Appeal Nos. 2020-1173, 2020-1174

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

IMPLICIT, LLC,
Appellant
v.

SONOS, INC.,
Appellee

JOHN A. SQUIRES, UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE,
Intervenor

Appeals from the United States Patent and Trademark Office,
Patent Trial and Appeal Board in Nos. IPR2018-00766 and IPR2018-00767

INTERVENOR'S RESPONSE TO THE PETITION FOR REHEARING EN BANC

NICHOLAS T. MATICH
Solicitor
AUSTIN P. MAYRON
Deputy Solicitor
WILLIAM LAMARCA
Special Counsel for Intellectual Property Litigation
ROBERT E. MCBRIDE
SARAH E. CRAVEN
Associate Solicitors
Office of the Solicitor, USPTO
Mail Stop 8, P.O. Box 1450
Alexandria, Virginia 22313
(571) 272-9035
Attorneys for the Director of the USPTO

June 1, 2026

TABLE OF CONTENTS

I. Introduction 1

II. Summary of Panel Decision 2

III. Rehearing En Banc Is Not Warranted 4

A. Implicit's Petition concedes that the panel decision is not contrary to any decision of the Supreme Court and does not require an answer to a question of exceptional importance 5

B. The *Implicit* panel decision does not violate 35 U.S.C. § 256 5

1. Implicit was permitted to correct inventorship 6

2. Neither the USPTO, the Board, or this Court's panel ever determined the correct inventorship for Implicit's '791 and '252 patents 6

C. The *Implicit* panel decision is not contrary to the precedents of this Court in *Stark I*, *Stark II*, and *Egenera* 8

1. Consistent with *Stark I* and *Stark II*, the panel correctly held that Implicit forfeited its untimely antedating argument and failed to diligently correct inventorship 9

2. Consistent with *Egenera*, the panel correctly affirmed forfeiture of Implicit's new and untimely inventorship theory when the Board did not decide or alter inventorship 15

IV. Conclusion 17

TABLE OF AUTHORITIES

Page(s)

Cases

Egenera, Inc. v. Cisco Systems, Inc.,
972 F.3d 1367 (Fed. Cir. 2020) ....*passim*

In re Google Technology Holdings LLC,
980 F.3d 858 (Fed. Cir. 2020) 12, 13

LendingTree, LLC v. Zillow, Inc.,
656 Fed. Appx. 991 (Fed. Cir. 2016)....................13, 14

Schwendimann v. Neenah,
82 F.4th 1371 (Fed. Cir. 2023) 12

Sonos, Inc. v. Implicit, LLC,
IPR2018-00766, IPR2018-00767, 2023 WL 6367720 (P.T.A.B. Sept. 19, 2023) 4

Stark v. Advanced Magnetics, Inc.,
29 F.3d 1570 (Fed. Cir. 1994) ....*passim*

Stark v. Advanced Magnetics, Inc.,
119 F.3d 1551 (Fed. Cir. 1997) ....*passim*

United States vs. Olano,
507 U.S. 725 (1933)....................12

Statutes

35 U.S.C. § 102(e) 7

35 U.S.C. § 102(f)....................16

35 U.S.C. § 256....................*passim*

Other Authorities

37 C.F.R § 1.324 ....9, 10

Fed. Cir. R. 40(c) 4, 9

Fed. R. App. P. 40(b)(2)..4

I. INTRODUCTION

The IPRs at issue in this appeal were fully litigated on the uncontested understanding that the challenged patents had only two inventors. The Patent Trial and Appeal Board ("PTAB or Board") ultimately concluded that the challenged claims were unpatentable, based principally on a prior art reference known as Janevski. Years after the conclusion of the IPRs, the patent owner, Implicit, LLC, availed itself of a statutory mechanism that allows patent owners to correct the inventorship of their patents, *see* 35 U.S.C. § 256, and added a third named inventor to the challenged patents. Implicit contends that as a result of this change in inventorship, it is entitled to an earlier priority date for its patents, one that antedates Janevski. Following a limited remand from this Court, Implicit argued to the Board that the final written decisions, even if correct when issued, should be set aside in light of this development. The Board rejected this contention, concluding that under the doctrines of forfeiture, waiver (which the Board discussed interchangeably) and judicial estoppel, Implicit, having never raised any issue of inventorship during the IPR proceedings, could not upend final written decisions issued in long completed IPRs based on its subsequent acquisition of certificates of correction to inventorship.

