

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS
AMERICA, INC.,

Petitioners

v.

WHIRLPOOL CORPORATION

Patent Owner

Case PGR2026-00043
Patent 12,543,922

**PATENT OWNER'S
DISCRETIONARY DENIAL BRIEFING PURSUANT
TO THE DIRECTOR'S MARCH 26, 2025 MEMORANDUM**

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EXHIBIT LIST

Exhibit	Description
EX2001	Declaration of William B. Collier, Jr. in Support of Patent Owner's Notice of Intent to Designate Provisionally Recognized Attorney William B. Collier, Jr. as Back-Up Counsel Under 37 C.F.R. § 42.10(c)
EX2002	Complaint for Patent Infringement, <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 1, filed Oct. 10, 2025 (E.D. Tex.)
EX2003	Amended Complaint for Patent Infringement, <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 38, filed Feb. 9, 2026 (E.D. Tex.)
EX2004	Plaintiff's Motion for Preliminary Injunction, <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 4, filed Oct. 10, 2025 (E.D. Tex.)
EX2005	Samsung's Opposition to Whirlpool's Motion for Preliminary Injunction (Redacted), <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 24, filed Dec. 15, 2025 (E.D. Tex.)
EX2006	Expert Declaration of Dr. Kimberly K. Cameron Regarding Non-infringement and Invalidity of the Asserted Patents, <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 70-1, filed May 27, 2026 (E.D. Tex.)
EX2007	Expert Declaration of Dr. Kimberly K. Cameron Regarding Non-infringement and Invalidity of U.S. Patent No. 12,543,922 (Redacted), <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 70-2, filed May 27, 2026 (E.D. Tex.)
EX2008	Expert Declaration of Dr. Kimberly K. Cameron Regarding Non-infringement and Invalidity of the Asserted Patents (Redacted), <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 70-3, filed May 27, 2026 (E.D. Tex.)
EX2009	Transcript of Evidentiary Hearing Held April 8, 2026 (Redacted), <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 76, filed June 10, 2026 (E.D. Tex.)
EX2010	Plaintiff's Post-hearing Brief in Support of Motion for a Preliminary Injunction, <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 65, filed May 5, 2026 (E.D. Tex.)
EX2011	Samsung's Post-hearing Responsive Brief in Opposition to Motion for a Preliminary Injunction (Redacted), <i>Whirlpool Corporation v. Samsung</i>

	<i>Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 70, filed May 27, 2026 (E.D. Tex.)
EX2012	Plaintiff's Post-hearing Reply Brief in Support of Motion for a Preliminary Injunction (Redacted), <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 75, filed June 10, 2026 (E.D. Tex.)
EX2013	Declaration Of Justin DeLapa In Support Of Patent Owner's Discretionary Denial Briefing Pursuant To The Director's March 26, 2025 Memorandum
EX2014	Docket Report, <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042 (E.D. Tex.) last accessed June 28, 2026
EX2015	Whirlpool Corporation Product Marking Page, available at https://www.patent-listing.com/index.html (last accessed June 10, 2026)
EX2016	Docket Control Order, <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 78, filed June 12, 2026 (E.D. Tex.)
EX2017	Letter from Counsel for Samsung regarding prior art stipulation
EX2018	Samsung's Post-hearing Sur-reply Brief in Opposition to Motion for a Preliminary Injunction (Redacted), <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 85, filed June 25, 2026 (E.D. Tex.)
EX2019	Second Amended Complaint for Patent Infringement, <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 88, filed Jun. 26, 2026 (E.D. Tex.)

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I. Introduction

Patent Owner Whirlpool Corporation (“Whirlpool”) respectfully requests that the Director discretionarily deny Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.’s (collectively “Samsung”) Petition to institute post grant review of U.S. Patent No. 12,543,922 (the “’922 Patent”). In support of discretionary denial, Whirlpool submits this briefing—limited in scope to discretionary denial issues—pursuant to the Director’s March 26, 2025 Memorandum.

First, the parallel District Court lawsuit¹ will address the same invalidity grounds raised in this PGR. Whirlpool sued Samsung for infringement of the ’922 Patent (as well as U.S. Patent Nos. 10,512,385 (the “’385 Patent”) and 12,232,681 (the “’681 Patent”) (collectively, the “Whirlpool Patents”)) in the Eastern District of Texas.² Whirlpool also filed a motion for a preliminary injunction, seeking to enjoin Samsung from selling its infringing dishwashers in direct competition with Whirlpool’s premium dishwasher line. The parties have since filed extensive briefing on the preliminary injunction issues, including addressing validity of the

¹ *Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.*, No. 2:25-cv-01042 (E.D. Tex.) (the “District Court lawsuit”).

