

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

Petitioners,

v.

SLYDE ANALYTICS, LLC,

Patent Owner.

Patent No. 9,651,922
Filing Date: December 22, 2011
Issue Date: May 16, 2017

Inventors: Jörg Hysek and Pascal Pozzo Di Borgo
Title: WRISTWATCH WITH A TOUCH SCREEN AND
METHOD FOR DISPLAYING ON A TOUCH-SCREEN WATCH

PATENT OWNER'S PRELIMINARY RESPONSE

Case No. IPR2024-00002

TABLE OF CONTENTS

	<u>Page(s)</u>
I. INTRODUCTION	1
II. THE '922 PATENT	3
III. THE ALLEGED PRIOR ART	4
A. Louch	4
B. Duarte	6
C. Hotelling	7
IV. CLAIM CONSTRUCTION	7
V. LEVEL OF ORDINARY SKILL IN THE ART	7
VI. PETITIONER HAS NOT DEMONSTRATED A REASONABLE LIKELIHOOD OF SUCCESS FOR THE GROUNDS ADVANCED IN THE PETITION, AND THE PETITION SHOULD BE DENIED	8
A. Ground 1: Claim 1 is Not Obvious Over Louch	10
1. The Petition Does Not Show that Louch Discloses “wherein one card of said several available cards and occupying the entire digital matrix display is immediately and without further user intervention replaced after the scrolling by a different card of said several available cards that occupies the entire digital matrix display,” as Required by Claim Element 1[g]	10
2. Louch Does Not Render Claims 2-4, 6-19, and 21-24 Obvious	13
B. Ground 2: Claims 5 and 20 are Not Obvious Over the Combination of Louch in view of Hepp	13
C. Ground 3: Claims 8, 13-17, 21, 22, and 24 are Not Obvious Over the Combination of Louch in view of Duarte	13

D.	Ground 4: Claim 1 is Not Obvious Over the Combination of Louch in view of Park	14
E.	Ground 5: Claim 1 is Not Obvious Over the Combination of Duarte, Biggs, and Hotelling.....	14
1.	The Petition Does Not Show that the Combination of Duarte, Biggs, and Hotelling Discloses “wherein said processing circuit is specifically laid out so as to cause said several available cards to scroll past in order to lastingly replace the initially displayed card with a replacement card selected between said several available cards, wherein each card of said several available cards has a distinct fixed or periodically refreshed image,” as Required by Claim Element 1[e]	14
2.	The Petition Does Not Show that the Combination of Duarte, Biggs, and Hotelling Discloses “wherein the size of the image corresponds to the size of said digital matrix display so that the displayed card occupies the whole of said digital matrix display,” as Required by Claim Element 1[f]	16
3.	The Petition Does Not Show that the Combination of Duarte, Biggs, and Hotelling Discloses “wherein one card of said several available cards and occupying the entire digital matrix display is immediately and without further user intervention replaced after the scrolling by a different card of said several available cards that occupies the entire digital matrix display,” as Required by Claim Element 1[g].....	17
4.	The Combination of Duarte, Biggs, and Hotelling Does Not Render Claims 2-13 and 17-24 Obvious.....	17
F.	Ground 6: Claims 14-16 are Not Obvious Over the Combination of Duarte, Biggs, and Hotelling in Further View of Louch.....	18

VII.	THE PETITION SHOULD BE DENIED IN THE DISCRETION OF THE DIRECTOR UNDER 35 U.S.C. § 314(a)	18
A.	The Parallel District Court Litigation and the Petition Involve the Same Parties	20
B.	The District Court Litigation Involves Substantially the Same Claims.....	20
C.	Proximity of the District Court’s Trial Date	21
D.	Significant Investment and Petitioner’s Delay in Filing the Petition.....	22
E.	No Stay of the Parallel District Court Litigation	23
F.	Other Factors Favor Discretionary Denial	24
VIII.	THE PETITION SHOULD BE DENIED IN THE BOARD’S DISCRETION IN VIEW OF THE SAME PRIOR ART PREVIOUSLY PRESENTED TO THE OFFICE DURING PROSECUTION.....	25
A.	Petitioner’s Grounds 5 and 6 Should Be Denied	25
B.	Petitioner’s Grounds 1-4 and 6 Should Be Denied	28
IX.	THE BOARD SHOULD REJECT ANY LATE SOTERA STIPULATION	29
X.	CONCLUSION.....	31

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Apple Inc. v. Fintiv, Inc.</i> , IPR2020-00019, Paper 11 (P.T.A.B. Mar. 20, 2020)	19, 30
<i>Apple, Inc. v. Contentguard Holdings, Inc.</i> , IPR2015-00355, Decision Denying Institution of <i>Inter Partes</i> Review, Paper 9 at 9-10 (P.T.A.B. June 26, 2015)	8
<i>Broadcom Corp. v. Emulex Corp.</i> , 732 F.3d 1325 (Fed. Cir. 2013)	9
<i>Cisco Sys., Inc. v. Ramot at Tel Aviv Univ. Ltd.</i> , IPR2020-00122, Paper 15 (P.T.A.B. May 15, 2020)	21, 22
<i>Edward LifeSciences Corp. v. Evalve, Inc.</i> , IPR2019-01479, Paper 7 (P.T.A.B. Feb. 26, 2020)	22
<i>Funai Elec. Co. v. Gold Charm Ltd.</i> , IPR2015-01491, Paper 18 (P.T.A.B. Feb. 18, 2016)	25
<i>Graham v. John Deere Co. of Kansas City</i> , 383 U.S. 1 (1966)	8
<i>Innogenetics, N.V. v. Abbott Lab 'ys.</i> , 512 F.3d 1363 (Fed. Cir. 2008)	10
<i>Intell. Ventures II v. FedEx Corp.</i> , No. 2:16-cv-00980-JRG, Dkt. 141 (E.D. Tex. Oct. 24, 2017)	23, 24
<i>Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.</i> , 821 F.3d 1359 (Fed. Cir. 2016)	9
<i>KSR Int'l Co. v. Teleflex Inc.</i> , 550 U.S. 398 (2007)	8