This Court's panel decision affirmed the Board's decision, holding that 1) forfeiture can apply to Implicit's new antedating argument despite the correction

of inventorship, and 2) the Board did not abuse its discretion in finding Implicit had forfeited its new antedating argument. Op. at 6, ECF No. 147. Because forfeiture was an independent ground for affirmance, the panel's decision stated "we need not and do not reach the issues of judicial estoppel or waiver." *Id.*

Implicit now seeks rehearing en banc, arguing that "[a] panel of this Court erred in holding that nonstatutory, discretionary 'forfeiture principles'—applied here by APJs—could defeat the application of 35 U.S.C. § 256(b) inventorship corrections." Pet. at 1.[1] Counsel for Implicit states their belief that the panel decision is contrary to at least the following statute and precedents of this court: *Egenera, Inc. v. Cisco Sys., Inc.*, 972 F.3d 1367 (Fed. Cir. 2020); *Stark v. Advanced Magnetics, Inc.*, 29 F.3d 1570 (Fed. Cir. 1994) (*Stark I*); *Stark v. Advanced Magnetics, Inc.*, 119 F.3d 1551 (Fed. Cir. 1997) (*Stark II*); 35 U.S.C. § 256. Pet. at viii.

II. Summary of Panel Decision

The panel decision begins by addressing whether forfeiture applies in cases where a § 256 correction has been issued and held that "forfeiture can apply to Implicit's antedating argument despite the 35 U.S.C. § 256 correction of inventorship." Op. at 6. The panel observed that "the PTO granted Implicit's

---

[1] Citations to "Appx__" refer to the Joint Appendix, ECF No. 124, and citations to "Pet. at __" refer to Implicit's Petition for Rehearing En Banc, ECF No. 149.

petitions to correct inventorship" and the "Board merely decided that Implicit could not make new antedating arguments based on this correction of inventorship." *Id.*; Pet. at 10. Even so, the panel indicated that "whether there is a requirement of diligence in seeking correction of inventorship is 'determined on the facts of that case.'" *Id*. (citing *Stark I*, 29 F.3d at 1575). Thus, the panel held that "it can be appropriate to apply forfeiture principles in a case when a 35 U.S.C. § 256 correction has issued." Op. at 7.

The panel next considered whether the Board abused its discretion in determining that Implicit forfeited its new antedating argument based on the inventorship correction. *Id*. The panel recognized that Implicit failed "to raise its new antedating argument until years after the final written decisions and without sufficient justification for the delay." *Id*. Thus, the panel determined that the "Board did not abuse its discretion when it determined that Implicit forfeited its right to argue that Mr. Carpenter was an inventor to support its antedating argument." Op. at 8.

The panel found Implicit's reliance on *Egenera* unpersuasive because "the key circumstance allowing a mid-litigation effort to seek correction of inventorship in *Egenera* is not present here." *Id*. The panel explained that "[i]n *Egenera*, a judicial adoption of a particular claim construction changed the scope of the claims and, hence, justified a new assessment by the patentee of who the co-inventors

were." *Id*. The panel stated that "[n]o change in the claim scope occurred in the present case" and "[f]rom the beginning, Implicit 'had in its sole possession the evidence of inventorship and intentionally presented evidence asserting a certain inventorship'—Mr. Balassanian and Mr. Bradley, without Mr. Carpenter." Op. at 9 (citing *Sonos, Inc. v. Implicit, LLC*, IPR2018-00766, IPR2018-00767, 2023 WL 6367720, at *1 (P.T.A.B. Sept. 19, 2023) ("Decision on Remand")). Given that "Implicit has not adequately explained why it could not have made any arguments related to Mr. Carpenter in the first instance or more diligently sought correction of inventorship," the panel "conclude[d] that the Board did not abuse its discretion in finding that Implicit forfeited its argument." *Id*.

III. REHEARING EN BANC IS NOT WARRANTED

This Court ordinarily only grants a petition for rehearing en banc if: 1) the "panel decision is contrary to the . . . decision(s) of the Supreme Court of the United States or the precedent(s) of this court," and/or 2) the "appeal requires an answer to one or more precedent-setting questions of exceptional importance." Fed. Cir. R. 40(c); *see also* Fed. R. App. P. 40(b)(2). This stringent criteria for granting en banc review is not met here.

