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Paper 17
Date: April 11, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EUNSUNG GLOBAL CORP.,
Petitioner,

v.

HYDRAFACIAL LLC,
Patent Owner.

IPR2024-01491
Patent 11,865,287 B2

Before ERIC C. JESCHKE, CYNTHIA M. HARDMAN, and JAMIE T. WISZ, *Administrative Patent Judges.*

WISZ, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

ORDER
Granting Patent Owner's Motion to Seal and Entering Protective Order
37 C.F.R. §§ 42.14, 42.54

I. INTRODUCTION

Eunsung Global Corp. ("Petitioner") filed a Petition (Paper 2, "Pet.") requesting an *inter partes* review of claims 1–12, 14–20, 22–26, 28–37, and 39–45 of U.S. Patent No. 11,865,287 B2 (Ex. 1001, "the '287 patent"). HydraFacial LLC ("Patent Owner") filed a Preliminary Response (Paper 7, "Prelim. Resp."). With Board authorization, Petitioner filed a Preliminary Reply (Paper 9, "Prelim. Reply"), and Patent Owner filed a Preliminary Sur-reply (Paper 12, "PO Prelim. Sur-reply") addressing 35 U.S.C. § 325(d) and Patent Owner's evidence of objective indicia of non-obviousness. With further Board authorization, Patent Owner filed a Supplemental Brief (Paper 15, "*Fintiv* Brief"), and Petitioner filed a Supplemental Reply (Paper 16, "*Fintiv* Reply") addressing the impact of the USPTO's February 28, 2025 recission of the June 2022 memorandum titled, "Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation" ("Interim *Fintiv* Procedure") on discretionary denial.

Under 35 U.S.C. § 314(a), the Board may not authorize an *inter partes* review to be instituted unless "the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." After considering the briefing and the evidence of record, we exercise our discretion under 35 U.S.C. § 314(a) and deny institution of an *inter partes* review.

Additionally, we grant Patent Owner's motion to seal and enter a protective order. *See infra* Section III.C.

II. BACKGROUND

A. Real Parties-in-Interest

Petitioner identifies itself, Eunsung Global Corp., as the real party-in-interest. *See* Pet. 97. Patent Owner identifies HydraFacial LLC and The Beauty Health Company as the real parties-in-interest. Paper 4 (Patent Owner's Mandatory Notices), 1.

B. Related Matters

The parties identify the following International Trade Commission ("ITC") and district court proceedings as involving the '287 patent: *Certain Hydrodermabrasion Systems and Components Thereof*, Inv. No. 337-TA-1408 (ITC) (the "ITC proceeding"); *Certain Hydrodermabrasion Systems and Components Thereof II*, Inv. Nos. 337-TA-1416 (ITC); *HydraFacial LLC v. Luvo Medical Technologies et al.*, 2-24-cv-00587 (D. Utah) (the "district court proceeding"); *HydraFacial LLC f/k/a Edge Systems LLC v. Sinclair Pharma Limited et al.*, 2-24-cv-06250 (C.D. Cal.); *HydraFacial LLC f/k/a Edge Systems LLC v. Aesthetic Management Partners, LLC et al.*, 2-24-cv-02480 (W.D. Tenn.); *HydraFacial LLC f/k/a Edge Systems LLC v. Cartessa Aesthetics, LLC*, 2-24-cv-04253 (E.D.N.Y.); *HydraFacial LLC f/k/a Edge Systems LLC v. Medicreations LLC*, 2-24-cv-00855 (D. Nev.); and *HydraFacial LLC et al. v. eMIRAmed USA LLC et al.*, 8-24-cv-01865 (C.D. Cal.). Pet. 97; Paper 4, 2–3.

C. The '287 Patent

The '287 patent is titled "Devices and Methods for Treating Skin." Ex. 1001, code (54). In the background section, the '287 patent explains that "[d]ermabrasion refers to a procedure in which the surface of the skin is removed due to mechanical rubbing by a handpiece with an abrasive element that is often in the form of a burr, wheel, or disc" and that it "tends to be

painful and messy." *Id.* at 1:48–52. The procedure "leaves the skin red and raw-looking" and "removed skin can take several months to regrow and heal." *Id.* at 1:53–55. The '287 patent explains that a suction element can "decrease the mess caused by the process waste, such as removed skin and blood." *Id.* at 1:58–60.