<i>Lennon Image Techs., LLC v. Macy’s Retail Holdings, Inc.</i> , 2:13-CV-00235-JRG, 2014 WL 4652117 (E.D. Tex. Sept. 18, 2014)	23
<i>Los Angeles Biomedical Rsch. Inst. at Harbor-UCLA Med. Ctr. v.</i> <i>Eli Lilly & Co.</i> , 849 F.3d 1049 (Fed. Cir. 2017)	9
<i>Neil Ziegman, N.P.Z., Inc. v. Stephens</i> , IPR2015-01860, Paper 11 (P.T.A.B. Feb. 24, 2016).....	25
<i>Next Caller Inc. v. TrustID, Inc.</i> , IPR2019-00961, -00962, Paper 10, at 8-16 (P.T.A.B. Oct. 16, 2019)	22
<i>NHK Spring Co. v. Intri-Plex Techs., Inc.</i> , IPR2018-00752, Paper 8 (P.T.A.B. Sept. 12, 2018).....	20
<i>NXP USA, Inc. v Impinj, Inc.</i> , IPR2021-01556, Paper 12, 5-6 (P.T.A.B. Aug. 25, 2022)	30
<i>NXP USA, Inc. v Impinj, Inc.</i> , IPR2021-01556, Paper 13, 3-4 (P.T.A.B. Sept. 7, 2022)	30
<i>Pers. Web Techs., LLC v. Apple, Inc.</i> , 848 F.3d 987 (Fed. Cir. 2017)	9
<i>Samsung Elecs. Am., Inc. v. Uniloc 2017 LLC</i> , IPR2019-01218, Paper 7 (P.T.A.B. Jan. 7, 2020)	22
<i>Samsung Elecs. Co., v. Slyde Analytics, LLC</i> , IPR2024-00002, Paper 5 (P.T.A.B. October 30, 2023).....	20
<i>Sotera Wireless, Inc. v. Masimo Corp.</i> , IPR2020-01019, Paper 12, 13-14 (P.T.A.B. Dec. 1, 2020) (designated Dec. 17, 2020)	29, 30
<i>Stratoflex, Inc. v. Aeroquip Corp.</i> , 713 F.2d 1530 (Fed. Cir. 1983)	8
<i>Supercell Oy v. Gree, Inc.</i> , IPR2020-00513, Paper 11 (P.T.A.B. June 24, 2020)	21

<i>Unified Pats. Inc. v. John L. Berman</i> , IPR2016-01571, Paper 10 (P.T.A.B. December 14, 2016)	25
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<i>In re Van Os</i> , 844 F.3d 1359 (Fed. Cir. 2017)	9
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Statutes

35 U.S.C. § 314(a)	2, 18, 20, 24
35 U.S.C. § 314(b)(1).....	21
35 U.S.C. § 316(a)(11).....	21
35 U.S.C. § 325(d)	2, 25

Other Authorities

37 C.F.R. § 42.1(b)	30
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LIST OF EXHIBITS

Exhibit No.	Description of Document
2001	Second Amended Docket Control Order, Dkt. 33, <i>Slyde Analytics LLC v. Samsung Elecs. Co.</i> , No. 2:23-cv-00083-RWS-RSP (E.D. Tex. October 5, 2023)
2002	Defendants' Joint Patent L.R. 3-3 Invalidity Contentions and Subject Matter Ineligibility Contentions, <i>Slyde Analytics LLC v. Samsung Elecs. Co.</i> , No. 2:23-cv-00083-RWS-RSP, served November 14, 2023

I. INTRODUCTION

On October 9, 2023, Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively, “Petitioner” or “Samsung”) submitted a petition (Paper 3, “Petition” or “Pet.”) to institute *inter partes* review (“IPR”) of U.S. Patent No. 9,651,922 (Ex. 1001, the “’922 Patent”), challenging claims 1-24 (the “Challenged Claims”). The Petition asserts that (i) Claims 1-4, 6-19, and 21-24 are obvious over Louch; (ii) Claims 5 and 20 are obvious over Louch and Hepp; (iii) Claims 8, 13-17, 21, 22, and 24 are obvious over Louch and Duarte; (iv) Claim 23 is obvious over Louch and Park; (v) Claims 1-13 and 17-24 are obvious over Duarte, Biggs, and Hotelling; and (vi) Claims 14-16 are obvious over Duarte, Biggs, Hotelling, and Louch. Pet. at 3-4. The Board should deny the Petition for at least the reasons described briefly below.

With respect to Petitioner’s Ground 1, Petitioner fails to show that Louch discloses a replacement card occupying the entire display without further user intervention after scrolling, as required by Claim 1.

With respect to Petitioner’s Ground 5, Petitioner points to no evidence that Duarte discloses a scrolling operation that causes “several available cards to scroll past” but only shows that the focus of Duarte’s display can move between two non-adjacent windows. Additionally, the Petition does not cite evidence that Duarte discloses the claimed “said several available cards has a distinct fixed or periodically

refreshed image” but only utilizes one sentence of unsupported expert opinion to bridge the gap between Duarte’s disclosure of “applications or other activities in operation” and the actual claim limitation. Petitioner also cannot show that Duarte discloses a displayed card occupying the whole of said digital matrix display because Duarte’s disclosure of a “full-screen mode” only corresponds to an “activity [that] occupies *substantially* an entire display screen.”

The Board should exercise its discretion to deny the Petition under 35 U.S.C. § 314(a) for at least the following reasons: (i) there exists a parallel District Court Litigation between the same parties or real-parties-in-interest; (ii) the District Court Litigation involves the same subject patent (the ’922 Patent) with substantially the same claims; (iii) the District Court’s trial will be almost *two months before* the projected statutory deadline; (iv) the parties have heavily invested in the District Court Litigation and a trial date is set for February 18, 2025; and (v) there is no stay of the parallel District Court Litigation.

The Board should also exercise its discretion to deny the Petition under 35 U.S.C. § 325(d) because “the same or substantially the same prior art or arguments previously were presented to the Office.” 35 U.S.C. § 325(d). In particular, Hotelling (Ex. 1006) was previously considered by the U.S. Patent & Trademark Office during prosecution of the ’922 Patent, and Petitioner’s arguments with respect to Louch rely on Louch’s incorporation by reference of Hotelling and were previously considered

by the Patent Office.

II. THE '922 PATENT

The '922 Patent “concerns a wristwatch, in particular an electronic wristwatch having a high-resolution display screen and a haptic surface. '922 Patent, 1:14-16.

