

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JUNIPER NETWORKS, INC.,
Petitioner,

v.

PORTSMOUTH NETWORK CORP.,
Patent Owner.

Case IPR2024-00893

Patent 6,917,986

PATENT OWNER'S PRELIMINARY RESPONSE

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Pursuant to 37 C.F.R. § 42.120, Patent Owner Portsmouth Network Corp. (“Patent Owner”) respectfully submits this Preliminary Response to the Petition filed by Petitioner Juniper Networks, Inc. (“Petitioner”) regarding U.S. Patent No. 6,917,986 (Ex. 1001, “’986 patent”).

I. Introduction

The ’986 patent claims a novel and non-obvious system to provide rapid reconfiguration of a network in response to network topology changes. In a network containing multiple interconnected switches, a failure in one switch may disrupt communication throughout the network. The ’986 patent’s system uses redundant ports and links to connect switches together so that data transmissions may continue in case a particular port or link fails. For example, when a switch detects a failure in one of its ports, it may activate a backup port and begin transmitting data through the link connected to the backup port. The ’986 patent discloses techniques and methods to detect and respond to a network failure without needing to modify existing standards or use special commands.

Petitioner challenges claims 1–24, including independent claims 1, 12, 13 and 24, under two different grounds. Petitioner challenges claims 1–3, 6–15, and 18–24 under Ground 1 based on an obviousness combination of *Gai* in view of *IEEE 1999*. Petitioner challenges dependent claims 4–5 and 16–17 under Ground 2 based on an obviousness combination of *Gai*, *IEEE 1999*, and *Jain*. The various reference

combinations, however, fail to disclose all of the '986 patent's independent claim limitations and thus fail to establish that any of the challenged claims are invalid.

While *Gai* generally relates to rapidly reconfiguring a computer network, it does so differently than the '986 patent and fails to disclose all of the '986 patent's independent claim limitations. For example, *Gai* does not disclose sending dummy traffic “downstream” as required by claim limitations 12e and 24c, and Petitioner appears to acknowledge this deficiency. *See, e.g.*, Petition at 45.

Additionally, *IEEE 1999* does not disclose sending dummy traffic “so as to cause each of the one or more access switches to modify its respective database responsive to the second port being in the active state” as required by claim limitations 1e and 13c. This deficiency applies to independent claims 1 and 13 and also the claims which depend therefrom. Additionally, Petitioner applies the same logic for its analysis of independent claims 12 and 24. Therefore, this deficiency also applies to independent claims 12 and 24 and also the claims which depend therefrom.

Because of these deficiencies, the Petition fails to establish a reasonable likelihood that Petitioners would prevail in showing the unpatentability of at least one claim.

Institution should also be denied under 35 U.S.C. § 314 based on the *Fintiv* factors. As explained below, of the six factors, five factors weigh in favor of

discretionary denial and one factor is neutral. Accordingly, Patent Owner respectfully requests that the Board exercise its discretion and deny institution.

II. Claim Construction

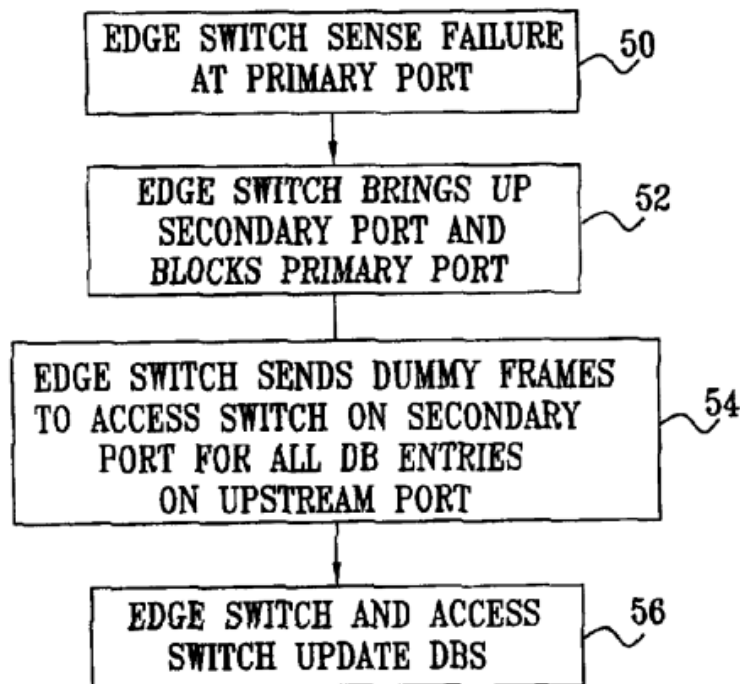
A court “look[s] to the words of the claims themselves ... to define the scope of the patented invention.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). A claim term is generally given its “ordinary and customary meaning,” which is “the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention.” *Id.* at 1312–13. While courts may deviate from the plain and ordinary meaning in some circumstances, there is a “heavy presumption that a claim term carries its ordinary and customary meaning.” *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002) (internal quotations omitted). Under this “exacting” standard, any departure from a claim’s ordinary meaning must be based on language that is “so unmistakable as to be unambiguous.” *Dealertrack Inc. v. Huber*, 674 F.3d 1315, 1322 (Fed. Cir. 2012) (citations omitted).

