

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

AT&T SERVICES INC., T-MOBILE USA, INC., CELLCO PARTNERSHIP
D/B/A VERIZON WIRELESS, ERICSSON, INC., AND NOKIA OF AMERICA
CORPORATION,

Petitioners

v.

INNOVATIVE SONIC LIMITED,

Patent Owner.

Case No. IPR2024-01143

U.S. Patent No. 7,664,059

PATENT OWNER PRELIMINARY RESPONSE

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2006	United States District Courts—National Judicial Caseload Profile for 12-month period ending June 30, 2024; available at https://www.uscourts.gov/statistics-reports/analysis-reports/federal-court-management-statistics
2007	Defendants’ P.R. 3-3 Invalidity Contentions from <i>ASUS Technology Licensing Inc. and Celerity IP, LLC v. AT&T Corp. et al.</i> , No. 2:23-cv-490 (lead), -489, -491, E.D. Tex., April 12, 2024

I. INTRODUCTION

The Board should deny institution because:

(1) the Petition is facially defective because it fails to state legally sufficient reasoning to establish the main reference (Ex.1004) as a printed publication under 35 U.S.C. § 311(b), which is required for all grounds in the Petition;

(2) the Petition fails to show how the claims are anticipated or rendered obvious by the cited references; and

(3) all six *Fintiv* factors favor discretionary denial under 35 U.S.C. § 314.

II. INSTITUTION SHOULD BE DENIED BECAUSE THE PETITION FAILS TO ESTABLISH EX. 1004 AS A PRINTED PUBLICATION

The Petition is facially defective because it fails to state legally sufficient reasoning to establish the main reference (Ex.1004)¹ as a printed publication under 35 U.S.C. § 311(b). Having failed to carry Petitioner’s burden, the Petition should be denied institution. *See Medtronic, Inc. v. Barry*, 891 F.3d 1368, 1380 (Fed. Cir. 2018) (“Petitioner bears the burden of establishing that a particular document is a printed publication.”). Every ground in the Petition relies heavily on Ex. 1004. No ground states a basis for unpatentability once Ex. 1004 is disqualified.

¹ Petitioner refers to Ex. 1004 as “3GPP-4.60-v860-Specification” but no such title is found on Ex.1004. For accuracy and simplicity, we refer to it as Ex. 1004.

The only arguments stated in the Petition in support of Ex.1004 qualifying as a printed publication are that Ex. 1004 was publicly accessible before the ‘059 patent’s priority date because (1) it was uploaded to a file server and (2) a non-precedential PTAB decision, *Samsung v. Huawei*, supposedly held all 3GPP documents are necessarily publicly accessible. Both are without merit. Any additional arguments that may be found in Petitioner’s expert declaration, but not stated in the Petition, are not entitled to consideration.

A. Uploading to a File Server is Legally Insufficient to Establish Public Accessibility

The Petition’s first argument for public accessibility of Ex.1004 is that it was uploaded to 3GPP’s file server before the ‘059 priority date:

As explained in detail by Craig Bishop (Ex-1006), 3GPP technical specifications (TS), including [Ex. 1004], are publicly accessible as of the date they were uploaded to 3GPP’s file server.

* * *

[Ex. 1004] was uploaded to 3GPP’s file server on October 11, 2000. Ex-1006, ¶¶51-53. As a result, [Ex. 1004] became a “printed publication” under pre-AIA 35 U.S.C. § 102(a) on October 11, 2000.

Pet., 15-17.

That argument is unavailing. Uploading a document to a file server does not by itself show public accessibility sufficient to establish a document as a printed publication. *SRI Int'l, Inc. v. Internet Sec. Sys., Inc.*, 511 F.3d 1186, 1195 (Fed. Cir. 2008) (“this court does not find enough evidence in the record to show that [a file posted on a file server] was publicly accessible and thus a printed publication.”). This is true even if the document was technically accessible. *Acceleration Bay, LLC v. Activision Blizzard Inc.*, 908 F.3d 765, 772 (Fed. Cir. 2018) (“The Board then correctly noted that ‘public accessibility’ requires more than technical accessibility.”). But that is the only argument presented in the Petition specific to Ex. 1004 supposedly being a printed publication.

To establish a reference as a printed publication, a petition must show the reference was publicly accessible, i.e., “searchable or indexed [or otherwise organized] in a meaningful way so that a person of ordinary skill in the art would have located [the reference].” *Acceleration Bay, LLC v. Activision Blizzard Inc.*, 908 F.3d 765, 772 (Fed. Cir. 2018). But the present Petition does not allege Ex. 1004 was ever indexed for search or actually disseminated to the interested public. Nor does the Petition state Ex. 1004 was meaningfully organized in any other way, such as providing the name of specific subject matter in a catalog or the like. Pet., 1-62.

Having failed to state a sufficient reason to consider Ex. 1004 as publicly accessible before the priority date, the Petition should be denied.

B. Samsung v. Huawei Did Not Render All Alleged 3GPP Documents Publicly Accessible

The Petition's other stated argument is that a non-precedential Board decision in an unrelated case, *Samsung v. Huawei*, supposedly established a rule that *all* 3GPP documents are necessarily publicly accessible:

at least one PTAB panel has found that this is true of all 3GPP documents:

TR 33.821 and TS 23.401,3 *like all 3GPP documents*, were generated with intent to distribute them to interested members of the telecommunications industry. They were uploaded to 3GPP's FTP server without restriction or expectation of confidentiality, and were indefinitely maintained there. They have been available for downloading (copying) from the FTP server since being uploaded, and can be shared with others without restriction. *Under such circumstances, the documents are publicly accessible.*

Samsung Elecs. Co., Ltd. v. Huawei Techs. Co., Ltd.,

IPR2017-01487, Paper 45 (Final Written Decision), 2018

WL 6519544, *5 (P.T.A.B. Dec. 10, 2018)

Pet., 16 (emphasis added by Petitioner).

There is no such rule. Public accessibility is determined on a case-by-case basis, not by some general statement in an unrelated, non-precedential PTAB decision. *In re Lister*, 583 F.3d 1307, 1311 (Fed. Cir. 2009) (public accessibility “is determined on a case-by-case basis”).

