

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DELL INC., DELL TECHNOLOGIES INC., HP INC., AND LENOVO
(UNITED STATES) INC.

Petitioners,

v.

UNIVERSAL CONNECTIVITY TECHNOLOGIES INC.,

Patent Owner.

Case IPR2024-01480
U.S. Patent No. 9,852,103

**PATENT OWNER'S PRELIMINARY RESPONSE
TO THE PETITION**

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2001	Docket Control Order, <i>Universal Connectivity Technologies Inc. v. Lenovo Group Limited</i> , No. 2:23-cv-00449-JRG (E.D. Tex. June 12, 2024)
2002	Civil Minutes, <i>Universal Connectivity Technologies Inc. v. HP Inc.</i> , No. 4:24-cv-04097-YGR (N.D. Cal. Nov. 4, 2024)
2003	Order, <i>Universal Connectivity Technologies Inc. v. Dell Inc.</i> , No. 1:23-cv-01506-RP (W.D. Tex. Dec. 12, 2024)
2004	Defendant’s Invalidity and Eligibility Contentions, <i>Universal Connectivity Technologies Inc. v. Lenovo Group Limited</i> , No. 2:23-cv-00449-JRG (E.D. Tex. July 24, 2024)
2005	Defendants Dell Technologies Inc. and Dell Inc.’s Preliminary Invalidity Contentions, <i>Universal Connectivity Technologies Inc. v. Dell Inc.</i> , No. 1:23-cv-01506-RP (W.D. Tex. July 24, 2024)
2006	HP’s Invalidity Contentions, <i>Universal Connectivity Technologies Inc. v. HP Inc.</i> , No. 4:24-cv-04097-YGR (N.D. Cal. Dec. 5, 2024)
2007	U.S. District Courts—Federal Court Management Statistics—Profiles—During the 12-Month Periods Ending September 30, 2019 through 2024
2008	Memorandum Opinion and Order, <i>Universal Connectivity Technologies Inc. v. Lenovo Group Limited</i> , No. 2:23-cv-00449-JRG (E.D. Tex. Oct. 17, 2024)
2009	Order, <i>Universal Connectivity Technologies Inc. v. Lenovo Group Limited</i> , No. 2:23-cv-00449-JRG (E.D. Tex. Oct. 2, 2024)

I. INTRODUCTION

The Board should exercise its discretion to deny institution under *Fintiv*. No stay has been requested in the underlying Eastern District of Texas litigation (the “LGL Case”) and trial is set to begin in early November 2025—nearly five months before the Board will enter its final written decision. Petitioners will have their day in court to make these same invalidity arguments to the jury. To conserve time and resources, the Board should exercise its discretion and deny institution under *Fintiv*. Accordingly, the Board should deny institution of the ’103 Petition.

II. THE *FINTIV* FACTORS WEIGH AGAINST INSTITUTION

The Board has discretion under 35 U.S.C. § 314(a) to deny institution of the requested *inter partes* review due to the advanced state of parallel district court litigation regarding the same issues. *See NHK Spring Co. v. Intri-Plex Techs., Inc.*, IPR2018-00752, Paper 8 (PTAB Sept. 12, 2018) (precedential, designated May 7, 2019). The Board has set forth six factors (known as the “Fintiv factors”) for determining whether discretionary denial is appropriate:

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

- proximity of the court’s trial date to the Board’s projected statutory deadline for a final written decision;
- investment in the parallel proceeding by the court and the parties;
- overlap between issues raised in the petition and in the parallel proceeding;
- whether the petitioner and the defendant in the parallel proceeding are the same party; and
- other circumstances that impact the Board’s exercise of discretion, including the merits.

Apple Inc. v. Fintiv, Inc., IPR2020-00019, Paper 11 at 5-6 (PTAB Mar. 20, 2020) (precedential, designated May 5, 2020) (“*Fintiv I*”); *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 15 at 7-8 (PTAB May 13, 2020) (decision denying institution of inter partes review) (“*Fintiv II*”). “These factors relate to whether efficiency, fairness, and the merits support the exercise of authority to deny institution in view of an earlier trial date in the parallel proceeding.” *Fintiv I* at 6. In evaluating the factors, “the Board takes a holistic view of whether efficiency and integrity of the system are best served by denying or instituting review.” *Id.*

As set forth below, all of the Fintiv factors weigh against institution. To avoid duplication of efforts, wasting resources, and potentially inconsistent decisions, the Board should deny institution.