Here, at this stage in the proceeding, Patent Owner will apply the ordinary and customary meaning to the ’986 patent’s claim terms.

III. Overview of the '986 Patent

The '986 patent discloses “methods and devices for providing reliable, fault-resistant network access.” EX1001, 1:7–8. The '986 patent discloses techniques to rapidly recover from network failures while maintaining compatibility with existing network equipment and protocols. *Id.* at 3:58–60. For example, Figure 3 of the '986 patent is reproduced below.

FIG. 3



EX1001, Figure 3.

Figure 3 of the '986 patent illustrates an exemplary method to respond to a network failure. An edge switch may first sense a failure in its active primary port.

See id., Figure 3. In response, the edge switch blocks the primary port and activates a previously-disabled secondary port. *Id.* In order to shorten communication delays when updating database entries, the edge switch sends dummy frames downstream to the access switch. *Id.*, 9:42–44. The access switch may then update its filtering database based on the received dummy frames to reflect the change in active links. *Id.*, 9:62–65.

IV. Arguments

Petitioner challenges claims 1–24, including independent claims 1, 12, 13, and 24, with Grounds 1 and 2. Independent claim 1 is reproduced below. Independent claims 13 and 24 are system claim versions of independent claims 1 and 12, respectively. Petitioner applies its analysis of independent claim 1 to the rest of the independent claims. *See* Petition at 54–57, 60–61. For clarity, both independent claims 1 and 12 are reproduced below.

[1pre] A method for network communication, comprising:

[1a] coupling an edge switch in a network to one or more access switches via at least first and second redundant links, respectively connected to first and second ports of the edge switch;

[1b] placing the first port in an active state, while placing the second port in a blocking state;

[1c] conveying communication traffic over the first link while the first port is in the active state, thereby causing each of the switches to build a respective database for use in forwarding the traffic;

[1d] responsive to a failure associated with the first link, placing the second port in the active state and the first port in the blocking state; and

[1e] sending dummy traffic from the edge switch over the second link to the one or more access switches, so as to cause each of the one or more access switches to modify its respective database responsive to the second port being in the active state.

[12a] A method for network communication, comprising: coupling a first bridge in a network to a second bridge located downstream of the first bridge, by connecting at least first and second redundant links to respective first and second ports of the first bridge so as to communicate with the second bridge;

[12b] placing the first port in an active state, while placing the second port in a blocking state;

[12c] conveying communication traffic over the first link while the first port is in the active state, thereby causing the bridges to build respective databases for use in forwarding the traffic;

[12d] responsive to a failure associated with the first link, placing the second port in the active state and the first port in the blocking state; and

[12e] sending dummy traffic from the first bridge over the second link downstream to the second bridge, so as to cause the second bridge to modify its database responsive to the second port being in the active state.

As demonstrated below, Grounds 1 and 2 of the Petition fail to teach claim limitation 1e and 12e, limitations which are also found in independent claims 13 and 24. Thus, Grounds 1 and 2 do not support institution because they fail to establish a reasonable likelihood that Petitioner would prevail in showing the unpatentability of the '986 patent's independent claims, and therefore also the claims which depend therefrom. Furthermore, the Board should exercise its discretion to deny institution under 35 U.S.C. § 314(a). Accordingly, the Board should deny institution.

