UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
SAMSUNG ELECTRONICS CO., LTD.;
SAMSUNG ELECTRONICS AMERICA, INC.,
Petitioners,

v.

MULLEN INDUSTRIES LLC,
Patent Owner.

Case No. IPR2025-00018
U.S. Patent No. 11,122,418

PATENT OWNER'S AUTHORIZED RESPONSE TO PETITIONERS' REQUEST FOR REHEARING[1]

[1] Authorized pursuant to the PTAB's August 18, 2025 email to the parties in this proceeding. *See* Ex. 3102.

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I. THE ORDER PROPERLY EXERCISED THE DIRECTOR'S DISCRETION TO DENY INSTITUTION BASED ON A "HOLISTIC ASSESSMENT" AND "OVERALL WEIGHING" OF ALL OF THE EVIDENCE AND ARGUMENTS PRESENTED

The July 17, 2025 Order Granting Director Review, Vacating the Decision Granting Institution, and Denying Institution of *Inter Partes* Review ("Order") was correctly decided and should not be disturbed. It reflected sound exercise of the Director's discretion to deny institution of this proceeding based on a "holistic assessment" and "overall weighing" of all of the evidence and arguments presented (Order, at 3), which is the proper standard.[2]

Petitioners' request for rehearing of the Order ("Req.") is based on Petitioners' incorrect and misguided view that Petitioners are somehow entitled to institution as a matter of law. However, directly contrary to Petitioners' argument, the Supreme Court has held that a decision whether to institute review in *inter partes* review proceedings "is a matter committed to the Patent Office's discretion." *Cuozzo Speed Technologies, LLC v. Lee*, 136 S. Ct. 2131, 2140 (2016). In addition, the

[2] Acting Director Coke Morgan Stewart "delegated her authority as set forth in the Notice of Delegation in this case." Order, at n. 2. Accordingly, the Order exercising the Director's discretion was issued by Michelle N. Ankenbrand, Senior Lead Administrative Patent Judge. Order, at 1.

Supreme Court has held that statute ***bars review*** of a Director's institution decision where, as here, "the grounds for attacking the decision to institute *inter partes* review consist of questions that are closely tied to the application and interpretation of statutes related to the Patent Office's decision to initiate *inter partes* review." *Thryv, Inc. v. Click-to-Call Techs., LP*, 140 S. Ct. 1367, 1369 (2020) (citing *Cuozzo*, 136 S. Ct. at 2141); 35 U.S.C. § 314(d) ("[t]he determination by the Director whether to institute an inter partes review under this section shall be final and nonappealable").[3]

Petitioners resort to misstating the record in an attempt to conjure a basis for rehearing or reconsideration. Specifically, Petitioners argue incorrectly that the Decision:

(i) allegedly relied on "settled expectations" as a basis for denying institution in this proceeding (Req., at 1-4);[4] and

[3] *See also Apple Inc. v. Iancu*, No. 5:20-CV-06128-EJD, 2021 U.S. Dist. LEXIS 218143, at *18 (N.D. Cal. Nov. 10, 2021) (to "inquire into the lawfulness of the *NHK-Fintiv* rule, the Court would have to analyze 'questions that are closely tied to the application and interpretation of statutes related to the [Director's] decision to initiate inter partes review,'" which the Supreme Court's *Cuozzo* decision "forbids").

[4] Moreover, to the extent Petitioners argue that the Director should have relied on "settled expectations" in *support of* institution, not only are Petitioners incorrect,

(ii) allegedly did not "properly weigh other relevant factors" when rendering the Director's decision (Req., at 4).

As to the former, "settled expectations" did not factor into the Director's denial of institution for this proceeding. Accordingly, there is no basis to reconsider the Order with regard to this proceeding on the basis of "settled expectations." In addition, any argument by Petitioners that the Director should have relied on "settled expectations" in *support of* institution is waived because Petitioners never raised this argument before, despite having an opportunity to do so in their Authorized Response to Patent Owner's Director Review Request. *See* Paper No. 17.

As to the latter, Petitioners improperly seek to rehash the same arguments the Order did expressly and correctly consider as part of its "holistic assessment" of all evidence and arguments presented. Order, at 4. Petitioners are wrong for two primary reasons.