A. Factor 1: No stay has been entered in the LGL Case and there is no evidence that a stay will be granted

There are presently four district court cases involving the '103 Patent: one pending in the Eastern District of Texas (*Universal Connectivity Technologies Inc. v. Lenovo Group Limited*, No. 2:23-cv-00449-JRG (the “LGL Case”)); one pending in Delaware (*Lenovo (United States) Inc. v. Universal Connectivity Technologies Inc.*, No. 1:24-cv-01126-RGA (the “Lenovo US Case”)¹; one pending in the Northern District of California (*Universal Connectivity Technologies Inc. v. HP Inc.*, No. 4:24-cv-04097-YGR (the “HP Case”))²; and one pending in the Western District of Texas (*Universal Connectivity Technologies Inc. v. Dell Inc.*, No. 1:23-cv-01506-RP (the “Dell Case”))³. Lenovo Group Limited (“LGL”), while not a Petitioner in the instant *inter partes* review

¹ Lenovo US case is a declaratory judgment action filed by LGL’s wholly-owned, U.S.-based subsidiary Lenovo (United States) Inc., over a year after the LGL Case was filed. On December 2, 2024, UCT filed a Motion to Dismiss the Lenovo US Delaware action based on the first-to-file rule. See Case No. 1:24-cv-01126-RGA, Dkt. 10. Lenovo US filed its response on January 6, 2025, and UCT filed its reply on January 21, 2025.

² HP filed a motion to stay in the HP Case which was denied. See EX2002, Civil Minutes, HP Case, Dkt. No. 92.

³ Dell filed a motion to stay in the Dell Case which was granted. See EX2003, Order, Dell Case, Dkt. No. 69.

request, is the parent of Petitioner Lenovo (United States) Inc. (“Lenovo US”) and has been identified as a real party-in-interest. *See* Petition at 1. The LGL Case is proceeding ahead of the other three cases, with a jury trial set to begin in November 2025. LGL has not filed a motion to stay in the LGL Case, nor is there any evidence to suggest a stay would be granted if such a motion was filed.

The LGL Case is not in its early stages. Jury selection is scheduled for later this year, on November 3, 2025. *See* EX2001, Docket Control Order, LGL Case, Dkt. 27 (June 12, 2024), at 1. This is “a deadline that cannot be changed without an acceptable showing of good cause. Good cause is not shown merely by indicating that the parties agree that the deadline should be changed.” *Id.* at 5. Fact discovery—including extensive third-party discovery—is ongoing. An institution decision on the ’103 IPR Petition is not due until April 2025. By that date, the parties will have substantially completed the claim construction process, with the *Markman* hearing scheduled for May 12, 2025. *See id.* at 4. A Final Written Decision would not be due until April 2026, five (5) months after trial is scheduled to begin. *See id.* at 1.

It is unlikely that a stay would be granted in the LGL Case at this time. *Trover Group, Inc. v. Dedicated Micros USA*, No. 2:13-cv-1047-WCB, 2015 WL 1069179, at *6 (E.D. Tex. Mar. 11, 2015) (Bryson, J.) (“This Court’s survey of cases from the Eastern District of Texas shows that when the PTAB has not yet acted on a petition for inter partes review, the courts have uniformly denied motions for a stay.”); *see also Samsung Elecs. Co. Ltd. v. Evolved Wireless LLC*, IPR2021-00950, Paper 10 at 10-11 (PTAB Nov. 29, 2021) (“*Evolved*”) (finding this factor weighed in favor of denial and denying institution where patent owner showed a stay was unlikely based on the advanced stage of the case and the court’s past decisions denying stays); *Samsung Elecs. Co. Ltd. v. Clear Imaging Research, LLC*, IPR2020-0152, Paper 12 at 12-13 (PTAB Mar. 3, 2021) (denying institution because, in part, Judge Gilstrap deemed unlikely to stay a case in similar circumstances).

The Eastern District of Texas is likely to find that a stay in this situation would unduly prejudice UCT, disfavoring a stay. *See, e.g., MyPort, Inc. v. Samsung Electronics Co., Ltd., et al.*, No. 2:22-cv-00114-JRG, Dkt. No. 73 (E.D. Tex. June 12, 2023) at 4 (Noting that patent owner has an interest in the timely enforcement of its patent rights and that

granting a stay could delay the case by nearly two years where the PTAB decision is not due until over two months after jury trial is set to begin.). The district court is also likely to find that the stage of litigation disfavors a stay. As noted above, by the date an institution decision is due in this proceeding, the parties will have substantially completed claim construction in the district court litigation and, as further evidenced by the docket sheet, a substantial amount of work and financial resources have been invested in the district court case. Under similar circumstances, the district court has found that the stage of litigation disfavors a stay. *Id.* at 5.

Moreover, because LGL has asserted multiple invalidity theories and there are other defendants who are asserting invalidity defenses, a stay in the district court would be unlikely to simplify the issues. As district courts have recognized, when a party has raised multiple invalidity theories that will not go before the PTAB, a stay would leave in limbo these invalidity theories that will not go before the Board, weighing against a stay. *Id.* at 5-6.

