

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EDWARDS LIFESCIENCES CORP.,

Petitioner,

v.

BOSTON SCIENTIFIC SCIMED, INC.,

Patent Owner.

Case IPR2017-01301

Patent 6,915,560

PATENT OWNER'S PRELIMINARY RESPONSE

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I. STATEMENT OF RELIEF REQUESTED

On April 19, 2017, Edwards Lifesciences Corporation (“Petitioner”) submitted the instant Petition for *Inter Partes* Review (the “Petition” or “Pet.”) challenging claims 1, 2, 6, 8–11, 14, 15, 17–19, 23, 25–28, 31, 33–35, 37, 39, and 40 of U.S. Patent No. 6,915,560 (“the ’560 Patent”). Pursuant to 37 C.F.R. § 42.107(a), Boston Scientific Scimed, Inc. (“Patent Owner”) submits this Preliminary Response requesting that the Board deny the Petition for at least the reasons set forth herein.

II. INTRODUCTION

The instant Petition is the third in a series of petitions filed by Petitioner, each challenging exactly the same claims of the ’560 Patent. Petitioner filed the instant Petition only after being afforded the opportunity to review and analyze Patent Owner’s preliminary responses to both of the earlier petitions.

In addition, the instant Petition raises the same arguments raised in the previously filed second petition, except that Petitioner alleges that a newly cited reference describes elements recited in the preambles of the challenged claims; this despite Petitioner’s contention that the claim preambles are not limitations, and despite the fact that Petitioner knew of the newly cited reference prior to filing both of the earlier petitions.

The Patent Office has repeatedly discouraged such conduct as unjust to patent owners and a waste of the Patent Office's limited resources. For at least those reasons, which are discussed in further detail herein, the Petition should be denied.

III. RELATED PROCEEDINGS

The '560 Patent is the subject of a district court action filed by Patent Owner against Petitioner on April 19, 2016. *Boston Scientific Corp. v. Edwards Lifesciences Corp.*, Case 8:16-cv-0730 (C.D. Cal. 2016).

On October 14, 2016, Petitioner filed a first petition for *inter partes* review, alleging that claims of the '560 Patent were unpatentable in view of alleged Applicant Admitted Prior Art ("AAPA"), U.S. Patent No. 5,918,511 ("Sabbaghian"), U.S. Patent No. 4,308,744 ("Baker"), and U.S. Patent No. 5,893,852 ("Morales"). *Edwards Lifesciences Corp. v. Boston Scientific Scimed, Inc.*, IPR2017-00072, Paper 1 (P.T.A.B. Oct. 14, 2016) ("First Petition"). The specific grounds identified by Petitioner in the First Petition were as follows.

References	Basis	Claims challenged
AAPA and Sabbaghian	§ 103	1, 2, 6, 8–10, 14, 15, 18, 23, 25, 27, 28, 31, 33, 37, and 40
AAPA, Sabbaghian, and Morales	§ 103	11, 17, 19, 26, 34, 35, and 39
AAPA and Baker	§ 103	1, 2, 6, 8–10, 14, 15, 18, 23, 25, 27, 28, 31, 33, 37, and 40
AAPA, Baker, and Morales	§ 103	11, 17, 19, 26, 34, 35, and 39

Id. at 29.

On December 7, 2016, Petitioner filed a second petition for *inter partes* review, alleging that the same claims of the '560 Patent were unpatentable in view of U.S. Patent No. 4,454,657 ("Yasumi"), the alleged AAPA, and Morales. *Edwards Lifesciences Corp. v. Boston Scientific Scimed, Inc.*, IPR2017-00444, Paper 1(P.T.A.B. Dec. 7, 2016) ("Second Petition"). The specific grounds identified by Petitioner in the Second Petition were as follows.

References	Basis	Claims challenged
Yasumi and AAPA	§ 103	1, 2, 6, 8–10, 14, 15, 18, 23, 25, 27, 28, 31, 33, 37, and 40
Yasumi, AAPA, and Morales	§ 103	11, 17, 19, 26, 34, 35, and 39

Id. at 30.

On January 25, 2017, Patent Owner filed a preliminary response to the First Petition, arguing *inter alia* that the alleged AAPA was not a reference upon which Petitioner's challenges could properly be based, that the preambles of the challenged claims were claim limitations, and that the same or substantially the same prior art and arguments relied upon by Petitioner were previously considered by the Patent Office during prosecution of the '560 Patent. *Edwards Lifesciences Corp. v. Boston Scientific Scimed, Inc.*, IPR2017-00072, Paper 7 at 7–25 (P.T.A.B. Jan. 25, 2017) ("First Preliminary Response").

