

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SONY CORPORATION,
Petitioner,

v.

OPTIMUM IMAGING TECHNOLOGIES, LLC,
Patent Owner.

Case No. IPR2024-00923

Patent No. 10,873,685

**PETITIONER'S OPPOSITION TO
PATENT OWNER'S MOTION TO TERMINATE**

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EXHIBIT LIST

Exhibit	Description
1001	U.S. Patent No. 10,873,685
1002	Prosecution History of U.S. Patent No. 10,873,685
1003	Declaration of Leonard Laub
1004	Curriculum Vitae of Leonard Laub
1005	U.S. Patent Publication No. 2005/0280877 (“Watanabe”)
1006	Certified Translation Of Japanese Patent Application No. JP2004-233872 (“JP-872”)
1007	Certified Translation Of Japanese Patent No. JPA 2004-343358 (“Kishida”)
1008	Certified Translation Of Japanese Patent Application Publication JP 2004-328506A (“Kita”)
1009	U.S. Patent Publication No. 2003/0223007 A1 (“Takane”)
1010	Certified Translation Of Japanese Patent No. JP 06-319106A (“Hisamatsu”)
1011	U.S. Patent Publication No. 2004/0264918 (“Turner”)
1012	U.S. Patent No. 8,559,743 (“Liege”)
1013	U.S. Patent No. 7,688,384 (“Davis”)
1014	U.S. Patent Publication No. 2006/0132646 (“Komatsu”)
1015	SMPTE 244M-2003 SMPTE Standard for Television – System M/NTSC Composite Video Signals – Bit-Parallel Digital Interface, The Society of Motion Picture and Television Engineers (2003) (“SMPTE-240”)
1016	SMPTE 170-M-2004 SMPTE Standard for Television – Composite Analog Video Signal – NTSC for Studio Applications, The Society of Motion Picture and Television Engineers (2004) (“SMPTE-170M”)
1017	National Television System Committee, NTSC Signal Specifications (Dec. 1953)
1018	PCT Publication No. WO 2004/093438 A1 (“Dutta”)
1019	Texas Instruments, TMS320C8x System-Level Synopsis (Sep. 1995)
1020	Texas Instruments, Product Bulletin: TMS320C5470 and TMS320C5471 System-Level DSPs (2002)
1021	Chaoui, Jamil, et al. “Open multimedia application platform: enabling multimedia applications in third generation wireless terminals through a combined RISC/DSP architecture.” <i>2001 IEEE International Conference on Acoustics, Speech, and Signal Processing. Proceedings</i> (Cat. No. 01CH37221). Vol. 2. IEEE, 2001.

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1022	U.S. Patent No. 9,063,982 (“Bestgen”)
1023	U.S. Patent No. 6,920,443 (“Cesare”)
1024	U.S. Patent Publication No. 2006/0268357 A1 (“Vook”)
1025	U.S. Patent No. 5,739,691 (“Hoenninger”)
1026	Prosecution History of U.S. Patent No. 8,451,339
1027	Dkt. No. 88, Claim Construction Memorandum Opinion and Order, <i>Optimum Imaging Technologies LLC v. Canon Inc.</i> , No. 2:19-cv-00246 (E.D. Tex. June 11, 2020)
1028	<i>digital filter</i> , Comprehensive Dictionary of Electrical Engineering (2d ed. CRC Press 2005)
1029	<i>database management system</i> , Newton’s Telecom Dictionary (CMP Books, 2005)
1030	<i>Canon Inc. v. Optimum Imaging Technologies LLC</i> , IPR2020-1322, Paper 1 (Jul. 20, 2020) (“-01322 Petition”)
1031	<i>Canon Inc. v. Optimum Imaging Technologies LLC</i> IPR2020-1322, Paper 9 (Mar. 1, 2021) (“-01322 D.I.”)
1032	<i>Canon Inc. v. Optimum Imaging Technologies LLC</i> , IPR2020-1321, Paper 1 (Jul. 20, 2020) (“-01321 Petition”)
1033	<i>Canon Inc. v. Optimum Imaging Technologies LLC</i> , IPR2020-1321, Paper 10 (Mar. 1, 2021) (“-01321 D.I.”)
1034	U.S. Patent No. 6,529,237 (“Tsay”)
1035	U.S. Patent Publication No. 2006/0050335 A1 (“Dorrell”)
1036	U.S. Patent Publication No. 2006/0098253 A1 (“Masuno”)
1037	Dkt. No. 1, Complaint, <i>Optimum Imaging Technologies LLC v. Sony Corp.</i> , No. 4:23-cv-00928 (E.D. Tex. Oct. 18, 2023)
1038	Docket report in <i>Optimum Imaging Technologies LLC v. Sony Corp.</i> , No. 4:23-cv-00928 (E.D. Tex. Oct. 18, 2023) as of May 13, 2024
1039	Eastern District of Texas, U.S. District Court—Judicial Caseload Profile, as of May 13, 2024
1040	U.S. Patent No. 7,206,136 (“Labaziewicz”)
1041	U.S. Patent No. 5,444,482 (“Misawa”)
1042	U.S. Patent No. 5,742,806 (“Reiner”)
1043	U.S. Patent No. 7,245,319 (“Enomoto”)
1044	Certified Translation Of Japanese Patent No. JPH (1999)-313250 (“Yamagata”)
1045	U.S. Patent No. 5,905,530 (“Yokota”)
1046	U.S. Patent Publication No. 2004/0150732 (“Yamanaka II”)

