

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC,
Petitioner,

v.

WSOU INVESTMENTS d/b/a BRAZOS LICENSING AND
DEVELOPMENT,
Patent Owner.

Case IPR2025-00188
Patent 8,982,691

**PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW
UNDER 37 C.F.R. § 42.75**

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EXHIBIT LIST

Exhibit No.	Exhibit Description
2001	<i>WSOU Investments LLC v. Cisco Systems</i> 24-cv-00332 (EDTX) Complaint
2002	<i>WSOU Investments LLC v. Cisco Systems</i> 24-cv-00332 (EDTX) Docket Control Order
2003	'884 Patent 2025-01-30 [4] Filing Date Accorded
2004	Docket Navigator Statistics
2005	Legal Metrics Report
2006	2024-09-23 Defendant's Invalidity Contentions
2007	Ex. D1 - Invalidity Chart - '691 Patent – Elie-Dit-Cosaque
2008	Ex. D3 - Invalidity Chart - '691 Patent – Hanif
2009	U.S. Patent No. 7,113,481
2010	Invalidity Chart - '691 Patent – Park
2011	Ex. D9 - 2024-09-23 Cisco's Ineligibility Contentions
2012	Ex. D - Ineligibility Chart - '691 Patent
2013	U.S. Patent No. 7,352,703
2014	2025-02-28 USPTO Rescinds Memorandum Addressing Denial Procedures
2015	Protective Order
2016	'691 Maintenance Fee Details
2017	U.S. Patent No. 6,778,492
2018	Director's CSIS Statement
2019	'691 Patent Assignment
2020	WSOU v. Cisco Jury Trial Proceeding Excerpt 2/10/25

Patent Owner's Request for Director Review
IPR2025-00188 (U.S. Patent No. 8,982,691)

Exhibit No.	Exhibit Description
2021	March 31, 2025 email from Panel to Parties authorizing additional briefing.

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.75, Patent Owner WSOU Investments LLC d/b/a Brazos Licensing and Development respectfully submits this request for Director Review of the Patent Trial and Appeal Board's June 13, 2025, institution decision ("Institution Decision") concerning U.S. Patent No. 8,982,691 ("691 Patent") in IPR2025-00188. *See* Paper 10. The Institution Decision presents two distinct issues meriting reversal.

First, despite having expressly authorized the parties to brief issues bearing on discretionary denial as set out in the Director's March 26 Guidance, when the Panel subsequently issued its Institution Decision on June 13, the Panel all but completely ignored both parties' discretionary denial submissions. *See generally* Institution Decision. The Panel's decision to institute without addressing or even acknowledging the issues bearing on discretionary denial as set forth under the Director's March 26 Guidance alone warrants reversal—and further infected the Panel's finding that *Fintiv* Factor 6 weighed against discretionary denial.

Second, the Panel's Institution Decision errs in its analysis of Cisco's second putative *Sotera* stipulation under *Fintiv* Factor 4. *See* Paper 7. Specifically, Brazos highlighted in its request for discretionary denial Cisco's reservation of rights that "[n]otwithstanding this stipulation, Petitioner does not relinquish any rights or opportunities to pursue in the co-pending district court litigation . . . any ground on

which the PTAB declines to institute an IPR trial.” Paper 8 at 2, quoting Paper 7 at 2. Brazos thus pointed out that “Petitioner’s proposed second stipulation fails to embody a true *Sotera* stipulation because regardless of the institution decision, Petitioner will remain free to assert any prior art ground in the District Court proceeding that was not presented to the Board—even if Petitioner could reasonably have done so.” Paper 8 at 3. And in particular, Brazos flagged that Cisco’s stipulation “does not stipulate that it will not assert purported ***prior art based on products or systems*** in combination with prior art that it has raised or could have raised before the Board.” *Id.* (emphasis added). But despite Cisco’s express reservation of rights, the Panel’s Institution Decision found that “Patent Owner misinterprets and overstates Petitioner’s limited reservation of rights in its *Sotera* stipulation,” and accordingly “that Petitioner’s stipulation weighs strongly against exercising discretion to deny institution.” Institution Decision at 16. Because Cisco’s reservation of rights in its stipulation renders this proceeding less than a “true alternative” to District Court litigation, this factor should have been weighed under *Fintiv* Factor 4 in favor of Brazos’s request for discretionary denial.