The '922 Patent specification describes several long felt needs, that made the solution for the '922 Patent advantageous:

There is thus a need in the prior art for a wristwatch provided with a tactile (i.e., touch-sensitive) glass making it possible to enter commands without having to press on a particular zone of the glass.

There is in particular a need for a wristwatch allowing movements of a finger on a touch screen to be detected.

In particular, there is a need for a wristwatch of which at least certain elements, including the haptic surface, the signal processing circuit coming from the electrodes of this surface, the processor and the graphical interface, are adapted to the particular constraints of a wristwatch, in particular the reduced surface of the screen and the very strict requirements in terms of electric consumption and computation power available.

There is also a need for a wristwatch enabling a large number of different indications to be displayed without however cluttering up the display. This watch should furthermore afford easy and intuitive access to different available items of information by means of commands that are easy to learn and to enter on a touch-sensitive (tactile) glass.

There is also a need for a wristwatch that allows the type of information displayed and the manner in which this information is presented to be customized.

Id., 3:40-62.

One embodiment to achieve a solution to the problems noted above involves the following:

Scrolling in a given direction is achieved by moving the finger on the touch screen, which causes the cards to move continuously in the finger's preferential direction; the speed and amplitude of the cards' displacement depend on the impulsion given by the finger. The user can stop the scrolling and select a card during scrolling with a tap on this card; the selected card will automatically be centered.

Id., 10:16-23.

III. THE ALLEGED PRIOR ART

A. Louch

Louch is directed towards presenting a widget on the display in response to touch input, where the widget is capable of displaying dynamic behavior determined by a scripting language file associated with the widget. Ex. 1005, Abstract.

Louch discloses that after scrolling, the user must click or touch the dashboard/widget to invoke the widget and cause the dashboard/widget to be displayed to cover the entire display. Ex. 1005, [0080]. Specifically, Louch states:

In some implementations, the user can scroll (horizontally or vertically) through dashboards or widgets across the display area 502 by touching the widgets and making the

appropriate finger gestures in horizontal or vertical directions. When a desired dashboard/widget is found, the *user can click or touch the dashboard/widget to invoke the widget*. In some implementations, *when the dashboard/widget is invoked the dashboard/widget is displayed to cover the entire display area 502* (full screen).

Id., [0080] (emphasis added). *See also* [0086] (disclosing that in the embodiment of Figure 5D, a click or touch is necessary to cause the dashboard or widget to be displayed over the entire screen).

In other implementations, Louch requires user intervention so that “a widget can be opened in a user interface (e.g., *in response to multi-touch input*),” and additionally, Louch does not disclose the claimed “occup[ying] the entire digital matrix display” because opening a widget in Louch only causes the widget to “consume *substantially* all of the multi-touch sensitive display area.” *Id.*, [0081] (emphasis added).

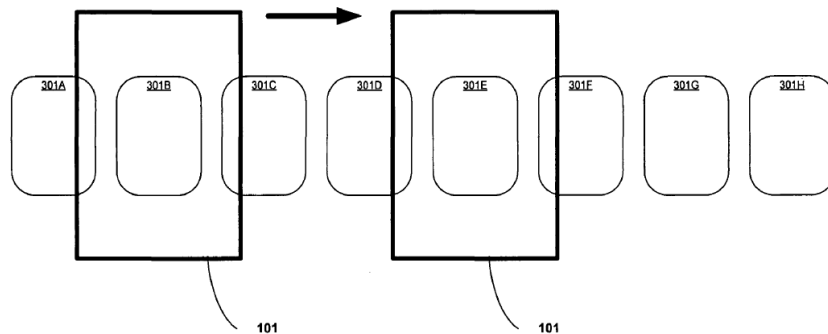
None of the embodiments of Louch show scrolling widgets in a full-screen mode (*see, e.g.*, Ex. 1005, FIGS. 5B, 5D, 5E), and the only disclosure of a scrolled widget entering full-screen mode requires user intervention, such as clicking or touching the widget. *Id.*, [0080], [0086].

Louch incorporates Hotelling (Ex. 1006) by reference. *See* Ex. 1005, [0043].

B. Duarte

Duarte “relates to application management in computing devices, and more particularly to systems and methods for navigating among activities such as applications in such devices.” Ex. 1010, 1:18-21.

Duarte discloses that the display’s focus can move from a window 301B to window 301E, as shown in its Fig. 7.



Id., FIG. 7; 7:51-56. To move the focus between windows, Duarte’s specification discloses that “the user can repeatedly drag windows 301 in a leftward direction to cause windows 301C, 301D, and 301E to successively occupy the central position.” *Id.*, 7:60-63. In another embodiment of Duarte, the user can click on a partially displayed window to move it to a central position. *Id.*, 7:63-8:2. Duarte’s dragged windows may “show applications or other activities in operation.” *Id.*, 7:18-21.

Duarte also discloses a “full-screen mode” where “one activity occupies substantially an entire display screen.” *Id.*, 2:62-63.

C. Hotelling

Hotelling “relates generally to an electronic device having a touch screen. More particularly, the present invention relates to a touch screen capable of sensing multiple points at the same time.” Ex. 1006, [0002].

During prosecution of the '922 Patent, the Examiner considered, and cited to, US 2006/0026535 to Hotelling et al., which incorporates Hotelling (Ex. 1006) by reference.

IV. CLAIM CONSTRUCTION

For the purposes of this Preliminary Response only, Patent Owner believes that claim construction is not required to resolve any issues. Petitioner also notes that it believes that claim construction is not otherwise warranted. Pet. at 6.

V. LEVEL OF ORDINARY SKILL IN THE ART

For the purposes of this Preliminary Response only, Patent Owner utilizes Petitioner’s proposed level of skill in the art: “a bachelor’s degree in electrical engineering, computer science, computer engineering, or a related field, and 2-3 years of experience in the research, design, development, or testing of graphical user interfaces, touchscreens, and mobile devices, with additional education substituting for experience and vice-versa.” Pet. at 6 (citations omitted).

**VI. PETITIONER HAS NOT DEMONSTRATED A REASONABLE
LIKELIHOOD OF SUCCESS FOR THE GROUNDS
ADVANCED IN THE PETITION, AND THE PETITION
SHOULD BE DENIED**

The question of obviousness is resolved on the basis of underlying factual determinations, including: (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) so-called secondary considerations where in evidence. *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17-18 (1966); *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1537 (Fed. Cir. 1983).