Moreover, *Samsung* dealt with 3GPP documents first posted in 2007, long after the relevant dates in the present case. *Samsung Elecs. Co., Ltd. v. Huawei Techs. Co., Ltd.*, IPR2017-01487, Paper 45 (PTAB Dec. 10, 2018) (Final Written Decision, hereinafter “*Samsung FWD*”) at 3; *Id.*, Paper No. 2 (hereinafter “*Samsung Petition*”) at 10, 16, 23. As one might expect, the evidence presented for public accessibility of those 2007-era documents was much greater than anything alleged in the present Petition relating to 3GPP documents first posted in 2000. Among other things, the *Samsung FWD* cited evidence described in the *Samsung Petition* that:

- The 3GPP documents relied upon in *Samsung* were “fully searchable” and “available ‘to users via conventional search

engines, such as the Google search engine’” in 2007. *Samsung* FWD at 10; *Samsung* Petition at 16.

- In 2007, “3GPP members typically received an email whenever documents contributed for a Working Group meeting were uploaded to the FTP server.” *Samsung* FWD at 11, fn.3; *Samsung* Petition at 16.

No such evidence is argued in the present Petition concerning Ex. 1004, allegedly posted in 2000.

Therefore, *Samsung* cannot save Petitioner from the failure of its Petition to show Ex. 1004 was publicly accessible before the April 5, 2005, priority date of the ‘059 Patent.

C. Additional Arguments in Petitioner’s Expert Declaration That Are Not Stated in the Petition Should Not Be Considered

Rather than setting forth with particularity the evidence allegedly establishing Ex. 1004 as a printed publication as required, the Petition purports to incorporate Exhibit 1006 (a four-hundred-fifty-four (454) page declaration by Craig Bishop) to support a single-sentence conclusion in the Petition:

As explained in detail by Craig Bishop (Ex-1006), 3GPP technical specifications (TS), including [Ex. 1004], are publicly accessible as of the date they were uploaded to

3GPP's file server. Ex-1006, ¶¶48-53; see generally Ex-1006, ¶¶19-60.

Pet., 15-16. This attempted incorporation by reference is improper and should not be countenanced.

The Petition itself must “identif[y], in writing and with particularity, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim.” 35 U.S.C. §312(a)(3). It is impermissible to incorporate by reference from another document. 37 C.F.R. §42.6(a)(3) (“[a]rguments must not be incorporated by reference from one document into another document.”).

Federal Circuit caselaw supports that Rule. For example, in *3M Co. v. Evergreen Adhesives, Inc.*, the Federal Circuit rejected 3M's arguments not made in the petition because its reference to expert testimony was “an attempt to introduce argument by citation.” 860 Fed.Appx. 724, 725-727 (Fed. Cir. 2021) (The Board is not to be forced to “play archeologist with the record” for arguments made outside the parties' briefing). *See also, e.g., Medtronic, Inc. v. Teleflex Life Sciences Ltd.*, 86 F.4th 902, 906-7 (Fed. Cir. 2023) (rejecting incorporation by reference); *Microsoft Corp. v. DataTern, Inc.*, 755 F.3d 899, 910 (Fed. Cir. 2014) (rejecting incorporation by reference as “fundamentally unfair”).

As the Board explained in *Vivint, Inc. v. SB IP Holdings LLC*: “What a petitioner may not do is to simply state conclusions in the petition, and rely on the expert declaration to provide all of the reasoning, explanation, and analysis.” IPR2022-00814, Paper 15 at 14-15, 2023 WL 6878619 at *5 (PTAB Oct. 16, 2023). That is precisely what the present Petition attempts to do: simply assert the conclusion that Ex. 1004 was publicly accessible before the priority date and rely on an expert declaration to provide all the reasoning, explanation, and analysis. Pet., 15-16 (“As explained in detail by Craig Bishop (Ex-1006), 3GPP technical specifications (TS), including [Ex. 1004], are publicly accessible as of the date they were uploaded to 3GPP’s file server.”).

The requirement that the Petition itself must state the evidence supporting the grounds—and not just incorporate an expert declaration by reference—applies to the requirement to establish a reference as a printed publication. *Microsoft Corp. v. Throughputer, Inc.*, IPR2023-00852, Decision Denying Institution (Paper 18) at 17-18 (PTAB Nov. 9, 2023). That is part of Petitioner’s burden. *Medtronic, Inc. v. Barry*, 891 F.3d 1368, 1380 (Fed. Cir. 2018).

The Petition presents only a single sentence to allege public accessibility, and relies on the 454-page Bishop declaration *en bloc* to supply all the reasoning, explanation, and analysis: “As explained in detail by Craig Bishop (Ex-1006), 3GPP technical specifications (TS), including [Ex. 1004], are publicly accessible as of the

date they were uploaded to 3GPP’s file server.” Pet., 15-16. That single sentence also cites, without explanation, two very large sections of the Bishop declaration: “Ex-1006, ¶¶48-53; see generally Ex-1006, ¶¶19-60.” Pet., 15-16.

The first referenced section of the Bishop declaration, ¶¶48-53, by itself spans more than three full pages to support the Petition’s single-sentence conclusion. Ex. 1006, 26-29. Worse, ¶49 itself attempts to sub-incorporate at least three more pages from the declaration’s integrated Appendix: Appendix 21 at 2 and Appendix 20 at 156-57. Appendix 20 does not have any pages marked with page number 156 or 157, so it is uncertain what those pages are supposed to be, leading to still more “archeology” among many more pages. Worse still, ¶48 sub-incorporates ¶31 (one-half page), which itself sub-incorporates two more pages: Appendix 10 at 7 and Appendix 11 at 1. A table of the pages included in the first referenced section of the Bishop declaration (Ex.1006) is presented here:

Portion of Ex. 1006	Incorporated (or sub-incorporated) by	Number of pages
¶¶48-53	Pet., 16	3
Appendix 20 at 156-57	Ex. 1006, ¶49	2+
Appendix 21 at 2	Ex. 1006, ¶49	1
¶31	Ex. 1006, ¶48	½
Appendix 10 at 7	Ex. 1006, ¶31	1
Appendix 11 at 1	Ex. 1006, ¶31	1

TOTAL		8½+
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Neither Patent Owner nor the Board should be forced to “play archeologist” with the record and dig through 8½+ pages of Exhibit 1006 in an attempt to discern what reasoning, explanation, and analysis might support the Petition’s one-sentence conclusion (Ex. 1004 was “publicly accessible as of the date they were uploaded to 3GPP’s file server”). This first referenced section of the Bishop declaration does not substitute for the reasoning, explanation, and analysis that was required to appear in the Petition itself to establish Ex. 1004 as a publicly accessible printed publication.

