

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ENTEGRIS, INC.
Petitioner

v.

INPRIA CORP.
Patent Owner

Case No. IPR2025-00267
Patent 11,673,903

**PETITIONER’S REQUEST FOR REHEARING OF DECISION DENYING
INSTITUTION OF *INTER PARTES* REVIEW (PAPER 12)**

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Pursuant to 37 C.F.R. § 42.71(d), Petitioner Entegris, Inc. (“Entegris” or “Petitioner”) respectfully requests Rehearing of the Director Discretionary Decision (Paper 12, “DDD”) denying institution *of inter partes review* (“IPR”) of claims 1-4 and 6-10 of U.S. Patent No. 11,673,903 (EX1001, “the ’903 patent”).

I. INTRODUCTION

Reversal of the DDD in this case is necessary for several important reasons.

First, the February 2025 rescission of the “Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation” (“June 2022 Memo”), and application of that rescission to the Petition, did not comply with the Administrative Procedure Act (“APA”) and violated Entegris’s due process rights. As a result of the unlawful rescission, the DDD did not address the merits of the Petition, which presented a compelling validity challenge to an overbroad patent claiming *an entire class of compounds* at a known purity level—precisely the type of patent that the IPR process was designed to invalidate.

Second, separate and apart from the rescission, the decision to discretionarily deny the Petition in view of a Delaware litigation involving different parties was an abuse of discretion. Specifically, the DDD failed to follow precedential PTAB case law, including *Fintiv*, by characterizing Entegris and the defendant in the Delaware litigation as “related”—they are not related, and under *Fintiv*, that should have weighed heavily in favor of institution. The DDD also ignored the fact that the issues

are different in the Delaware litigation and the Petition, as Patent Owner Inpria Corp. (“Inpria”) has asserted only *one dependent claim* in that litigation, compared to the *nine* claims at issue in the Petition.

Third, the DDD is also contrary to established and critical public policy. Congress enacted the AIA and created the post-grant process specifically to allow third parties—like Entegris—to challenge the validity of a patent outside of a district court proceeding. The DDD’s erroneous determination that Entegris’s rights would somehow be vindicated by a third party in a district court action—to which Entegris is not a party—negates Congress’s intent in creating the post-grant process. The DDD should be reversed.

II. PROCEDURAL BACKGROUND

Entegris filed its Petition on December 12, 2024, challenging claims 1-4 and 6-10 of the ’903 patent. Paper 1. The Notice of Filing Date Accorded was issued on February 12, 2025. Paper 5. In the two years leading up to Entegris filing its Petition, the USPTO’s “binding agency guidance” from the June 2022 Memo provided that “to benefit the patent system and the public good, the PTAB will not rely on the *Fintiv* factors to discretionarily deny institution in view of parallel district court litigation where a petition presents compelling evidence of unpatentability.” June 2022 Memo at 2, 3-5.

On February 28, 2025, more than two months after Entegris filed its Petition, the Director rescinded its binding guidance without explanation, simply directing parties to “refer to” pre-June 2022 precedent going forward (“February 2025 recession”). February 28, 2025 Notice Rescinding Memorandum Addressing Discretionary Denial Procedures (“February 28, 2025 Notice”). On March 24, the Chief ALJ issued a memorandum stating for the first time that the recission would retroactively change the rules applicable to certain petitions filed before the recission, including in “any case where the Board has not issued an institution decision.” March 24, 2025 Memorandum from Chief ALJ, “Guidance on USPTO’s recission of “Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation,” at 2 (“March 24, 2025 Memo”). And the Chief ALJ stated that, contrary to the June 2022 Memo’s “binding agency guidance,” June 2022 Memo at 3, “the strength of the merits” would no longer be “dispositive in making the assessment.” March 24, 2025 Memo at 3. Two days later, on March 26, 2025, the Director issued a memorandum with Interim Processes for how “the Director will exercise her discretion on institution of AIA proceedings” prospectively, *i.e.*, “where the deadline for the patent owner to file a preliminary response has not yet passed.” March 26, 2025 Memorandum from Acting Director of the United States Patent and Trademark Office, “Interim Processes for PTAB Workload Management,” at 1, 3 (“March 26, 2025 Memo”). In this case, as the

March 26, 2025 Memo only applied prospectively, and “does not address the circumstance in which the time for filing discretionary briefing has not yet elapsed, but will elapse in one month or less,” the PTAB gave Inpria an extra month to submit its brief. Paper 6.