As further background, the '287 patent explains that "[m]icrodermabrasion refers generally to a procedure in which the surface of the skin is removed due to mechanical rubbing by a handpiece emitting a stream of sand or grit." *Id.* at 1:65–67. As an example of microdermabrasion, the '287 patent describes using a handpiece "to direct an air flow containing tiny crystals of aluminum oxide, sodium chloride, or sodium bicarbonate." *Id.* at 2:1–3. The '287 patent also teaches that "[m]icrodermabrasion removes moisture from the skin, so the procedure is always followed by the application of moisturizing creams." *Id.* at 2:16–18.

The '287 patent discloses "an apparatus for treating skin" that "deliver[s] fluid from at least one of the plurality of fluid sources to [a] handpiece assembly." Ex. 1001, 2:26–35. The apparatus has "a console with a user input device," a "handpiece assembly" that is "configured to treat skin," a "fluid line" that "provides fluid communication between the console and the handpiece assembly," and a "manifold system" that is "coupled to the console and controlled by the user input device, such as a computer, touchscreen, keyboard, and the like." *Id.* "The manifold system is configured to hold releasably a plurality of fluid sources and deliver fluid from at least one of the plurality of fluid sources to the handpiece assembly." *Id.* at 2:33–35. We reproduce Figure 1 from the '287 patent below.

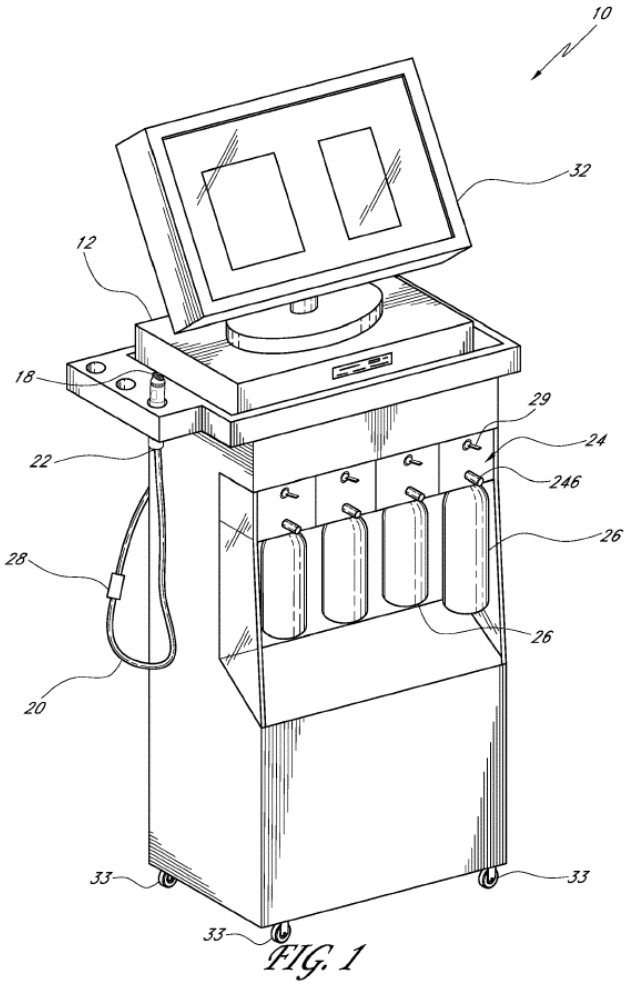

FIG. 1

Figure 1 "illustrates a skin treatment system 10" that includes a console 12, a handpiece assembly 18 connected to the console via a line 20, and a manifold system 24 that can control the flow of treatment material from containers 26 into and through line 20. *Id.* at 5:24–30.