First, Petitioners cannot genuinely dispute that the Order properly focused on the undisputed fact that the parallel district court litigation,[5] which will consider the same (and more) prior art raised in this proceeding, remains set for trial on November 3, 2025, which is ***more than six months before*** any Final Written

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Petitioners waived this new argument by never having raised it before.

[5] *Mullen Industries v. Samsung et al.*, No. 2:24-cv-00049-JRG (E.D. Tex.).

Decision could even potentially issue in this proceeding. Order, at 2. This very heavily supports the Order's denial of institution because it cannot be genuinely disputed that it would be wildly inefficient for the PTAB, and the parties, to drastically multiply the proceedings by litigating the same or very similar issues simultaneously in multiple forums, including both the PTAB and the district court.

Second, Petitioners ignore that the Order is likewise strongly supported by additional evidence favoring denial of institution. This evidence was set forth in detail in Patent Owner's Preliminary Response ("Br.") with regard to each *Fintiv* factor,[6] and is summarized as follows:

A. *Fintiv* Factor 1: the Parallel District Court Proceeding Has Not and Will Not Be Stayed

This factor strongly supports the Order's denial of institution because the district court denied Samsung's motion for a stay, and the district court case has now proceeded past all fact and expert discovery and the parties have filed all dispositive motions. *E.g.*, Br., at 24-27. In addition, the district court trial remains scheduled for November 3, 2025, which confirms that the district court trial has not and will not be stayed. *Id*. at 26 (citing, e.g., *Solas OLED Ltd. v. Samsung Display Co., Ltd.*, Case

[6] *Apple Inc. v. Fintiv*, *Inc.*, IPR2020-00019, Paper 11 at 5-6 (PTAB Mar. 20, 2020) (precedential).

No. 2:19-CV-00152-JRG, 2020 U.S. Dist. LEXIS 125973, at *6 (E.D. Tex. July 17, 2020) (denying stay because "trial is only a few months away" and PTAB FWDs would have issued months after the trial).

B. *Fintiv* Factor 2: the District Court's Trial Date is Many Months Before the Board's Projected Statutory Deadline for a Final Written Decision

This factor likewise strongly supports the Order's denial of institution because, as the Order correctly held, the trial in the district court proceeding is set for November 3, 2025, which is ***more than six months before*** any Final Written Decision could even possibly issue in this proceeding. Order, at 2; Br., at 27-28.

C. *Fintiv* Factor 3: the District Court and the Parties Have Invested Heavily in the Parallel District Court Proceeding

This factor, too, strongly supports the Order's denial of institution because, as noted above, the Court and the parties have made a massive investment of resources in the district court case. The district court proceeding has now advanced past all fact and expert discovery and the parties have filed all dispositive motions, with few items remaining to be completed before trial. E.g., Br., at 29-31.

D. *Fintiv* Factor 4: there is Substantial Overlap Between Issues Raised in the Petition and the Parallel District Court Proceeding

This factor also supports the Order's denial of institution because it is ***undisputed*** that Petitioners rely on the ***same*** alleged prior art references in the Petition as they do in the parallel district court litigation—this remains true

notwithstanding Petitioners' so-called *Sotera* stipulation and that Patent Owner has streamlined the asserted claims in the district court proceeding in order to accommodate the imminent 5-day jury trial setting. Br., at 31. For example, undermining the effect, if any, of Petitioners' purported *Sotera* stipulation, Petitioners have combined in the district court the same prior art references they rely upon in the Petition with alleged system art. Br., at 43-44; *see Motorola Sols., Inc. v. Stellar, LLC*, IPR2024-01205, Paper 19 at 4 (PTAB Mar. 28, 2025) (denying institution under such circumstances notwithstanding *Sotera* stipulation).

In addition, Patent Owner expressly stipulated (the "*Mullen* Stipulation") that if claims are dropped from consideration in the district court proceeding in the lead-up to trial "Patent Owner will not assert in any future district court action against Samsung" any claim challenged in this Petition that Patent Owner has dropped in the district court litigation. Patent Owner's Request for Director Review (May 23, 2025), at 11. The *Mullen* stipulation thus further confirms that instituting review would be inefficient and supports the Order's denial of institution, even if claims are dropped in the district court litigation.

