

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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FENUN INC.,  
Petitioner,  
v.  
PETPIVOT INC.,  
Patent Owner.

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Case No. PGR2026-00066  
U.S. Patent No. 12,433,239 B2

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**PETITIONER'S OPPOSITION TO PATENT OWNER'S  
REQUEST FOR DISCRETIONARY DENIAL**

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## I. INTRODUCTION

Petitioner Fenun Inc. (“Petitioner”) respectfully submits this Opposition to Paten Owner Petpivot Inc.’s (“Patent Owner”) Request for Discretionary Denial of the Petition for *inter partes* review (“IPR”) of U.S. Patent No. 12,433,239 B2 (the “‘239 Patent”). The Director should decline to deny institution on discretionary grounds. The Petition was filed on July 6, 2026, inside the nine-month statutory window for post grant review, 35 U.S.C. § 321(c), and only weeks after Patent Owner itself placed the validity of the ‘239 Patent in issue by suing the real parties in interest for infringement. A petition filed that promptly, in direct response to a lawsuit, does not present the concerns that discretionary denial is intended to address.

Patent Owner’s Request for Discretionary Denial (Paper 6) (the “Request”) does not rely on the parallel district court litigation, and that litigation would not support denial: it remains at its earliest stage. When the Petition was filed, no defendant had been served. In fact, service was not completed until September 14, 2026. Ex. 1027 (Dkts. 29, 30). Patent Owner has twice sought preliminary injunctive relief, and the district court has denied both motions without prejudice: the motion for a temporary restraining order on July 13, 2026, and the motion for a preliminary injunction following the October 1, 2026 evidentiary hearing. Ex. 1027 (Dkts. 10, 13, 31, 51). The defendants answered on October 5, 2026, no discovery has occurred,

and no trial date has been set. Ex. 1027 (Dkt. 50). Resolving validity now, before the parties and the district court invest in discovery and trial, is the sequence the statute contemplates.

The Request also does not address the Petition's grounds under 35 U.S.C. § 112(b), which challenge claims 10 and 12 through 17 as indefinite. Pet. at 102. Even if every argument in the Request was accepted in full, those grounds would remain untouched, and denial of the entire Petition would still be unwarranted.

The Request is also silent on an enumerated consideration, the strength of the unpatentability challenge. Nowhere does it contend that the Petition's challenges are weak. Its five arguments are procedural objections and even taken together they do not reach Grounds 4 through 6 or the § 112(b) grounds. Post-grant review exists to correct erroneously issued claims close to examination, within the window set by Congress for that very purpose. The Request asks the Director to leave in force claims the Office has never tested against Zhou or PAWBBY, without defending their patentability.

The five arguments the Request does present are addressed in turn below. First, the Petition's expert testimony supports motivation to combine and reasonable expectation of success; the Request identifies no claim limitation supplied by testimony in place of the prior art. Second, expectations cannot become settled within the nine-month window Congress provided for post-grant review. Third, the

real parties in interest are fully disclosed and undisputed, and the district court disclosure statements the Request describes as missing have since been filed. Fourth, the art on which the Petition principally relies was never presented to the Office. Fifth, the Petition’s grounds reflect the completeness that post-grant review estoppel requires. None of Patent Owner’s arguments support discretionary denial.

## **II. THE MERITS OF THE PETITION SUPPORT INSTITUTION**

The strength of the unpatentability challenge is an express consideration in the discretionary analysis. Memorandum, *Interim Processes for PTAB Workload Management* at 2–3 (Mar. 26, 2025). The Request does not address the strength of the Petition’s grounds nor does it contend that any ground is weak. Consistent with the Office’s published guidance on the bifurcated process, Petitioner respectfully requests that the Director consider the merits briefing, including the Petition and its supporting evidence, in evaluating this factor.

The purpose of AIA reviews “was, and is, to provide a quick and cost-effective *alternative* to district court patent litigation for resolving disputes over patent validity.” *Magnolia Medical Technologies, Inc. v. Kurin, Inc.*, IPR2026-00097, Paper 17 at 2 (Director May 14, 2026) (precedential) (denying institution where the petitioner had already litigated the same validity grounds to a jury verdict in district court and lost). The Petition here was filed as that alternative, at the outset of the dispute. No court has ruled on the validity of the ‘239 Patent. Patent Owner’s

motion for a temporary restraining order was denied without prejudice, its late-filed validity declaration was struck, and its motion for a preliminary injunction was denied without prejudice following the October 1, 2026 evidentiary hearing. Ex. 1027 (Dkts. 13, 44, 45, 47, 48, 51). There is no prior determination for this proceeding to revisit, and Petitioner's stipulation not to pursue in the district court any ground raised or that reasonably could have been raised in this proceeding ensures that those grounds will be resolved in this proceeding alone. Ex. 1024.