D. Challenged Claims

Petitioner challenges claims 1–12, 14–20, 22–26, 28–37, and 39–45 of the '287 patent. Pet. 1. Of the challenged claims, claims 1, 11, 22, 26, and 37 are independent. Claim 1 is illustrative of the challenged claims, and is reproduced below:

[1.pre] A system for treating skin, the system comprising:

[1.1] a console configured to receive a first container and at least one additional container;

[1.2] a handpiece configured to contact skin tissue of a subject; and

[1.3] a block in the console, wherein the block is:

configured to selectively receive fluid from the first container when the first container is connected to the console;

configured to selectively receive fluid from the at least one additional container when the at least one additional container is connected to the console; and,

configured to selectively be in fluid communication with the handpiece through a first conduit when the handpiece is connected to the console;

[1.4] a vacuum source, wherein the console comprises the vacuum source; and

[1.5] wherein the handpiece is configured to be in fluid communication with the vacuum source through a second conduit when the handpiece is connected to the console;

[1.6] wherein when the handpiece, the first container, the at least one additional container and a waste container are each connected to the console, the first container contains a first treatment fluid, and the at least one additional container contains an additional treatment fluid,

[1.7] the handpiece is in fluid communication with the vacuum source and the waste container through the second conduit; and

[1.8] the system is configured to deliver the first treatment fluid contained in the first container and the additional treatment fluid contained in the at least one additional container to the handpiece sequentially.

Ex. 1001, 21:25–57 (annotated with bracketed labels corresponding to the labels in the Petition (*see* Pet. vi, "Listing of Claims")).

E. The Asserted Grounds of Unpatentability

Petitioner asserts that claims 1–12, 14–20, 22–26, 28–37, and 39–45 of the '287 patent are unpatentable on the following grounds:

Ground	Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1A	1–3, 8–12, 14–16, 22, 23, 26, 28, 29, 34–37, 39, 40, 45	103	Karasiuk,[1] Palmer[2]
1B	1–10, 12, 17–20, 22–26, 28–36, 40–44	103	Karasiuk, Palmer, Trueba[3]
2A	1–3, 8–12, 14–16, 22, 23, 26, 28, 29, 34–37, 39, 40, 45	103	Greenberg[4]
2B	1–10, 12, 17–20, 22–26, 28–36, 40–44	103	Greenberg, Trueba

Petitioner also relies on the Declaration of Eric Simon (Ex. 1003). Patent Owner relies on the Declarations of Karl R. Leinsing (Ex. 2001) and Elliot Duboys (Ex. 2003).

[1] Karasiuk, US 2003/0212415 A1, published Nov. 13, 2003 (Ex. 1004, "Karasiuk").
[2] Palmer et al., U.S. Patent No. 5,199,604, issued Apr. 6, 1993 (Ex. 1005, "Palmer").
[3] Trueba, U.S. Patent No. 6,684,880, issued Feb. 3, 2004 (Ex. 1008, "Trueba").
[4] Greenberg, US 2003/0093089 A1, published May 15, 2003 (Ex. 1006, "Greenberg").

III. ANALYSIS

A. Discretionary Denial Under § 314(a)

Institution of an *inter partes* review ("IPR") under 35 U.S.C. § 314(a) is discretionary. *See* 35 U.S.C. § 314(a) (stating "[t]he Director may not authorize an *inter partes* review to be instituted unless the Director determines that the information presented in the petition . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition" (emphasis added)); *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 273 (2016) ("[T]he agency's decision to deny a petition is a matter committed to the Patent Office's discretion."); *SAS Inst. Inc. v. Iancu*, 584 U.S. 357, 366 (2018) ("[Section] 314(a) invests the Director with discretion on the question whether to institute review . . . ." (emphasis omitted)); *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) ("[T]he PTO is permitted, but never compelled, to institute an IPR proceeding.").

Patent Owner asserted the '287 patent against Petitioner in both the district court proceeding and the ITC proceeding.[5] *Fintiv* Brief 1, 2, 4; *Fintiv* Reply 1–3. The district court proceeding has been stayed pending resolution of the ITC proceeding. Ex. 1101, 2. Petitioner entered a consent order on January 21, 2025 and withdrew from the ITC proceeding. *Fintiv* Brief 4. Patent Owner alleges that Petitioner's exclusive distributor, Cartessa Aesthetics, LLC ("Cartessa"), remains in the ITC proceeding. *Id.* at 1, 2, 4.