Inpria filed its brief on discretionary denial and preliminary response on May 12, 2025. Paper 7; Paper 8. Entegris filed its response to the discretionary denial brief on June 12, 2025, and filed Updated Mandatory Notices on June 27, 2025. Paper 10; Paper 11. The Updated Mandatory Notices alerted the PTAB that, in a Delaware litigation involving the '903 patent between Inpria and third-party Lam Research Corp. (“Lam”), 1:22-cv-01359, the Patent Owner had dropped all claims except one dependent claim of the '903 patent (compared to the nine challenged claims in the Petition). Paper 11.

On July 2, 2025, the Petition was discretionary denied, relying on only one *Fintiv* factor, the timing of the trial. Specifically, despite Entegris not being involved in the *Inpria v. Lam* matter, the PTAB relied on the fact that the current trial date in that matter, if held, would precede any final written decision date in this proceeding. Regarding Entegris’s detailed explanation that it had no involvement in the *Inpria v. Lam* matter and that discretionary denial would deprive Entegris of any opportunity to be heard on invalidity, the PTAB included only three sentences, noting (a) a purported “business relationship” between Entegris and Lam and (b) that Lam had—

without any involvement by Entegris—incorporated by reference the grounds included in the public Petition into Lam’s invalidity contentions (which Entegris to this day has not reviewed). Paper 12. The PTAB did not properly weigh the *Fintiv* factors.

III. ARGUMENT

A. Retroactively Applying the February 2025 Recission of “Binding Agency Guidance” Violates the APA and Due Process

1. The PTO Applied The Recission Retroactively

A law is retroactive if it “changes the legal consequences of acts completed before its effective date.” *Weaver v. Graham*, 450 U.S. 24, 31 (1981). The PTAB has already acknowledged the recission is a “change of binding guidance.” *HP Inc. v. Universal Connectivity Techs., Inc.*, IPR2024-01428, Paper 12, at 2 (Apr. 8, 2025). Here, the PTAB’s application of the February 2025 recission to the Petition changed the legal consequences of Entegris’s actions in filing the Petition in December 2024.¹

Specifically, before the recission, when Entegris filed its Petition and paid the non-refundable IPR request fees, the legal consequences of Entegris’s filing were that (a) the June 2022 Memo’s provisions would apply, (b) the Board would examine

¹ In *Motorola Solutions, Inc. v. Stellar, LLC*, IPR2024-01206, Paper 23 at 5 (May 23, 2025), the Director found that the recission was not applied retroactively because it was “applicable only to cases in which a final decision on institution has not yet been made.” But as the facts of this proceeding show, even though no final decision on institution had been made, the PTAB’s recission after Entegris filed its Petition and paid the non-refundable fee changed the legal consequences for Entegris and denied it the right to an evaluation of the merits of the Petition.

the merits of the Petition first, and (c) the Board would *not* rely on the *Fintiv* factors to discretionarily deny institution in view of parallel district court litigation where, as here, the merits are compelling and the Director has not refuted the merits. Indeed, Entegris expressly relied on the June 2022 Memo and explained in the Petition that there is “no basis for discretionary denial under” *Fintiv* because, among other things, the Petition presents “compelling merits, as the claims were allowed based on the Office’s reliance on PO’s factual assertions during prosecution that were misleading and/or inaccurate.” Paper 1 at 23.

After the rescission, the legal consequences of Entegris’s filing changed. Instead of applying the June 2022 Memo and reviewing the merits of the Petition first, the DDD entirely ignored the merits. And instead of refusing discretionary denial in view of the strong merits, the DDD purported to rely on the *Fintiv* factors to discretionarily deny the Petition in view of the timing of parallel district court litigation—exactly what the June 2022 Memo prohibited.