These two categories of error both implicate multiple grounds on which Director Review may be granted—the Panel’s abuse of discretion; failure to consider important issues of law or policy; and erroneous conclusions of law. Director

Review should be granted, the Panel's Institution Decision should be vacated, and the Director should deny institution of *inter partes* review.

II. LEGAL STANDARD FOR DIRECTOR REVIEW

“Requests for Director Review of a Board's decision on institution . . . shall be limited to decisions presenting (a) an abuse of discretion, (b) important issues of law or policy, (c) erroneous findings of material fact, or (d) erroneous conclusions of law.” USPTO, Revised Interim Director Review Process § 2.B (last modified May 23, 2025). “The Director Review process provides a mechanism to correct errors at the institution stage, for example, to avoid unnecessary trials for patent owners.” *Id.*

III. PROCEDURAL HISTORY

The subject '691 Patent is asserted by Patent Owner Brazos against Petitioner Cisco in U.S. District Court Case No. 2:24-cv-00332-RWS-RSP (E.D. Tex.), filed May 6, 2024 (“District Court Litigation”). Cisco filed its petition in the instant proceeding on November 14, 2024. *See* Paper 1.¹ Brazos filed its Patent Owner Preliminary Response March 17, 2025. *See* Paper 6.

¹ Brazos also asserts U.S. Patents No. 7,386,630 (“'630 Patent”) and 9,450,884 (“'884 Patent”) in the District Court Litigation. *See* Case No. 2:24-cv-00332-RWS-RSP, Dkt. 1. Cisco did not petition to open an IPR proceeding concerning the '630

On March 26, the Director issued the memorandum entitled “Interim Processes for PTAB Workload Management,” addressing issues relating to discretionary denial (“March 26 Guidance”). On March 27, Cisco and Brazos submitted a “joint[] request [for] authorization to file additional papers in IPR2025-00188 addressing Petitioner’s *Sotera* stipulation and the Office’s March 26, 2025 guidance.” Ex. 2021. On March 31, the Panel duly authorized Brazos “to file a supplemental brief on discretionary denial by April 10, 2025,” with Cisco to respond by April 22. Ex. 2021. The parties made their respective submissions as ordered. *See* Papers 8-9.

On June 13, the Panel issued its Institution Decision. Paper 10. The Panel’s Institution Decision cites Brazos’s supplemental submission concerning discretionary denial for a single issue, concerning Cisco’s purported *Sotera* stipulation. Institution Decision at 15. With respect to the Panel’s treatment of Brazos’s positions advanced under *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019

Patent during the 12-month period after the litigation commenced, and its window to do so has now expired. Cisco filed its petition directed to the ’884 Patent in IPR2025-00429 on January 9, 2025 (IPR2025-00429, Paper 1). On June 25, the Director determined that “discretionary denial of institution is appropriate in [that] proceeding.” IPR2025-00429, Paper 15 (June 25, 2025).

(“*Fintiv*”), Paper 11 (Mar. 20, 2020) (precedential), in Brazos's Patent Owner Preliminary Response (*see* Paper 6 at 2-22), the Panel ultimately found as follows:

- Factor 1 (whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted): “[W]e find that that Factor 1 is ***neutral*** because neither party has requested a stay of the district court litigation.” Institution Decision at 12 (emphasis added).²
- Factor 2 (proximity of the court's trial date to the Board's projected statutory deadline for a final written decision): “Because the District Court's current trial date is scheduled ***approximately three months before*** any anticipated Final Written Decision in this proceeding, this factor ***somewhat favors*** the exercise of discretionary denial.” *Id.* at 13 (emphasis added).
- Factor 3 (investment in the parallel proceeding by the court and the parties): “Based on the modest level of investment and effort expended on initial claim construction and invalidity issues in the District Court, we find

² Of note here, in the companion IPR proceeding the Director determined that “there is insufficient evidence that the district court is likely to stay its proceeding even if the Board were to institute trial.” IPR2025-00429, Paper 15 at 2 (June 25, 2025).