[5] *HydraFacial LLC v. Luvo Medical Technologies et al.*, 2-24-cv-00587 (D. Utah); *Certain Hydrodermabrasion Systems and Components Thereof*, Inv. No. 337-TA-1408 (ITC).

Patent Owner argues that we should exercise our discretion to deny institution in this case under 35 U.S.C. § 314(a) because the pending investigation at the ITC will conclude before a final written decision will issue in this case. *See Fintiv* Brief 1–2 (citing *Apple, Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential) ("*Fintiv*")). According to Patent Owner, with the rescission of the Interim *Fintiv* Procedure, the Board has authority to discretionarily deny institution in light of a parallel ITC proceeding. *Id.* at 1. Patent Owner argues that the ITC proceeding "will assess the '287 patent's validity based on the exact same prior art and arguments that [Petitioner] asserted in this IPR." *Id.* According to Patent Owner, "the *Fintiv* factors overwhelmingly favor denying institution," and in order to "conserve Board and party resources and avoid potentially conflicting rulings, the Board should exercise discretion and deny institution." *Id.* at 1–2.

Petitioner argues that it is no longer a party to the ITC proceeding and that *Fintiv* favors institution. *Fintiv* Reply 1, 2. Petitioner also contends that *Fintiv* should not apply in the case of parallel ITC proceedings "because invalidity rulings at the ITC carry no preclusive effect on other forums." *Id.* at 1 (emphasis omitted).

When determining whether to exercise discretion to deny institution in view of a parallel litigation, we consider the following 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 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.

Fintiv, Paper 11 at 5–6. According to *Fintiv*, these factors relate to "efficiency, fairness, and the merits" and require the Board to take "a holistic view of whether efficiency and integrity of the system are best served by denying or instituting review." *Id.* at 6.

As an initial matter, we address Petitioner's argument that *Fintiv* should not apply in the case of parallel ITC proceedings. *See Fintiv* Reply 1–2. On March 24, 2025, Chief Administrative Patent Judge Scott R. Boalick issued a memorandum titled, "Guidance on USPTO's Recission of 'Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation'" ("March 2025 Guidance Memo"),[6] which provides guidance to members of the PTAB in light of the Office's February 28, 2025 recission of the Interim *Fintiv* Procedure. The March 2025 Guidance Memo clarifies that "the Board will apply the *Fintiv* factors when there is a parallel proceeding at the [ITC]" because, "[a]s the *Fintiv* decision explains, although an ITC final invalidity determination does not have preclusive effect, it is difficult as a practical matter to assert patent claims that the ITC has determined are invalid." March 2025 Guidance Memo, 2. Therefore, we consider the ITC proceeding when applying the *Fintiv* factors, as set forth below.

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

1. Likelihood of a Stay

The district court has stayed its proceeding until the conclusion of the ITC proceeding and any appeal.[7] Ex. 1101, 2. Petitioner indicates that the ITC proceeding was stayed as to Petitioner prior to their termination from the case. *Fintiv* Reply 2 (citing Ex. 1106). However, the ITC proceeding is not stayed as to the remaining parties and a stay has not been requested. *Fintiv* Brief 2.

There is no evidence that the pending ITC proceeding is likely to be stayed. Indeed, a stay seems unlikely given that the trial in the ITC proceeding began on April 9, 2025. *Id.* Accordingly, despite the stay of the district court litigation, this factor weighs in favor of exercising discretion to deny institution.

2. Proximity of Trial Date to Projected Statutory Deadline

Patent Owner argues that the ITC trial began on April 9, 2025 and is expected to conclude on April 15, 2025. *Fintiv* Brief 2. According to Patent Owner, the Administrative Law Judge ("ALJ") in the ITC must issue her decision on validity by August 17, 2025, and the Commission will issue the final determination by December 17, 2025, which dates are approximately eight months and four months, respectively, before the Board's projected final written decision deadline if a trial were instituted. *Id.* (citing Ex. 2048, vi.).