E. *Fintiv* Factor 5: the Petitioners and the Defendants in the Parallel Proceeding are the Same Parties

This factor also supports the Order's denial of institution because the parties here are the same parties in the district court litigation—*i.e.*, Mullen Industries LLC

and the Samsung entities. Petitioners do not contest these facts. Br., at 31-32.

Moreover, contrary to Petitioners' argument, the fact that Google LLC is an additional co-Petitioner in this IPR proceeding is of no moment and does not change the analysis. Br. at 32-33 (citing *Fintiv*, IPR2020-00019, Paper 11 at 14 ("Even when a petitioner is unrelated to a defendant, however, 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"); *Mylan Labs. Ltd. v. Janssen Pharms. N.V.*, IPR2020-00440, Paper 17 at 12 (PTAB Sept. 16, 2020) (denying institution under *Fintiv* in light of a district court trial notwithstanding that the petitioner was ***not*** the defendant in that trial), *aff'd*, 989 F.3d 1375, 1378 (Fed. Cir. 2021)).

It is also undisputed, and Petitioners cannot deny, that co-Petitioner Google LLC ***is*** related to, and collaborating with, the Samsung entities in both the district court case and this IPR proceeding. Br., at 32-33. The Samsung Petitioners are the defendants in the upcoming November 3, 2025 district court trial, and Petitioner Google LLC, while not a named party in the district court proceeding, ***is voluntarily participating on Samsung's behalf in the district court case***. *Id*. Specifically, in the district court case, it is undisputed that Google LLC has (i) voluntarily submitted declarations on Samsung's behalf, (ii) produced documents and source code in response to subpoenas, and (iii) is represented by the same outside counsel that

represents the Samsung entities. *Id*. The Samsung Petitioners and co-Petitioner Google LLC are thus related, collectively involved in the district court case, and cooperating in the district court case on each other's behalf.

F. *Fintiv* Factor 6: the Merits of the Petition are Weak

This factor also supports the Order's denial of institution because Patent Owner showed that the merits of Petitioners' challenges are weak. Br., at 33-35, 44-59. The Petition misreads both the claims and the cited references, and even then can only muster a misguided argument for alleged multi-reference obviousness, which demonstrates the Petition's weakness and favors denial of institution. Moreover, even if Petitioners' showing was seen as meeting the "reasonable likelihood" standard for institution—which it is not—it is not sufficiently strong on the merits to outweigh the strong evidence in favor of denying institution in factors 1-5. *Id*.

II. PETITIONERS' ADDITIONAL ARGUMENTS FAIL

A. The Order was Proper in View of the *Mullen* Stipulation and the Undisputed Fact that the District Court Will Address the Same or Similar Issues

Petitioners' argument that the Order erred because Patent Owner has elected, pursuant to the district court's rules, a subset of the claims originally asserted in the district court to be addressed at the upcoming district court trial is unpersuasive. Req., at 5-6. As discussed *supra* at Section I.D, notwithstanding Petitioners' argument, *Fintiv* factor 4 still supports the Order's denial of institution because it is

undisputed that Petitioners rely on the ***same*** alleged prior art references in the Petition as they do in the parallel district court litigation. Accordingly, notwithstanding Patent Owner's election of claims, this '418 Patent is still at issue in the district court trial and the district court trial will still address the same or similar issues that Petitioners insist should nonetheless be wastefully considered in parallel by the PTAB and the parties to this IPR proceeding. The Order committed no error by declining to sponsor such waste.

Patent Owner's "*Mullen* Stipulation" also supports the Order's denial of institution. Indeed, Patent Owner has stipulated not to assert again in the future against the Samsung Petitioners any claim challenged in this Petition that Patent Owner has dropped in the district court litigation. *See supra* at Section I.D. This, too, undermines Petitioners' incorrect argument that the Order somehow erred when it denied institution because "Samsung [was required] to address [the originally asserted claims] in contentions and . . . claim construction" in the district court. Req., at 5. Samsung no longer has to address any such dropped claims in the district court and, in light of the *Mullen* Stipulation, will not have to address any such dropped claims in future litigation.

B. The Order was Proper in View of the Undisputed Fact that Co-Petitioner Google is Related to and Cooperating With the Samsung Entities in the Litigation

Petitioners' argument that the Order erred because "Google is a party to this

IPR but is not a party to the district-court proceeding" is unpersuasive and does not require reconsideration or rehearing. Req., at 6.