A. Implicit's Petition concedes that the panel decision is not contrary to any decision of the Supreme Court and does not require an answer to a question of exceptional importance

Implicit's statement of counsel under Federal Circuit rule 40(c) asserts only that the panel decision is contrary to the precedent of this Court and 35 U.S.C. § 256. Pet. at viii. It does not state that the panel decision is contrary to any decision of the Supreme Court of the United States, nor does it state that this appeal requires an answer to one or more precedent-setting questions of exceptional importance. *Id*. In fact, nowhere does Implicit's petition make any such statement. Pet. at 1-18. Implicit thus effectively concedes that the panel decision does not violate any decision of the Supreme Court and that this appeal does not require an answer to any precedent-setting questions of exceptional importance.

B. The *Implicit* panel decision does not violate 35 U.S.C. § 256

Implicit's statement of counsel further states that the panel decision is contrary to § 256. Pet. at viii. But neither Implicit's statement nor the supporting arguments in Implicit's Petition characterize this purported conflict with § 256 as a question of exceptional importance. *Id*.; Pet. at 1-18. Thus, it does not satisfy this Court's standard for rehearing en banc. Moreover, this statement and Implicit's supporting arguments are unpersuasive.

1. Implicit was permitted to correct inventorship

Implicit is correct that the text of § 256 does not limit when inventorship can be corrected. But neither the panel's decision nor the underlying Board decisions found that Implicit forfeited its right to correct inventorship. Op. at 6. Nor did the USPTO limit Implicit's ability to correct inventorship. To the contrary, as the panel decision observed, the USPTO *granted* Implicit's petitions to correct inventorship of U.S. Patent Nos. 7,391,791and 8,942,252 by adding Guy Carpenter as an inventor. *See* Mot. for Remand, ECF No. 78, Exhibits E-F; Appx174; Appx192; Op. at 6.

Thus, forfeiture was not applied by the USPTO, the Board, or the panel's decision as a basis to deny Implicit the ability to correct inventorship under § 256. This makes the *Stark I* and *Stark II* cases that Implicit relies on irrelevant, since this is not a case about whether an inventor diligently sought correction of inventorship (as in *Stark I* and *Stark II*), but about whether Implicit diligently asserted a legal right before the Board, i.e., raising an alternative inventorship theory that includes Guy Carpenter as an inventor in order to antedate Janevski.

2. Neither the USPTO, the Board, or this Court's panel ever determined the correct inventorship for Implicit's '791 and '252 patents

Although the USPTO issued certificates of correction adding Guy Carpenter as an inventor for the '791 and '252 patents, those certificates of correction were

pro forma in that the USPTO did not assess or otherwise determine the correct inventorship for Implicit's patents. Appx174; Appx192.

Likewise, the Board's decisions never determined whether or not Guy Carpenter was an inventor, or contributed to inventorship, at all. Appx4-7; Appx12-13; Appx43-48. Rather, "the issue addressed in the [Board's] Final Written Decisions was not the correct inventorship of the patents, but rather the *sufficiency* of corroborating evidence of conception and communication of the invention in order for the inventors to benefit from Mr. Carpenter's work." Appx13; *see also* Appx15 ("We made no such determination, however, specifically regarding inventorship in our Final Written Decisions, nor do we make such a determination now.").

While Implicit attempts to frame the issue as the right of a patent owner to correct inventorship under 35 U.S.C. § 256, the Board simply did not assess or determine correct inventorship. Rather, it found that Implicit's '791 and '252 patents were unpatentable based on the Janevski prior art reference. Appx3. As part of that prior art analysis, the Board also rejected Implicit's attempt to eliminate (or "swear behind") Janevski as prior art under § 102(e) because, according to Implicit, the subject matter of the claims was conceived and actually reduced to practice prior to Janevski's filing date of December 11, 2001. Appx3-4.

In particular, the Board determined that the evidence presented by Implicit was insufficient to carry its burden of production to establish conception of the invention and the communication of the invention such that any actual reduction to practice could inure to the inventors' benefit. *Id*. Thus, as the Board stated, "the issue addressed in the Final Written Decisions was not the correct inventorship of the patents, but rather the *sufficiency* of corroborating evidence of conception and communication of the invention in order for the inventors to benefit from Mr. Carpenter's work." Appx13.

In sum, neither the USPTO, the Board, nor this Court have ever determined the correct inventorship for Implicit's patents.