As explained by the Board, a stay of the district court litigation pending resolution of the PTAB proceedings “allays concerns about

inefficiency and duplication of efforts.” *Fintiv I* at 6; *Fintiv II* at 12. But here, the district court in the LGL case has not stayed the pending litigation, nor is there any evidence that a stay will be granted. Allowing this IPR to proceed simultaneously with the district court litigation in the LGL case would be wasteful and inefficient.⁴ This factor weighs against institution.

B. Factor 2: The proximity of the court’s trial date to the Board’s projected statutory deadline for a final written decision.

“If a district court’s trial date is earlier than the Board’s projected statutory deadline for a final written decision, the Board generally has weighed this fact in favor of exercising discretion to deny institution.” *T-Mobile USA, Inc., et al., v. Wireless Alliance*, IPR2024-00608, Paper 16 (PTAB Sept. 3, 2024) (exercising discretion to deny institution of *inter partes* review). The ’103 Petition was filed on October 1, 2024, a decision

⁴ While the HP case and the Dell case do not have a matching schedule to the LGL case, the resources expended in the LGL case are nonetheless wasteful and inefficient as all the Petitioners have taken a predominantly common approach with respect to prior art invalidity in their respective invalidity contentions for the ’103 Patent. *Compare* EX2004, Invalidity Contentions, LGL Case, at 171-217, *with* EX2005, Invalidity Contentions, Dell Case, at 169-215, *with* EX2006, Invalidity Contentions, HP Case, at 139-173.

whether to institute is expected approximately on April 30, 2025, and, if instituted, the statutory deadline for a final written decision is April 30, 2026, which can be extended to October 30, 2026, for good cause or in the case of joinder. 37 C.F.R. § 42.100.

Jury selection in the LGL Case is scheduled to begin on November 3, 2025. *See* EX2001, at 1. This is “a deadline that cannot be changed without an acceptable showing of good cause. Good cause is not shown merely by indicating that the parties agree that the deadline should be changed.” *Id.*, at 5.

Even if the Board disregards the scheduled trial date, an analysis of the current median time-to-trial statistics still weighs against institution.⁵ *See* EX2007, U.S. District Courts—Federal Court Management Statistics—Profiles—During the 12-Month Periods Ending September 30, 2019 through 2024. The most recent statistics, for a 12-month period ending September 30, 2024, show a median time-to-trial in

⁵ “The Guidance Memo provides that the parties may also present the most recent statistics on median time-to-trial for civil actions in the relevant district court.” *T-Mobile*, IPR2024-00608, Paper 16 at 13 (citing the June 21, 2022 Memorandum “Interim Procedure for Discretionary Denials in AIA Post Grant Proceedings with Parallel District Court Litigation”).

the Eastern District of Texas of 21.9 months. *Id.* at 35. Accordingly, the projected trial date for purposes of *Fintiv* in accordance with Director’s June 21, 2022 Memorandum on Discretionary Denials would be December 26, 2025—close to the scheduled trial date and more than four months before the expected timing of a Final Written Decision if proceedings are instituted. The Board recently found that this weighed in favor of exercising discretionary denial where the underlying litigation was also in the Eastern District of Texas and the projected trial date was prior to the date when the final written decision would be due. *See, e.g., T-Mobile*, IPR2024-00608, Paper 16 at 13 (“Because the district court would address issues relating to the validity of the ’662 patent in a trial that, by any measure, would occur many months before we would issue a final written decision, we weigh the second *Fintiv* factor as favoring discretionary denial.”).

Accordingly, this factor weighs against institution.

C. Factor 3: The parties and the courts have made a substantial investment in the parallel proceeding.

This factor 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 (emphasis added). For

example, “if, at the time of the institution decision, the district court has issued substantive orders related to the patent at issue in the petition,” this factor favors denial. *Id.* at 9-10. Claim construction orders entered by the district court likewise “indicate that the court and parties have invested sufficient time in the parallel proceeding to favor denial.” *Id.* at 10.

As discussed above, fact discovery between the parties is ongoing in the LGL Case. In addition, UCT has conducted extensive third-party discovery from LGL’s suppliers. By the date the institution decision is due, the parties will have substantially completed the claim construction process with the *Markman* hearing scheduled for May 12, 2025. *See* EX2001, at 4. As shown in the district court docket sheet, the courts and the parties have made a substantial investment in the LGL Case to date: the parties have already briefed, and the Court has denied, LGL’s Motion to Dismiss (*see* EX2008, Memorandum Opinion and Order, LGL Case, Dkt. No. 47) and the parties have already briefed, and the Court has granted, UCT’s Motion to Compel (*see* EX2009, Order, LGL Case, Dkt. No. 44).