A. Ground 1 should be denied because *IEEE 1999* fails to teach “sending dummy traffic from the edge switch over the second link to the one or more access switches, so as to cause each of the one or more access switches to modify its respective database responsive to the second port being in the active state” (claim limitation 1e)

Petitioner argues that *Gai* in view of *IEEE 1999* discloses and/or renders obvious limitation 1e. Petition at 40. According to Petitioner, *Gai* discloses sending the same dummy traffic between switches as disclosed in the '986 patent. *Id.* In support of its argument, Petitioner argues that *Gai*'s dummy multicast message is generated in the same way as the dummy traffic of the '986 patent and that *Gai*'s

switch system can send dummy multicast messages using any switch. *Id.* at 41–42. However, Petitioner appears to acknowledge that *Gai* does not disclose sending dummy multicast messages downstream. *Id.* at 45. Petitioner therefore relies on *IEEE 1999* to fill the gap.

According to Petitioner, *IEEE 1999* discloses that it is advantageous to send self-healing messages both upstream and downstream. Petition at 46. Specifically, Petitioner asserts that “[a]s part of the spanning tree reconfiguration, to improve recovery time, each switch that detected a link failure sends ‘teardown messages’ to both upstream and downstream switches to ‘terminate the connections through a failed link.’” *Id.* at 25. Petitioner further asserts that a switch receiving a teardown message will update its filtering database such that the failed connection is terminated. *Id.* at 26. Therefore, Petitioner appears to equate *IEEE 1999*’s teardown messages with the claimed dummy traffic.

IEEE 1999’s teardown message is not dummy traffic used “to cause each of the one or more access switches to modify its respective database responsive to the second port being in the active state” as required by the claims. *IEEE 1999* discloses that its fault recovery mechanism performs three main steps: (1) “[t]erminating connections through the faulty link/switch,” (2) “[r]econfiguring the spanning tree,” and (3) “[r]e-establishing the connections that were torn down.” EX1009 at 167. As part of the first step, *IEEE 1999* explains that the fault recovery mechanism must

“(a) identify the connection identifiers of the failed connections (b) send a teardown message to the upstream/downstream sources of outgoing connections and (c) tear the connection to the upstream/downstream destinations if incoming connections.”

Id. *IEEE 1999* is clear that the teardown message is used in the first step of the fault recovery mechanism “[t]o terminate the connections going through a failed link.”

Id. As the name implies, *IEEE 1999*’s teardown message is sent specifically to tear the connection to the upstream/downstream destinations. The teardown message plays no part in the reconfiguration of *IEEE*’s spanning tree, and the separation of the steps is repeatedly mentioned throughout *IEEE 1999*. For example, *IEEE 1999* clearly shows the separation of the connection termination and spanning tree reconfiguration steps in Table 1, reproduced below:

Fault Recovery Component		Time Spent
Connection Termination	Connection Queue Processing	95 ns/connection
	Message transmission	2us/message
Spanning Tree Reconfiguration	SP Reply Timer	30ms
	Message Processing (SP, SCP, TDC)	35ns, 20ns, 15ns per message
	Message transmission	2us
Connection Reestablishment	Total Cost	8-14ms (on the host) 0.1-0.6 ms/link

Table 1: *Timing breakdown of the various components of fault recovery.*

Id. at Table 1.

Not only does Petitioner’s reliance on *IEEE 1999* fail, so does its argument that a POSITA would have been motivated to combine *Gai*’s system with *IEEE*

1999's disclosure to send self-healing messages both upstream and downstream. Petition at 45–56. In support of this argument, Petitioner argues that a POSITA would have understood that “a switch that receives a ‘teardown message’ updates its filtering database such that the failed connection is terminated. Thus, *IEEE 1999* discloses to POSAs that, to improve recovery time, a switch, responsive to detecting a failure upstream or downstream of itself, sends messages both upstream and downstream to cause other switches to update their respective filtering databases” *Id.* at 26. As discussed above, *IEEE 1999*'s teardown message is solely used to terminate faulty connections and is not used in the spanning tree reconfiguration process. In fact, *IEEE 1999* clearly teaches that sending the teardown message is used as a preparatory step and that it not used in the actual reconfiguration of the spanning tree. EX1009 at 165 (“The propagation order spanning tree algorithm works in three phases: 1. A startup phase (SP), which goes from the root of the tree to the leaves. 2. A startup completion phase (SCP), which goes from the leaves of the tree to the root. 3. A topology discovery complete (TDC) phase which goes from the root of the three to the leaves.”). Indeed, the teardown message is not mentioned at all in *IEEE 1999*'s discussion of the spanning tree reconfiguration. *See Id.* at 165 (discussing the Propagation Order Spanning Tree).