- that this factor is *neutral or weighs somewhat against* exercising discretionary denial in this case.” *Id.* at 14 (emphasis added).
- Factor 4 (overlap between issues raised in the petition and in the parallel proceeding): “Following the analysis in *Sotera*, we find that Petitioner’s stipulation *weighs strongly against* exercising discretion to deny institution.” *Id.* at 17 (emphasis added).
 - Factor 5 (whether the petitioner and the defendant in the parallel proceeding are the same party): “[W]here, as here, the parties are the same in both proceedings . . . this factor *weighs in favor* of discretionary denial.” *Id.* (emphasis added).
 - Factor 6 (other circumstances that impact the Board’s exercise of discretion, including the merits): “[W]e find the merits of Petitioner’s obviousness grounds to be particularly strong. Thus, we find that this factor *weighs strongly against* exercising discretion to deny institution.” *Id.* at 22 (emphasis added).

The Panel thus found two of the six *Fintiv* factors (Nos. 4 and 6) to weigh strongly against discretionary denial; two factors (Nos. 1 and 3) to be neutral or weigh slightly against discretionary denial; and two factors (Nos. 2 and 5) to weigh in favor of discretionary denial.

IV. THE PANEL'S FAILURE TO CONSIDER THE PARTIES' SUPPLEMENTAL DISCRETIONARY DENIAL SUBMISSIONS NEGLECTS TO ENGAGE WITH IMPORTANT QUESTIONS OF LAW AND POLICY; THUS ABUSES ITS DISCRETION; AND LEADS TO AN ERRONEOUS CONCLUSION OF LAW

The Director's March 26 Guidance is clear concerning the importance of the issues addressed therein: "These processes aim to improve PTAB efficiency, maintain PTAB capacity to conduct AIA proceedings, reduce pendency in *ex parte* appeals, and promote consistent application of discretionary considerations in the institution of AIA proceedings." March 26 Guidance at 3.

But—notwithstanding the Panel's express authorization to file briefing addressing *both* "Petitioner's Sotera stipulation and the Office's March 26, 2025 guidance"—the Panel's consideration of Brazos's supplemental brief is *limited to a single citation* relating to Cisco's second purported *Sotera* stipulation. *See* Ex. 2021; Institution Decision at 15. The rest of Brazos's submission relating to the exemplary factors set forth in the Director's March 26 Guidance is completely ignored by the Panel. *Compare generally* Paper 8 at 5-13 *with* Institution Decision. For the Panel to authorize Brazos to make a submission concerning the important questions of law and policy implicated by the Director's March 26 Guidance, only to disregard that submission in its entirety, is the epitome of an abuse of discretion.

Furthermore, *Fintiv* Factor 6 directs the Panel to consider all "other circumstances that impact the Board's exercise of discretion, including"—but *not*

limited to—“the merits.” *Fintiv* at 6 (emphasis added). But in analyzing this factor, the Panel refused to take notice of Brazos’s supplemental submission concerning discretionary denial, and instead limited itself to a preview assessment of the merits of Cisco’s Petition. *See* Institution Decision at 18-22. In so doing, the Panel inherently “stacked the deck” in support of its findings regarding *Fintiv* Factor 6.

In particular, the Panel did not consider any of the *four separate grounds* raised by Brazos in support of discretionary denial advanced under multiple prongs of the Director’s March 26 Guidance—i.e., “The Strength of the Unpatentability Challenge”; “The Extent of the Petition’s Reliance on Expert Testimony”; “Settled Expectations of the Parties”; and “Compelling Economic Interests.” *See* Paper 8 at 5-13. So even assuming *arguendo* that the Panel’s preliminary assessment of the merits in the Institution Decision is correct (though it is not), had the Panel properly considered the additional four issues above *alongside* its assessment of the merits, the Panel would have realized that *Fintiv* Factor 6 did not in fact “weigh[] strongly against exercising discretion to deny institution.” Institution Decision at 22. Rather, under a proper examination of *all* salient “other issues,” the Panel would have concluded that Factor 6 in fact weighs *in favor of* discretionary denial.