The second referenced section of the Bishop declaration, ¶¶19-60, spans twenty-two pages to support the Petition’s single sentence. Ex. 1006, 10-32. Worse, those twenty-two (22) pages themselves sub-incorporate at least four-hundred-fifteen (415) more pages: Appendices 2-23 at pdf pages 39-454. Neither Patent Owner nor the Board should be forced to “play archeologist” with the record and dig through four-hundred-thirty-seven (437) pages of Exhibit 1006 to discern what reasoning, explanation, and analysis might support the single sentence of the Petition. This second section of the Bishop declaration does not substitute for the reasoning, explanation, and analysis that was required to appear in the Petition to establish Ex. 1004 as a publicly accessible printed publication.

D. Further Preliminary Briefing is Not Warranted

To the extent Petitioner realizes from this Preliminary Response that its Petition was deficient and seeks further preliminary briefing, it should be denied.

Further briefing may only be authorized upon a showing of good cause. See 37 C.F.R. §42.108(c). “It is of the utmost importance that petitioners in the IPR proceedings adhere to the requirement that **the initial petition** identify ‘with particularity’ the ‘evidence that supports the grounds for the challenge to each claim.’ ” *Intel. Bio-Systems, Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016) (emphasis added).

It should come as no surprise to Petitioner that its Petition was deficient. Demonstrating that a reference qualifies as a printed publication is a “fundamental element of Petitioner’s contentions” in its Petition. *Microsoft Corp. v. Corel Software, LLC*, IPR2016-01083, Decision Denying Institution (Paper 14) at 13, fn.5 (PTAB Dec. 1, 2016). That a Petitioner reading a Patent Owner Preliminary Response realizes the Petition failed to state a threshold showing of a reference being a printed publication “does not support a finding of good cause” for additional briefing. *Id.* at 13, fn.5. The same applies here.

III. BACKGROUND

A. The ’059 Patent

U.S. Patent 7,664,059 is titled “Error handling in a wireless communications system.” Ex. 1001, abstract. The ’059 Patent describes a “3rd generation mobile

communications system [that] can provide different levels of transmission quality and operates in different modes according to the different requirements, for instance, Transparent Mode (TM), Unacknowledged Mode (UM), Acknowledged Mode (AM).” Ex. 1001, 1:40-44. “TM is used for services requiring instant transmission, UM is used for services requiring instant transmission as well as packet orders, and AM is used for robust services requiring data accuracy but not instant transmission.” Ex. 1001, 44-48.

“In AM, for better data accuracy and robustness, Radio Link Control (RLC) layers of a transmitter and a receiver initiate a status report procedure at an appropriate time to have the receiver transmit a status report unit... to the transmitter.” Ex. 1001, 1:49-53. Under the AM, the transmitter defines status variables:

1. Variable VT(S): represents a Sequence Number (SN) of a next Protocol Data Unit (PDU) to be transmitted for a first time (*i.e.* excluding retransmitted PDUs). The variable is updated after corresponding PDUs are transmitted. An initial value of the variable is 0.
2. Variable VT(A): represents an SN of a next expected acknowledged PDU, meaning the SN following an SN of a last in-sequence acknowledged PDU. The variable is updated after a status report unit showing the expected PDU had been positively acknowledged.

Ex. 1001, 1:56-67.

“According to the variables $VT(S)$ and $VT(A)$, the RLC layer is able to detect whether an SN in a status report unit is correct.” Ex. 1001, 2:1-3. The ‘059 Patent identifies an issue with such an RLC layer when $VT(A)=VT(S)$, and identifies that this issue “leads to errors not being recovered and waste in wireless transmission resources.” Ex. 1001, 2:44-62. The ‘059 Patent explains “[t]he prior art cannot detect protocol errors in this case” but the invention “is able to detect this kind of error”. Ex. 1001, 5:21-35.

FIG. 1 shows a flow chart of one exemplary embodiment:

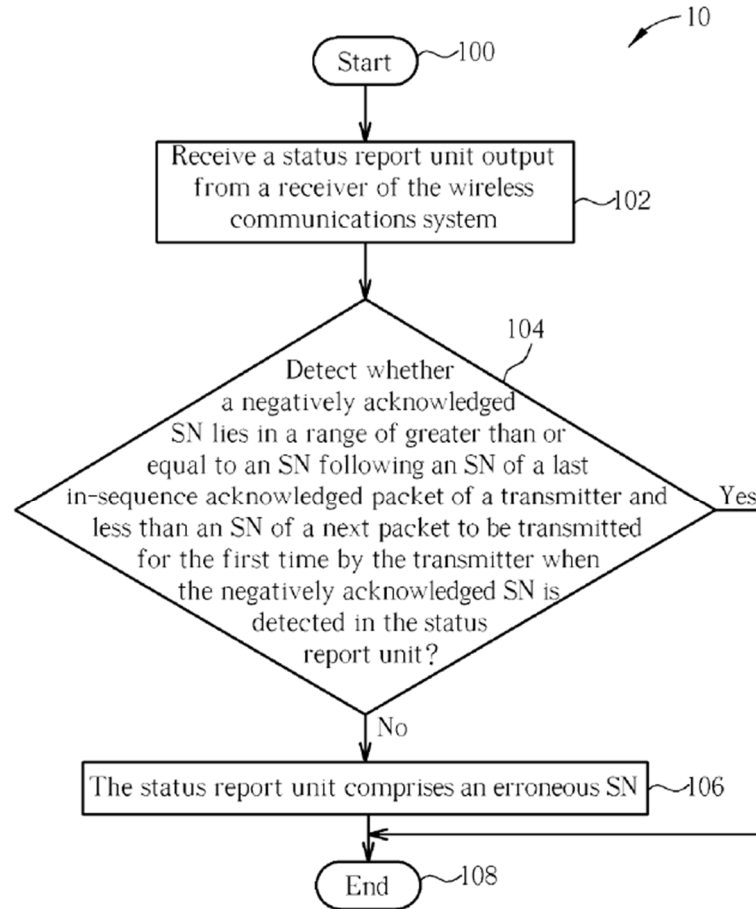


Fig. 1

Ex. 1001, Fig. 1.

“FIG. 1 is a flow chart of a procedure 10 that detects whether a status report unit comprises an erroneous SN [(sequence number)] in a wireless communications system.” Ex. 1001, 4:9-11. In step 102, the procedure “receive[s] a status report unit output from a receiver of the wireless communications system.” Ex. 1001, 4:18-19. In step 104, the procedure “detect[s] whether a negatively acknowledged SN lies in a range of greater than or equal to an SN following an SN of a last in-sequence acknowledged packet of a transmitter and less than an SN of a next packet to be

transmitted for the first time by the transmitter when the negatively acknowledged SN is detected in the status report unit.” Ex. 1001, 4:20-27. “If the negatively acknowledged SN does not lie in the range,” then the procedure goes to step 106 and determines that “the status report unit comprises an erroneous SN.”; otherwise the procedure goes to step 108. Ex. 1001, 4:25-29.