Thus, the parties and the district court will have invested significant time and resources in the litigation by the time the Board reaches an institution decision in this matter. This favors discretionary denial. *Fintiv I* at 10; *Fintiv II* at 13-14 (finding that “the level of investment and effort already expended on claim construction and invalidity contentions” favored denial).

D. Factor 4: There is complete overlap between this IPR and the LGL Case

This factor looks at “whether all or some of the claims challenged in the petition are also at issue in district court,” and whether the “petition includes the same or substantially the same claims, grounds, arguments, and evidence” as the parallel district court case. *Fintiv I* at 12-13.

Here, Petitioners have challenged all of the asserted claims of the ’103 Patent. And, LGL’s Preliminary Invalidity Contentions in the district court case identify the same Zhu, DisplayPort 1.2, and Lyle references asserted in the Petition as prior art that allegedly renders obvious the challenged independent claims (Grounds 1-5). *See* EX2004, Invalidity Contentions, LGL Case, at 172-177. Likewise, the other two Petitioners—HP and Dell—also identified the same Zhu, DisplayPort 1.2, and Lyle references in their invalidity contentions. *See* EX2005,

Invalidity Contentions, Dell Case, at 170-175; EX2006, Invalidity Contentions, HP Case, at 140-144.

Thus, there is complete overlap with respect to the arguments and evidence presented here and in the district court litigation for all. That the district court case involves additional prior art references not asserted in this IPR is “not relevant to the question of the degree of overlap for this factor.” *Fintiv II* at 15. The fact that the Petition challenges additional claims does not warrant institution. *See, e.g., Next Caller Inc. v. TRUSTID, Inc.*, IPR2019- 00961, Paper 10 at 14 (PTAB Oct. 16, 2019) (denying institution where the district court case involved only a subset of the challenged claims).

Notably, none of the Petitioners have stipulated to not pursue in a parallel district court proceeding the same grounds as in the petition or any grounds that could have reasonably been raised in the petition (*i.e.*, a Sotera stipulation). Had the Petitioners done so, that could mitigate concerns of potentially conflicting decisions and duplicative efforts between the district court and the PTAB. *See Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 at 18-19 (PTAB Dec. 1, 2020) (precedential as to § II.A). Those concerns are particularly relevant

when, as here, the Petitioners are asserting the same prior art in the district court and the PTAB, guaranteeing duplicative efforts between the district court and the PTAB and potentially conflicting decisions.

In sum, this IPR and the district court case involve the same claims—which will be construed under the same *Phillips* standard—and the same prior art (and, as discussed below, the same parties), which raises substantial “concerns of inefficiency and the possibility of conflicting decisions.” *Fintiv I* at 12. This factor thus weighs in favor of a discretionary denial. *See Fintiv II* at 15; *NHK Spring* at 19–20.

E. Factor 5: The Petitioners and Real Parties-in-Interest are parties to the District Court Cases

There is no dispute that real party-in-interest LGL, parent of Lenovo US, is the defendant in the LGL Case. There is also no dispute that Lenovo US is the plaintiff in the Lenovo US Case, or that Dell and HP are defendants in the Dell Case and HP Case, respectively. “Because the petitioner and the defendant in the parallel proceeding are the same party, this factor weighs in favor of discretionary denial.” *Fintiv II* at 15.

F. Factor 6: Other circumstances that impact the Board’s exercise of discretion, including the merits.

The Board may consider other circumstances in the exercise of its

discretion, including the merits of the case. *Fintiv I* at 14. However, “a full analysis of the merits is not necessary to evaluate this factor.” *Fintiv II* at 17. And, it is important to note that the compelling merits standard is a higher standard than the standard for institution set by statute. “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.” *OpenSky Indus., LLC v. VLSI Tech. LLC*, IPR2021-01064, Paper 102, 49 (PTAB Oct. 4, 2022) (precedential). Petitioners have not done so here, and, when considered together with the five other *Fintiv* factors discussed above, this factor also favors discretionary denial.

III. CONCLUSION

As discussed *supra*, all of the *Fintiv* factors strongly favor discretionary denial, and the Petition should be denied for this reason alone.

Date: January 30, 2025

Respectfully submitted,

/Brett Cooper/

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CERTIFICATION REGARDING WORD COUNT

Pursuant to 37 C.F.R. § 42.24(d), Patent Owner certifies that there are no more than 2,906 words in the paper excluding the portions exempted under 37 C.F.R. § 42.24(a)(1).

Dated: January 30, 2025

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e)(1))

The undersigned hereby certifies that the above document was served on January 30, 2025, by filing this document through the Patent Trial and Appeal Case Tracking System as well as delivering a copy via electronic mail upon the following attorneys of record for the Petitioner:

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