The Board has held that a failure to identify the differences between the claimed subject matter and the prior art is fatal to an obviousness challenge. *See, Apple, Inc. v. Contentguard Holdings, Inc.*, IPR2015-00355, Decision Denying Institution of *Inter Partes* Review, Paper 9 at 9-10 (P.T.A.B. June 26, 2015) (denying institution for failure to identify the differences between the claimed subject matter and the prior art).

In arriving at an obviousness determination, the Board must sufficiently explain and support the conclusions that the prior-art references disclose all the

elements recited in the Challenged Claims and a relevant, skilled artisan not only could have made, but would have been motivated to combine all the prior art references in the way the patent claims and reasonably expected success. *Pers. Web Techs., LLC v. Apple, Inc.*, 848 F.3d 987, 994 (Fed. Cir. 2017). That is, even if all the claim elements are found across a number of references, an obviousness determination must consider whether a person of ordinary skill in the art would have the motivation to combine those references. *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1368 (Fed. Cir. 2016); *Los Angeles Biomedical Rsch. Inst. at Harbor-UCLA Med. Ctr. v. Eli Lilly & Co.*, 849 F.3d 1049, 1067 (Fed. Cir. 2017) (vacating and remanding an obviousness determination, in part, because the Board did not make factual finding as to whether there was an apparent reason to combine all three prior art references to achieve the claimed invention and whether a person of skill in the art would have had a reasonable expectation of success from such a combination). This combinability determination, as supported by an articulated motivation to combine, requires a plausible rationale as to why those prior art references would have worked together. *Broadcom Corp. v. Emulex Corp.*, 732 F.3d 1325, 1335 (Fed. Cir. 2013). Absent some articulated rationale, a “common sense” finding is no different than the conclusory statement “would have been obvious.” *In re Van Os*, 844 F.3d 1359, 1361 (Fed. Cir. 2017). Of additional importance, “knowledge of a problem and motivation to solve it are entirely different

from motivation to combine particular references. . . .” *Innogenetics, N.V. v. Abbott Lab’ys.*, 512 F.3d 1363, 1373 (Fed. Cir. 2008).

A. Ground 1: Claim 1 is Not Obvious Over Louch

- 1. The Petition Does Not Show that Louch Discloses “*wherein one card of said several available cards and occupying the entire digital matrix display is immediately and without further user intervention replaced after the scrolling by a different card of said several available cards that occupies the entire digital matrix display,*” as Required by Claim Element 1[g]**

Claim 1 of the ’922 Patent recites “wherein one card of said several available cards and occupying the entire digital matrix display is immediately and without further user intervention replaced after the scrolling by a different card of said several available cards that occupies the entire digital matrix display.” Petitioner fails to demonstrate that Louch discloses that, after scrolling, a replacement card occupies the entire display without further user intervention.

Louch discloses that after scrolling, the user must click or touch the dashboard/widget to invoke the widget and cause the dashboard/widget to be displayed to cover the entire display. Ex. 1005, [0080]. Specifically, Louch states:

In some implementations, the user can scroll (horizontally or vertically) through dashboards or widgets across the display area 502 by touching the widgets and making the appropriate finger gestures in horizontal or vertical directions. When a desired dashboard/widget is found, the *user can click or touch the dashboard/widget to invoke the widget.* In some implementations, *when the dashboard/widget is invoked the dashboard/widget is*

displayed to cover the entire display area 502 (full screen).

Id. (emphasis added). *See also* [0086] (disclosing that in the embodiment of Figure 5D, a click or touch is necessary to cause the dashboard or widget to be displayed over the entire screen). The user intervention of clicking or touching required to cause the dashboard/widget to cover the entire display is expressly excluded from the scope of claim element 1[g].

In other implementations, Louch requires user intervention so that “a widget can be opened in a user interface (e.g., *in response to multi-touch input*),” and additionally, Louch does not disclose the claimed “occup[ying] the entire digital matrix display” because opening a widget in Louch only causes the widget to “consume *substantially* all of the multi-touch sensitive display area.” *Id.*, [0081] (emphasis added).

The Petition ignores these express teachings of Louch and instead cobbles together disparate statements to suggest that Louch discloses the scrolling of full-screen dashboards/widgets and that the replacement of one card with another throughout the scrolling operation meets this limitation. This argument has several defects.

First, Petitioner cites Louch’s teaching that an open widget occupies “*substantially all* of the multi-touch-sensitive display area” to meet the claim

limitation that the card covers “the *entire* digital matrix display.” Pet., 21-22 (emphasis added). It is beyond dispute that “substantially all” of a display is not “the entire” display.

Second, Petitioner cites the replacement of one widget with another *during* scrolling instead of the replacement of a card with another *after* scrolling, as required by the claim. Pet., 22. In context, claim limitation 1[e] recites that scrolling is done to reach “a replacement card selected between said several available cards,” and then claim limitation 1[g] recites that “after scrolling,” one card is replaced by another card that occupies the entire display without further user intervention. Petitioner disregards the “after scrolling” limitation and cites Louch’s replacement of cards “[d]uring such scrolling” to meet this claim element. *Id.*

Third, none of the teachings cited by Petitioner suggests that the scrolling widgets occupy the full screen during scrolling in Louch. *Id.* None of the embodiments of Louch shows scrolling widgets in a full-screen mode, *see, e.g.*, Ex. 1005, FIGS. 5B, 5D, 5E, and the only disclosure of a scrolled widget entering full-screen mode requires user intervention, such as clicking or touching the widget. *Id.*, [0080], [0086].

Therefore, the Petition is deficient because it fails to show that claim element 1[g] is disclosed or rendered obvious by Louch.

2. Louch Does Not Render Claims 2-4, 6-19, and 21-24 Obvious

Claims 2-4 and 6-8 are dependent on Claim 1. Therefore, Claims 2-4 and 6-8 are not rendered obvious by Louch for at least the same reasons as Claim 1.

Petitioner relies on the same arguments with respect to Claims 9, 23, and 24 as Claim 1. *See* Pet. at 32-34, 41-44. Therefore, for at least the same reasons as Claim 1, Louch does not render Claims 9, 23, and 24 obvious.

Claims 10-19 are dependent on Claim 9. Therefore, Claims 10-19 are not rendered obvious by Louch for at least the same reasons as Claim 9.