The '059 Patent explains that:

In accordance to the procedure 10, when a status report unit shows a negatively acknowledged SN, the present invention detects whether the negatively acknowledged SN lies in a range of greater than or equal to an SN following an SN of a last in-sequence acknowledged packet of a transmitter and less than an SN of a next packet to be transmitted for the first time by the transmitter, meaning to detect whether the negatively acknowledged SN agrees with $VT(A) \leq SN < VT(S)$. The status report unit is determined to comprise an erroneous SN when disagreement occurs. Furthermore, a reset procedure is initiated when the status report unit is determined to comprise an erroneous SN. As the equation $VT(A) \leq SN < VT(S)$ shows, a modulus operation with

VT(A) as a modulus base, meaning that $\text{base} = \text{VT(A)}$, is used to detect whether the SN x lies outside the set $\{x | (\text{VT(A)} - \text{base}) \bmod 4096 \leq (x - \text{base}) \bmod 4096 < (\text{VT(S)} - \text{base}) \bmod 4096\}$ and hence detect whether the status report unit comprises an erroneous SN.

Ex. 1001, 4:31-47.

The '059 Patent further explains the scenario when " $\text{VT(A)} = \text{VT(S)}$ ":

[W]hen an SN of a next PDU to be transmitted for a first time equals an SN of a next expected acknowledged PDU, it represents all PDUs having been transmitted by a transmitter are positively acknowledged. So, any negative acknowledgement by a status report unit must be an error caused by a protocol. The prior art cannot detect protocol errors in this case. In comparison to the present invention in the same situation, with $\text{VT(A)} \leq \text{SN} < \text{VT(S)}$, it is known that none of the negatively acknowledged SNs agree with $\text{VT(A)} \leq \text{SN} < \text{VT(S)}$ when $\text{VT(A)} = \text{VT(S)}$. In fact, there should not be any negatively acknowledged PDUs reported from a status report unit, and if there is, it must

be a protocol error. So the present invention is able to
detect this kind of error with $VT(A) \leq SN < VT(S)$.

Ex. 1001, 5:22-35.

B. The Alleged Prior Art

The Petition asserts the following three grounds of invalidity:

- Anticipation of claims 1-3 and 5-8 in view of Ex. 1004;
- Obviousness of claims 1-3 and 5-8 in view of Ex. 1004; and
- Obviousness of claims 1-8 in view of Ex. 1005 Ex. 1004.

Each ground relies upon Ex. 1004. Grounds 1 and 2 each rely on Ex. 1004 alone; and Ground 3 relies on Ex. 1005 as the primary reference and Ex. 1004 for additional alleged teachings.

1. Ex. 1004

Ex. 1004 is a technical specification titled “Technical Specification Group GSM EDGE Radio Access Network; General Packet Radio Service (GPRS) Mobile Station (MS) - Base Station System (BSS) interface; Radio Link Control/Medium Access Control (RLC/MAC) protocol”.² The specification relates to the Global System for Mobile Communications (GSM) standard. Ex. 1004, 1-3. The

² Petitioner refers to Ex. 1004 as “3GPP-4.60-v860-Specification” but no such title is found on Ex.1004. For accuracy and simplicity, we refer to it as Ex. 1004.

specification specifies the procedures used at the radio interface (Reference Point Um) for the GPRS Medium Access Control /Radio Link Control (MAC/RLC) layer. Ex. 1004, 14. The specification is applicable to the following GPRS Um functional layers: Radio Link Control (RLC) functions, Medium Access Control (MAC) functions, and Physical Link Control functions. *Id.* The procedures described in the specification are for the RLC/MAC functions of the GPRS radio interface (Um) when operating on a Packet Data Channel (PDCH). *Id.*

2. Ex. 1005

Ex. 1005 is a technical specification titled “Radio Link Control (RLC) protocol specification”.³ The specification relates to the Universal Mobile Telecommunications System (UMTS) standard. Ex. 1005, 2, 9. The specification specifies the Radio Link Control protocol for the radio interface between User Equipment (UE) and the UMTS Terrestrial Radio Access Network (UTRAN), the UE-UTRAN radio interface. Ex. 1005, 8-10.

³ Petitioner refers to Ex. 1005 as “3GPP-25.322-v630-Specification” but no such title is found on Ex.1005. For accuracy and simplicity, we refer to it as Ex. 1005.

IV. CLAIM CONSTRUCTION

The Petition submits that “no claim term requires express construction.” Pet., 14 (citation omitted). For purposes of this preliminary response, Patent Owner’s position is that all terms are entitled to their plain and ordinary meaning as understood by a POSITA under the proper construction. Patent Owner reserves the right to expressly construe terms of the ’059 Patent should the Board institute review.

V. INSTITUTION SHOULD BE DENIED BECAUSE THE PETITION FAILS TO SHOW HOW THE CLAIMS ARE ANTICIPATED OR RENDERED OBVIOUS BY THE CITED REFERENCES

Challenged independent claim 1 of U.S. Patent No. 7,664,059 is directed to a method for detecting an erroneous sequence number of a status report unit in a wireless communications system. To do so, the claims require receiving a status report unit output from a receiver of the wireless communications system, and then detecting whether a negatively acknowledged sequence number lies in a range of greater than or equal to a sequence number following a sequence number of a last in-sequence acknowledged packet of a transmitter and less than a sequence number of a next packet to be transmitted for the first time by the transmitter when the negatively acknowledged sequence number is detected in the status report unit. The claims further require detecting that the status report unit comprises an erroneous

sequence number when the negatively acknowledged sequence number is not in the range.

The Petition fails to show any of the alleged prior art discloses or suggests the combination of “detecting whether a negatively acknowledged sequence number lies in a range of greater than or equal to a sequence number following a sequence number of a last in-sequence acknowledged packet of a transmitter and less than a sequence number of a next packet to be transmitted for the first time by the transmitter when the negatively acknowledged sequence number is detected in the status report unit” and “detecting that the status report unit comprises an erroneous sequence number when the negatively acknowledged sequence number is not in the range” as claimed. As explained below, none of Ex. 1004 and Ex. 1005 teaches these limitations. Because the Petition fails to show how these limitations are anticipated by or rendered obvious by the alleged prior art, the Board should deny institution.