Moreover, the Petition's showing is strong. The Petition identifies the two features on which allowance turned, the bump and groove joint of claim 1 and the C-shaped slot with a separately arranged limit protrusion of claim 3, and demonstrates that both are disclosed by Zhou, a reference the examiner never applied. Pet. at 103. Ground 5 presents anticipation of claim 3 by PAWBBY, prior art the examiner never saw in any form, presented as a printed publication: a single FCC equipment authorization record, publicly accessible on the FCC's public database before the critical date. Exs. 1009–1016. That record is corroborated by the PAWBBY product's Amazon listing and an authentication declaration. Exs. 1017, 1018. The obviousness grounds map every limitation of the challenged claims to the prior art references themselves, element by element. Pet. at 29–101. A petition of this strength weighs against discretionary denial.

### III. THE PETITION'S USE OF EXPERT TESTIMONY IS PROPER

The *Interim Processes* identify the extent of a petition's reliance on expert testimony as a consideration. That consideration is directed at testimony used as a wholesale substitute for record evidence, in particular testimony used to supply a claim limitation missing from the prior art. *Arendi S.A.R.L. v. Apple Inc.*, 832 F.3d 1355, 1361–62 (Fed. Cir. 2016) (cited in the Request).

The Petition does not use expert testimony in this way. Every claim limitation in every ground is mapped to the disclosure of the prior art references themselves. Pet. at 29–101. The declaration of Dr. Abraham is cited principally for motivation to combine and reasonable expectation of success. The only two passages the Request identifies, Pet. at 76–77 and Pet. at 82, are both of that character. Expert testimony is a proper and expected form of evidence on those questions, which by their nature concern the knowledge and reasoning of a person of ordinary skill.

Moreover, the Request does not identify a single claim limitation for which the Petition relies on Dr. Abraham's testimony in place of the prior art. That omission is dispositive of this factor. The length of the declaration reflects a complete limitation by limitation analysis across ten grounds and two statutory bases. A thorough record is not a reason to deny institution.

#### **IV. SETTLED EXPECTATIONS DO NOT FAVOR DENIAL**

The ‘239 Patent issued on October 7, 2025. The Petition was filed on July 6, 2026, within the nine-month period that Congress established for post-grant review. *See* 35 U.S.C. § 321(c). Expectations cannot become settled during the period in which the statute invites challenge. By Patent Owner’s reasoning, every timely post-grant review petition would face denial because the patent was, in Patent Owner’s words, “as old as possible” on post-grant review. This reasoning would convert the statutory window itself into a ground for denial and would apply with equal force to every timely petition. The Request itself says those expectations were “as settled as could be” on post-grant review. That concedes a period of reliance of at most nine months.

The Office’s decisions confirm the point that “petitions for post-grant review are favored because they must be filed no later than nine months from the grant of the patent (35 U.S.C. § 321(c)), are close in time to examination, and occur before expectations in the patent rights are strongly settled.” *LifeVac, LLC v. DCSTAR Inc.*, IPR2025-00454, Paper 11 at 2 (Acting Director July 11, 2025); *accord Multi-Color Corporation v. Brook & Whittle Ltd.*, PGR2025-00025, Paper 10 at 1–2 (Acting Director July 16, 2025) (informative) (declining to deny a timely post grant review petition notwithstanding parallel district court litigation).

The Office has likewise declined to find settled expectations in patents far older than this one, concluding that “most of the challenged patents have not been in force for a significant period of time (issued in 2020, 2019, and 2019).” *Cambridge Industries USA, Inc. v. Applied Optoelectronics, Inc.*, IPR2025-00434, Paper 11 at 2 (Acting Director June 26, 2025). By contrast, the Request’s lead authority, *Dabico Airport Solutions Inc. v. AXA Power ApS*, IPR2025-00408, Paper 21 at 2 (Acting Director June 18, 2025) (informative), denied institution where the patent had been “in force almost eight years, creating settled expectations.” Here, the ‘239 Patent had been in force for nine months when the Petition was filed, and Patent Owner had already placed its validity in dispute by suing the real parties in interest. Pet. at 106; Ex. 1023.

The Request’s reliance on *iRhythm Technologies, Inc. v. Welch Allyn, Inc.*, IPR2025-00363, et al., Paper 10 at 3 (Acting Director June 6, 2025), is misplaced. That case involved a petitioner that had known of the patent family for many years before seeking review. Here, Patent Owner filed its complaint on May 27, 2026. The Petition followed on July 6, 2026, approximately five weeks later, and more than two months before any defendant was served in the district court action on September 14, 2026. Ex. 1027 (Dkts. 29, 30). A petition filed before the real parties in interest had even been served reflects diligence, not delay.