On April 4, 2017, Patent Owner filed a preliminary response to the Second Petition, again arguing *inter alia* that the alleged AAPA was not a reference upon

which Petitioner's challenges could properly be based, and that the preambles of the challenged claims were claim limitations. *Edwards Lifesciences Corp. v. Boston Scientific Scimed, Inc.*, IPR2017-00444, Paper 7 at 8–12, 27–29 (P.T.A.B. Apr. 4, 2017) (“Second Preliminary Response”).

After having been served with both the First Preliminary Response and the Second Preliminary Response, Petitioner filed a third petition (the instant Petition) for *inter partes* review on April 19, 2017, the statutory deadline for filing such a petition, challenging the same claims of the '560 Patent that were challenged in the First Petition and the Second Petition. (Pet. 26–27.) The grounds identified by Petitioner in the third petition are identical to the grounds identified in the Second Petition except that Petitioner's earlier reliance on the alleged AAPA has been replaced by a reliance on U.S. Patent No. 5,437,083 (“Williams”). The specific grounds identified by Petitioner in the third petition are as follows.

References	Basis	Claims challenged
Yasumi and Williams	§ 103	1, 2, 6, 8–10, 14, 15, 18, 23, 25, 27, 28, 31, 33, 37, and 40
Yasumi, Williams, and Morales	§ 103	11, 17, 19, 26, 34, 35, and 39

Id.

On April 21, 2017, the Patent Trial and Appeals Board (the “Board”) issued a decision in which it exercised its discretion under 35 U.S.C. § 325(d) to deny the First Petition in its entirety, concluding that the First Petition raised the same or

substantially the same prior art or arguments as those previously considered by the Office. *Edwards Lifesciences Corp. v. Boston Scientific Scimed, Inc.*, IPR2017-00072, Paper 8 at 11 (P.T.A.B. Apr. 21, 2017).

On June 29, 2017, the Board issued a decision in which it concluded that Petitioner's identification of grounds in the Second Petition "fail[ed] to properly summarize the full range of arguments and grounds asserted by Petitioner." *Edwards Lifesciences Corp. v. Boston Scientific Scimed, Inc.*, IPR2017-00444, Paper 9 at 7 (P.T.A.B. June 29, 2017). As discussed in further detail below, the Board instituted *inter partes* review with respect to two of those six grounds. *Id.* at 8, 25.

IV. THE PETITION SHOULD BE DENIED PURSUANT TO THE ESTOPPEL PROVISION OF 35 U.S.C. § 351(e)(1)

35 U.S.C. § 351(e)(1) provides that:

[t]he petitioner in an *inter partes* review of a claim in a patent under this chapter that results in a final written decision under section 318(a), or the real party in interest or privy of the petitioner, may not request or maintain a proceeding before the Office with respect to that claim on any ground that the petitioner raised or reasonably could have raised during that *inter partes* review.

The grounds identified by Petitioner in the Second Petition are identical to those identified in the instant Petition except that Petitioner's earlier reliance on the

alleged AAPA in the former has been replaced by a reliance on Williams in the latter. (*Compare* Second Petition at 30 *with* Pet. 26–27.) There is no reason why Petitioner could not have reasonably raised the instant grounds in either of its previous petitions. Indeed, Williams was known (or should have been known) to Petitioner, as it appears in the “References Cited” section of the ’560 Patent. (Ex. 1201 at [56] (References Cited).)

V. THE PETITION SHOULD BE DENIED PURSUANT TO THE BOARD’S DISCRETION UNDER 35 U.S.C. § 325(d)

35 U.S.C. § 325(d) provides that, in determining whether to institute *inter partes* review, “[t]he Director may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office.” Because the prior art and arguments relied upon in the instant Petition are the same or substantially the same as those relied upon in the Second Petition, the Board should exercise its discretion to deny the Petition pursuant to 35 U.S.C. § 325(d).

In the instant Petition, the third in a series of petitions filed by Petitioner against the ’560 Patent, Petitioner alleges that claims 1, 2, 6, 8–10, 14, 15, 18, 23, 25, 27, 28, 31, 33, 37, and 40 are invalid as obvious over Yasumi in view of Williams. (Pet. 46.)

