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Paper 6
Date: March 27, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

YEALINK (USA) NETWORK TECHNOLOGY CO. LTD., and
YEALINK NETWORK TECHNOLOGY CO., LTD.,
Petitioner,

v.

BARCO N.V.,
Patent Owner.

IPR2024-01436 (Patent 10,762,002 B2)
IPR2024-01437 (Patent 11,403,237 B2)
IPR2024-01438 (Patent 11,258,676 B2)
IPR2024-01439 (Patent 11,422,951 B2)

Before MEREDITH C. PETRAVICK, DAVID C. McKONE, and FREDERICK C. LANEY, *Administrative Patent Judges.*

PETRAVICK, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5(a)

On Mach 26, 2025, via email to Trials@uspto.gov, Patent Owner requested authorization to submit a two-page brief to argue the *Fintiv* factors[1] and to submit an April 9, 2024 scheduling order from a related district court case showing a trial date of September 9, 2025. IPR2024-01436, Ex. 3002. Patent Owner argues that good cause exists because of a change of guidance in discretionary denials, the USPTO's February 28, 2025 recission of the June 21, 2022 memorandum entitled "Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation."[2] *Id.*

Patent Owner informs us that:

> Petitioner opposes this request because: (1) Patent Owner waited nearly a month after the USPTO's February 28, 2025, change in guidance to make this request; (2) the district court schedule Patent Owner now cites, including the September 9, 2025, trial date, is not new but has been in place since April 9, 2024, and has remained unchanged; (3) the statutory deadline for institution is in two weeks, making it difficult to draft and consider new briefing; and, importantly (4) Petitioner provided a precedential *Sotera* stipulation and has waived prior-art-based invalidity arguments in the district court. *See*, *e.g.*, *Samsung Electronics Co., Ltd. v. Headwater Research LLC*, IPR2024-01407, Paper 9, 8 (PTAB Mar. 20, 2025) (finding *Sotera* stipulation weighs strongly against discretionary denial).

Id. If Patent Owner's request is granted, Petitioner requests authorization to submit a two-page reply.

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[1] *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) ("*Fintiv*").

[2] Available at https://www.uspto.gov/about-us/news-updates/uspto-rescinds-memorandum-addressing-discretionary-denial-procedures

Our March 24, 2025 guidance memorandum about the February 28, 2025 recission tell us that:

> the Interim Procedure's recission applies to any case in which the Board has not issued an institution decision, or where a request for rehearing or Director Review of an institution decision was filed and remains pending. The Board will consider ***timely requests for additional briefing on the application of the Interim Procedure's recission on a case-by-case basis.***

March 24, 2025 Guidance Memorandum,[3] 2 (emphasis added). Our Rules also provide that "[a] party should seek relief promptly after the need for relief is identified. Delay in seeking relief may justify a denial of relief sought." 37 C.F.R. § 42.25(b).

For IPR2024-01436 and IPR2024-01439, Patent Owner filed preliminary responses on January 9, 2025. For IPR2024-01437 and IPR2024-01438, Patent Owner let the January 9, 2025 due date lapse without filing a Preliminary Response.

By statute, we must issue a decision on whether to institute an *inter partes* review within three months of "receiving a preliminary response to the petition" or "if no such preliminary response is filed, the last date on which such response may be filed." 35 U.S.C. § 314(b). In each of these proceedings, we must issue a decision before April 9, 2025.

Given our statutory deadline and the other circumstances of these proceedings, we determine Patent Owner's request to be untimely. Patent

[3] Available at https://www.uspto.gov/sites/default/files/documents/guidance_memo_on_interim_procedure_recission_20250324.pdf.

Owner's request to brief the *Finitv* factors comes approximately a month after the USPTO's February 28, 2025 recission. If we were to grant briefing now, that would leave approximately seven business-days for us to meet our statutory deadline. Seven business-days is insufficient time for both Patent Owner and Petitioner to file briefs arguing the *Fintiv* factors and for us to give due consideration to the parties' arguments.

Under the circumstances in these proceedings, we deny Patent Owner's request because it is untimely.

It is ORDERED that Patent Owner's request is *denied.*

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