This is particularly true in view of the fact that the “compelling merits” standard espoused by the former Director is no longer in force and cannot be considered by panels. Indeed, the Board has denied institution under *Fintiv*, its

progeny, and recent Office guidance even where “Petitioner’s obviousness challenges meet the standard for institution.” *Eunsung Global Corp. v. Hydrafacial LLC*, IPR2024-01491, Paper 17 at 16-17 (Apr. 11, 2025); *see also Toyota Motor Corp. v. Emerging Auto. LLC*, IPR2024-00785, Paper 13 at 15-16 (Mar. 11, 2025) (denying institution under *Fintiv* and noting that “[a]lthough we determine that Petition adequately shows a reasonable likelihood of success . . . , we do not find the merits to be particularly strong on the record”), *Director review denied*, Paper 16 (May 27, 2025). Indeed, the Board has also recently denied institution even where it finds Petitioner’s “case on the merits is strong.” *Samsung Elecs. Co. v. SiOnyx, LLC*, IPR2025-00064, Paper 16 at 16, 21-22 (June 6, 2025).

Thus, the Panel abused its discretion in refusing to consider Brazos’s supplemental submission on discretionary denial, and placing far too great a weight on the supposed “merits” of the Petition. In so doing, the Panel neglected to address the important issues of law and policy set forth in the March 26 Guidance, and reached an erroneous conclusion of law concerning *Fintiv* Factor 6.

V. THE PANEL’S CONCLUSION REGARDING CISCO’S SECOND PURPORTED *SOTERA* STIPULATION IS FOUNDED ON AN ABUSE OF DISCRETION AND RESULTS IN AN ERROR OF LAW

As noted above, the most significant gap in Cisco’s second purported stipulation pursuant to *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 (Dec. 1, 2020) (*see* Paper 7)—which flaw Brazos expressly raised for the

Panel's consideration—is that Cisco “does not stipulate that it will not assert purported *prior art based on products or systems* in combination with prior art that it has raised or could have raised before the Board.” Paper 8 (emphasis added). The Panel's Institution Decision does not engage with this issue at all—indeed, nowhere in the Panel's discussion of *Fintiv* Factor 4 are the concepts of product or system prior art even mentioned. *See* Institution Decision at 15-17. Rather, the Panel conclusorily found that “Patent Owner misinterprets and overstates Petitioner's limited reservation of rights in its *Sotera* stipulation.” *Id.* at 16. In so finding, the Panel ignored controlling Director authority—cited by Brazos in its submissions to the Panel—concerning *Sotera* stipulations analogous to that on which Cisco now hopes to rely.

Specifically, the Director and the Board have repeatedly found that a purported *Sotera* stipulation's failure to disclaim future reliance in district court proceedings on combinations of product or system prior art with Section 102 and 103 references asserted in a related IPR proceeding rendered the stipulation insufficient to weigh against discretionary denial for purposes of *Fintiv* Factor 4. *See Motorola Solutions v. Stellar, LLC*, IPR2024-01205 *et seq.*, Paper 19 (Order Granting Director Review, Vacating the Decision Granting Institution, and Denying Institution of *Inter Partes* Review) at 3-4 (Mar. 28, 2025) (“Petitioner's stipulation does not ensure that these IPR proceedings would be a ‘true alternative’ to the district

court proceeding. Petitioner's invalidity arguments in the district court are more expansive and include combinations of the prior art asserted in these proceedings with *unpublished system prior art*, which Petitioner's stipulation is not likely to moot.") (citation omitted; emphasis added). *See also, e.g., Samsung v. SiOnyx*, IPR2025-00064, Paper 16 at 14-16 ("[T]he district court invalidity contentions also assert combinations of *product art* with printed publication prior art asserted in this proceeding. Petitioner's Stipulation does not moot these district court invalidity contentions because these contentions could not have been asserted in the Petition In other words, 'Petitioner's stipulation does not ensure that [this proceeding] would be a "true alternative" to the district court proceeding.' Because of the remaining overlap between the Petition and the District Court proceeding, *Fintiv* factor four weighs somewhat in favor of discretionary denial.") (citations omitted; emphasis added).