A. Grounds 1 And 2: Claims 1-3 And 5-8 Are Not Anticipated By Ex. 1004 Or Obvious In View Of Ex. 1004

Claim 1 is directed to a method for detecting an erroneous sequence number of a status report unit in a wireless communications system. The claims require that “the status report unit comprises an erroneous sequence number”, as recited in Claim 1. The alleged prior art relied upon for Grounds 1 and 2 does not disclose this element.

In Ground 1, Petitioners argue that Ex. 1004 discloses this element. The Petition equates Ex. 1004's "Packet Uplink Ack/Nack (TLLI)" with the recited "status report unit". Pet., 21-22 (citing Ex. 1004, 286, 89, 65; Ex. 1002, ¶¶74-75). The Petition also equates Ex. 1004's "BSNs [Block Sequence Numbers]" "that are not valid" with the recited "erroneous sequence number". Pet., 20. However, Ex. 1004's "Packet Uplink Ack/Nack (TLLI)" does not include actual sequence numbers. Instead, it includes a received block bitmap (RBB) and Ex. 1004 explains that a block sequence number (BSN) must be calculated ("interpreted") from the RBB. Ex. 1004, 89 ("The BSN values specified in the RBB are interpreted by subtracting the bit position in the bitmap from the starting sequence number (SSN) modulo SNS."). Because the BSN values must be "interpreted" by performing operations on the values actually included in the "Packet Uplink Ack/Nack (TLLI)" (the RBB values), it necessarily follows that the "Packet Uplink Ack/Nack (TLLI)" does not include the BSN values themselves. The "Packet Uplink Ack/Nack (TLLI)" of Ex. 1004 therefore cannot meet the limitation "the status report unit comprises an erroneous sequence number", as recited in Claim 1.

Therefore, the claim element "the status report unit comprises an erroneous sequence number" is completely missing from Grounds 1 and 2.

In addition, the Petition equates Ex. 1004's variables "V(A)" and "V(S)" with the '059 Patent specification's "VT(A)" and "VT(S)", instead of mapping Ex.

1004's variables to the claim language. Pet., 24-25 (citing Ex. 1002, ¶81). The language of the cited definitions of Ex. 1004's variables does not track exactly the claim language of the claimed range, and neither the Petition nor the expert declaration explain how the reference's definitions meet the claim limitations. Instead, the Petition and expert declaration merely quote the variable definitions from Ex. 1004 and then use a conclusory "i.e." parenthetical quoting the claim language, with no explanation of how they are the same. Pet., 24; Ex. 1002, ¶79; *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 at 15 (PTAB Aug. 24, 2022) (precedential) (denying institution due to the "conclusory statements" of the petitioner's expert; finding that "[e]xpert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight."); *Upjohn Co. v. Mova Pharm. Corp.*, 225 F.3d 1306, 1311 (Fed. Cir. 2000) ("Lack of factual support for expert opinion to factual determinations, however, may render the testimony of little probative value in a validity determination.") (quoting *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 294 (Fed. Cir. 1985)). The Petition therefore fails to adequately explain how Ex. 1004 meets the claimed range recited in claim 1.

Moreover, the Petition fails to adequately explain how Ex. 1004 meets the claimed "detecting that the status report unit comprises an erroneous sequence number when the negatively acknowledged sequence number is not in the range"

recited in claim 1. Pet., 25-26 (citing Ex. 1004, 86; Ex. 1002, ¶82). The Petition quotes a portion of Ex. 1004 which says “All BSNs which meet that criteria are valid within the transmit window” (Pet., 26 (quoting Ex. 1004, 86)) and then immediately concludes, without any explanation: “Thus, when a BSN value falls outside of that window, erroneous sequence numbers are detected.” Pet., 26 (citing Ex. 1002, ¶82). The cited paragraph of the expert declaration is similarly conclusory and therefore cannot remedy the Petition’s failure to adequately explain how Ex. 1004 meets the claimed “detecting that the status report unit comprises an erroneous sequence number when the negatively acknowledged sequence number is not in the range” recited in claim 1. *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 at 15 (PTAB Aug. 24, 2022) (precedential) (denying institution due to the “conclusory statements” of the petitioner’s expert; finding that “[e]xpert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight.”); *Upjohn Co. v. Mova Pharm. Corp.*, 225 F.3d 1306, 1311 (Fed. Cir. 2000) (“Lack of factual support for expert opinion to factual determinations, however, may render the testimony of little probative value in a validity determination.”) (quoting *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 294 (Fed. Cir. 1985)).

The Petition’s anticipation ground (Ground 1) therefore fails for at least these reasons.

Petitioners' Ground 2 argument is a single-reference obviousness ground based on Ex. 1004 alone and fails to acknowledge or address the deficiencies discussed above. Pet., 33-35. Thus, the Petition fails to show that claim 1 is obvious over Ex. 1004 alone and Ground 2 fails for at least these reasons.

B. Ground 3: Claims 1-8 Are Not Obvious In View Of Ex. 1005 And Ex. 1004

Petitioners' Ground 3 argument relies upon combining Ex. 1005 with Ex. 1004 to allegedly meet the element "detecting whether a negatively acknowledged sequence number lies in a range of greater than or equal to a sequence number following a sequence number of a last in-sequence acknowledged packet of a transmitter and less than a sequence number of a next packet to be transmitted for the first time by the transmitter when the negatively acknowledged sequence number is detected in the status report unit" as recited in claim 1. Pet., 39-43. To support this combination of Ex. 1005 and Ex. 1004, the Petition provides two motivations to combine the references, both of which fail to establish a reasonable likelihood of the Petitioner prevailing during a trial on the merits.

First, the Petition asserts that "a POSITA would have been motivated to replace the inequality expression from [Ex. 1005] to the inequality from [Ex. 1004] *once the POSITA realized* that the edge case of $VT(A) == VT(S)$ will fail for the inequality expression disclosed in [Ex. 1005]." Pet., 41 (citing Ex-1002, ¶113) (emphasis added). This is insufficient and engages in impermissible hindsight. The

Federal Circuit has identified this type of impermissible hindsight and has held that, instead of starting with the assumption that the POSITA will recognize the problem recognized by the inventors, a patent challenger “***must prove*** by clear and convincing evidence that a person of ordinary skill in the [] arts at the time of the invention ***would have*** recognized the [] problem recognized by the inventors and found it obvious to produce the [inventors’ solution to] that problem”. *Mintz v. Dietz & Watson, Inc.*, 679 F.3d 1372, 1377 (Fed. Cir. 2012); see also *Novartis Pharms. Corp. v. Watson Lab'ys, Inc.*, 611 F. App'x 988, 995 (Fed. Cir. 2015) (“Even an obvious solution, however, does not render an invention obvious if the problem solved was previously unknown.” (citing *Mintz v. Dietz & Watson, Inc.*, 679 F.3d 1372, 1377 (Fed. Cir. 2012))). Here, the Petition provides no evidence and no argument to show how or why a POSITA “would have recognized” the problem. Pet. 41-42. This is impermissible under *Mintz*, and therefore this purported motivation to combine cannot be relied upon for Ground 3.