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1047	GUAN et al., <i>Digital Image Correcting Method for Digital Camera</i> (December 2005) (“Ricoh”)
1048	U.S. Patent No. 5,999,330 (“Goosey”)
1049	U.S. Patent No. 7,738,015 (“Steinberg I”)
1050	U.S. Patent No. 7,590,305 (“Steinberg II”)
1051	Certified Translation Of Japanese Patent No. JPA 2002-190979 (“Kuniba”)
1052	Certified Translation Of Japanese Patent No. JPA 2000-184247 (“Imai”)
1053	GONZALEZ & WOODS, <i>DIGITAL IMAGE PROCESSING</i> , (Prentice Hall, 2d ed. 2002) (“Gonzalez”)
1054	JOHN C. RUSS, <i>THE IMAGE PROCESSING HANDBOOK</i> (CRC Press, 4th ed. 2002) (“Russ”).
1055	U.S. Patent No. 7,609,297 (“Master”)
1056	U.S. Patent Publication No. 2007/0080280 (“Havens”)
1057	U.S. Patent No. 7,936,392 (“Ng”)
1058	Certified Translation Of PCT Publication No. WO 2002/069214 (“Takae”)
1059	U.S. Patent No. 6,279,004 (“Lee”)
1060	Certified Translation Of Japanese Patent Application Publication No. JP 2001-251546A (“Iida”)
1061	U.S. Patent No. 5,818,524 (“Juen”)
1062	M. Gottardi and W. Yang. “A CCD/CMOS image sensor array with integrated A/D conversion.” <i>1997 IEEE International Symposium on Circuits and Systems (ISCAS)</i> . Vol. 3. IEEE, 1997.
1063	U.S. Patent Publication No. 2002/0135688 (“Niikawa”)
1064	U.S. Patent No. 4,903,204 (“Dobbins”)
1065	U.S. Patent No. 5,414,782 (“Carasso”)
1066	Certified Translation Of Japanese Patent No. JPA 2006-72660 (“Yamazaki”)
1067	U.S. Patent Publication No. 2003/0095197 (“Wheeler”)
1068	U.S. Patent No. 7,554,584 (“Lim”)
1069	U.S. Patent No. 5,630,153 (“Intrater”)
1070	U.S. Patent No. 5,864,409 (“Kashida-409”)
1071	PCT Publication No. WO 1993-020536 A1 (“Reddig”)
1072	U.S. Patent No. 5,475,420 (“Buchin”)
1073	U.S. Patent No. 4,562,436 (“Coleman”)
1074	U.S. Patent No. 6,816,625 (“Lewis”)

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1075	U.S. Patent No. 6,798,449 (“Hsieh”)
1076	P. Strumillo and M. Strzelecki, Fourier Transform of Images, available at http://mstrzel.eletel.p.lodz.pl/mstrzel/pattern_rec/fft_ang.pdf (visited May 10, 2024).
1077	McKeown, Scott “Sotera Stipulation” Received by Tom Dunham (Counsel for Optimum Imaging Technologies), September 4, 2024
1078	<i>Intentionally Left Blank</i>
1079	<i>Intentionally Left Blank</i>
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1083	Boalick, Chief APJ, Guidance on USPTO's rescission of “Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation” (Mar. 24, 2025)
1084	Dkt. No. 65, Joint Mot. To Modify Scheduling Order, <i>Optimum Imaging Technologies LLC v. Sony Corp.</i> , No. 4:23-cv-00928 (E.D. Tex. Feb. 11, 2025)
1085	Dkt. No. 71, Sony Mot. To Stay, <i>Optimum Imaging Technologies LLC v. Sony Corp.</i> , No. 4:23-cv-00928 (E.D. Tex. Feb. 25, 2025)
1086	Docket Report, <i>SB IP Holdings LLC v. Vivint, Inc.</i> , No. 4:20-cv-00886-ALM (E.D. Tex.), accessed March 25, 2025.
1087	Dkt. No. 374, Order Setting Trial, <i>SB IP Holdings LLC v. Vivint, Inc.</i> , No. 4:20-cv-00886-ALM (E.D. Tex. June 9, 2023)
1088	Dkt. No. 111, Scheduling Order, <i>Wapp Tech. Ltd. v. Seattle Spinco, Inc.</i> , No. 4:18-cv-00469-ALM (E.D. Tex. Nov. 1, 2019)
1089	Dkt. No. 189, Order Setting Trial, <i>Wapp Tech. Ltd. v. Micro Focus Int’l PLC</i> , No. 4:18-cv-00469-ALM (E.D. Tex. June 12, 2020)