B. Ground 2: Claims 5 and 20 are Not Obvious Over the Combination of Louch in view of Hepp

Claims 5 and 20 are respectively dependent on Claim 1 and Claim 9. Therefore, Claims 5 and 9 are not rendered obvious by Louch in view of Hepp for at least the same reasons as noted for Ground 1 on which Petitioner's Ground 2 relies.

C. Ground 3: Claims 8, 13-17, 21, 22, and 24 are Not Obvious Over the Combination of Louch in view of Duarte

Claims 8, 13-17, 21, and 22 are respectively dependent on Claim 1 and Claim 9. Therefore, Claims 8, 13-17, 21, and 22 are not rendered obvious by Louch in view of Duarte for at least the same reasons as noted for Ground 1 on which Petitioner's Ground 3 relies.

Claim 24 is an independent claim, which is not rendered obvious by Louch in view of Duarte, for at least the same reasons as noted for Ground 1 on which Petitioner's Ground 3 relies. Pet. at 48-49.

D. Ground 4: Claim 1 is Not Obvious Over the Combination of Louch in view of Park

Claim 23 is an independent claim, which is not rendered obvious by Louch in view of Park, for at least the same reasons as noted for Ground 1 on which Petitioner's Ground 4 relies. Pet. at 51.

E. Ground 5: Claim 1 is Not Obvious Over the Combination of Duarte, Biggs, and Hotelling

- 1. The Petition Does Not Show that the Combination of Duarte, Biggs, and Hotelling Discloses “*wherein said processing circuit is specifically laid out so as to cause said several available cards to scroll past in order to lastingly replace the initially displayed card with a replacement card selected between said several available cards, wherein each card of said several available cards has a distinct fixed or periodically refreshed image,*” as Required by Claim Element 1[e]**

Claim 1 of the '922 Patent recites “wherein said processing circuit is specifically laid out so as to cause said several available cards to scroll past in order to lastingly replace the initially displayed card with a replacement card selected between said several available cards, wherein each card of said several available cards has a distinct fixed or periodically refreshed image.” Petitioner only relies on Duarte to disclose this claim limitation. Pet. at 59-61.

The Petition does not cite any evidence that Duarte discloses the claimed “said several available cards to scroll past.” The sole portion of Duarte’s specification relied on by Petitioner, Ex. 1010, 7:51-56, shows that the display’s focus can move from window 301B to window 301E. Pet., 60. The Petition does not disclose how Duarte accomplishes this change in focus. In fact, the specification discloses that “the user can repeatedly drag windows 301 in a leftward direction to cause windows 301C, 301D, and 301E to successively occupy the central position.” Ex. 1010, 7:60-63. In another embodiment, the user can click on a partially displayed window to move it to a central position. *Id.*, 7:63-8:2. Petitioner points to no evidence that Duarte discloses a scrolling operation that causes “several available cards to scroll past.”

Additionally, the Petition does not cite evidence that Duarte discloses the claimed “said several available cards has a distinct fixed or periodically refreshed image.” With respect to this claim limitation, Petitioner only describes that Duarte’s windows “show applications or other activities in operation.” Pet., 60-61 (citing Ex. 1010, 7:18-21). However, just because applications or activities are operating does not automatically imply that images of those applications are refreshed or even that they have a distinct fixed image associated with them. Notably, Petitioner relies solely on one sentence of unsupported expert testimony to close the gap between Duarte’s disclosure and the claimed limitation. *See* Pet. at 61 (“[t]o reflect the

progress of the activities, windows 301 would be “periodically refreshed”) (citing Ex-1002 ¶ 276).

For these reasons, the Petition is deficient because it fails to show that the combination of Duarte, Biggs, and Hotelling renders obvious claim element 1[e].

2. The Petition Does Not Show that the Combination of Duarte, Biggs, and Hotelling Discloses “*wherein the size of the image corresponds to the size of said digital matrix display so that the displayed card occupies the whole of said digital matrix display,*” as Required by Claim Element 1[f]

Claim 1 of the ’922 Patent recites “wherein the size of the image corresponds to the size of said digital matrix display so that the displayed card occupies the whole of said digital matrix display.” Petitioner only relies on Duarte to disclose this claim limitation. Pet. at 61.

In particular, Petitioner relies on only one phrase from Duarte, which discloses a “full-screen mode.” *Id.* (citing Ex. 1010, 2:62-63). On its face, Duarte does not disclose this claim limitation because in Duarte’s “full-screen mode, *one activity* occupies *substantially* an entire display screen” – not the claimed “whole of said digital matrix display.” *Id.* (emphasis added).

Therefore, the Petition is deficient because it fails to show that the combination of Duarte, Biggs, and Hotelling renders obvious this claim limitation.

3. The Petition Does Not Show that the Combination of Duarte, Biggs, and Hotelling Discloses “*wherein one card of said several available cards and occupying the entire digital matrix display is immediately and without further user intervention replaced after the scrolling by a different card of said several available cards that occupies the entire digital matrix display,*” as Required by Claim Element 1[g]

Claim 1 of the '922 Patent recites “wherein one card of said several available cards and occupying the entire digital matrix display is immediately and without further user intervention replaced after the scrolling by a different card of said several available cards that occupies the entire digital matrix display.”

Since Petitioner fails to show how the combination of Duarte, Biggs, and Hotelling discloses, teaches, or suggests the claimed “to cause said several available cards to scroll past in order to lastingly replace the initially displayed card with a replacement card selected between said several available cards,” it cannot now disclose, teach, or suggest “*the scrolling* by a different card of said several available cards that occupies the entire digital matrix display.” *See supra* Section VI.E.1.

Therefore, the combination of Duarte, Biggs, and Hotelling does not render obvious this claim limitation.

4. The Combination of Duarte, Biggs, and Hotelling Does Not Render Claims 2-13 and 17-24 Obvious

Claims 2-8 are dependent on Claim 1. Therefore, Claims 2-8 are not rendered obvious by the combination of Duarte, Biggs, and Hotelling for at least the same

reasons as Claim 1.

Petitioner relies on the same arguments with respect to Claims 9, 23, and 24 as Claim 1. *See* Pet. at 71-73, 78-81. Therefore, for at least the same reasons as Claim 1, the combination of Duarte, Biggs, and Hotelling does not render Claims 9, 23, and 24 obvious.

Claims 10-13 and 17-21 are dependent on Claim 9. Therefore, Claims 10-13 and 17-21 are not rendered obvious by the combination of Duarte, Biggs, and Hotelling for at least the same reasons as Claim 9.