Even assuming that *IEEE 1999*'s teardown message is equivalent to the claimed dummy traffic, Petitioner makes no showing that the teardown message is sent to "cause each of the one or more access switches to modify its respective database responsive to the second port being in the active state" as required by claim limitation 1e. Petitioner instead asserts that *IEEE 1999* sends messages "responsive to detecting a failure upstream or downstream of itself." Petition at 26. *IEEE 1999* does not disclose that the respective databases are modified "responsive to the second port being in the active state," and Petitioner does not address this point.

Additionally, a POSITA would not be motivated to combine *IEEE 1999*'s teardown message to *Gai*'s switch system. As discussed above, *IEEE 1999*'s teardown message is sent specifically to tear the connection to the upstream/downstream destinations. The teardown message plays no part in the reconfiguration of *IEEE 1999*'s spanning tree. As a result, *IEEE 1999*'s teardown message serves a completely different purpose than the *Gai*'s dummy multicast messages.

Petitioner also cites to Mr. McNair's declaration in support of its arguments. However, the cited portions of the expert declaration merely parrot Petitioner's flawed logic. See EX1003, ¶¶ 134, 135. Even though *IEEE 1999* discusses fault detection and recovery, nothing in the cited portions of *Gai* or *IEEE 1999* actually

support Petitioner's statements that IEEE's 1999 teardown messages update databases or provide any additional motivation to combine that establishes why a POSITA would be motivated to incorporate *IEEE 1999*'s method in *Gai*'s system.

Accordingly, the Petition fails to establish a reasonable likelihood that Petitioner would prevail in showing the unpatentability of independent claim 1. This deficiency is also applicable to the remaining independent claims 12, 13, and 24.

For example, limitation [12e] states "sending dummy traffic from the first bridge over the second link downstream to the second bridge, so as to cause the second bridge to modify its database responsive to the second port being in the active state." '986 patent at claim 12; Petition at 55. Petitioner's analysis of [12e] merely states that "Gai meets [12E] for the same reasons as [1E]." Petition at 55.

Petitioner makes similar arguments for independent claims 13 and 24. For example, limitation [13c] discloses "a protocol processor ... being further adapted ... to send dummy traffic through the second access port over the second link to the one or more access switches, so as to cause each of the one or more access switches to modify its respective access switch database responsive to the second access port being in the active state." '986 patent at claim 13; Petition at 56. Petitioner argues that "[t]he capabilities of 'protocol processor' of [13C] match the steps recited in [1B]-[1E]" and that "[13C] is obvious for the same reasons as [1B]-

[1E].” Petition at 56. Similarly, limitation [24c] discloses “a protocol processor ... being further adapted ... to send dummy traffic over the second link downstream to the further bridge device, so as to cause the further bridge device to modify its database responsive to the second downstream port being in the active state.” ’986 patent at claim 24; Petition at 61. Regarding [24c], Petitioner states that *Gai* modified in view of *IEEE 1999* “renders obvious [24C], via *Gai*’s protocol entity 232, for the same reasons explained above with respect to [13C].” Petition at 61.

Because Petitioner applies the same logic in its analysis of independent claims 12, 13, and 24, this deficiency identified with respect to [1E] applies to the remaining independent claims. Accordingly, this Petition also fails to establish a reasonable likelihood that Petitioner would prevail in showing the unpatentability of independent claims 12, 13, and 24.

B. Ground 2 does not address any independent claims

Ground 2 only addresses dependent claims 4–5 and 16–17. Accordingly, Ground 2 does not remedy the deficiencies in Petitioner’s arguments, as described above with respect to Ground 1.

C. The Board should use its discretion and deny institution under the *Fintiv* factors

Efficiency, fairness, integrity of the system, and the merits support the Board’s exercise of its discretionary denial authority under 35 U.S.C. § 314(a).