2. Retroactive Application Violates the APA

The APA does not permit the Director here to rescind the June 2022 Memo and apply that rescission retroactively.

Substantive rules “will not be construed to have retroactive effect unless their language requires this result.” *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). There is no such language in the February 2025 rescission. Thus, notice and

comment are required for a substantive agency rule, *i.e.*, one that “effects a change in existing law or policy which affects individual rights and obligations.” *Animal Legal Def. Fund v. Quigg*, 932 F.2d 920, 927 (Fed. Cir. 1991) (cleaned up); *see also* 35 U.S.C. § 316; 5 U.S.C. § 553. That characteristic is critical to recognizing a rule as “‘binding’ or hav[ing] the ‘force of law.’” *Chrysler Corp. v. Brown*, 441 U.S. 281, 302 (1979) (citation omitted). “When an agency changes course,” as the USPTO] did here, “it must be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account.” *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30-31 (2020) (cleaned up).

Here, the rescission greatly impacted individual rights—after rescission, then-pending petitions like Entegris’s could be discretionarily denied without any assessment of the merits at all, even though they were filed *before* the rescission when compelling invalidity merits were required to be assessed first. *See* Section III.A.1; *Am. Bar Ass’n v. U.S. Dep’t of Educ.*, 370 F. Supp. 3d 1, 33 (D.D.C. 2019) (granting summary judgment for plaintiffs claiming that application of changed standards to deny relief was arbitrary and capricious). Neither the February 28, 2025 Notice nor the March 24, 2025 Memo reflects any consideration of the reliance interests created by the June 2022 Memo or the consequences of retroactive application to a narrow set of petitioners like Entegris here.

Characterizing the rescission as a policy statement—rather than a substantive rule—does not save it. “[G]eneral statements of policy ... advise the public *prospectively* of the manner in which the agency proposes to exercise a discretionary power.” *Lincoln v. Vigil*, 508 U.S. 182, 197 (1993) (cleaned up) (emphasis added); *see also* 5 U.S.C. § 522(a)(2)(ii) (a “statement of policy ... may be relied on ... by an agency against a party ... only if ... the party has actual and timely notice of the terms thereof”). Thus, however it is characterized, the rescission may not be applied retroactively without notice and comment, as the Director has done here.

Finally, the Director’s June 2022 Memo was binding on both the PTAB and the Director herself, as the Director is part of the PTAB. *See* 35 U.S.C. § 6(a). As the March 26, 2025 Memo explaining how the Director “will exercise her discretion” going forward recognizes, establishing rules for the exercise of discretion properly restricts the Director’s own discretion under 35 U.S.C. § 314. Indeed, that Memo is intended to “promote consistent application of discretionary considerations in the institution of AIA proceedings,” March 26, 2025 Memo at 3, which prevents the arbitrary and capricious exercise of discretion. The same was true of the June 2022 Memo.

In sum, rescission of the June 2022 “binding agency guidance” cannot be applied retroactively without violating the APA. *See* 5 U.S.C. § 706(2).

3. Retroactive Application Violates Entegris’s Due Process

“‘[C]onstitutional protections sounding in due process and equal protection, as embodied in our longstanding traditions and precedents addressing retroactivity in the law’” may also “constrain retroactive application.” *Kirwa v. U.S. Dep’t of Def.*, 285 F. Supp. 3d 21, 41 (D.D.C. 2017) (quoting *De Niz Robles v. Lynch*, 803 F.3d 1165, 1171–72 (10th Cir. 2015) (Gorsuch, J.)). Here, retroactive rescission of the June 2022 Memo violated Entegris’s due process rights.