I. Introduction

Patent Owner (“PO”) urges that the Board terminate this trial based upon newly adopted Section 314(a) policies that simply did not exist last year, were never subject to rehearing, and in any event are not retroactive. “Absent extraordinary circumstances, the Board will not revisit a decision on institution if the time for seeking Director Review or rehearing has passed.” EX1083, 2. Time for seeking Director Review or rehearing in this case expired over three months ago on December 2, 2024. 37 C.F.R. §§42.71(d)(1), 42.75(c)(1). PO has not identified any extraordinary circumstances that warrant revisiting that decision—and indeed there are none. Under Chief APJ Boalick’s March 24, 2025 Guidance (EX1083), the Board should deny PO’s Motion to Terminate.

Simply stated, it would be “extraordinary” to waste months of trial effort here because PO has voluntarily continued its parallel litigation alongside this IPR for months. PO *already filed its principal brief* and cross-examined Petitioner’s witness. Indeed, Petitioner is finalizing its responsive brief. PO has little more than a Sur-reply and oral hearing remaining on this IPR schedule. Termination would not save the work or time/resource investment of the parties or Board to date—instead, PO proposes to throw away all of that effort. Meanwhile, PO continues to file lawsuits across the entire industry. Public policy dictates this review continue as all *Fintiv* factors support such even if the new policy were somehow applicable.

The Motion should be denied.

II. Outside of Rehearing, Discretionary Considerations Are Not Disturbed

The Office provides 14 days for PO to seek rehearing or Director review of a decision instituting trial, whereas it provides 30 days to seek review of a decision not to institute trial. 37 C.F.R. §§42.71(d)(1) (instituted), 42.71(d)(2) (not instituted), 42.75(c)(1) (Director review). The purposeful difference in time allowed for seeking rehearing serves the need for promptly providing the Board and parties finality before investing resources in trial that, by statute, must conclude within 12 months. 35 U.S.C. §316(a)(11). The 2025 Guidance Memo (EX1083) reinforces the importance of finality, predictability, and settled expectations.

In this case PO's time to seek rehearing expired more than 3 months ago and the parties have already expended significant resources: PO *already filed its principal brief* and cross-examined Petitioner's witness. Indeed, Petitioner is finalizing its responsive brief. PO has not cited a single decision where the Board has disturbed a discretionary decision under Section 314(a) outside the rehearing process. Nor does the Office's change in policy concerning Section 314(a) discretionary denial justify PO's termination request, because the *Fintiv* memo's rescission cannot be given retroactive effect even had PO argued an extraordinary situation

III. The Office’s *Fintiv* Memo Recission Cannot Be Applied Retroactively

A. Laws and Regulations Are Presumptively Not Retroactive

The *Fintiv* memo was binding authority on the Board both at the time the Petition was filed and at the time of the Institution Decision. To apply its recission retroactively, as PO urges, would violate the “presumption against retroactive legislation [that] is deeply rooted in [America’s] jurisprudence.” *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994). Indeed, it is an axiom of statutory interpretation that laws and administrative guidance generally “will not be construed to have retroactive effect unless their language requires this result.” *Id.* at 264. And while the Supreme Court has identified several exceptions to the presumption against retroactive application,¹ none apply here, nor does PO allege otherwise. *Landgraf*, 511 U.S. at 273-275. PO makes no showing *at all* to rebut the presumption against applying the *Fintiv* policy recission retroactively. The Motion fails for this additional reason.