² On June 26, 2026, Whirlpool filed an amended complaint asserting a fourth patent. *See generally* EX2019.

'922 Patent. The invalidity grounds raised by Samsung in the preliminary injunction rely on the Mailander, Carr, or Andrew references—essentially the same challenges presented in this PGR proceeding. Both Samsung and Whirlpool have submitted multiple rounds of expert declarations addressing validity. Samsung relies on the same expert, Dr. Cameron, for both this PGR and its preliminary injunction invalidity positions. The District Court already has conducted a day-long hearing that led to additional briefing on the preliminary injunction issues, including validity.

The District Court has heavily invested in this case as part of the preliminary injunction proceedings and will determine whether Samsung has “rais[ed] a substantial question concerning . . . validity” of the '922 Patent over the same art at issue in this Petition. The District Court will issue a preliminary order touching on validity arguments that substantially overlap with the PGR institution decision: whether Samsung has shown it is more likely than not that at least one claim is invalid. Discretionary denial, therefore, is warranted because this proceeding will concurrently address essentially the same validity issues raised in the District Court lawsuit, rather than presenting a less expensive alternative forum for deciding validity. Further, the District Court likely will make a preliminary ruling on these validity issues before any merits-based decision by the Board. The trial in the District Court proceeding will occur a few months after the final written decision in the PGR.

Discretionary denial also is warranted because Samsung uses this PGR

proceeding to mount duplicative invalidity attacks against Whirlpool, a U.S. manufacturer of patented dishwashers. Whirlpool has a century-long tradition of manufacturing its products in the United States and relying on American suppliers. Whirlpool employs more than 14,000 manufacturing employees at 10 manufacturing facilities across the United States, with an 11th facility on the way. In fact, the premium dishwashers that practice the '922 Patent are manufactured in Findlay, Ohio, the largest dishwasher factory in the USA. Samsung, conversely, is a Korea-based company and, to the best of Whirlpool's knowledge, does not manufacture any dishwashers in the United States.

In addition to these considerations, the remaining *Fintiv* factors favor discretionary denial: (i) the District Court is unlikely to grant a stay in the lawsuit, especially in light of the preliminary injunction issues currently pending before the Court; (ii) the District Court's decision on the preliminary injunction will precede any Final Written Decision; (iii) the parties and the court have already heavily invested in the District Court lawsuit; (iv) there is complete overlap in the issues; and (v) the parties are the same.

II. Factual Background

A. The parties are already litigating the validity of the patents.

Whirlpool is the owner of the '922 Patent and manufactures dishwashers in the United States that implement the patented inventions. EX2015. Whirlpool sued

Samsung for infringement of the '681 and '385 Patents in the Eastern District of Texas on October 10, 2025. *See generally* EX2002. That same day, Whirlpool moved for a preliminary injunction, seeking to enjoin Samsung from infringing those patents by copying Whirlpool's unique dishwasher design embodied in its premium KitchenAid dishwasher lines. *See generally* EX2004. Samsung filed its response on December 15, 2025. *See generally* EX2005. On February 9, 2026, Whirlpool amended its complaint to also assert infringement of the '922 Patent, and the '922 Patent was added to the preliminary injunction proceeding. *See generally* EX2003. Since the filing of the preliminary injunction motion, the parties have submitted four declarations touching on the '922 patent, including two by Dr. Kimberly Cameron, Samsung's expert. *See generally* EX2006-EX2008.

In her declarations, Dr. Cameron asserts virtually identical obviousness grounds as those presented in Samsung's PGR and IPR Petitions. *See* EX2006 §§ VIII.A.1, VIII.A.2; EX2008 § V.A. In fact, Dr. Cameron's analysis is essentially the same, relying on similar citations, figures, and reasoning in both the declarations filed in the District Court and before the Board, with only the addition or modification of secondary references.