There is no material distinction between the type of product/system art at issue in *Motorola v. Stellar* and *Samsung v. SiOnyx*, above, and what Cisco seeks to raise in the District Court Litigation here. *See* Paper 8 at 4. Again, the Panel's conclusory

treatment of the facts and legal authorities raised by Brazos³ in connection with Cisco's defective stipulation led the Panel to reach an erroneous conclusion of law—here, that *Fintiv* Factor 4 “weighs strongly against” discretionary denial. Institution Decision at 17. A proper analysis of the flaws in Cisco's stipulation would have led the Panel to conclude that Factor 4 weighs *in favor of* exercising discretion not to institute IPR.

Thus, the Panel abused its discretion in neglecting to engage with Brazos's positions and legal authorities relating to product and system art that a petitioner refuses to include in a purported *Sotera* stipulation. In so doing, the Panel reached an erroneous conclusion of law concerning *Fintiv* Factor 4.

VI. CONCLUSION

The Panel committed two fundamental errors. It refused to consider Brazos's positions and authorities advanced in its supplemental submission concerning discretionary denial, and it failed to acknowledge that Cisco's purported *Sotera*

³ The Board's June 6 decision in *Samsung v. SiOnyx* post-dates Brazos's submissions, but Brazos cited the Director's March 28 *Motorola v. Stellar* decision to the Panel in Brazos's April 10 supplemental submission. See Paper 8 at 3. The Panel's June 13 Institution Decision cites neither *Motorola v. Stellar*, nor *Samsung v. SiOnyx*. See generally Institution Decision.

stipulation does not render this proceeding a “true alternative” to the District Court Litigation, based on the stipulation’s failure to bind Cisco vis-à-vis product/system prior art. These missteps rendered the Panel’s findings on *Fintiv* Factors 6 and 4 (respectively) incorrect.

The Panel’s improper conclusions that these two factors “weighed strongly against” discretionary denial (the only two factors regarding which the Panel so found) irreparably tilted the Panel’s entire six-factor balancing analysis in favor of Cisco. Director Review is thus necessary to ensure a proper application of the important principles set forth in the Director’s March 26 Guidance, as well as *Fintiv* and its progeny, and to correct the Panel’s multiple abuses of discretion and errors of law.

Respectfully Submitted,

Dated: June 27, 2025

/David D. Schumann/
David D. Schumann (Reg. No. 53,569)
Folio Law Group PLLC
1200 Westlake Ave. N., Suite 809
Seattle, WA 98109
Tel: (206) 880-1802
Email: david.schumann@foliolaw.com

Timothy Dewberry (Reg. No. 62,947)
Folio Law Group PLLC
13492 Research Blvd.
Ste. 120, No. 177
Tel: (206) 880-1802

Patent Owner's Request for Director Review
IPR2025-00188 (U.S. Patent No. 8,982,691)

Email: timothy.dewberry@foliolaw.com

(Case No. IPR2025-00188)

Attorneys for Patent Owner

CERTIFICATE OF SERVICE

As authorized by Patent Owner's Mandatory Notice, I hereby certify that on June 27, 2025, a copy of this document has been served in its entirety by electronic mail on Petitioner's lead and backup counsel.

Theodore M. Foster
Ipr.theo.foster@haynesboone.com

David L. McCombs
David.mccombs.ipr@haynesboone.com

Gregory P. Huh
Gregory.huh.ipr@haynesboone.com

Dated: June 27, 2025

/David D. Schumann/
David D. Schumann (Reg. No. 53,569)
Folio Law Group PLLC
1200 Westlake Ave. N., Suite 809
Seattle, WA 98109
Tel: (206) 880-1802
Email: david.schumann@foliolaw.com

(Case No. IPR2025-00188)

Attorneys for Patent Owner