Seeking to minimize duplication of work, the Board has set forth a set of nonexclusive factors for determining whether to deny a petition in view of parallel litigation (i.e., the “*Fintiv* factors”). See *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper No. 11 (P.T.A. B. March 20, 2020) (“*Fintiv I*”). As explained in detail below, the *Fintiv* factors weigh in favor of discretionary denial in this case.

1. Fintiv Factor 1: The district courts have not granted a stay

Patent Owner agrees with Petitioner that this factor is neutral. Petitioner notes that it will seek a stay, but because no motion to stay has been granted, the Board should not infer the outcome of such a motion. *Sand Revolution II LLC v. Continental Intermodal Group – Trucking LLC*, IPR2019-01393, Paper No. 24 at 7 (P.T.A.B. June 16, 2020) (informative).

2. Fintiv Factor 2: The related Cisco trial is expected to take place approximately six months before the projected statutory deadline for a final written decision

Fintiv factor 2 weighs against institution. Even though the court has not yet entered a schedule or set a trial date for the Juniper case, this factor weighs against institution because trial in the related Cisco case is set to occur approximately 6 months before the projected statutory deadline for a final written decision. The projected statutory deadline for a final written decision in this IPR is around December 2025. Jury selection for the Cisco trial is currently scheduled for June 2, 2025. Thus, the district court trial is set to occur approximately 6 months before the

projected statutory deadline for a final written decision. This weighs heavily against institution. *See Fintiv I*, IPR2020-00019, Paper No. 11 at 9 (“If the court’s trial date is earlier than the projected statutory deadline, the Board generally has weighed this fact in favor of exercising authority to deny institution under NHK.”).

Thus, this factor weighs in favor of discretionary denial

3. Fintiv Factor 3: The parties will have invested significant resources in at least the Cisco trial

Fintiv factor 3, which considers the resources invested in the parallel district court proceeding, weighs in favor of the Board’s exercising its discretionary denial authority. Petitioner appears to wrongly limit its analysis of the parties’ investment in the district court proceedings to the stage of those proceedings at the time the petition was filed. Petition at 98. However, *Fintiv* dictates that the proper timeframe for this factor is the investment in the parallel proceeding at the time of the institution decision. *Fintiv I*, IPR2020-00019, Paper No. 11 at 9–10. The institution decision in this proceeding is expected by December 14, 2024.

While Patent Owner acknowledges that no contentions have been exchanged between the parties in the related district court case against Petitioner, by December 14, 2024, Patent Owner will have expended significant resources in the related Cisco district court proceeding. Patent Owner and Cisco have already exchanged infringement and invalidity contentions for the ’986 patent. Fact discovery has already begun under the district court’s schedule and will conclude January 6, 2025,

approximately four months after the institution decision is projected to be issued in this case. Furthermore, the claim construction process has already begun in the Cisco case, and Joint Claim Construction hearing is scheduled for December 4, 2024, only ten days before the expected date of the institution decision.

Accordingly, because the Patent Owner will have expended significant resources by the time the Board issues an institution decision in this case, this factor weighs against institution.

4. Fintiv Factor 4: The issues in the petition and district court proceeding significantly overlap

Fintiv factor 4 weighs in favor of the Board's exercising its discretionary denial authority the issues in the Petition and the parallel district court proceeding overlap. Furthermore, Petitioner has not provided a *Sotera*-style stipulation or stipulation of any kind regarding the estoppel effects of this proceeding in the district court proceeding.

Accordingly, this factor weighs in favor of exercising the Board's discretion to deny institution.

5. Fintiv Factor 5: Petitioner are defendants in the district court proceeding

Fintiv factor 5 favors denial of institution because Petitioner is a defendant in a parallel district court proceeding. *Fintiv* factor 5 considers whether the Petitioner and the defendants in the parallel proceeding are the same party. *Fintiv I*, IPR2020-

00019, Paper No. 11 at 6. Petitioner is the defendant in the case in which Patent Owner asserts infringement of the '986 patent. Thus, Factor 5 weighs in favor of denial.