First, as discussed *supra* at Section I.E, it is well-settled that denying institution is appropriate "[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". *Id*. (citing *Fintiv*, IPR2020-00019, Paper 11 at 14; *Mylan Labs.*, IPR2020-00440, Paper 17 at 12, *aff'd*, 989 F.3d 1375, 1378 (Fed. Cir. 2021)). Here, the alleged invalidity issues are the same or similar in both this IPR proceeding and in the district court, which supports denial of institution. *See supra* at Sections I.D. and II.A.

Second, Petitioners' argument regarding the status of co-Petitioner Google LLC is disingenuous. As discussed *supra* at Section I.E, it is undisputed that co-Petitioner Google ***is*** related to, and collaborating with, the Samsung entities in both the district court case and these proceedings. Br., at 32-33. Google LLC, while not a named party in the district court proceeding, ***is voluntarily participating on Samsung's behalf in the district court case*** and as such its interests are more than adequately represented and protected. *Id*. Moreover, directly contrary to Petitioners' argument, the PTAB's rules seek to ***avoid*** the situation of a real-party-in-interest like Google LLC receiving two bites at the validity apple, i.e., one in district court and one before the PTAB via IPR. *See* 35 U.S.C. § 315(b) ("An inter partes review may

not be instituted if the petition requesting the proceeding is filed more than 1 year after the date on which the petitioner, real party in interest, or privy of the petitioner is served with a complaint alleging infringement of the patent").

Accordingly, the Order correctly denied institution even though Google is not a named party in the district court litigation.

C. The Order was Proper Because it Cannot Be Genuinely Disputed the District Court Trial Will Occur Many Months Before a Final Written Decision and Because the Merits of the Petition are Weak

Petitioners next argue incorrectly that the Order should be reversed for allegedly failing to properly weigh the "merits" of the Petition against the "Trial Timing" and because the "time-to-trial statistics" the Order relied upon are allegedly "not accurate." Req., 7-9. To the extent Petitioners' argument can be understood, it is incorrect. There is no rigid rule that requires the Director to "weigh" or compare factors in any particular way, and it is difficult to conceive how Petitioners can genuinely find fault in the Order's holding that institution should be denied here, where it is undisputed that the district court trial remains set for trial on November 3, 2025 ***more than six months before*** any Final Written Decision could even possibly issue in this proceeding. Order, at 2. In addition, Petitioners' preference to rely on different data regarding EDTX time-to-trial statistics is of no moment (Req., at 8-9); it does not change the undisputed fact that the parallel district court trial remains set for November 3, 2025.

Petitioners are also wrong to the extent they allege that the Director was required to defer to preliminary findings of prior Board panel(s), which never advanced to Final Written Decision(s). Req., at 7-8. To be clear, it is indisputable that ***none*** of Patent Owner's patents have ever been successfully challenged and invalidated in any IPR or district court proceeding. In addition, as discussed *supra* at Section I.D, Patent Owner maintains that the merits of the Petition in this proceeding are weak.

D. The Order was Proper Because It Is Well-Known That a *Sotera* Stipulation is Not Dispositive and is Ineffective Where, As Here, Petitioners Combine the Same Art from the Petition with System Art in the District Court

Petitioners' final argument that the Director was required to accept the Samsung Petitioners' *Sotera* stipulation and treat it as preclusive of discretionary denial is incorrect (*see* Req., at 9-15), as is Petitioners' argument that Petitioners were surprised and allegedly deprived of due process because they allegedly had "relied on the Vidal Memo and reasonably expected that there would be no risk of discretionary denial … so long as Samsung was willing to present a *Sotera* stipulation." Req., at 10.

Petitioners' arguments are easily dismissed. The PTAB's discretionary denial analysis has ***never*** treated any singular factor as dispositive, and any argument from Petitioners to the contrary amounts to no more than their misreading of the applicable

statutes, precedent, and rules. *See e.g.*, *Apple Inc. v. Fintiv*, *Inc.*, IPR2020-00019, Paper 11 at 5-6 (PTAB Mar. 20, 2020) (precedential). Moreover, whether to institute, or not, any IPR proceeding has always resided within the Director's discretion. *E.g.*, 35 U.S.C. § 314(d) ("[t]he determination by the Director whether to institute and inter partes review under this section shall be final and nonappealable").