C. The *Implicit* panel decision is not contrary to the precedents of this Court in *Stark I*, *Stark II*, and *Egenera*

Implicit's statement of counsel under Federal Circuit Rule 40(c) states that the panel decision is contrary to at least the following precedents of this court: *Egenera, Stark I*, and *Stark II*. Pet. at viii. This statement and the supporting arguments in Implicit's Petition do not show that rehearing en banc is warranted because these three cases are distinguishable from the situation here. Notably, each involves a situation where the court was tasked with determining correct inventorship and deciding whether to permit correction of inventorship under 35 U.S.C. § 256. In contrast, here the Board did neither—it was never asked to determine the correct inventorship of Implicit's '791 and '252 patents nor did it

ever make such a determination. And consistent with its usual procedures permitting a patent owner to alter the listed inventors as a pro forma matter without determining whether the altered inventorship is actually correct, 37 C.F.R. § 1.324, the USPTO permitted Implicit to correct inventorship for its patents.

1. Consistent with *Stark I* and *Stark II*, the panel correctly held that Implicit forfeited its untimely antedating argument and failed to diligently correct inventorship

Implicit argues that the panel's understanding from the *Stark I* and *Stark II* decisions that "diligence in seeking correction of inventorship" is "determined on the facts of that case" stems from a facial misreading of *Stark I*, and that "[b]y applying forfeiture principles to § 256, the PTAB assumed for itself power that Article III courts do not even enjoy." Pet. at 12, 17 (citing *Stark I*, 29 F.3d at 1575, and *Stark II*, 119 F.3d at 1553). According to Implicit, the *Stark I* and *Stark II* decisions stand for the proposition that a diligence requirement is *never* applied for inventorship corrections to *issued* patents. *Id*. This, however, is incorrect. It is Implicit that misreads the *Stark I* and *Stark II* decisions.

As an initial matter, the USPTO granted Implicit's petitions to correct inventorship and issued certificates of correction adding Guy Carpenter as an inventor for the '791 and '252 patents. Appx174; Appx192. Thus, Implicit's argument that *Stark I* and *Stark II* stand for the proposition that a diligence

requirement is never applied to § 256 inventorship corrections for issued patents is irrelevant.

More broadly, Implicit misreads *Stark I* because it cherry picks a single sentence from that opinion out of context. *Stark I* involved a situation where Dr. Stark filed suit asserting that he was omitted as an inventor on six patents owned by Advanced Magnetics, Inc. ("AMI") and requested correction of inventorship under § 256. *Stark I*, 29 F.3d at 1572. The district court granted summary judgment to AMI with respect to correction of inventorship finding that Dr. Stark had not acted diligently in seeking correction. *Id*.

To support its argument that a diligence requirement is never applied to inventorship correction for issued patents, Implicit relies on a sentence in *Stark I* stating that "[n]either 35 U.S.C. § 256 nor 37 C.F.R. § 1.324 requires that an omitted inventor of an issued patent must diligently bring a lawsuit to correct inventorship or be forever barred from doing so." Pet. at 12 (citing *Stark I*, 29 F.3d at 1574-75). But *Stark I* goes on to clarify that, even though § 256 and 37 C.F.R. § 1.324 do not expressly include a textual "diligence" requirement, the facts of each case will determine whether diligent action is required to correct inventorship. *Stark I*, 29 F.3d at 1575. While *Stark I* states "it was error to hold that Dr. Stark's action to correct inventorship was barred for lack of diligence *as a matter of law,*"

it *further states* that “[w]hether diligent action is required in a particular case must be determined on the facts of that case.” *Id.* (emphasis added).

With that diligence requirement in mind, *Stark I* reviewed the district court’s grant of summary judgment against Dr. Stark to “consider whether the circumstances of this case required diligent legal action by Dr. Stark, when the factual circumstances and inferences drawn therefrom are viewed favorably to Dr. Stark.” *Id*. This Court determined that the district court erred in holding that five of the issued patents were barred inventorship correction under § 256 as a matter of law based on finding a lack of diligence as to the one of the issued patents. *Id*. Thus, Implicit’s argument that *Stark I* and *Stark II* stand for the proposition that diligence is *never* required for § 256 inventorship corrections for issued patents is simply not accurate. Indeed, if Implicit’s theory were correct, there would have been no need for the court in *Stark I* to address diligence at all because the inventorship correction in *Stark I* and *Stark II* was all based on § 256 for six *issued* patents.