Applying *Landgraf*, the Federal Circuit provides a three-factor test for evaluating whether an administrative rule or regulation has “retroactive effects.” *Princess Cruises, Inc. v. U.S.*, 397 F.3d 1358, 1362-1367 (Fed. Cir. 2005). Those

¹ For example, where the new law/rule provides a clear statement that it should be applied retroactively. *Landgraf*, 511 U.S. at 273.

factors—which PO does not address—each weigh *against* applying the *Fintiv* memo’s rescission retroactively.

1. *Princess Cruises* Factor One

Under *Princess Cruises* factor one, courts test whether the “nature and extent of the change” of the new regulation works a significant or unexpected change (disfavoring retroactive application) rather than merely clarifying an ambiguous issue (favoring retroactive application). 397 F.3d at 1364-65. Here, the *Fintiv* memo’s rescission significantly and unexpectedly changes the agency’s previous policy concerning discretionary denial with a parallel proceeding. As such, this factor weighs against retroactive application. *See Woodward v. Dept. of Justice*, 598 F.3d 1311, 1314-15 (Fed. Cir. 2010) (regulatory amendment changing a burden of proof was “a significant change in the law that disfavors retroactive application”).

2. *Princess Cruises* Factor Two

Under *Princess Cruises* factor two, courts test “the degree of connection between the operation of the new rule and a relevant past event,” wherein “a significant connection with past events” disfavors retroactive application. 397 F.3d at 1365-66. That significant connection plainly holds here, where Petitioner relied on the *Fintiv* memo’s safe-harbor provisions for its *Sotera* stipulation, but the *Fintiv* memo’s rescission removed that safe-harbor. Thus, factor two weighs against applying the rescission retroactively.

3. *Princess Cruises* Factor Three

Under *Princess Cruises* factor three the courts consider “familiar considerations of fair notice, reasonable reliance, and settled expectations.” 397 F.3d at 1366 (quoting *Landgraf*, 511 U.S. at 270). These considerations plainly weigh against retroactive application. The *Fintiv* Memo was binding on the Board when Petitioner filed the Petition, and Petitioner reasonably relied on it when structuring the Petition and making a *Sotera* stipulation. *Woodward*, 598 F.3d at 1315 (agreeing that “retroactive application of an amended regulation is disfavored where claimants made strategic decisions in reliance on the old standard, before the new standard existed”). PO never sought timely rehearing of the Board’s institution and as noted above relying on the finality of that institution decision the parties have since invested significant resources in IPR.

All three *Princess Cruises* factors weigh against applying the *Fintiv* memo’s recission retroactively, precluding the Board from doing so here. 397 F.3d at 1367. As the PO completely ignored the presumption against retroactivity and the *Princess Cruises* analysis, the Motion fails.

IV. Even if the Board Revisits the *Fintiv* Analysis, It Strongly Favors Maintaining Institution

If the Board nonetheless revisits the *Fintiv* analysis, under the current litigation facts the factors favor maintaining the instituted trial. Thus, in any event, the Board should deny the Motion to Terminate.

A. Factor 1

Factor 1 is neutral because Petitioner moved to stay the Sony Litigation on February 25, 2025 (EX1085) and briefing for this motion is now complete.

Without “specific evidence” on how the court will rule, this factor is neutral. *Sand Revolution II, LLC v. Continental Intermodal Group–Trucking LLC*, IPR2019-01393, Paper 24, 7 (June 16, 2020) (informative).

B. Factor 2

Factor 2 favors maintaining institution because no trial date has been set, and it is highly unlikely that any EDTX trial will take place before FWD, which is expected no later than November 18, 2025. 35 U.S.C. §316(a)(11).

PO misrepresents the EDTX trial calendar. Contrary to PO’s assertion that final pretrial conference is “set for 11/6/2025” (Mot., 3), PO failed to inform the Board that *at PO’s request the court orally agreed to reschedule* the final pretrial conference for a later date after *PO itself* told the court that its counsel had a conflict with the November 2025 conference date. *See* EX1084, 2-3 n.5 (“*As discussed during the hearing* on September 19, 2024, *Plaintiff Optimum Imaging Technologies has a conflict* with the pre-trial conference as Plaintiff’s lead counsel and other attorneys are currently scheduled for trial from October 27, 2025 to November 11, 2025 in the Northern District of California.”) (emphasis added).

