

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.

IPR2025-00188
U.S. Patent No. 8,982,691

**AUTHORIZED RESPONSE TO
DIRECTOR REVIEW REQUEST**

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I. INTRODUCTION

Patent Owner's Request for Director Review of the Institution Decision ("Request," Paper 12) alleges error where there was none. Because the Board provided logical and rational reasons for its Institution Decision ("ID," Paper 10), Director Review should be denied.

II. THE BOARD PROPERLY CONSIDERED ALL "OTHER CIRCUMSTANCES" ARGUMENTS

First, Patent Owner argues that the Board erred by "disregard[ing] [Patent Owner's submission regarding the March 26 guidance] in its entirety" with respect to *Fintiv* Factor 6. Request, 7. But the Board cited and quoted from Patent Owner's supplemental brief on discretionary denial. ID, 15-16 (quoting Paper 8). Plainly the Board did not "disregard" the filing.

If Patent Owner expected the Board to address its arguments more, that expectation is contrary to controlling law. "The Board is not required to address every argument raised by a party or explain every possible reason supporting its conclusion. Rather, the Board must articulate 'logical and rational' reasons for its decisions and address the material issues raised." *Novartis AG v. Torrent Pharms. Ltd.*, 853 F.3d 1316, 1327 (Fed. Cir. 2017). The Board did so here.

Notably, Patent Owner's submission directed the Board back to the Preliminary Response for actual arguments about the strengths of the patentability

challenge. Paper 8, 6 (“as previously explained in Patent Owner’s Preliminary Response ... the strength of Petitioner’s unpatentability challenge is lacking”). The Board fully addressed those arguments, evaluating the strength of the challenge *across five pages* and concluding that it was “particularly strong.” ID, 18-22.

Second, Patent Owner argues that the Board failed to “consider any of the four separate grounds” it raised, of which the “Strength of the Unpatentability Challenge” is one. Request, 8. But again, the Board considered the issue across five pages, finding “based upon the current record that Petitioner presents strong evidence to support its contention” of invalidity. ID, 19. The Board provided “logical and rational” reasons supporting its conclusion. *Novartis*, 853 F.3d at 1327. This was not “stack[ing] the deck” as Patent Owner argues; this was expressly explaining—with evidence—the Board’s reasoning in support of its finding for Factor 6. ID, 18-22; *contra* Request, 8.

Far from “refusing to consider Brazos’ supplemental submission ... and placing far too great a weight on the supposed ‘merits’ of the Petition,” the Board applied the very “strengths” analysis laid out in the March 26 Interim Processes memo. Patent Owner may dislike the outcome of that analysis, but it cannot show that the Board acted arbitrarily, capriciously, or manifestly unreasonably in its reasoned analysis of the strengths of the challenge.

Third, the Board’s citation to Patent Owner’s submission demonstrates it

was considered. *See Medtronic, Inc. v. Daig Corp.*, 789 F.2d 903, 906 (Fed. Cir. 1986) (“We presume that a fact finder reviews all the evidence presented unless he explicitly expresses otherwise.”). The Board discussed Patent Owner’s arguments commensurate with their merit, which in many cases is none. For example, as Petitioner demonstrated:

- 1) The expert testimony Patent Owner points to consists of only 19 out of 251 paragraphs, a far cry from *Xerox* where the real issue was a lack of supporting evidence or technical reasoning for expert statements. *See* Paper 9, 11-12.
- 2) If there was any settled expectation here, it was to expect an IPR challenge after the patent was asserted in litigation. It is very common—indeed, it was the intent of Congress—for patent litigation defendants to seek review of dubious patents via IPR. This case contrasts sharply with situations where an IPR challenge was filed without any explanation as to *why*. *See Dabico Airport Solutions Inc. v. Axa Power APS*, IPR2025-00408, Paper 21 (PTAB June 18, 2025). Patent Owner does not dispute that the patent had not been commercialized, asserted, marked, licensed, or otherwise exploited before the copending lawsuit was recently filed—which fully explains why no one would have challenged it previously. *See* Paper 9, 8 (lawsuit against Cisco is the first assertion of this patent, and no evidence of commercializing the ’691); *see also Intel Corp. v. Proxense LLC*, IPR2025-00327, Paper 12 at 2-3 (June 26, 2025).

3) There are no compelling economic interests, since none of Patent Owner’s allegations about portfolio purchase, licensing, or otherwise are even allegedly connected to the ’691 patent itself. *See* Paper 9, 9-10.

Finally, the Board had no obligation to consider arguments based on the Acting Director’s Interim Process memo, which issued *after* Patent Owner filed its Preliminary Response. *See* Interim Memo (Mar. 26, 2025), 3 (applying “where the deadline for the patent owner to file a preliminary response has not yet passed.”).

Simply put, none of Patent Owner’s other arguments in the submission would have changed the outcome or warranted the Board to address “every possible reason” that Factor 6 strongly favored institution. *Novartis*, 853 F.3d at 1327. Accordingly, the Board properly performed its analysis under Factor 6.

III. THE BOARD’S DECISION PROPERLY ASSESSED THE STIPULATION UNDER FACTOR 4

Patent Owner contends that the Board erred by not discussing the “concepts of product or system prior art” in the Institution Decision. Request, 10. But system art is outside the scope of IPR estoppel. *Ingenico Inc. v. IOENGINE, LLC*, 136 F.4th 1354, 1366-67 (Fed. Cir. 2025). Patent Owner’s expectation for a Sotera stipulation to IPR-ineligible invalidity grounds is unreasonable and untenable.

Patent Owner’s comparison of this case to *Motorola v. Stellar* and *Samsung v. SiOnyx* is flawed. In those cases, the copending litigation was far more advanced,

with expert reports exchanged and claim construction completed. *See, e.g., Motorola Solutions v. Stellar, LLC*, IPR2025-01205, Paper 19 at 3 (PTAB March 28, 2025); *Samsung Elec. Co., Ltd. V. SiOnyx, LLC*, IPR2025-00065, Paper 16 at 11 (June 6, 2025). The *Motorola* Board stressed that the *Sotera* stipulation “does not outweigh the substantial investment in the district court proceeding.” *Id.* at 4.

The opposite is true here. The district court has *pushed back* discovery dates and the trial date, with the Markman hearing delayed until October 17, 2025 and trial until April 20, 2026. *See WSOU Investments, LLC v. Cisco Systems, Inc.*, 24-cv-00332, Dkt. No. 35 (May 23, 2025). Thus, the *Sotera* stipulation not only mitigates concerns of duplication with the parallel proceeding—it altogether outweighs the minimal investment in the district court proceeding. Because of the much earlier stage of the district court proceeding, the stipulation here ensures that the IPR is a “true alternative” to district court. *Contra Motorola* at 4.

In summary, Patent Owner simply disagrees with the outcome, which is not a legitimate basis for Director Review of an institution decision. Because the Board did not abuse its discretion, considered no important issue of law or policy, and made no factual or legal error, the Director should deny Patent Owner’s Request.

Respectfully submitted,

Dated: July 8, 2025
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CERTIFICATE OF SERVICE

The undersigned certifies that, in accordance with 37 C.F.R. § 42.6(e),
service was made on Patent Owner as detailed below.

Date of service July 8, 2025

Manner of service Electronic Email: david.schumann@foliolaw.com;
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Documents served **AUTHORIZED RESPONSE TO DIRECTOR
REVIEW REQUEST**

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