Implicit also argues that the panel’s affirmance endorses a “dual-track system—contrary to *Stark [II]*,” that allegedly permits APJs vast discretion to decide when and under what terms to allow correction, whereas district courts allegedly have no such discretion. Pet. at 17 (citing *Stark II*, 119 F.3d at 1553). However, this argument fails because there is no “dual-track system” for applying

forfeiture to new, untimely arguments. Forfeiture may apply to arguments not timely presented to the Board or a district court. The Board and district courts are both afforded discretion to apply forfeiture to such untimely arguments based on the facts and circumstances of each case. *In re Google Technology Holdings LLC*, 980 F.3d 858, 862-63 (Fed. Cir. 2020) (explaining that forfeiture is the failure to make the timely assertion of a right in a tribunal).

Here, Implicit's new antedating argument was clearly untimely. As the panel's decision recognized, Implicit failed "to raise its new antedating argument until years after the final written decisions and without sufficient justification for the delay." Op. at 7 (quoting *United States vs. Olano*, 507 U.S. 725, 733 (1933) ("[F]orfeiture is the failure to make the timely assertion of a right.")). And, a party forfeits an argument that it failed to present to the Board. *Schwendimann v. Neenah*, 82 F.4th 1371, 1383–84 (Fed. Cir. 2023).

The panel decision noted that "[f]rom the beginning, Implicit 'had in its sole possession the evidence of inventorship and intentionally presented evidence asserting a certain inventorship'— Mr. Balassanian and Mr. Bradley, without Mr. Carpenter." Op. at 9 (citing Decision on Remand at *10). The panel decision stated that "Implicit has not adequately explained why it could not have made any arguments related to Mr. Carpenter in the first instance or more diligently sought correction of inventorship." Op at 9. Indeed, as the panel observed, "[w]hen asked

at oral argument about difficulties in asserting correction of inventorship earlier, Implicit explained that: (1) it believed its initial position was correct; and (2) Mr. Carpenter resided in Australia." Op. at 9 (citing Oral Arg. 9:55-10:50, https://www.cafc.uscourts.gov/oral-arguments/20-1173_10 092025.mp3). The panel decision rightly observed that the first answer raised concerns of sandbagging, where Implicit could suggest or permit, for strategic reasons, that the Board pursue a certain course, and later—if the outcome is unfavorable—claim that the course followed was reversible error. Op. at 9 (citing *In re Google*, 980 F.3d at 864). The panel decision correctly noted that Implicit forfeited its second response by not raising it in its briefs to the Board or the panel. Op at 9.

Stark I's holding—that a requirement for diligent action to correct inventorship under 35 U.S.C. § 256 must be determined on the facts of that case—is also consistent with this Court's decision in *LendingTree, LLC v. Zillow, Inc.*, 656 Fed. Appx. 991, 999 (Fed. Cir. 2016). In *Lending Tree*, this Court held that a district court had discretion to determine whether lack of diligence may preclude a correction of inventorship under § 256. In particular, the jury had found all claims of the patents in suit invalid for improper inventorship. *Id*. at 997. After the jury verdict, LendingTree filed a motion to correct inventorship of the patents in suit pursuant to 35 U.S.C. § 256, which the district court denied. *Id*. Subsequently, LendingTree petitioned the USPTO to correct inventorship by adding James F.

Bennett, Jr. as a named inventor and the USPTO issued a certificate correcting inventorship. *Id*.

However, given that LendingTree did not exercise diligence in identifying the correct inventors, this Court found that the corrected inventorship did not require vacating the jury's verdict of invalidity based on improper inventorship. *Id*. Rather, this Court left that decision to the discretion of the district court on remand to determine as a matter of equity. *Id*. ("However, given that the district court found 'there were several combinations of inventors that the jury could have reasonably concluded should be listed on the patents in suit,' and given that LendingTree did not *timely* request identification of the inventors by the jury, the district court may decide that vacatur is inappropriate.") (emphasis added). Thus, the *LendingTree* decision demonstrates that an inventorship correction under § 256 does not automatically overcome a tribunal's finding of invalidity based on incorrect inventorship as a matter of law simply because § 256 applies retroactively. If it did, there would have no reason for a remand in *LendingTree*.

Finally, even if Implicit were correct that under *Stark I* and *Stark II* diligence is never required to correct issued patents, it would be of no help to Implicit because that is not the issue here—Implicit was permitted to correct inventorship. The panel was still correct to rely on Implicit's failure to explain why it could not have made any arguments related to Mr. Carpenter's status as an inventor in the

first instance, e.g., when it filed its Patent Owner Response, even if it waited to correct inventorship.