F. Ground 6: Claims 14-16 are Not Obvious Over the Combination of Duarte, Biggs, and Hotelling in Further View of Louch

Claims 14-16 are dependent on Claim 9. Therefore, Claims 14-16 are not rendered obvious by the combination of Duarte, Biggs, and Hotelling in further view of Louch for at least the same reasons as noted for Ground 5, which Petitioner's Ground 6 relies on.

VII. THE PETITION SHOULD BE DENIED IN THE DISCRETION OF THE DIRECTOR UNDER 35 U.S.C. § 314(a)

Based on Petitioner's reasons regarding § 314(a), the Board should exercise its discretion to deny this Petition.

The circumstances of the parallel District Court Litigation necessitate denial of the Petition under the Board's precedent, as every factor considered in relation to

efficiency, fairness, and the merits supports denial. *See Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11, at 6 (P.T.A.B. Mar. 20, 2020) (precedential) (considering (a) “whether the petitioner and the defendant in the parallel proceeding are the same party”; (b) “overlap between issues raised in the petition and in the parallel proceeding” (c) “proximity of the court’s trial date to the Board’s projected statutory deadline for a final written decision”; (d) “investment in the parallel proceeding by the court and the parties”; (e) “whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted”; and (f) “other circumstances that impact the Board’s exercise of discretion, including the merits.”).

As set forth below, these factors collectively demonstrate that efficiency and integrity of the AIA are best served by denying review. First, the Petitioner is the Defendant in the parallel proceeding. *See infra* Section VII.A. Second, the asserted claims in the District Court Litigation are all at issue in the Petition. *See infra* Section II.B. Third, trial in the District Court Litigation is set for February 18, 2025, two months prior to the projected statutory deadline for a Final Written Decision of this Petition in April 17, 2025. *See infra* Section VII.C. Fourth, the parties (and Patent Owner in particular) have invested significant resources on developing legal and factual issues of validity and infringement in the District Court Litigation and will have invested substantially more resources before any decision on this Petition. *See infra* Section VII.D. Fifth, the Court has neither granted nor denied a stay pending

this Petition. *See infra* Section VII.E. Finally, no other factors favor institution. *See infra* Section VII.F.

Accordingly, the Board should exercise its discretion under § 314(a) and deny the Petition because institution of this proceeding would not be consistent with the objective of the AIA to “provide an effective and efficient alternative to district court litigation.” *NHK Spring Co. v. Intri-Plex Techs., Inc.*, IPR2018-00752, Paper 8, at 20 (P.T.A.B. Sept. 12, 2018) (quoting *Gen. Plastic Indus. Co. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19, at 16–17 (P.T.A.B. Sept. 6, 2017) (precedential)).

A. The Parallel District Court Litigation and the Petition Involve the Same Parties

As noted in Patent Owner’s Mandatory Notice, there exists a parallel District Court Litigation between the same parties regarding the same subject patent (the ’922 Patent). *Samsung Elecs. Co., v. Slyde Analytics, LLC*, IPR2024-00002, Paper 5 at 2 (P.T.A.B. October 30, 2023); Pet. at 1. Petitioner is a party to the District Court Litigation captioned as *Slyde Analytics LLC v. Samsung Elecs. Co.*, Case No. 2-23-cv-00083 (E.D. Tex.) (the “District Court Litigation”). Accordingly, this factor weighs in favor of discretionary denial.

B. The District Court Litigation Involves Substantially the Same Claims

All of the asserted claims of the ’922 Patent in the District Court Litigation

are at issue in this Petition. “In at least these ways, the parallel proceedings would duplicate effort. This is an inefficient use of Board, party, and judicial resources and raises the possibility of conflicting decisions.” *Cisco Sys., Inc. v. Ramot at Tel Aviv Univ. Ltd.*, IPR2020-00122, Paper 15 at 10 (P.T.A.B. May 15, 2020). Accordingly, this fact weighs in favor of discretionary denial.

C. Proximity of the District Court’s Trial Date

The proximity of the District Court Litigation’s trial date to the Board’s projected statutory deadline for a Final Written Decision strongly weighs in favor of discretionary denial.

The parties’ trial is scheduled for February 18, 2025. Exhibit 2001 (Second Amended Docket Control Order, Dkt. 33, *Slyde Analytics LLC v. Samsung Elecs. Co.*, No. 2:23-cv-00083-RWS-RSP (E.D. Tex. October 5, 2023)). Pursuant to 35 U.S.C. §§ 314(b)(1) and 316(a)(11), the projected statutory deadline for a Final Written Decision of this Petition is April 17, 2025.¹ As the District Court’s trial will be almost *two months before* the projected statutory deadline, this factor weighs strongly in favor of denying institution. *See Supercell Oy v. Gree, Inc.*, IPR2020-

¹ The statutory deadline for institution is April 17, 2024, “three months after receiving a preliminary response to the petition under section 313.” *See* 35 U.S.C. § 314(b)(1). If instituted, the statutory deadline for Final Written Decision is April 17, 2025, “not later than 1 year after the date on which the Director notices the institution of a review.”

00513, Paper 11 at 10-12 (P.T.A.B. June 24, 2020) (denying institution where the jury trial was scheduled to conclude approximately ten months before the statutory deadline); *Edward LifeSciences Corp. v. Evalve, Inc.*, IPR2019-01479, Paper 7, at 6-13 (P.T.A.B. Feb. 26, 2020) (denying institution where jury trial would conclude more than nine months before a final decision would be due); *Samsung Elecs. Am., Inc. v. Uniloc 2017 LLC*, IPR2019-01218, Paper 7, at 7-10 (P.T.A.B. Jan. 7, 2020) (denying institution where jury selection was scheduled for approximately six months before trial in the Board proceeding would conclude); *Next Caller Inc. v. TrustID, Inc.*, IPR2019-00961, -00962, Paper 10, at 8-16 (P.T.A.B. Oct. 16, 2019) (denying institution where trial was scheduled to conclude “several months,” before a final decision would be due); *Cisco Sys., Inc.*, IPR2020-00122, Paper 15 at 8 (“Because the trial date is substantially earlier than the projected statutory deadline for the Board’s final decision, this factor weighs in favor of discretionary denial.”).