The preamble of each challenged claim recites a “stent crimper.” (Ex. 1201 at 10:7–14:9.) Petitioner contends that the claim preambles are not limitations. (Pet. 28–29.) Nonetheless, Petitioner alleges that Yasumi alone discloses every element of claims 1, 2, 6, 8–10, 14, 15, 18, 23, 25, 27, 28, 31, 33, 37, and 40 *including* the preambles. (See Pet. 80 (“The press tool of Yasumi is capable of crimping a stent and, thus, is a stent crimper.”).) Petitioner only relies on Williams to allege that “Williams discloses the use of tools such as ordinary pliers to crimp a stent” and that “to the extent necessary, it would have been obvious to a POSITA to use Yasumi as a stent crimper in view of Williams.” (Pet. 48, 80.) Thus, Petitioner only relies on Williams to the extent that the Board determines, contrary to Petitioner’s allegations, that (1) the claim preambles are limitations, and (2) Yasumi does not disclose the “stent crimper” of the preambles.

Petitioner made the same allegations in the earlier filed Second Petition, except that Petitioner relied on the alleged AAPA for its description of a “stent crimper” instead of on Williams. (Second Petition at 51 (“The AAPA also discloses the preamble ‘stent crimper.’”), 82 (“[T]o the extent necessary, it would have been obvious to a POSITA to modify Yasumi for use as a stent crimper in view of the AAPA.”).)

In the instant Petition, Petitioner further alleges that the additional limitations of claims 11, 17, 19, 26, 34, 35, and 39 “are disclosed in or obvious

over Yasumi either alone or in view of Williams.” (Pet. 83.) Petitioner also alleges that “[t]o the extent these limitations are not viewed as disclosed in or obvious in view of Yasumi alone or in view of Williams, Morales also discloses these limitations.” (Pet. 84.) Petitioner made the same allegations in the earlier filed Second Petition, except that Petitioner relied on the alleged AAPA instead of on Williams. (Second Petition at 85 (“These limitations are disclosed in or obvious over Yasumi either alone or in view of the AAPA.”), 86 (“To the extent these limitations are not viewed as disclosed in or obvious in view of Yasumi or the AAPA, Morales also discloses these limitations.”).)

In addition, in both the instant Petition and the earlier filed Second Petition, Petitioner relies on two distinct embodiments described by Yasumi (i.e., the embodiments shown in Figure 8 and Figure 9(a) of Yasumi) but fails to provide any explanation of their relationship, if any, to one another. (*See* Pet. 46–82; Second Petition at 49–85.)

In view of the foregoing allegations in the Second Petition, the Board found that in IPR2017-00444, “Petitioner’s identification of the grounds it asserts . . . fails to properly summarize the full range of arguments and grounds asserted by Petitioner in the Petition.” *Edwards Lifesciences Corp. v. Boston Scientific Scimed, Inc.*, IPR2017-00444, Paper 9 at 7–8 (P.T.A.B. June 29, 2017). The Board

then articulated what it understood to be the actual grounds asserted by Petitioner in the Second Petition. Those grounds are as follows.

References	Basis	Claims challenged
Yasumi (Figure 8 embodiment)	§ 103	1, 2, 6, 8–10, 14, 15, 18, 23, 25, 27, 28, 31, 33, 37, and 40
Yasumi (Figure 8 embodiment) and Morales	§ 103	11, 17, 19, 26, 34, 35, and 39
Yasumi (Figure 8 embodiment) and alleged “Applicant Admitted Prior Art”	§ 103	1, 2, 6, 8–10, 14, 15, 18, 23, 25, 27, 28, 31, 33, 37, and 40
Yasumi (Figure 8 embodiment) and Yasumi (Figure 9(a) embodiment)	§ 103	1, 2, 6, 8–10, 14, 15, 18, 23, 25, 27, 28, 31, 33, 37, and 40
Yasumi (Figure 8 embodiment), Yasumi (Figure 9(a) embodiment), and alleged “Applicant Admitted Prior Art”	§ 103	1, 2, 6, 8–10, 14, 15, 18, 23, 25, 27, 28, 31, 33, 37, and 40
Yasumi (Figure 8 embodiment), Yasumi (Figure 9(a) embodiment), and Morales	§ 103	11, 17, 19, 26, 34, 35, and 39

Id. at 8.

Assuming that the Board’s understanding is correct, Petitioner’s identification of the grounds it asserts in the instant Petition also fails to properly summarize the full range of arguments and grounds asserted by Petitioner. *See id.* at 7–8. According to the Board’s reasoning, Petitioner has asserted the following grounds in the instant Petition.