The District Court held an evidentiary hearing on April 8, 2026. At that hearing, the Court heard extensive arguments from the parties related to validity, including significant discussion of Dr. Cameron's analysis. *See, e.g.*, EX2009 at

213:15-19. Following the hearing, the parties submitted additional post-hearing briefing consistent with the Court’s Order. *See generally* EX2010-EX2012.

A few days after the evidentiary hearing, and more than two months after the ’922 Patent was added to the District Court lawsuit, Samsung filed the first of its petitions. *See* Paper 1. This table shows the accorded filing dates and projected final written decision deadline for each proceeding:

Patent No.	Review No.	Accorded Filing Date	Projected Final Written Decision
12,232,681	IPR2026-00336	April 13, 2026	October 13, 2027
10,512,385	IPR2026-00337	April 15, 2026	October 15, 2027
12,543,922	PGR2026-00043	April 14, 2026	October 14, 2027

B. The Whirlpool Patents address related subject matter.

Each of the Whirlpool Patents relates to Whirlpool’s “hero” dishwasher feature—its premium third rack. EX2009 at 9:19-22, 25:2-15. This new patented technology holds utensils in a horizontal orientation while simultaneously featuring cup seats that cradle drinkware, preventing unwanted movement in the rack to minimize breakage. It also includes a sprayer with multiple nozzles strategically placed to inject water into the interior of the cradled drinkware to enhance cleaning.

III. Argument

“Congress afforded significant discretion to the Director in duly executing the purposes of the AIA” including “to ensure fairness, efficiency, and predictability.”

Magnolia Medical Techs., Inc. v. Kurin, Inc., IPR2026-00097, Paper 17 at 6-7

(PTAB May 14, 2026) (precedential); *see also* *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 273 (2016). Accordingly, the Director has discretion to deny institution in the public interest and “based on the totality of the evidence and arguments presented” by the parties. *Id.* at 2, 7-8. In that vein, the *Fintiv* case “sets forth factors that balance considerations of system efficiency, fairness, and patent quality when a patent owner raises an argument for discretionary denial due to the advanced state of a parallel proceeding.” *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 15 at 7–8 (PTAB May 13, 2020) (informative).

In *Magnolia*, the Director recognized additional instances in addition to those outlined in *Fintiv* where AIA review (referring to both IPRs and PGRs) does not serve the public interest. One is when AIA reviews are not used as a true alternative to litigation, but instead as a “second bite at the apple” for a patent challenger. *See Magnolia* at 3-4, 9. The second is when reviews are used to disadvantage U.S. manufacturing. *Id.* at 4-6. Samsung’s Petition implicates both issues.

A. Samsung uses the PGR Proceeding as a second bite at the validity apple.

As part of the preliminary injunction proceedings, the District Court has already invested significant resources in determining whether Samsung’s obviousness arguments “rais[e] a substantial question concerning . . . validity.” *LifeScan Scotland, Ltd. v. Shasta Techs., LLC*, 734 F.3d 1361, 1366 (Fed. Cir. 2013); *see also* EX2005 at 11. Now, after litigating invalidity for months in the District

Court litigation, Samsung asks the PTAB to institute a parallel PGR based on essentially the same primary art and arguments advanced in the District Court. *See generally* EX2005. Institution of Samsung’s PGR Petition by the Board will cause “the parties to spend more time and resources litigating patent validity than they would have in the absence of AIA review,” *see Magnolia* at 3, and raises the possibility of inconsistent results between the Board and the District Court.

The Federal Circuit applies a four-factor test to determine whether a preliminary injunction should be granted. *Natera, Inc. v. NeoGenomics Labs., Inc.*, 106 F.4th 1369, 1375 (Fed. Cir. 2024). The first issue is whether the patent owner has established a likelihood of success on the merits. *Id.* This requires that the patent owner show it is likely to prove infringement and withstand any validity challenges. *Id.* A determination of this critical factor requires the District Court to analyze claim construction, infringement allegations, and any invalidity positions advanced by the defendant. *See id.* at 1375–77. Such proceedings require significant up-front investment by the District Court, far beyond what is necessary at the outset of a typical patent case.

