UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAP AMERICA, INC.,
Petitioner,

v.

CYANDIA, INC.,
Patent Owner.

IPR2024-01496
Patent 8,595,641

PETITIONER'S SUPPLEMENTAL BRIEF REGARDING *FINTIV,*
PURSUANT TO THE BOARD EMAIL OF MARCH 5, 2025

Even if the Vidal Memo no longer controls, its rescission has little impact on this IPR. Petitioner's *Sotera* stipulation (EX1045) (factor 4), though not *Fintiv*-dispositive, still strongly favors institution, and factors 3 and 6 also favor institution. These factors outweigh the others, including factor 2 (trial date), especially since Petitioner was diligent in filing its Petitions roughly four months after being served the infringement contentions. The Board should thus institute IPR, as it has done in situations with an even earlier trial date and far more district court investment. *E.g., Samsung Elecs. Co. v. Acorn Semi, LLC*, IPR2020-01183, Paper 17 at 38-47 (PTAB Feb. 10, 2021) (instituting IPR, despite Judge Gilstrap having set trial ten months before the FWD deadline and the parties having completed invalidity expert reports and expert discovery, because of Petitioner's *Sotera* stipulation and diligence in filing petitions about four months after the infringement contentions).

Factor 1 (stay) is neutral as Petitioner will move to stay the litigation if IPR is instituted. *E.g.*, *Samsung*, IPR2020-01183, Paper 17 at 36-37.

Factor 2 (trial date) only slightly favors denial. The trial date is set for about six months before a FWD is due (Oct. 6, 2025 vs. Apr. 9, 2026) (EX2006, 1; Paper 3 at 1), but that date is uncertain due to the pending transfer motion and cross-motion. *Zynga Inc. v. IGT*, IPR2022-00199, Paper 11 at 13-14 (PTAB Jun. 14, 2022).

Factor 3 (investment) favors institution or, at best, is neutral (as argued by the POPR, Paper 6 at 10) because significant work remains on the prior art invalidity

issues in district court. While a *Markman* hearing is set for April 2nd, the court has not issued any substantive orders, held any hearings, or otherwise invested resources on prior art invalidity issues. Opening expert reports are not due until May 12th and expert discovery closes June 23rd. EX2006, 2-3. *Samsung Elecs. Am., Inc. v. Proxense, LLC*, IPR2021-01439, Paper 11 at 10-12 (PTAB Feb. 28, 2022). Petitions were filed diligently, roughly four months after infringement contentions (May 15 vs. Oct. 1) (EX2006, 4; Paper 3 at 1). *Samsung*, IPR2020-01183, Paper 17 at 40.

Factor 4 (overlap) strongly favors institution given the *Sotera* stipulation (EX1045). *Samsung*, IPR2020-01183, Paper 17 at 40-45. Also, most of the challenged claims will be dropped from district court. *See Cyandia, Inc. v. SAP Am., Inc.*, No. 2:24-cv-00096-JRG, ECF No. 68 at 2 (E.D. Tex. Jan. 23, 2025); *cf. Apple Inc. v. Seven Networks, LLC*, IPR2020-00156, Paper 10 at 17 (PTAB Jun. 15, 2020).

Factor 6 favors institution because the obviousness grounds are compelling, as confirmed by Patent Owner relying on strained claim constructions that contradict its infringement contentions and raising apparent anticipation arguments (that a single prior art embodiment allegedly does not disclose every claim element) without squarely addressing obviousness. Paper 6 at 15-38; Paper 8 at 2-9.

Respectfully submitted,

Dated: March 12, 2025

By: /Roy Chamcharas/
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CERTIFICATE OF SERVICE
IN COMPLIANCE WITH 37 C.F.R. § 42.6(e)(4)

The undersigned certifies that on March 12, 2025, Petitioner emailed copies of **Petitioner's Supplemental Brief Regarding *Fintiv*** to the following email addresses, which Patent Owner has agreed constitutes service. *See* Paper 4 (Patent Owner's Mandatory Notices).

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