The Request's reliance on *Home Depot U.S.A., Inc. v. H2 Intellect LLC*, IPR2025-00480, Paper 11 (Acting Director Sept. 4, 2025) (informative), is also misplaced. That decision addressed whether a petitioner's own settled expectations can additionally support institution where a patent has been in force for many years without assertion. That a petitioner lacks settled expectations of its own does not support denial. The question remains whether Patent Owner's expectations have settled, and nine months within the statutory challenge window cannot settle them. Nor does it matter that Petitioner itself has not been accused of infringement. Section 321(a) permits a petition by any person other than the patent owner, and the accused parties are before the Office as the disclosed real parties in interest. The Petition responded to Patent Owner's suit within weeks.

Finally, the Request's assertion that Patent Owner has been practicing the patent is attorney argument supported only by a citation to Patent Owner's own website. It is not evidence of commercialization, licensing, or investment made in reliance on the patent, and it does not support a finding of settled expectations.

## **V. THE REAL PARTIES IN INTEREST ARE FULLY DISCLOSED**

The Petition identifies three real parties in interest: Fenun Inc., Shenzhen Yingqi Environmental Art Co., Ltd., and Zhi Yang. Pet. at 108. The Request identifies the same three. The Request does not dispute that identification and names

no person or entity said to have been omitted. The mandatory notices in this proceeding were accurate when filed and remain accurate.

The Request's factual premise is that the defendants in the district court action had not filed the disclosure statement required by Middle District of Florida Local Rule 3.03, and that such a statement would have disclosed whether a foreign government or an affiliated entity holds interest in or control over the real parties in interest. This premise does not support denial, for two reasons. First, the completeness of the mandatory notices in this proceeding is governed by 35 U.S.C. § 322(a)(2) and 37 C.F.R. § 42.8, not by another tribunal's local rules. The notices were complete and accurate when filed. Second, the disclosure statements in the district court proceeding have since been filed, and they disclose no foreign government interest. Ex. 1028 (Dkts. 37, 38). Furthermore, the disclosure statements identify this proceeding by name, and the defendants filed a notice of a related action in the district court the same day. Ex. 1027 (Dkt. 39).

The Request relies on *Corning Optical Communications RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 68 (PTAB Aug. 18, 2015), designated precedential in relevant part on October 28, 2025, and on the designation memorandum's concern with opacity in the chain of control. *Corning* addresses concealment of parties that fund, direct, or control a proceeding. The Request

identifies no such party and no such relationship. As such, this legal premise fails as well.

## **VI. SECTION 325(d) DOES NOT SUPPORT DENIAL**

The threshold question under § 325(d) is whether the same or substantially the same art or arguments were previously presented to the Office. *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 8 (PTAB Feb. 13, 2020) (precedential). The art on which the Petition principally relies was not.

First, Zhang and PAWBBY were never presented to the Office. Neither was cited on a Form 892, submitted in an information disclosure statement, applied in any rejection, or discussed in the reasons for allowance. Pet. at 103–04. The Request’s argument that Zhang is cumulative of Baxter and Turkalo is incorrect. The Petition presents the references in combinations the Office never evaluated, and those combinations are directed at the two features on which allowance turned, features the record art did not supply. Pet. at 103–05. The Request’s own footnote concedes that the relevant limitation of claim 3 is not discussed in the Non-Final Office Action because claim 3 was not rejected. An examiner cannot have considered prior art with respect to a limitation that the examiner never addressed with any prior art.

Second, as to Zhou and Sedlmeir, the Request relies on their appearance in the examiner's electronic search history strings. Ex. 1002 at 161–63. An entry in a search results log, without citation, discussion, or any finding is not art substantively presented to and considered by the Office within the meaning of the framework. The examiner made no findings about either reference and the prosecution record contains no analysis of either.

Even if the threshold was crossed, the Request's own theory establishes material error – Zhou was among the examiner's search results and Zhou discloses both features on which allowance turned. Pet. at 103. The claims were nonetheless allowed without any prior art applied to those features. Overlooking prior art disclosure of the very features on which allowance turned is material error. The Office has declined to deny institution on discretionary grounds where the petitioner demonstrated material error of this kind. See *Carbyne, Inc. v. Tritech Software Systems*, IPR2025-00959, Paper 11 at 2 (Deputy Director Oct. 3, 2025). In *Carbyne*, the overlooked reference had even been cited on an information disclosure statement during prosecution. Here, Zhou was never cited.