As a result, the District Court has received comprehensive briefing and heard extensive argument from the parties on the infringement and validity issues related to the ’922 Patent. *Supra* Section II.A. To date, the parties have filed six briefs comprising 139 pages of briefing and attaching 77 additional documents including

seven expert declarations, of which 95 pages of briefing and four declarations touch on the '922 Patent. *See* EX2014; EX2004, EX2005-EX2008, EX2010–EX2012, EX2018. At the all-day evidentiary hearing, the Court heard argument from both parties on validity and infringement and received testimony related to copying and irreparable harm from Whirlpool's witness, Michelle Villarroel, and Samsung's witness, Josh Stumacher.³ EX2009 at 4:8-13.

These briefs and arguments currently before the District Court raise remarkably similar issues to those presented in this PGR proceeding, namely, whether Samsung has raised a substantial question concerning obviousness of the '922 Patent's claims relative to Mailander, Carr, or Andrew. *See* EX2005 at 13-14. In light of the expedited nature of the preliminary injunction proceeding, the District Court has and will invest significant resources in this case before the Board analyzes the merits of Samsung's Petition. Moreover, the parallel proceedings at the District Court and the Board, if the PGR Proceeding were to institute, would raise the possibility of inconsistent findings on essentially the same issues.

³ The Court expected to hear testimony by both parties' experts who both traveled to Marshall, Texas, but Dr. Cameron was unavailable due to illness. EX2009 3:24-4:7. Instead of live testimony, the parties agreed that declarations would be submitted to the District Court, supplemented by additional briefing.

After completing its review of the record, the District Court should resolve nearly the same question as the Board will at institution. As the Federal Circuit has explained, this analysis will include resolving “whether the patentee has shown it is more likely than not to prevail over an invalidity challenge.” *Natera, Inc. v. NeoGenomics Labs., Inc.*, 106 F.4th 1369, 1377 (Fed. Cir. 2024). Before the Board, the burdens are swapped, but the underlying question is the same: whether Samsung has shown it is more likely than not that at least one claim of the ’922 Patent would have been obvious. 35 U.S.C. § 324(a) (a PGR may not be instituted unless the petition “demonstrate[s] that it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable”). In either case, the patent challenger cannot merely rely on conclusory argument and instead must explain its reasoning. *Natera*, 106 F.4th at 1377; *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016); *see also* 35 U.S.C § 322(a)(3). Unsurprisingly, Samsung makes largely identical arguments in both forums.

This case is a prime example of a petitioner seeking to obtain a second bite at the invalidity apple. This tactic, combined with the District Court’s significant investment in the lawsuit, justifies discretionary denial of Samsung’s PGR petition. Moreover, as explained below, additional factors warrant discretionary denial.

B. These proceedings will harm U.S. manufacturing.

The Director has acknowledged that duplicative PGR proceedings may be

used to disadvantage American patent holders and manufacturers. *Magnolia* at 4-5.

This Petition was filed by a foreign manufacturer that seeks to incorporate a technology patented by an American manufacturer, and who then uses an AIA Review proceeding to give itself two opportunities to render invalid a commercially valuable patent. *See* EX2015. This PGR proceeding thus serves only to provide a tactical advantage to a company that does not make its infringing dishwashers in the United States.

In contrast, Whirlpool has long been committed to designing and manufacturing products in the United States. EX2013 ¶¶2-4. Since its founding nearly 125 years ago, Whirlpool has based its headquarters in the small town of Benton Harbor, Michigan. *Id.* ¶¶2-3. In the many years since its founding, Whirlpool has expanded to 10 manufacturing sites in the United States where it employs 14,000 Americans. *Id.* ¶4. Last year, Whirlpool made more than 13,000,000 products in the United States under its Whirlpool brand, and other associated brands, including KitchenAid, JennAir, Maytag, and Amana. *Id.* These products span the home appliance market and include refrigerators, washers, dryers, and dishwashers, including the dishwashers covered by the '922 Patent. *Id.*

Whirlpool has long made significant investments in American technology and manufacturing. Whirlpool currently employs 600 research and development staff at various locations in the United States, including at its headquarters in Benton

Harbor. *Id.* ¶5. These engineers have contributed to over 10,000 U.S. Patents over the past 125 years that have led to important technical innovations, ranging from more efficient and better washing machines to experimental kitchens developed for NASA. *Id.* This investment in American innovation is the keystone to Whirlpool's continued manufacturing here in the United States. *Id.*