References	Basis	Claims challenged
Yasumi (Figure 8 embodiment)	§ 103	1, 2, 6, 8–10, 14, 15, 18, 23, 25, 27, 28, 31, 33, 37, and 40
Yasumi (Figure 8 embodiment) and Morales	§ 103	11, 17, 19, 26, 34, 35, and 39
Yasumi (Figure 8 embodiment) and Williams	§ 103	1, 2, 6, 8–10, 14, 15, 18, 23, 25, 27, 28, 31, 33, 37, and 40
Yasumi (Figure 8 embodiment) and Yasumi (Figure 9(a) embodiment)	§ 103	1, 2, 6, 8–10, 14, 15, 18, 23, 25, 27, 28, 31, 33, 37, and 40
Yasumi (Figure 8 embodiment), Yasumi (Figure 9(a) embodiment), and Williams	§ 103	1, 2, 6, 8–10, 14, 15, 18, 23, 25, 27, 28, 31, 33, 37, and 40
Yasumi (Figure 8 embodiment), Yasumi (Figure 9(a) embodiment), and Morales	§ 103	11, 17, 19, 26, 34, 35, and 39

Of the grounds identified in the table immediately above, the first, second, fourth, and sixth are identical to grounds previously presented in the Second Petition. Accordingly, the Board should deny the instant Petition with respect to those grounds.

Of the grounds identified in the table immediately above, the third and fifth are substantially the same as grounds previously presented in the Second Petition. Indeed, Petitioner's present argument that it would have been obvious to use Yasumi as a stent crimper in view of prior art that discloses a stent crimper is the same argument that it asserted in the Second Petition. (Second Petition at 83–84.) Furthermore, Petitioner's reliance on Williams for its description of a "stent crimper" is duplicative in view of the alleged AAPA, Yasumi, and Morales, each of which were presented in the Second Petition, and each of which Petitioner

contends discloses a “stent crimper.” (Pet. at 44, 48; Second Petition at 47, 51.)

Moreover, Petitioner itself argues that the teachings of Williams are not unique in view of “[n]umerous patents.” (Pet. at 81 (“Numerous patents from prior to September of 1999, including Williams, recognize that tools, such as ordinary pliers, were used to crimp stents.”).) Accordingly, the instant Petition should be denied with respect to all grounds. *See, e.g., Medtronic, Inc. v. Nuvasive, Inc.*, IPR2014-00487, Paper 8 at 5–7 (P.T.A.B. Sept. 11, 2014) (informative) (denying petition for *inter partes* review when, despite petitioner’s argument that the grounds presented were not redundant, the petition presented the same or substantially the same prior art or arguments and the parties were already involved in a separate *inter partes* review proceeding involving all of the same challenged claims).

VI. ADDITIONAL FACTORS COMPEL DENIAL OF THE PETITION

Institution of *inter partes* review is discretionary. *See* 35 U.S.C. § 314(a); 37 C.F.R. § 42.108. Panels of the Board have considered a variety of factors in deciding whether to exercise discretion not to institute review including, *inter alia*:

- (1) the finite resources of the Board;
- (2) the requirement under 35 U.S.C. § 316(a)(11) to issue a final determination not later than one year after the

date on which the Director notices institution of review;

- (3) whether the same petitioner previously filed a petition directed to the same claims of the same patent;
- (4) whether, at the time of filing of the earlier petition, the petitioner knew of the prior art asserted in the later petition or should have known of it;¹
- (5) whether, at the time of filing of the later petition, the petitioner already received the patent owner's preliminary response to the earlier petition or received the Board's decision on whether to institute review in the earlier petition;²

¹ See *Conopco, Inc. v. Proctor & Gamble Co.*, IPR2014-00506, Paper 25 at 4 (P.T.A.B. Dec. 10, 2014) (informative); *Conopco, Inc. v. Proctor & Gamble Co.*, IPR2014-00506, Paper 17 at 6 (P.T.A.B. July 7, 2014) (informative); *Toyota Motor Corp. v. Cellport Sys., Inc.*, IPR2015-01423, Paper 7 at 8 (P.T.A.B. Oct. 28, 2015).