The remaining motivation to combine provided by the Petition is also flawed. The Petition states that “a POSITA would have been motivated to reduce computational operations involved in evaluating the inequality expression, as to reduce the overhead of frequently computed calculation.” Pet., 42 (citing Ex. 1002, ¶114). The Petition cites Dr. Haas’s expert declaration (Ex. 1002) to support this conclusory statement that the calculations are “frequently calculated,” and the cited

portion of Dr. Haas's expert declaration similarly states, in a conclusory manner, that "the inequality expression[] must be frequently calculated", without providing any explanation as to why and without providing any evidence to support this conclusory statement. Like the expert's declaration in *Xerox Corp.*, the cited portion of Dr. Haas's declaration (Ex. 1002, ¶114) "merely repeats... the conclusory assertion for which it is offered to support" and "does not cite to any additional supporting evidence or provide any technical reasoning to support his statement". *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 at 15 (PTAB Aug. 24, 2022) (precedential) (denying institution due to the "conclusory statements" of the petitioner's expert; finding that "[e]xpert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight."); *Upjohn Co. v. Mova Pharm. Corp.*, 225 F.3d 1306, 1311 (Fed. Cir. 2000) ("Lack of factual support for expert opinion to factual determinations, however, may render the testimony of little probative value in a validity determination.") (quoting *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 294 (Fed. Cir. 1985)). This motivation to combine is therefore flawed for at least these reasons.

Thus, all of the Petition's purported motivations to combine the references are defective and the Petition therefore fails to provide sufficient motivation to modify the references to arrive at the claimed invention.

Accordingly, the Petition fails to show that any alleged combination of Ex. 1005 and Ex. 1004 suggests “detecting whether a negatively acknowledged sequence number lies in a range of greater than or equal to a sequence number following a sequence number of a last in-sequence acknowledged packet of a transmitter and less than a sequence number of a next packet to be transmitted for the first time by the transmitter when the negatively acknowledged sequence number is detected in the status report unit” as recited in claim 1 and institution must be denied.

VI. THE BOARD SHOULD EXERCISE DISCRETION UNDER SECTION 314 AND DENY INSTITUTION

The Board should deny institution under 35 U.S.C. §314 because all six *Fintiv* factors favor discretionary denial. There is no requirement that the Board institute IPR. *See, e.g., Harmonic Inc. v. Avid Tech.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016). “[T]he PTO is permitted, but never compelled, to institute an IPR proceeding.” *Id.* Rather, the decision to institute is delegated to the Board and is purely discretionary.

35 U.S.C. §314(a) gives the Board discretion to deny institution because of efficiency considerations stemming from parallel proceedings on the same patent. *See NHK Spring Co. v. Intrix-Plex, Inc.*, IPR2018-00752, Paper 8 (PTAB Sept. 12, 2018) (precedential, designated May 7, 2019) (“*NHK Spring*”). The PTAB has set forth six factors for determining whether discretionary denial due to efficiency considerations relating to parallel proceedings is appropriate (the “*Fintiv* factors”):

1. whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted;

2. proximity of the court's trial date to the Board's projected statutory deadline for a final written decision;

3. investment in the parallel proceeding by the court and the parties;

4. overlap between issues raised in the petition and in the parallel proceeding;

5. whether the petitioner(s) and the defendant in the parallel proceeding are the same party; and

6. other circumstances that impact the Board's exercise of discretion, including the merits.

Apple Inc. v. Fintiv, Inc., IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential) (“*Fintiv I*”), 6; *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 15 (PTAB May 13, 2020) (order denying institution) (informative, designated July 13, 2020) (“*Fintiv II*”), 7-8.

When she was Director, Katherine Vidal issued interim guidance on the application of *Fintiv*. See Katherine K. Vidal, *Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation*

(June 21, 2022)⁴ (“*Fintiv Memo*”); *see also OpenSky Indus., LLC v. VLSI Tech. LLC*, IPR2021- 01064, Paper 102, 49–50 (PTAB Oct. 4, 2022) (precedential) (“*OpenSky*”) and *CommScope Techs. LLC v. Dali Wireless, Inc.*, IPR2022- 01242, Paper 23 (PTAB Feb. 27, 2023) (precedential) (“*CommScope*”). Under the interim *Fintiv Memo*, if the Board “determines that the information presented at the institution stage presents a compelling unpatentability challenge, that determination alone demonstrates that the PTAB should not discretionarily deny institution under *Fintiv*.” Interim *Fintiv Memo*, 4–5. However, *OpenSky* and *CommScope* make clear that the compelling merits standard is a significantly higher standard than the institution standard, requiring that it be “highly likely that the petitioner would prevail with respect to at least one challenged claim.” *OpenSky*, 49; *CommScope*, 3–4. Further, “compelling merits” should be considered only after a determination that the first five *Fintiv* factors favor discretionary denial. *CommScope*, 4–5. Regardless, the interim guidance was issued “[i]n the meantime” until Director Vidal put out “an Advanced Notice of Proposed Rulemaking”, *Fintiv Memo* at 2, which she never did. Director Vidal has resigned without doing the rule package.

⁴ Available at https://www.uspto.gov/sites/default/files/documents/interim_proc_discretionary_denials_aia_parallel_district_court_litigation_memo_20220621_.pdf

Here, all six *Fintiv* factors weigh in favor of discretionary denial and there are no “compelling merits” or a *Sotera*-type stipulation. Accordingly, the Board should exercise its discretion and deny institution.

A. Factor 1

The first *Fintiv* factor—regarding whether a stay exists or is likely to be granted if a proceeding is instituted—weighs in favor of denial. No motion to stay pending the institution decision has been filed in the litigations. The district court has an established practice not to stay litigations pending resolution of inter partes review prior to institution. *Viavi Sols. Inc. v. Zhejiang Crystal-Optech Co.*, No. 2:21-CV-00378-JRG, 2022 WL 16856099, at *5 (E.D. Tex. Nov. 10, 2022) (“It is the Court’s established practice to consider that motions to stay pending IPR proceedings which have not been instituted are inherently premature and should be denied as such.”).