Petitioners also feign confusion about the so-called "Vidal Memo." It is undisputed that ***even after*** issuance of the "Vidal Memo," former Director Vidal stated clearly in briefing dated September 21, 2023 (***well before*** Petitioners' filed their Petition here) that **no factor** in the discretionary denial analysis is dispositive. Ex. 2017 at 6 (institution "should not"—***not*** "must not"—occur in view of *Sotera* stipulation). Petitioners thus could not have reasonably believed, nor relied on, when filing their Petition in this proceeding that a *Sotera* stipulation would be dispositive or that there was "no risk of discretionary denial" like they argue now. *Also e.g.*:

> [T]he *Fintiv* factors are only a 'general statement of agency policy' that binds neither the Board nor actors beyond the agency …

Ex. 2017 at 8.

> [T]he *Fintiv* factors do not compel a specific outcome on institution *even within the agency*.

Id. at 12 (emphasis in original).

> [T]he *Fintiv* factors do not establish a 'binding norm' because they do not replace the Board's exercise of the Director's delegated discretion. Rather, they merely guide the Board's decision-making process in

> determining whether to institute and IPR on the Director's behalf in any instance, without dictating any particular outcome.

Id. at 15.

> [T]he *Fintiv* factors … do not offer a plain, formulaic answer to the question of whether to institute IPR…. [T]he Board may consider any '[o]ther facts and circumstances' it deems relevant … with 'a holistic view of whether [the] efficiency and integrity of the system are best served by denying or instituting review…. This flexibility, and the opportunity for the Board to make individual institution decisions, demonstrates that the *Fintiv* factors amount to only a general statement of policy guiding exercise of the Director's delegated discretion ….

Id. at 16.

> A requirement that the Board 'must consider' the factors is not the same as a requirement that the Board 'must obey' the factors. It is true that the designation of the decisions as precedential means the Board 'must consider' the factors. It is not true that this means the factors *per se* dictate the outcome. The only requirement is consideration, after which the Board may choose to—or not to—institute IPR.

Id. at 17.

The former Director likewise made the same statements in October 2024:

> [The discretionary denial factors] have no binding effect on the Director, and they do not require the Board to reach a particular result or otherwise foreclose the Board's ability to exercise genuine discretion and make individualized determinations.

Ex. 2018 at 15.

> Upon consideration of those factors, which leave the Board ample discretion to determine how the factors should be balanced in individual cases, the Board remains free to use that delegated discretion to either grant or deny a statutorily sufficient IPR petition after a 'balanced assessment of all relevant circumstances … including the merits.'

Id. at 23.

> [T]he *Fintiv* factors do not dictate outcomes; they leave the Board with broad discretion to determine whether institution is warranted in a given case and leave the Director free to reverse any decision.

Id. at 29.

Accordingly, Petitioners cannot claim surprise nor that they were deprived of any right. Not only is a *Sotera* stipulation not dispositive of the discretionary denial analysis, it also is "not likely to moot" "invalidity arguments in the district court [when they] are more expansive and include combinations of the prior art asserted in [parallel IPR petitions] with unpublished system prior art[.]" *Motorola Sols., Inc. v. Stellar, LLC*, IPR2024-01205, Paper 19 at 4. Thus, when Petitioners chose to assert in the district court proceeding the same prior art they rely upon in this IPR, including the combination of such art with system art in an effort to get two similar bites at the apple, Petitioners knew or should have known that the effect, if any, of their purported *Sotera* stipulation in this proceeding would be greatly diminished.

Contrary to Petitioners' arguments, the Order thus made no error when denying institution under the facts and circumstances here.

III. CONCLUSION

For each of the above-described reasons, Patent Owner respectfully requests the Director, or the Director's delegate, to deny Petitioners' Request for Rehearing of the Order denying institution.

Dated: August 22, 2025

Respectfully submitted,

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I certify that a copy of this PATENT OWNER'S AUTHORIZED RESPONSE TO PETITIONERS' REQUEST FOR REHEARING is being served by electronic mail on the following counsel of record:

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