Petitioner argues that the district court case is stayed with no trial date set. *Fintiv* Reply 2. Although Petitioner acknowledges that, in the ITC

[7] The district court case was initially stayed, at least in part, due to the mandatory stay provision of 28 U.S.C. § 1659, which requires a stay of district court litigation pending the resolution of an ITC proceeding. *See* Ex. 1101, 2; *Fintiv*, Paper 11 at 8.

proceeding, an initial determination is due in August 2025 and a final determination is due in December 2025, Petitioner notes that there will then be another 60 days for presidential review, and argues that "[e]xtensions of these due dates are possible and, if an exclusion order is issued, litigation before Customs would be an option" such that "the Board's statutory deadline (here April 2026) compares favorably." *Id.* (citing Ex. 1107; Ex. 1108).

The March 2025 Guidance Memo explains that, "instituting an IPR or PGR where the ITC has set a target date for completing its investigation (i.e., the full Commission's final determination) to occur earlier than the Board's deadline to issue a final written decision in a challenge involving the same patent claims means that multiple tribunals may be adjudicating validity at the same time, which may increase duplication and expenses for the parties and the tribunals." March 2025 Guidance Memo, 2. The Memo further explains that, "[t]hus, the Board is more likely to deny institution where the ITC's projected final determination date is earlier than the Board's deadline to issue a final written decision." *Id.* In this case, despite the stay of the district court case, the ITC is scheduled to reach a final determination in December 2025, several months before our final written decision deadline of April 2026. This factor weighs in favor of exercising discretion to deny institution.

3. Investment in the Parallel Proceeding

Patent Owner argues that "[t]he entirety of the ITC proceeding—including the parties' investment in preparing and presenting arguments at trial, the ALJ's investment in the decision, and the Commission's investment in reaching its decision—will be completed before the Board issues a FWD." *Fintiv* Brief 2–3.

Petitioner argues that no investment has occurred in the district court case and, because the ITC proceeding was stayed as to Petitioner prior to Petitioner's withdrawal, limited investment related to Petitioner occurred before the ITC. *Fintiv* Reply 3 (citing Ex. 1106; Ex. 1107, 17; Ex. 1111, 7). Petitioner also argues that it diligently filed its Petition less than 3 months after the ITC investigation was instituted. *Id.* at 4.

It is undisputed that the ITC and Patent Owner have made substantial investments in the ITC proceeding, in view of the trial scheduled for April 9, 2025. Although Petitioner was diligent in filing its Petition less than 3 months after the ITC investigation was instituted, this diligence does not outweigh the substantial investment made in the ITC proceeding. Thus, this factor weighs in favor of exercising discretion to deny institution.

4. Overlap of Issues

Patent Owner argues that this factor favors denying institution because Petitioner "seeks to relitigate the same issues on the same claims, relying on the same prior art and invalidity grounds as those in the ITC proceeding." *Fintiv* Brief 3. Patent Owner also points out that the ITC invalidity contentions incorporate by reference the Petition and copy many of its annotated figures. *Id.* at 3–4 (citing Ex. 2049, 4, 14–18, 43–57).

If the Board institutes review, Petitioner agrees to a *Sotera* stipulation in the district court litigation, which, Petitioner argues, strongly favors institution. *Fintiv* Reply 4; *see Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 at 18–19 (PTAB Dec. 1, 2020) (precedential as to § II.A). Petitioner also argues that, in order to demonstrate overlap, Patent Owner submitted excerpts from a supplemental validity response filed in October 2024, "which does not confirm the grounds that will actually be presented at the ITC hearing." *Id.* Petitioner further alleges that the Petition

challenges 41 claims, while less than half of those claims are being asserted at the ITC, with further reductions likely. *Id.* According to Petitioner, "[b]ecause the petition covers at least 21 claims that will not be addressed by the ITC, institution is warranted." *Id.*

Petitioner alleges that the Petition covers claims that are not being addressed in the ITC; however, Petitioner does not cite to anything to support this contention and the only evidence of record shows the same claims being asserted in the ITC as being challenged in the Petition. *See* Ex. 1109, 7; Ex. 2049, 1. Further, even if fewer claims are pursued in the ITC proceeding than in the IPR, if the art and arguments substantially overlap, there would still be a substantial duplication of efforts. To that point, the only evidence of record setting forth the invalidity arguments being made at the ITC indicates that the same prior art is being asserted, resulting in substantial overlap with the art and arguments being asserted in the Petition (including an incorporation by reference of the IPR Petition in the ITC proceeding). *See* Ex. 2049, 4, 14–18, 43–57.