Finally, the argument cannot support denial of the Petition as a whole. Section 325(d) concerns art and arguments previously presented. Grounds 4, 5, and 6 rest on PAWBBY, which was never before the Office in any form, and the Petition's

grounds under 35 U.S.C. § 112(b), directed to claims 10 and 12 through 17, are outside § 325(d) entirely. Pet. at 102. The Request addresses neither point.

## **VII. THE PETITION’S GROUNDS ARE FOCUSED AND EFFICIENT**

Post-grant review estoppel reaches any ground that a petitioner raised or reasonably could have raised. 35 U.S.C. § 325(e). The statute therefore requires a petitioner to present its complete case in a single petition, because grounds omitted cannot be raised later. Completeness within the word limit is compliance with that statutory structure, not inefficiency.

Nor are the grounds redundant: they differ by the category of evidence on which they rest. Grounds 4 through 6 rest on the PAWBBY printed publication record. The remaining grounds rely on patent literature. Different categories of evidence carry different risks of proof. For instance, a ground built on a printed publication record does not duplicate a ground built on patent literature. The Request’s own description concedes as much: it notes that each of the five grounds directed to claim 3 rests on a different reference or combination. Claim 3 receives particular attention because it is the only claim Patent Owner asserts in the district court action. Pet. at 105. The Petition’s treatment of that claim is proportionate to its place in the dispute.

Finally, the Request relies on *Zhuhai CosMX Battery Co., Ltd. v. Ningde Amperex Technology Ltd.*, IPR2025-00405, Paper 24 at 2 (Director Oct. 15, 2025),

but that case involved at least fifteen grounds of unpatentability, five of which overlapped the same set of challenged claims. The Petition here presents ten prior art grounds within the standard word limit of 37 C.F.R. § 42.24, and the Request identifies no violation of any rule governing petition content. Petitioner's stipulation with the real parties of interest (Ex. 1024) further removes any concern about duplicative litigation of the same grounds in district court. Efficiency favors resolving validity in this proceeding, on the statutory schedule.

## **VIII. CONCLUSION**

The Petition was filed within the statutory window, weeks after Patent Owner sued the real parties in interest and before any defendant was served. The Request opposes it with five procedural objections, and none supports denial. The expert testimony objection identifies no limitation supplied by testimony rather than by the prior art. The settled expectations theory would convert the statutory window into a ground for denial. The disclosure argument rests on a premise that no longer exists. The § 325(d) argument does not reach the art on which the Petition principally relies. The grounds objection faults the Petition for the completeness that § 325(e) requires. The Request nowhere contends that the challenges are weak, and its arguments do not reach Grounds 4 through 6 or the § 112(b) grounds. For the foregoing reasons, Petitioner respectfully requests that the Director decline to exercise discretion to

deny institution and permit the Petition to proceed to a determination on the merits.

Petitioner appreciates the Director's consideration of this Opposition.

Dated: October 19, 2026

Respectfully submitted,

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**UPDATED EXHIBIT LIST**

Petitioner submits the following additional exhibits with this Opposition.

Exhibits 1001 through 1026 were filed with the Petition.

**Ex. 1027** Docket sheet, *PetPivot Inc. v. Shenzhen Yingqi Environmental Art Co., Ltd. (d/b/a FumoiShop) and Zhi Yang*, No. 8:26-cv-01554 (M.D. Fla.), as of October 19, 2026.

**Ex. 1028** Defendants' Disclosure Statements under M.D. Fla. Local Rule 3.03, No. 8:26-cv-01554, Dkts. 37, 38 (Sept. 29, 2026).

**Ex. 1029** Plaintiff's Motion for Temporary Restraining Order, or in the Alternate, for a Preliminary Injunction: No. 8:26-cv-01554, Dkts. 10 (Jul. 13, 2026).

**CERTIFICATION OF WORD COUNT (37 C.F.R. § 42.24(d))**

Pursuant to 37 C.F.R. § 42.24(d), the undersigned certifies that the foregoing Opposition contains 3,141 words, as measured by the word processing system used to prepare it, excluding the table of contents, exhibit list, this certification, and the certificate of service. This is within the 14,000 word limit applicable to this brief under the Office's March 26, 2025 Memorandum, *Interim Processes for PTAB Workload Management*.

/s/ Steven A. Moore

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Lead Counsel for Petitioner

**CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))**

I hereby certify that a true and correct copy of the foregoing PETITIONER'S  
OPPOSITION TO PATENT OWNER'S REQUEST FOR DISCRETIONARY  
DENIAL, together with Exhibits 1027 - 1029, was served on October 19, 2026, via  
electronic mail on the following counsel of record for Patent Owner:

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