Petitioner argues that this factor should be neutral because Petitioners in IPR proceedings are often defendants in litigation. *See* Petition at 68. Petitioner's argument is contrary to numerous Board decisions. For example, in *Nokia*, the Board unequivocally held that "Petitioner is the defendant in the parallel proceeding. Thus, this factor weighs in favor of exercising our discretion to deny the Petition." *Nokia of America Corporation et al. v. Godo Kaisha IP Bridge 1*, IPR2022-00755, Paper No. 9 at 13.

Furthermore, Petitioner's argument that this factor should not be a basis for denying institution despite having the same parties in the parallel district court proceeding fails a simple logic test. If Petitioner's argument were true, then this factor could *never* favor denial. Factors by their very nature lie along a scale of: weighing in favor, being neutral, or weighing against. Petitioner would have this Board remove this factor's ability to weigh in favor of patent owners entirely and only provide benefits to Petitioner. Such a determination is contrary to the very nature of factors, is bad public policy, and likely only a power available to the Director.

For all the reasons above, *Fintiv* factor 5 favors denial of institution.

6. Fintiv Factor 6: Petitioner’ grounds do not rise to the level of “compelling evidence of unpatentability”

Factor 6 weighs against institution because, as shown above, the merits of the petition are weak and include numerous deficiencies, which cannot meet the high compelling merits standard needed to overcome *Fintiv* factors 1–5 strongly favoring denial of institution.

To meet the standard for a compelling unpatentability challenge, the Petition must present challenges “in which the evidence, if unrebutted in trial, would plainly lead to a conclusion that one or more claims are unpatentable by a preponderance of the evidence.” *Commscope Techs. LLC v. Dali Wireless, Inc.*, IPR2022-01242, Paper No. 23 at 3 (P.T.A.B. Feb. 27, 2023) (citing Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation at 4. (June 21, 2022) (“Guidance Memo”).) “[T]he compelling merits standard is a higher standard than the standard for institution set by statute.” *Commscope Techs.*, IPR2022-01242, Paper No. 23 at 3 (citing Guidance Memo at 4–5). Under the compelling merits standard, “[a] challenge can only ‘plainly lead to a conclusion that one or more claims are unpatentable’ if it is *highly likely* that the petitioner would prevail with respect to at least one challenged claim.” *Id.* at 3–4 (quoting *OpenSky Indus., LLC v. VLSI Tech. LLC*, IPR2021-01064, Paper No. 102 at 49–50 (P.T.A.B. Oct. 4, 2022) (precedential)) (emphasis added).

The compelling merits determination does not replace a *Fintiv* analysis; rather, “PTAB panels ... only consider compelling merits if they first determine[] that *Fintiv* factors 1-5 favor[] a discretionary denial.” *Commscope Techs, LLC*, IPR2022-01242, Paper No. 23 at 4 (P.T.A.B. Feb. 27, 2023). Where the Board finds compelling merits, it “must provide reasoning to explain and support its determination as to compelling merits sufficient to allow the parties to challenge that finding and sufficient to allow for review of that decision.” *Id.* at 5–6. Here, *Fintiv* Factors 1–5 plainly favor discretionary denial thus requiring Petitioner to show compelling merits, which they cannot do.

As discussed above, Petitioner’s prior art grounds contain critical deficiencies and do not demonstrate a reasonable likelihood of—let alone plainly lead to—a conclusion that at least one claim is unpatentable. *See supra* Sections IV.A–B.

In sum, five factors (2–6) weigh in favor of discretionary denial, whereas one factor (1) is neutral. Accordingly, Patent Owner respectfully requests that the Board exercise its discretion and deny institution.

V. Conclusion

As discussed above, Petitioner has failed to establish a reasonable likelihood it will prevail in showing the unpatentability of the challenged claims. Accordingly, the Board should deny institution.

Date: September 16, 2024

Respectfully submitted,

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CERTIFICATION UNDER 37 C.F.R. § 42.24

Under the provisions of 37 C.F.R. § 42.24, the undersigned hereby certifies that the foregoing document contains 4,234 words, and thus complies with the word-count limits of 37 C.F.R. § 42.24.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing PATENT OWNER'S PRELIMINARY RESPONSE was served on September 16, 2024 by filing this document through the P-TACTS platform as well as by delivering a copy via the delivery method indicated to the attorneys of record for the Petitioner as follows:

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