As stated in *Fintiv*, "if 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" because "concerns of inefficiency and the possibility of conflicting decisions [are] particularly strong." *Fintiv*, Paper 11 at 12. Although Petitioner offers a *Sotera* stipulation in the district court case, this stipulation does not alleviate the overlap between the Petition and the co-pending ITC proceeding. Thus, this factor weighs in favor of exercising discretion to deny institution.

5. Identity of Parties

Petitioner is a party to the district court litigation but is not currently a party to the ITC proceeding, having withdrawn by entering a consent order

on January 21, 2025. *Fintiv* Brief 4; Ex. 1109. Patent Owner contends that, despite Petitioner's withdrawal from the ITC proceeding, Petitioner's exclusive distributor, Cartessa, continues to assert the same invalidity grounds as those presented in the Petition. *Fintiv* Brief 4. Patent Owner asserts that, "[g]iven the close relationship between [Petitioner] and Cartessa in sourcing and selling of the allegedly infringing products—and their shared opportunity to litigate validity—Cartessa effectively stands in for [Petitioner] in the ITC proceeding" and "should be treated functionally as the same party." *Id.* Patent Owner also cites to *Fintiv*'s statement that, "[e]ven when a petitioner is unrelated to a defendant, . . . if the issues are the same as, or substantially similar to, those already or about to be litigated, or other circumstances weigh against redoing the work of another tribunal, the Board may, nonetheless, exercise the authority to deny institution." *Id.* (citing *Fintiv*, Paper 11 at 14).

Petitioner argues that it was terminated from the ITC proceeding and that Patent Owner did not submit any evidence to substantiate the argument that Petitioner and Cartessa have a close relationship. *Fintiv* Reply 4. Petitioner further argues that Cartessa has no involvement in the IPR and that, since being terminated from the ITC investigation, Petitioner has not been involved in Cartessa's litigation with Patent Owner. *Id.* at 4–5. According to Petitioner, "[Petitioner] and Cartessa are represented by different counsel and neither party controls or funds the other" and Petitioner "cannot direct or control Cartessa's invalidity case at the ITC, nor can Cartessa direct or control [Petitioner's] arguments here." *Id.* at 5. Petitioner concludes that "the parties do not have a significant relationship for purposes of discretionary denial and Cartessa's presentation of invalidity before the ITC does not represent [Petitioner's] interest." *Id.*

Petitioner does not deny that it has a business relationship with Cartessa, and it appears to be undisputed that Cartessa is a U.S. distributor of Petitioner's allegedly infringing product. *See* Ex. 3001, 13. However, given that Petitioner is not itself currently a party to the ITC litigation, we find that this factor neither weighs in favor of or against discretionary denial.

6. Other Circumstances, Including the Merits

The parties dispute whether the merits favor institution or discretionary denial. *Fintiv* Brief 4–5; *Fintiv* Reply 5. Patent Owner also argues that "[f]airness considerations further support denying institution" because the IPR "imposes an undue burden on [Patent Owner], which pursued enforcement through the ITC, where [Petitioner] was a party until just seven weeks ago." *Fintiv* Brief 5. According to Patent Owner, Petitioner "was afforded a full and fair opportunity to present its case at the ITC alongside its exclusive distributor but chose to withdraw" and any assertion that Petitioner would be prejudiced by discretionary denial "is flawed" because Petitioner voluntarily exited the ITC proceeding and "should not be rewarded for procedural gamesmanship." *Id.*

Petitioner argues that "efficient use of Board resources favors institution" because Petitioner has filed IPRs for three other patents asserted against it in district court that use the same prior art as this IPR. *Fintiv* Reply 5. According to Petitioner, "[i]t would be most efficient for the Board to consider these IPRs together, which could efficiently resolve several stayed litigations consistent with the goals of the AIA." *Id.*

We find that Petitioner's obviousness challenges meet the standard for institution. We also will not speculate as to whether the other three petitions referenced by Petitioner will be instituted. Taken together with the other

considerations raised by the parties, on balance, we find this factor neither weighs in favor of nor against discretionary denial.