Petitioner does not contest that the proximity of the trial favors denial of institution. Thus, this factor also weighs in favor of discretionary denial.

D. Significant Investment and Petitioner’s Delay in Filing the Petition

The parties’ investment in the parallel proceeding weighs in favor of discretionary denial. In the District Court Litigation, the Court has already entered three Docket Control Orders (Dkts. 28, 31, 33), Discovery Order (Dkt. 29),

Protective Order (Dkt. 41), and E-Discovery Order (Dkt. 40). Discovery is also well under way. The parties have already exchanged infringement contentions pursuant to P.R. 3-1, and invalidity contentions pursuant to P.R. 3-3, and a trial date is set for February 18, 2025, which is only about a year away. Ex. 2001. Thus, the parties' and Court's substantial investment in this proceeding weighs in favor of denial of institution under this factor.

E. No Stay of the Parallel District Court Litigation

There is no stay of the parallel District Court Litigation. Even if the Petition were instituted and Petitioner filed a motion to stay the District Court Litigation, prejudice, tactical disadvantage to Slyde Analytics, the late stage of the litigation, and the lack of potential simplification would weigh strongly against such a motion. *See Lennon Image Techs., LLC v. Macy's Retail Holdings, Inc.*, 2:13-CV-00235-JRG, 2014 WL 4652117, at *1 (E.D. Tex. Sept. 18, 2014). The statutory deadline for institution is not until after claim construction discovery begins.² Ex. 2001; *see Intell. Ventures II v. FedEx Corp.*, No. 2:16-cv-00980-JRG, Dkt. 141 at 5 (E.D. Tex. Oct. 24, 2017) ("The Court agrees that the Parties have already invested substantial effort and resources during discovery and in preparing claim construction briefing. .

² As noted above, the statutory deadline for institution is April 17, 2024. *See supra* n. 1. Per Ex. 2001, the date for compliance with P.R. 4-1 (Exchange Proposed Claim Terms) is March 22, 2024.

. . These circumstances weigh against staying this case”).

Moreover, a stay would not decrease the burden on the Court and the parties since any instituted IPR would not cover any of the references that Petitioner raised in the District Court Litigation for both anticipation or any of the combinations of obviousness, and do not include Petitioner’s challenges under § 112 or § 101. *See generally* Ex. 2002, at 59-61, 63-64, 172-175, 182-184, 190-193. *Intell. Ventures II*, No. 2:16-cv-00980-JRG, Dkt. 141 at 3-4 (“[T]he instituted IPRs only cover a narrow slice of the invalidity arguments Defendants have raised in this case. For example, Defendants have argued that the ’715 Patent is invalid under § 102 with respect to at least eight references . . . under § 103 with respect to at least twenty-six combinations . . . under § 112 [], and under § 101.”).

Accordingly, it would be unlikely for the Court to hold that a stay would streamline the litigation and this factor supports denial of institution.

F. Other Factors Favor Discretionary Denial

Petitioner does not present a strong case on the merits, further supporting denial of institution. *See supra* Section VI. Petitioner also does not identify any other factors which weigh against discretionary denial. Pet. at 84-87.

Thus, when viewing the factors together, the Petition should be denied in the Director’s discretion under 35 U.S.C. § 314(a).

VIII. THE PETITION SHOULD BE DENIED IN THE BOARD'S DISCRETION IN VIEW OF THE SAME PRIOR ART PREVIOUSLY PRESENTED TO THE OFFICE DURING PROSECUTION

“In determining whether to institute or order a proceeding under this chapter, chapter 30, or chapter 31, 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.*” 35 U.S.C. § 325(d) (emphasis added); *Unified Pats. Inc. v. John L. Berman*, IPR2016-01571, Paper 10 (P.T.A.B. December 14, 2016) (denying institution where the prior art cited in the petition was used in combination by the PTO in attempting to reject the underlying application); *Funai Elec. Co. v. Gold Charm Ltd.*, IPR2015-01491, Paper 18 (P.T.A.B. Feb. 18, 2016) (denying institution because the same prior art asserted in the petition was considered by the Examiner during prosecution against those claims); *Neil Ziegman, N.P.Z., Inc. v. Stephens*, IPR2015-01860, Paper 11 (P.T.A.B. Feb. 24, 2016) (exercising its discretion under § 325(d) to deny institution on the basis that the petition presented substantially the same or similar art or arguments as those previously presented during prosecution of the patent).

A. Petitioner's Grounds 5 and 6 Should Be Denied

Petitioner's Grounds 5 and 6, are based on combinations involving Hotelling (Ex. 1006), which was previously presented to the Office during prosecution of the

'922 Patent. As a result, Grounds 5 and 6 of the Petition ought to be denied in the discretion of the Board.

In particular, during prosecution of the '922 Patent, the Examiner considered and cited to US 2006/0026535 to Hotelling et al., which incorporates Hotelling (Ex. 1006) by reference, as shown below:

Notice of References Cited		Application/Control No. 13/334,823		Applicant(s)/Patent Under Reexamination HYSEK ET AL.	
		Examiner ERIC J. BYCER		Art Unit 2173	Page 1 of 1
U.S. PATENT DOCUMENTS					
*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-2006/0026535 A1	02-2006	Hotelling et al.	715/863

Ex. 1004, 0302; *see also* Ex. 1004, 0290-0294, 0319-0322, 0402-0406, 0412-0415, 0432-0433, 0498-0503, 0574-0575, 0602-0606, 0643. The Examiner specifically cites to “Hotelling [US-2006/0026535 A1], paragraphs 0068-0069.” Ex. 1004, 0290 and 0402. Paragraph 0069 of US 2006/0026535 A1 is precisely where U.S. Patent Application Ser. No. 10/840,862 (Hotelling) is incorporated by reference, which is the patent application that Samsung relies upon in its Petition. *See* Ex. 1006, 0001 (“Appl. No.: 10/840,862”).

Examiner’s “Reasons for Allowance” noted that it carefully examined US 2006/0026535 A1 and found that it was sufficiently distinguished from several claim limitations of the '922 Patent:

The Examiner has carefully examined independent claims 1, 8, 26, and 27. The closest prior art references of record are U.S. Patent Application Publication No. 2009/01991130 A1 (hereinafter Tseng), U.S. Patent Application Publication No. 2006/0026535 A1 (hereinafter Hotelling), and U.S. Patent No. 7,751,285 B1 (hereinafter Cain), U.S. Patent No. 6,747,680 B1 (hereinafter Igarashi).