The dishwashers covered by the '922 Patent are produced at Whirlpool's facility in Findlay, Ohio. *Id.* ¶6-7. The Findlay factory employs 2,000 Americans producing up to 13,000 dishwashers per day. *Id.* ¶6. It is the largest dishwasher factory in the United States and one of the largest in the world. *Id.* The majority of the subparts and components used in these dishwashers are from the United States. *Id.* Of the over 1,200 parts used in these dishwashers, over 850 are made in the U.S. by Whirlpool and 90 different American suppliers. *Id.*

Samsung and Whirlpool are competitors, particularly in the kitchen appliance market. *Id.* ¶8. Unlike Whirlpool, Samsung is Korea-based and does not produce the infringing dishwashers in the United States. *Id.* Instead, these dishwashers are manufactured abroad and shipped to the United States. *Id.*

As the Director has recognized, using post-grant proceedings as a duplicative attack by a foreign entity against an American manufacturer's commercially valuable patent fails to serve the public interest, and instead "provide[s] a tactical advantage to companies that neither manufacture in the United States nor make

American manufacturing investments.” *Magnolia* at 7. Accordingly, institution should be discretionarily denied for this additional reason.

C. The remaining *Fintiv* factors support discretionary denial.

In addition to the above unique considerations, the remaining *Fintiv* factors “support the exercise of authority to deny institution” based on parallel district court litigation. *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11, at 6 (PTAB March 20, 2020) (precedential) (“*Fintiv*”). The Director has discretion to deny institution under 35 U.S.C. § 324(a). *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 273 (2016); *Magnolia* at 6-7 (citing cases). The USPTO should exercise such discretion here and deny the Petition because nearly identical invalidity arguments currently are being addressed in the District Court lawsuit, and the Board has not begun to analyze the merits of Samsung’s Petition. Additionally, the District Court will likely resolve the same or similar invalidity issues, at least on a preliminary basis, prior to any final written decision by the Board. Accordingly, any Board review of Samsung’s petition would not be an efficient use of the Board’s resources and raises the potential for inconsistent findings on the same or very similar obviousness issues.

The USPTO considers the presence and status of parallel district court litigation in determining whether to deny institution. *Magnolia* at 3-4 (citing *Motorola Sols., Inc. v. Stellar, LLC*, IPR2024-01205, Paper 19 (Director Mar. 28, 2025)); see also *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 15 at 17 (PTAB

May 13, 2020) (informative) [hereinafter “*Fintiv*”]; *Gen. Plastic Indus. Co., Ltd. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 at 16–17 (PTAB Sept. 6, 2017) (“[W]e recognize that an objective of the AIA is to provide an effective and efficient alternative to district court litigation”). *Fintiv* “sets forth factors that balance considerations of system efficiency, fairness, and patent quality when a patent owner raises an argument for discretionary denial due to the advanced state of a parallel proceeding.” *Fintiv*, Paper 15 at 7–8. The factors are:

1. whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted;
2. proximity of the court’s trial date to the Board’s projected statutory deadline for a final written decision;
3. investment in the parallel proceeding by the court and the parties;
4. overlap between issues raised in the petition and in the parallel proceeding;
5. whether the petitioner and the defendant in the parallel proceeding are the same party; and
6. other circumstances that impact the Board’s exercise of discretion, including the merits.

Id. “[T]he Board examines these factors, which relate to whether efficiency, fairness, and the merits support the exercise of authority to deny institution. In evaluating the factors, the Board takes a holistic view of whether efficiency and integrity of the system are best served by denying or instituting review.” *Id.* (internal citations

omitted). As detailed below, these factors favor discretionary denial.

1. Factor 1: whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted

This factor favors discretionary denial because Samsung has not filed a motion to stay, and even if it did, that motion will almost certainly be denied. The “universal practice” in the Eastern District of Texas is to “den[y] stay requests when the PTAB has not yet acted on the petition for review.” *Tessera Advanced Techs., Inc. v. Samsung Elecs. Co.*, 2018 U.S. Dist. LEXIS 120999, *10-11 (E.D. Tex. July 19, 2018). Thus, until the Director makes his institution decisions in each PGR and IPR proceeding, any stay motion Samsung files will almost certainly be denied.