7. Holistic Assessment of Factors

Because the analysis is fact-driven, no single factor is determinative of whether we exercise our discretion and deny institution under 35 U.S.C. § 314(a). Given the advanced stage of litigation in the ITC and the substantial overlap of issues, after weighing all of the factors and taking a holistic view of the relevant circumstances of this proceeding, we determine that instituting an *inter partes* review would be an inefficient use of the Board's and parties' resources, and we exercise discretion to deny institution under 35 U.S.C. § 314(a).

B. Discretionary Denial under 35 U.S.C. § 325(d)

Patent Owner asserts that we should deny the Petition under 35 U.S.C. § 325(d) because the Petition presents substantially the same art and arguments that the Office previously analyzed and fails to show that the Office erred during prosecution. *See* Prelim. Resp. 58–68. Because we exercise discretion to deny institution under 35 U.S.C. § 314(a) for the reasons discussed above, we do not need to reach Patent Owner's argument regarding denial under § 325(d).

C. Patent Owner's Motion to Seal and Entry of Protective Order

Patent Owner filed a combined Motion to Seal and for Entry of Protective Order (Paper 8, "Mot."), requesting entry of a modified version of the Default Protective Order (Ex. 2024) and seeking to seal Exhibits 2009 and 2010 as well as portions of Patent Owner's Preliminary Response discussing Patent Owner's allegedly confidential information. Patent Owner indicates that the Motion is "partially opposed" by Petitioner; however, Petitioner did not file any opposition. Mot. 2.

Patent Owner explains that the information it seeks to seal consists of "confidential financial data, such as sales revenue for numerous products" and, "[i]f such information were publicly accessible, [Patent Owner's] competitors could exploit it to obtain an unfair competitive advantage." Mot. 2.

The standard for granting a motion to seal is "for good cause." 37 C.F.R. § 42.54(a). The moving party bears the burden to show entitlement to the requested relief and to establish that the information sought to be sealed is confidential information. *Id.* § 42.20(c). The "good cause" standard for granting a motion to seal reflects the strong public policy for making all information in an *inter partes* review open to the public. *Argentum Pharms. LLC v. Alcon Rsch., Ltd.*, IPR2017-01053, Paper 27 at 3 (PTAB Jan. 19, 2018) (informative). When assessing whether the standard has been met, we may consider whether the information at issue is truly confidential, whether harm would result upon public disclosure, and whether the interest in maintaining confidentiality as to the information outweighs the strong public interest in an open record. *Id.* at 3–4.

We have reviewed the documents at issue, and we agree with Patent Owner that they reflect confidential financial data, which meets the criteria set forth above. We find that Patent Owner's public filing of its redacted Patent Owner Preliminary Response (Paper 7) and redacted Savsani Declaration (Ex. 2009) strikes the right balance "between the public's interest in maintaining a complete and understandable file history and the parties' interest in protecting truly sensitive information." Consolidated Trial Practice Guide (Nov. 2019),[8] 19. Further, the general nature of Patent

[8] Available at https://www.uspto.gov/TrialPracticeGuideConsolidated.

Owner's reliance on the sealed exhibits is discernable from the public version of the Patent Owner Preliminary Response. *See generally* Paper 7.

Additionally, Patent Owner requests that we enter a modified version of the Default Protective Order (Ex. 2024). Mot. 2, 6–8. Patent Owner indicates that the Modified Protective Order "provide[s] protection similar to the Confidential Business Information designation in a protective order entered in a pending ITC Investigation to which [Petitioner] was a party." *Id.* at 2. Petitioner did not file an opposition to the Modified Protective Order.

For the reasons noted above, Patent Owner's Motion to Seal and for Entry of Protective Order is *granted*.

IV. CONCLUSION

For the forgoing reasons, we do not institute *inter partes* review, and we grant Patent Owner's Motion to Seal and for Entry of Protective Order.

V. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the Petition is *denied* as to all challenged claims of the '287 patent;

FURTHER ORDERED that no *inter partes* review is instituted; and

FURTHER ORDERED that Patent Owner's Motion to Seal and for Entry of Protective Order is *granted*.

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