Even post-institution, the district court judge is unlikely to stay the case absent agreement from the parties. EX2005, 3 (showing 15% win rate on contested motions to stay pending IPRs in the ED Tex). Thus, this factor weighs in favor of denial.

B. Factor 2

The second *Fintiv* factor—the proximity of the court’s trial date to the Board’s projected statutory deadline for a Final Written Decision—weighs in favor

of denial. The Notice of Filing Date Accorded to Petition was mailed on August 15, 2024. Paper 9, 1. A Final Written Decision will therefore be due by February 15, 2026. *See* 35 U.S.C. §314(b); 35 U.S.C. §316(a)(11). Jury selection in the district court litigation is scheduled to begin on July 21, 2025. EX1012, 1. Thus, a final written decision will likely issue half a year or more after the trial.

Further, under the interim *Fintiv Memo*, the PTAB will consider the median time from filing to disposition of the civil trial for the district in which the parallel litigation resides. *Id.*, 4-5. The current median time to trial in the Eastern District of Texas is 21.6 months. EX2006, 35. The district court litigations were filed on October 19, 2023. Paper 10, 2-3. Under these statistics, trial would be expected July or August 2025. Thus, using either the actual scheduled trial date in this matter or the median time-to-trial statistics for the Eastern District of Texas, trial is expected to conclude at least five months before a final written decision is due in this matter.

Under *Fintiv* factor 2, this weighs heavily in favor of discretionary denial. *See Fintiv I*, 9 (“If the court’s trial date is earlier than the projected statutory deadline, the Board generally has weighed this factor in favor of exercising authority to deny institution under NHK.”); *Ericsson Inc. et al v. Collison Communications, Inc.*, IPR2022-01233, Paper 12 at 12-13 (PTAB Jan. 19, 2023) (holding Factor 2 “weighs in favor of denying institution, given that we would not expect to issue a final written until at least four months” after trial). Further, granting institution here

would frustrate one of the primary objectives of the AIA, which is “to provide an effective and efficient alternative” to parallel litigation. *NHK Spring*, 19-20 (*quoting General Plastic Indus. Co., Ltd. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19, 15-19 (PTAB Sept. 6, 2017) (precedential, designated Oct. 18, 2017)). If IPR were instituted, any potential FWD would issue well after trial concludes. Thus, instituting IPR here cannot be viewed as an “alternative” to litigation. Rather, it would simply be more litigation.

Petitioners cite *Hulu, LLC v. SITO Mobile R&D IP, LLC*, IPR2021-00298, Paper 11 at 11-18 (PTAB May 19, 2021) and *NetNut Ltd. v. Bright Data Ltd.*, IPR2021-01492, Paper 12 at 9-16 (PTAB Mar. 21, 2022) to argue that “[t]he Board has granted institution in cases where the final written decision issued a few months after the scheduled trial date when other factors favor institution.” Pet., 54. In both cases, several factors weighed in favor of institution. Here, no factors weigh in favor of institution.

Petitioners also cite *CrowdStrike, Inc. v. Open Text Inc.*, IPR2023-00556, Paper 9 at 8 (PTAB Sept. 12, 2023) to argue that the Board treats factor 2 as neutral where Petitioners will have multiple trials (Pet., 54), but in *CrowdStrike*, the trials started “a few weeks earlier than the projected statutory deadline.” *Id.* Here, the projected statutory deadline will be five months after the scheduled trials. Thus,

CrowdStrike does not support Petitioners’ position. Factor 2 therefore weighs in favor of denying institution.

C. Factor 3

The third *Fintiv* factor—which relates to “the amount and type of work already completed in the parallel litigation by the court and the parties at the time of the institution decision” (*Fintiv I* at 9)—also favors denial. Significant amounts of work have been completed in the district court. The parties have completed their P.R. 3-1 and 3-2 disclosures (Infringement Contentions), their P.R. 3-3 and 3-4 disclosures (Invalidity Contentions), and have exchanged claim constructions. EX1012, 5-6. The institution decision is expected no later than February 15, 2025. See 35 U.S.C. §314(b). By that date, the parties will have submitted their opening claim construction briefs, completed claim construction discovery, submitted technical tutorials, and completed the Markman hearings. EX1012, 3-5. The Markman hearings in the district court litigations are scheduled for January 22, 2025 and February 5, 2025, respectively.⁵ EX1012, 3. The ordinary practice of this

⁵ The district court split the deadlines for the district court cases into two tracks—the “ATL cases” (including cases 2:23-cv-486, 2:23-cv- 487, and 2:23-cv-488) and the “ISL cases” (including cases 2:23-cv-489, 2:23- cv-490, and 2:23-cv-491). EX1012, 2 n.2. The ATL schedule is roughly two weeks ahead of the ISL schedule.

district court is to provide preliminary constructions at or shortly before the *Markman* hearing. Thus, significant substantive work will have already been completed in the district court litigation by the expected time of the institution decision. *See Fintiv II*, 14 (“based on the level of investment and effort already expended on claim construction and invalidity contentions in the District Court, this factor weighs somewhat in favor of discretionary denial in this case.”).

Petitioners argue that their “diligence in filing and the district court’s minimal investment tips this factor in favor of institution.” Pet., 55. But the Petition measures investment at the time the IPRs were filed, not (as required by *Fintiv*) at the time of the institution decision. As discussed above, by the time of the institution decision, claim construction will be nearly complete and significant discovery will have taken place.

Further, the Petition was filed on July 19, 2024. Paper 1, 62. Infringement contentions were filed January 4, 2024. EX1012, 6. Thus, Petitioners waited approximately five months from receiving infringement contentions to file the Petition. Indeed, Petitioners filed their own invalidity contentions on April 12, 2024 and then waited another fourteen weeks before filing this Petition. EX1012, 5. These timelines show more delay than any case Petitioner cites. Accordingly, factor 3 weighs in favor of non-institution.

D. Factor 4

The fourth *Fintiv* factor—which relates to overlap between issues raised in the petition and in the parallel proceeding—also weighs in favor of denying institution. “[I]f the petition includes the same or substantially the same claims, grounds, arguments, and evidence as presented in the parallel proceeding, this fact has favored denial.” *Fintiv* at 12. Claims 1-8 challenged in this IPR are also asserted in the District Court litigation. EX2007, 2. Petitioners identify as prior art Ex. 1005 in the District Court litigation. EX2007, 11. Petitioners rely on Ex. 1005 as the primary alleged prior art in Ground 3 of this IPR. Accordingly, both Petitioners’ infringement contentions and this IPR rely on Ex. 1005. EX2007, 11.