² See *Conopco, Inc. v. Proctor & Gamble Co.*, IPR2014-00628, Paper 21) at 11 (P.T.A.B. Oct. 20, 2014) (discouraging filing of a first petition that holds back prior art for use in later attacks against the same patent if the first petition is denied); *Toyota Motor Corp.*, IPR2015-01423, Paper 7 at 8 (“[T]he opportunity to

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- (6) the length of time that elapsed between the time the petitioner learned of the prior art asserted in the later petition and the filing of the later petition;
- (7) whether the petitioner provides adequate explanation for the time elapsed between the filing dates of multiple petitions directed to the same claims of the same patent; and
- (8) whether the same or substantially the same prior art or arguments previously were presented to the Office.³

Blue Coat Sys. LLC v. Finjan, Inc., IPR2016-01443, Paper 13 at 8–10 (P.T.A.B. Jan. 23, 2017) (citing *LG Elecs. Inc. v. Core Wireless Licensing S.A.R.L.*, IPR2016-00986, Paper 12 at 6–7 (P.T.A.B. Aug. 22, 2016); *NVIDIA Corp. v. Samsung Elec. Co.*, IPR2016-00134, Paper 9 at 6–7 (P.T.A.B. May 4, 2016);

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read Patent Owner's Preliminary Response in IPR2015-00634, prior to filing the Petition here, is unjust.").

³ See 35 U.S.C. § 325(d) ("In determining whether to institute or order a proceeding under . . . chapter 31 [providing for *inter partes* review], the Director may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office.").

Unified Patents, Inc. v. PersonalWeb Techs., LLC, IPR2014-00702, Paper 13 at 7–9 (P.T.A.B. July 24, 2014) (informative); Amendments to the Rules of Practice for Trials Before the Patent Trial and Appeal Board, 81 Fed. Reg. 18750, 18759 (Apr. 1, 2016) (“[T]he current rules provide sufficient flexibility to address the unique factual scenarios presented to handle efficiently and fairly related proceedings before the Office on a case-by-case basis” and “the Office will continue to take into account the interests of justice and fairness to both petitioners and patent owners where multiple proceedings involving the same patent claims are before the Office.”)). The factors guide the Board’s decision to exercise discretion, but not all factors need be present and the Board need not give equal weight to each factor in reaching its decision. *Blue Coat Sys. LLC*, IPR2016-01443, Paper 13 at 10. In the instant case, however, all of the factors are present and all weigh in favor of denial of the Petition.

The third and eighth factors are discussed in Sections III and V above. Petitioner filed two petitions directed to the same claims of the ’560 Patent prior to filing the instant Petition, and the same or substantially the same prior art and arguments were previously presented to the Patent Office in at least the Second Petition.

With respect to the fourth, sixth, and seventh factors, Petitioner knew of both Yasumi and Morales upon filing the earlier petitions. Yasumi is discussed in detail

in the First Petition and is expressly relied upon by Petitioner in the Second Petition. (*E.g.*, First Petition at 7, 97–98; Second Petition at 49–51.) Morales is expressly relied upon by Petitioner in both the First Petition and the Second Petition. (First Petition at 77–78, 93; Second Petition at 85–86.) Furthermore, Petitioner knew (or should have known) of Williams and Morales at least upon the commencement of the related district court action, as Williams and Morales both appear in the “References Cited” section of the ’560 Patent. (Ex. 1201 at [56] (References Cited).) Petitioner has not provided any argument or evidence that it did not know of Williams upon filing the First Petition or the Second Petition. The Board has stated that “it is typically only an additional reference of which Petitioner was not, or reasonably could not have been, aware that could potentially justify the filing of a serial petition.” *Duncan Parking Techs., Inc., v. IPS Grp. Inc.*, IPR2016-01144, Paper 9 at 10–11 (P.T.A.B. Nov. 21, 2016); *see also Conopco, Inc. v. Proctor & Gamble Co.*, IPR2014-00506, Paper 17 at 6 (P.T.A.B. July 7, 2014) (informative) (denying a petition for *inter partes* review because the petitioner “present[ed] no argument or evidence that the seven newly cited references were not known or available to it at the time of filing of the [earlier] Petition”); *See Conopco, Inc. v. Proctor & Gamble Co.*, IPR2014-00628, Paper 21 at 11 (P.T.A.B. Oct. 20, 2014); *Toyota Motor Corp. v. Cellport Sys., Inc.*, IPR2015-01423, Paper 7 at 8 (P.T.A.B. Oct. 28, 2015). Moreover, Petitioner has

not provided an adequate explanation as to why its filing of the instant Petition was delayed over four months after the filing of the Second Petition, over six months after the filing of the First Petition, and one year after the commencement of the district court action.