But even if the Director decides to institute review on some of the Whirlpool Patents, the Eastern District of Texas is unlikely to stay litigation. That is because “[i]t has been [that district’s] consistent and long-established practice to deny motions to stay pending [review] . . . when the PTAB . . . [has] instituted review on less than all asserted claims of all asserted patents.” *AGIS Software Development LLC v. Google LLC*, No. 2:19-cv-361-JRG, 2021 U.S. Dist. LEXIS 24195, at *9 (E.D. Tex. Feb. 9, 2021); *see Force Mos Tech., Co. Ltd. v. Asustek Computer, Inc.*, No. 2:22-cv-460-JRG, 2024 U.S. Dist. LEXIS 66423, at *10 (E.D. Tex. Apr. 11, 2024). Thus, pursuant to established precedent from that Court, to have any chance of receiving a stay, all three of Samsung’s Petitions would need to be instituted.

In sum, there is strong evidence that any theoretical stay motion will be

denied, which favors discretionary denial. At minimum, “there is insufficient evidence that the district court is likely to stay its proceeding even if the Board were to institute trial.” *Coretronic Corp. v. Maxell, Ltd.*, IPR2025-00474, Paper 11 at 2 (PTAB Jul. 10, 2025) (Stewart, C.M.).

2. Factor 2: proximity of the court’s trial date to the Board’s projected statutory deadline for a final written decision

This factor is neutral. The anticipated deadline for the Board’s final written decision, should this case be instituted, would be October 14, 2027, only slightly sooner (by just under two months) than trial in the District Court lawsuit, which is scheduled for December 6, 2027. EX2016 at 1.

The District Court trial date and the projected final written decision deadline are close in time. *See, e.g., Advanced Micro Devices, Inc. et al. v. Concurrent Ventures, LLC et al.*, IPR2025-00223, Paper 9 at 2 (Acting Director Stewart June 12, 2025) (discretionarily denying based—in part—on the final written decision deadline and scheduled trial date being within approximately two weeks of each other) (reversed on rehearing due to subsequent stay in district court proceeding). “Even though a district court trial date that occurs after a projected final written decision date reduces the possibility of conflicting decisions, that benefit does not outweigh the efficiencies gained by avoiding parallel proceedings in this instance because of the parties’ meaningful investment in the district court proceeding” *Id.*

Given the substantial investment in the District Court lawsuit that will occur before any final written decision might issue in this proceeding, this factor is neutral, at worst. But if the preliminary injunction proceedings are considered, including the extensive briefing and the full day hearing on Whirlpool's Motion for Preliminary Injunction that has occurred already, then this factor favors discretionary denial because a decision on the preliminary injunction motion will likely pre-date even the Institution Decision.

3. Factor 3: investment in the parallel proceeding by the court and the parties

This factor weighs heavily in favor of discretionary denial because of the significant investment the District Court and the parties have made already. *See supra* Section III.A. In the District Court lawsuit, the parties have been litigating Whirlpool's Motion for Preliminary Injunction for more than eight months and the District Court has invested and will continue to invest considerable time and resources to this case. *Supra* Section III.A, III.C.2. In that time, both parties conducted discovery, invested significant resources in lawyers and experts, prepared witnesses, and traveled with those witnesses, attorneys, experts, and in-house counsel to the preliminary injunction hearing. *See, e.g.*, EX2009 at 3:8-23, EX2016.

Beyond the preliminary injunction, trial in the District Court is scheduled to start on December 6, 2027, less than two months after the projected final written decision deadlines in the proceedings for the Whirlpool Patents. EX2016; *see supra*

Section II.A. By that time, the Preliminary Injunction motion will be resolved, and the parties and the Court will be preparing for trial. The District Court will have held a *Markman* hearing, and the parties will have concluded fact and expert discovery, filed dispositive motions, and served pretrial disclosures, all before the Board's decision. EX2016. Given the significant investment in the parallel District Court lawsuit, this factor strongly favors denial.

4. Factor 4: overlap between issues raised in the petition and in the parallel proceeding

Factor 4 strongly favors discretionary denial given the complete overlap between the invalidity allegations in the District Court lawsuit and the Petition. *See supra* Section III.A. As noted above, Samsung asserts nearly the same obviousness grounds in this PGR as it is asserting in its opposition to Whirlpool's motion for a preliminary injunction in the District Court lawsuit.