Moreover, PO’s cases demonstrate Judge Mazzant’s pattern of setting trial several months after a final pretrial conference was scheduled to take place. In

4:20-cv-00886 (cited Mot., 4, n.3), the court originally set the Final Pretrial Conference for May 18, 2023, then cancelled it “to be reset when the Court sets the Jury Selection and Trial of the case.” EX1086 (Text Entry on May 17, 2023). The court thereafter set trial for October 2023—five months later. EX1087. In 4:18-cv-00469 (cited Mot., 4, n.3), the court originally set Final Pretrial Conference for December 3, 2020 (EX1088, 4), but then reset the conference and set trial for March 1, 2021—three months later (EX1089). The other cases cited by PO (Mot., 4, n.3) follow similar patterns. Under that practice it is highly unlikely that any trial will take place until months *after* FWD.

C. Factor 3

Factor three strongly favors maintaining institution. Petitioner promptly filed its petition seven months after the complaint was filed, before even answering the complaint (EX2052, 2, Dkt. 19), and months before PO served infringement contentions (EX2050, 2). *Cf. Samsung Elecs. Co. Ltd. v. Empire Tech. Development LLC*, IPR2024-00896, Paper 15, 13-14 (Dec. 13, 2024) (no unreasonable delay when petition filed nine months after complaint); *Apple Inc. v. Scramoge Tech. Ltd.*, IPR2022-00120, Paper 9, 12-13 (May 4, 2022) (Petitioner was diligent in filing Petition two months *after* being served infringement contentions). Finally, PO’s argument with regard to the Canon IPRs fail as they do

not qualify as “parallel proceedings” given that neither of them were directed to the ’685 patent (although there is some overlap of prior art).

PO’s complaints about potential inefficiencies are fully self-inflicted given that (1) it chose to continue litigating the parallel case after trial was instituted in this case and (2) it has the ability to avoid any further investment of resources in the parallel case by agreeing to join the Motion to Stay now pending.

D. Factor 4

This factor favors maintaining institution given that Petitioner has provided a *Sotera* stipulation (EX1077), which eliminates overlapping invalidity issues. *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12, 19 (Dec. 1, 2020) (precedential as to §II.A); EX1083, 2-3 (*Sotera* stipulation is “highly relevant”); *see also, e.g., LinkedIn Corp. v. eBuddy Techs. B.V.*, IPR2022-00176, Paper 13, 14 (May 17, 2022) (*Sotera* stipulation “weighs strongly against exercising discretion to deny *inter partes* review” under Factor 4). Since IPR was instituted, Petitioner’s stipulation is binding.

Additionally, more than half of the claims challenged here are not asserted in the Sony Litigation, which favors maintaining institution. EX1085, 3; *see, e.g., Hewlett Packard Enter. Co. v. Cobblestone Wireless, LLC*, IPR2024-00707, Paper 17, 49 (Sept. 24, 2024). Thus, as there is no overlap between the issues raised by

this IPR and issues that will be adjudicated in the Sony Litigation, Factor 4 favors maintaining institution.

E. Factor 5

As is usually the case, the parties are the same in this proceeding as well as the Sony case and, as explained above, “there is not substantial overlap” between the issues raised in the IPR and the parallel proceeding. Thus, this factor’s weight is neutral at best. As such, Factor 5 should be considered neutral.

F. Factor 6

This Board *already* determined that Petitioner “has demonstrated a reasonable likelihood of showing at least one claim of the ’685 patent is unpatentable.” Paper 11 at 31. PO should not be permitted to attempt to relitigate this issue, and as such Factor 6 strongly favors maintaining Institution.

Further, the fact that PO resorts to discussing alleged secondary considerations of non-obviousness (Mot., 10) only highlights the strength of the Petition merits. Likewise, as PO has already leveraged discretionary denial to the detriment of the public in its earlier dispute with Canon, such strongly **favors maintaining** institution. The public would benefit from a careful review of the patent already adjudged here to be reasonably likely to be found unpatentable.

G. On Balance, the Factors Favor Maintaining Institution

Four of the six factors favor maintaining institution and the other two are neutral. As such, to the extent the Board believes a post-Institution *Fintiv* analysis

is appropriate (it is not), the Board should still deny Patent Owner's Motion to Terminate.

V. Conclusion

For at least the reasons discussed herein, Petitioner respectfully request the Board deny Patent Owner's Motion to Terminate.

Respectfully submitted,
Sony Corporation

Date: March 26, 2025

/Scott A. McKeown/

Scott A. McKeown, Reg. No. 42,866
WOLF, GREENFIELD & SACKS, P.C.

CERTIFICATE OF SERVICE UNDER 37 C.F.R. §42.6 (e)(4)

I certify that on March 26, 2025, a copy of the foregoing document, including any exhibits filed therewith, is being served via electronic mail, as previously consented to by Patent Owner, upon the following:

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Date: March 26, 2025

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