Claims 1, 8, 26, and 27 are patentable over Tseng, Hotelling, Cain, and Igarashi at least because the cited combination of references does not teach or suggest the following limitations, recited in one form or another, by independent claims 1, 8, 26, and 27:

Regarding independent claims 1 and 8:

- *wherein said processing circuit is specifically laid out so as to cause said several available cards to scroll past in order to lastingly replace the initially displayed card with a replacement card selected between said several available cards, wherein each card of said several available cards has a distinct fixed or periodically refreshed image,*
- *wherein the size of the image corresponds to the size of said digital matrix display so that the displayed card occupies the whole of said digital matrix display;*
- *wherein one card of said several available cars [sic] and occupying the entire digital matrix display is immediately and without further user intervention replaced after the scrolling by a different card of said several available cards that occupies the entire digital matrix display;*
- *wherein said processing circuit is further laid out so that the replacement card is dependent from the*

initially displayed card and from the direction of said movement and is independent from the starting point and end point of said movement on said digital matrix display.

Ex. 1004, 0657-0658.³ The Board should find that Examiner’s consideration of Hotelling precludes any grounds relying on Hotelling from being granted institution.

B. Petitioner’s Grounds 1-4 and 6 Should Be Denied

Petitioner admits that Louch also incorporates Hotelling by reference and Petitioner explicitly relies on Hotelling’s incorporation into Louch to allegedly disclose several claim limitations on behalf of Louch. *See, e.g.*, Pet. at 14 (“Louch incorporates by reference Hotelling (Ex-1006) as an example of a ‘multi-touch-sensitive display.’ Ex-1005 ¶ 43. Hotelling discloses that its multi-touch-sensitive display may include a ‘liquid crystal display (e.g., active *matrix*, passive *matrix* and the like)’ (Ex 1006 ¶ 51) and is a “pixilated array” (*id.* ¶ 68), both of which signify a ‘digital matrix display,’ as recited in the claim. Ex-1002 ¶ 89.”), 15 (“Hotelling discloses a glass touchscreen (glass member 138 and protective glass cover 140) to protect the display from forces exerted on the touchscreen. Ex-1006 ¶¶ 71-72),” 17 (“Hotelling discloses touch-sensitive electrodes ‘positioned almost anywhere’ on the touchscreen, in rows and columns, or in ‘concentric and radial segments’ to enable

³ Notably, these claim limitations cited by the Examiner coincide with the claim limitations that Patent Owner now distinguishes from Louch and the combination of Duarte, Biggs, and Hotelling, noted above in Section VI.

touch detection. Ex-1006 ¶ 64.”). Since Petitioner’s arguments are actually derivative of Hotelling, rely on Louch’s incorporation by reference of Hotelling, and have already been considered by the Patent Office during prosecution,⁴ the Board should deny all of Grounds 1-4 and 6 involving Louch.

In view of the Examiner’s prior in-depth consideration of Hotelling, and, in the case of Louch, arguments derivative of Hotelling, the Board should exercise its discretion by denying the Petition on all of its Grounds.

IX. THE BOARD SHOULD REJECT ANY LATE SOTERA STIPULATION

Petitioner has not made a *Sotera*-style stipulation that “if IPR is instituted, [Petitioner] will not pursue in the District Court Litigation any ground raised or that could have been reasonably raised in an IPR” in its Petition, which weighs further in favor of discretionarily denying institution. *See Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12, 13-14 (P.T.A.B. Dec. 1, 2020) (designated Dec. 17, 2020).

The Board should not accept any late *Sotera* stipulation after this Patent Owner Preliminary Response. Petitioner has known about the related District Court Litigation since Patent Owner filed a Complaint asserting infringement of the ’922

⁴ *See* Ex. 1004, 0290-0294, 0319-0322, 0402-0406, 0412-0415, 0432-0433, 0498-0503, 0574-0575, 0602-0606, 0643.

Patent against Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (February 28, 2023) over 7 months before this Petition (October 9, 2023) and has had three docket control orders for the District Court Litigation, each anticipating a trial date for February 18, 2025. Docket Control Order, Dkt. 28, *Slyde Analytics, LLC v. Samsung Elecs. Co.*, No. 2:23-cv-00083-RWS-RSP (E.D. Tex. September 20, 2023). Any withholding of the *Sotera* stipulation in its Petition is gamesmanship and prejudicial to Patent Owner in this proceeding, and is inconsistent with 37 C.F.R. § 42.1(b)'s mandate to “secure the just, speedy, and inexpensive resolution of every proceeding.”

Both the Board and the Director are abundantly clear that Petitioner cannot wait until after the Board renders its Institution Decision to address the issue of *Fintiv*, the Board's discretionary authority, and to submit a *Sotera* stipulation. *NXP USA, Inc. v Impinj, Inc.*, IPR2021-01556, Paper 12, 5-6 (P.T.A.B. Aug. 25, 2022); *see also id.*, IPR2021-01556, Paper 13, 3-4 (P.T.A.B. Sept. 7, 2022) (the Director finding “that the Board correctly determined that a stipulation, offered by a petitioner for the first time after a decision denying institution, is not a proper basis for granting rehearing of the decision on institution;” “[p]ermitting a petitioner to wait and see if the Board denies institution under *Fintiv*, and then offer such a stipulation for the first time on rehearing, frustrates these goals [of avoiding conflicting decisions] and would open the door to gamesmanship;” “*the only appropriate time for a petitioner*

to offer a stipulation related to the Fintiv factor 4 analysis is prior to the Board's decision of whether to institute review.”) (emphasis added).

X. CONCLUSION

For the foregoing reasons, Patent Owner respectfully requests that the Board deny institution of the Petition in its entirety.

Respectfully submitted,

Dated: January 17, 2024

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CERTIFICATE OF WORD COUNT

The undersigned hereby certifies that the portions of the above-captioned PATENT OWNER'S PRELIMINARY RESPONSE specified in 37 C.F.R. § 42.24 has 6,640 words in compliance with the 14,000 word limit set forth in 37 C.F.R. § 42.24. This word count was prepared using Microsoft Word for Office 365.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

A copy of PATENT OWNER'S PRELIMINARY RESPONSE and EXHIBITS 2001 through 2002 have been served on Petitioner's counsel of record as follows:

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