With respect to the fifth factor, the instant Petition was filed after Petitioner had already received and reviewed Patent Owner's Preliminary Responses to the First Petition and the Second Petition. In fact, Petitioner indicates that its purpose in filing the instant Petition was to address arguments in Patent Owner's earlier preliminary responses. (Pet. 93–94 (“The present petition relies on Williams for the suggestion to use Yasumi as a stent crimper. Petition IPR2017-00444 similarly relies on Yasumi, but relies on the AAPA (which Patent Owner has argued is not prior art) for the suggestion to use Yasumi as a stent crimper. . . . The Patent Owner cannot overcome Williams by establishing that it is not properly considered as patent or printed publication prior art for purposes on an inter partes review.”).) Petitioner's filing of the instant Petition is the precise conduct that the Board has discouraged and characterized as “unjust.” *See Conopco, Inc.*, IPR2014-00628, Paper 21 at 11 (“On this record, the interests of fairness, economy, and efficiency support declining review—a result that discourages the filing of a first petition that holds back prior art for use in successive attacks, should the first petition be denied. . . . [T]he instant Petition simply swaps in new references, all of which

were available to [petitioner] at the time of filing of the [first petition]; [Petitioner] should have presented its 'best case' in the first petition."); *Toyota Motor Corp.*, IPR2015-01423, Paper 7 at 8 ("[T]he opportunity to read Patent Owner's Preliminary Response in IPR2015-00634, prior to filing the Petition here, is unjust."). Such conduct has a harassing impact on Patent Owner, and should not be entertained by the Board. *Blue Coat Sys. LLC*, IPR2016-01443, Paper 13 at 14–15 ("[I]t is appropriate to consider the harassing impact that the resulting piecemeal challenges have on Patent Owner in defending its patent." (citing *ZTE Corp. v. ContentGuard Holdings, Inc.*, IPR2013-00454, Paper 12 at 5–6 (P.T.A.B. Sept. 25, 2013) (informative) ("The Board is concerned about encouraging, unnecessarily, the filing of petitions which are partially inadequate."); *Butamax Advanced Biofuels LLC v. Gevo, Inc.*, IPR2014-00581, Paper 8 at 12–13 (P.T.A.B. Oct. 14, 2014) ("Allowing similar, serial challenges to the same patent, by the same petitioner, risks harassment of patent owners and frustration of Congress's intent in enacting the Leahy-Smith America Invents Act." (citing H.R. Rep. No. 112-98, pt. 1, at 48 (2011))))).

With respect to the first and second factors, the circumstances discussed above would strain the Board's limited resources and hinder its ability to issue final determinations in accordance with statutory requirements. *See Blue Coat Sys. LLC*, IPR2016-01443, Paper 13 at 15 ("These various considerations also inform

our consideration of the first and second factors. ‘The Board’s resources would be more fairly expended on *initial petitions*, rather than on *follow-on petitions*, such as the Petition in this case.’” (quoting *Alarm.com Inc. v. Vivint, Inc.*, IPR2016-01091, Paper 11 at 13 (P.T.A.B. Nov. 23, 2016))); *Toyota Motor Corp.*, IPR2015-01423, Paper 7 at 8 (“Petition seeks another opportunity to challenge the same claims on essentially the same grounds, albeit not based on the identical set of prior art references. Such a second bite at the apple wastes the Board’s limited resources and imposes undue burden on the Patent Owner.”); *Conopco, Inc. v. Proctor & Gamble Co.*, IPR2014-00628, Paper 21 at 12 (P.T.A.B. Oct. 20, 2014) (“On this record, we are persuaded that our resources are better spent addressing matters other than [petitioner’s] second attempt to raise a plurality of duplicative grounds against the same patent claims.”).⁴

VII. CONCLUSION

For the reasons described above, Patent Owner requests that the Board deny the Petition.

⁴ Patent Owner does not provide evidence or argument on the merits in this Preliminary Response in light of Patent Owner’s Preliminary Response and the Institution Decision in Case IPR2017-00444. Patent Owner will do so should the Board institute this proceeding.

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Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Pursuant to 37 C.F.R. § 42.24(d), Patent Owner hereby certifies, in accordance with and reliance on the word count provided by the word-processing system used to prepare this Preliminary Response, that the number of words in this Preliminary Response is approximately 4,183. Pursuant to 37 C.F.R. § 42.24(a), this word count does not include the table of contents, table of authorities, certificate of word count, and certificate of service.

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing PATENT OWNER'S PRELIMINARY RESPONSE was served on August 9, 2017 to the following Counsel for Petitioner via e-mail:

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