The Petition stipulates that “if trial is instituted, Petitioners will not pursue this IPR’s Grounds in the district court litigation.” Pet., 55-56. The PTAB has classified such stipulations as “*Sand Revolution*”-style stipulations after the stipulation filed in *Sand Revolution II, LLC v. Continental Intermodal Group-Trucking LLC*, IPR2019-01393, Paper 24 (PTAB June 16, 2020), where Petitioner filed a stipulation that it “will not pursue the same grounds in district court litigation.” *Id.* at 11-12. The PTAB has routinely found similar stipulations weigh only “marginally in favor of not exercising discretion to deny institution.” *Id.*, 12; *LG Elecs., Inc. v. Ancora Techs., Inc.*, IPR2021-00581, Paper 16, 9-10 (PTAB June 10, 2021) (same); *Google LLC v. EcoFactor Inc.*, IPR2021-00454, Paper 9 (PTAB

July 22, 2021) (same); *Samsung Electronics Co. Ltd. v. California Institute of Tech.*, IPR2023-00130, Paper 10, 19-20 (PTAB May 4, 2023) (same); *Roku, Inc. v. IOENGINE, LLC*, IPR2022-01554, Paper 11, 13-14 (PTAB May 5, 2023) (same).

The Board historically assigns almost no weight to *Sands Revolution*-style stipulations such as the one Petitioner filed here. This is because *Sands Revolution*-style stipulations do little to eliminate overlap with the district court litigations. Petitioners' stipulation does nothing to prevent the alleged prior art references asserted in the Petition from being re-used in substantially the same form in the litigation by combining them with different secondary references. Indeed, Petitioners' invalidity contentions reserve the right to do so. See, e.g., EX2007, 12 ("Any prior art reference cited herein may be combined with any other reference to demonstrate the invalidity of any of the Asserted Claims."). Thus, the stipulation here is practically meaningless.

Further, the Board has often denied institution in situations like the present where the other factors clearly favored non-institution, even where Petitioners offered stronger stipulations than the one offered here. For example, in *LG Elecs., Inc. v. Ancora Techs., Inc.*, No. IPR2021-00581, Paper 16, 9-10 (PTAB June 10, 2021), the Board denied institution despite the petitioner's stipulation "it will not subsequently assert invalidity in the district court on the same grounds asserted in the IPR or on the basis of the Hellman reference, either alone or in combination with

any other reference.” *Id.* Unlike Petitioners’ stipulation here, the petitioner in *Ancora* agreed to a blanket stipulation not to assert the primary reference Hellman under any circumstance. The Board there agreed with the patent owner that, even with the petitioner’s stipulation, “there is significant overlap between the issues raised in the Petition and in the parallel district court proceeding.” *Id.* Similarly, in *Samsung Electronics Co., LTD. v. California Institute of Technology*, IPR2023-00130, Paper 10 (PTAB May 4, 2023), the Board denied institution notwithstanding a stipulation it characterized as “broader to some degree than the stipulation discussed in *Sand Revolution*” because “the trial in the Underlying Litigation would commence several months before the expected date of our final written decision” and there had been significant investment in the litigation. *Id.*, 16-20.

The facts here are stronger than *Ankora* and *Samsung*. Petitioners offer a practically meaningless stipulation that does not outweigh the other factors.

E. Factor 5

The fifth *Fintiv* factor—whether the petitioners and the defendant in the parallel proceedings are the same parties—weighs in favor of discretionary denial. The parties here are the same as the parties in the litigations. *Fintiv II*, 15 (“Because the petitioner and the defendant in the parallel proceeding are the same party, this factor weighs in favor of discretionary denial.”).

F. Factor 6

The sixth *Fintiv* factor—relating to other circumstances that impact the Board’s exercise of discretion, including the merits—weighs in favor of discretionary denial. As demonstrated above in Section II, Petitioner is not substantially likely to establish the main reference (Ex. 1004) as a printed publication under 35 U.S.C. 311(b). Even if Ex. 1004 were somehow a printed publication, Section V above demonstrates the Petition is not likely to show the claims are anticipated by Ex. 1004 or rendered obvious by Ex. 1004 alone or in combination with Ex. 1005. There is no reasonable likelihood of success, much less the high likelihood of success required to show “compelling merits.” *See Fintiv I*, 15 (“if the merits of the grounds raised in the petition are a closer call, then that fact has favored denying institution when other factors favoring denial are present”); *Commscope Technologies LLC, v. Dali Wireless, Inc.*, IPR2022-01242, Paper 23, 5 (precedential) (“Merely pointing to [] analysis under the lower institution standard is insufficient to demonstrate that the Petition presents a compelling unpatentability challenge.”).

Petitioners’ allegations that the Petition shows “compelling merits” (Pet., 57) are based solely on their attorney argument repeating their §314 analysis and should be rejected as in *Commscope*. Petitioner’s allegations essentially “point[] to its analysis under the lower §314 standard.” *Commscope*, IPR2022-01242, Paper 23.

See Pet., 57. Petitioner does not elaborate on why the merits here are “compelling.”

Such generic allegations do not rise to the level of compelling merits. *See, e.g., OpenSky* at 49 (“a compelling-merits challenge is a higher standard than the reasonable likelihood required for the institution of an IPR under 35 U.S.C. §314(a).”). Thus, this factor favors discretionary denial.

Accordingly, all six *Fintiv* factors weigh in favor of discretionary denial. The Board should use its discretion to deny institution of this IPR.

VII. CONCLUSION

For the foregoing reasons, the Board should deny institution.

Dated: November 15, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITS

This Patent Owner Preliminary Response consists of 8,008 words, excluding table of contents, table of authorities, certificate of service, this certificate, or table of exhibits. The Response complies with the type-volume limitation of 14,000 words as set forth in 37 C.F.R. § 42.24. In preparing this certificate, counsel has relied on the word count of the word-processing system used to prepare the paper (Microsoft Word).

Dated: November 15, 2024

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6, the undersigned certifies that on November 15, 2024, a copy of the foregoing documents **PATENT OWNER PRELIMINARY RESPONSE AND EXHIBITS** were served by electronic mail, as consented to by Petitioner, upon the following:

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