2. Consistent with *Egenera*, the panel correctly affirmed forfeiture of Implicit's new and untimely inventorship theory when the Board did not decide or alter inventorship

Implicit's timeline (Pet. at 14-15) ignores the fact that the proper time for Implicit to raise its antedating theory based on Guy Carpenter being an inventor was in the Patent Owner Response. Implicit also had ample notice that failing to timely raise this new antedating argument would result in forfeiture because during the IPR proceedings and before Implicit filed its Patent Owner responses, the Board put the parties on notice that any arguments concerning patentability not raised in the patent owner response may be deemed waived. Appx463. In particular, the Board stated that "Patent Owner is cautioned 'that any arguments for patentability not raised in the response may be deemed waived.'" *Id*. (citing Appx459).

In an attempt to justify its untimely presentation of its new inventorship theory, Implicit relies heavily on this Court's *Egenera* decision for the propositions that "a patent *cannot be invalidated* if inventorship can be corrected instead" and that § 256 was enacted as "a savings provision, functioning to prevent invalidation when correction is available." Pet. at 1, 9 (emphasis in original) (citing *Egenera*, 972 F.3d at 1376-77). But *Egenera* is distinguishable because it involved potential

invalidation under pre-AIA 35 U.S.C. § 102(f) due to a failure to name the proper inventors after the district court's claim construction changed the scope of the claims. *Egenera*, 972 F.3d at 1369-70. As the *Implicit* panel decision recognized, the changed claim scope justified a new assessment by Egenera of inventorship and a mid-litigation effort to seek correction of inventorship under § 256. Op. at 8.

Here, by contrast, the Board's decision did not change the claim scope or otherwise determine or alter the inventorship, but rather assessed the sufficiency of the evidence for inurement. *Id*. Thus, nothing the Board did required Implicit to reevaluate and correct inventorship under § 256. *Id.* And the panel correctly held that the Board did not abuse its discretion in applying forfeiture.

Furthermore, in *Egenera*, unlike here, the patent owner timely moved to correct inventorship just after the district court decided the claim construction issue, i.e., during the district court proceeding while the opposing party had an opportunity to address the new inventorship position if adopted by the court. *Egenera*, 972 F.3d at 1371-72.

At bottom, in its Patent Owner Response, Implicit was free to argue alternative inventorships in attempting to antedate the prior art. Section 256 ensures that if the Board agreed with a different inventorship than listed on the patents, then under § 256 that incorrect inventorship would not invalidate the patents. Section 256 does not, however, allow Implicit to choose one inventorship

theory to litigate and then, after losing in a final written decision, pick a different theory without forfeiture applying. Implicit's reading of § 256 would allow it to assert Guy Carpenter as a co-inventor on remand, but if it again failed to meet its burden of proof, Implicit would be free to unwind another final decision and try again with yet another inventorship theory. Section 256 is a safeguard against invalidation based on an incorrect inventorship, but its safeguard does not void common law principles of forfeiture or authorize endless litigation.

IV. CONCLUSION

For the foregoing reasons, the Court should deny Implicit's Petition.

Respectfully submitted,

June 1, 2026

/s/ Robert E. McBride

NICHOLAS T. MATICH
Solicitor

AUSTIN P. MAYRON
Deputy Solicitor

WILLIAM LAMARCA
Special Counsel for Intellectual Property Litigation

ROBERT E. MCBRIDE
SARAH E. CRAVEN
Associate Solicitors

Office of the Solicitor
U.S. Patent and Trademark Office
Mail Stop 8, P.O. Box 1450
Alexandria, Virginia 22313

Attorneys for the Director of the United States Patent and Trademark Office

CERTIFICATE OF COMPLIANCE

I certify pursuant to Federal Circuit Rule 40(e) that the foregoing INTERVENOR'S RESPONSE TO THE PETITION FOR REHEARING EN BANC complies with the type-volume limitation. The total number of words in the foregoing Response, excluding the table of contents and table of authorities, is 3,896 as measured by the word-processing software used to prepare this brief.

Dated: June 1, 2026

Respectfully,

/s/ Robert E. McBride
ROBERT E. MCBRIDE
Associate Solicitor
United States Patent and Trademark Office