Despite this overlap, or perhaps because of it, Petitioner offered no stipulation (*Sotera* or otherwise) with the Petition to attempt to mitigate the duplication of effort that would occur if this PGR was instituted. Samsung only recently offered a stipulation, but retained the right to "continue to assert that [] no injunction of any sort should issue in the related district court case because the existence of the ongoing [AIA review]." ⁴ EX2017. Consistent with its conditional stipulation,

⁴ This stipulation was provided *after* Whirlpool filed its request for discretionary

Samsung has not withdrawn its invalidity arguments raised in response to the preliminary injunction motion and continues pursuing duplicative invalidity positions in the two forums. These actions confirm that Samsung views this proceeding as an additional “bite at the apple” rather than any sort of true alternative to trying validity in the District Court lawsuit. *See Magnolia* at 3-4, 9-10. This factor favors discretionary denial.

5. Factor 5: whether the petitioner and the defendant in the parallel proceeding are the same party

Petitioner Samsung and Patent Owner Whirlpool are parties to both the lawsuit and this PGR, *see* EX2002 at 1, which favors discretionary denial. *Sotera Wireless*, IPR2020-01019, Paper 12 at 19.

6. Factor 6: other circumstances that impact the Board’s exercise of discretion, including the merits

Factor 6 weighs in favor of discretionary denial. Both the District Court’s investment in Whirlpool’s motion for preliminary injunction and Whirlpool’s U.S. manufacturing support discretionary denial. *See supra* Sections III.A, III.B. In addition, the District Court is better situated to resolve this obviousness challenge by Samsung because of the fulsome discovery available to the Parties in that forum. For example, the District Court heard live testimony during the preliminary injunction hearing related to Samsung’s copying of the patented dishwasher features,

denial in response to Samsung’s IPR petitions related to the ’681 and ’385 Patents.

which in addition to addressing the infringement issue, serves as secondary indicia of non-obviousness. *See, e.g.*, EX2009 at 7:7-13, 50:9-15, 78:9-14. Other evidence related to copying (and other secondary considerations) is in Samsung's possession and will require extensive discovery to obtain given its confidential nature. *See, e.g., id.* at 24:8-22 (redacting information). Whirlpool can pursue this evidence in the District Court proceeding, but the limited nature of a PGR proceeding will restrict Whirlpool's ability to obtain that evidence here and unduly prejudice Whirlpool. *See, e.g.*, 37 CFR § 42.51(b)(2) (permitting additional discovery only when it is in "the interests of justice").

Yet another factor favoring discretionary denial is that the merits of the Petition are relatively weak. Each of Mailander, Carr, and Andrew were identified to the Patent Office during prosecution of the '922 Patent and listed on the face of the patent, and yet the examiner did not find any of them to be invalidating. Additionally, despite multiple attempts, Samsung cannot identify a "cup seat" in the art, as recited by claim 1 of the '922 Patent (the only independent claim). Samsung identifies merely an "angled portion" of Carr's wash rack 200 and a sloped support surface 34 in Mailander, but nothing that cradles or seats a cup. Andrew, which is a 1959 patent, depicts a two-rack dishwasher whose bulky upper rack is fundamentally incompatible with three-rack dishwashers and does not teach a space large enough to accommodate the claimed elements of the '922 Patent.

This is only one example of the deficiencies present in the PGR Petition, but it serves to illustrate that this is not a situation where the Petitioner has clearly established a significant obviousness concern.

D. Additional considerations also support discretionary denial.

In addition to the *Fintiv* factor analysis and other considerations discussed above, Samsung's Petition relies heavily on its expert declaration in an attempt to satisfy limitations absent from its cited art. In the absence of compelling prior art, Samsung has cited its expert approximately 147 times in its Petition. *See generally* Pet. (citing "Ex-1002"). Yet its expert added little (if any) value to its analysis, frequently providing conclusory statements and parroting the contents of the Petition. *See* EX1002. The declarations upon which it relies are more accurately framed as attorney argument, and Samsung's reliance on conclusory testimony that simply duplicates arguments made in the Petition is not helpful to the trier of fact. This provides yet another reason the Petition should be discretionarily denied.

IV. Conclusion

Whirlpool respectfully requests that the Director discretionarily deny institution of post grant review for the reasons stated herein.

Dated: June 29, 2026

Respectfully submitted,

/Michael F. Heim /

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CERTIFICATE OF SERVICE

The undersigned certifies that pursuant to 37 C.F.R. § 42.6(e), a true copy of the foregoing DISCRETIONARY DENIAL BRIEF was served on the date below to the following lead counsel for Petitioners via e-mail:

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