The June 2022 Memo, which “restrict[ed] the exercise of official discretion,” gave Entegris “a legitimate entitlement” to consideration of its Petition on the merits where there were compelling invalidity merits. *Tarpeh-Doe v. United States*, 904 F.2d 719, 722 (D.C. Cir. 1990). That “binding agency guidance” did not relegate the merits to one of many factors; it provided that “the PTAB *will not rely on the Fintiv factors to discretionarily deny institution* in view of parallel district court litigation *where a petition presents compelling evidence of unpatentability*.” June 2022 Memo at 2 (emphasis added); *see also id.* at 4 (“[C]ompelling, meritorious challenges will be allowed to proceed at the PTAB even where district court litigation is proceeding in parallel.”). As the March 24, 2025 Memo implicitly recognized, under the June 2022 binding guidance, compelling merits were “dispositive” “alone.” March 24, 2025 Memo at 3. This sort of “explicitly mandatory language” creates a constitutionally protected interest. *Tarpeh-Doe*, 904 F.2d at 723 (cleaned up).

The rescission “as applied to” Entegris “summarily denies” Entegris the right to consideration of its Petition on the merits, contrary to the June 2022 Memo that governed when it filed the Petition, which “implicate[s] due-process concerns.” *Kirwa v. U.S. Dep’t of Def.*, 285 F. Supp. 3d 257, 274 (D.D.C. 2018). The provision for Director Review does not change this fact. Because the June 2022 Memo restricted the Director’s discretion, too, “all events necessary to establish” Entegris’s rights had occurred, preventing the retroactive application of the rescission. *Covey v. Hollydale Mobilehome Ests.*, 116 F.3d 830, 837-38 (9th Cir. 1997).

Entegris acknowledges that institution is always discretionary. *See Mylan Lab’ys Ltd. v. Janssen Pharmaceutica, N.V.*, 989 F.3d 1375, 1382 (Fed. Cir. 2021) (USPTO is under “no mandate to institute review” and that USPTO’s “decision to deny a petition is a matter committed to the Patent Office’s discretion.”) (internal quotation omitted). However, the retroactive rescission of the June 2022 Memo prevented Entegris’s Petition from being evaluated on the merits, which has substantial legal consequence. A merits evaluation would have provided Entegris, who is not a party to any litigation involving the ’903 patent, the opportunity to prove unpatentability of patent claims based on a lower preponderance of evidence standard, with no presumption of validity, before a panel of technically trained patent law experts. Moreover, the retroactive rescission deprives Entegris of the substantial

non-refundable IPR fee, which it tendered to the USPTO at the time of filing of its Petition, which Entegris filed in reliance on June 2022 Memo.

Compliance with due process mandates applying the June 2022 Memo to the Petition, which precludes discretionary denial based on parallel litigation in view the strong merits presented in the Petition.

B. The DDD Is Contrary To PTAB Precedent, Including *Fintiv*

Assuming that the *Fintiv* factors should even be weighed in this case (pursuant to the binding June 2022 Memo, they should not), the DDD should be reversed as it misapplied the *Fintiv* standard and ignored other PTAB case law which dictated against discretionary denial.

1. The DDD Improperly Found Entegris to Be Related to the Defendant in the Delaware Litigation

In *Fintiv*, the Office confirmed that, “[i]f a petitioner is unrelated to a defendant in an earlier court proceeding, the Board has weighed this fact against exercising discretion to deny institution under NHK.” See Paper 10 at 3 (citing *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 13-14 (P.T.A.B. Mar. 20, 2020) (precedential) (footnote omitted)); see also Paper 1 at 21. The Director summarily concluded that Entegris and the defendant in the Delaware litigation are “related” merely because they have a “business relationship.” Paper 12 at 2. That is legal error and an abuse of discretion.

Entegris and Lam are not “related” under any plausible interpretation of that term. Entegris is merely one of multiple suppliers of chemical precursors that may be used in Lam’s MOR equipment. Paper 10 at 4-6. Entegris has no control over Lam in the Delaware litigation; Entegris has no say in the positions taken in that case; Entegris has never seen Lam’s invalidity contentions, has no control over Lam’s invalidity positions, and has no opportunity to be heard in the district court case (via Lam or otherwise) on the issue of invalidity of the ’903 patent. *Id.* Nor does Entegris control Lam in any other way, such as whether Lam’s customers purchase Entegris’s precursors or those of other entities. *Id.*

In *Dolby Lab’ys, Inc. v. Intertrust Technologies Corp.*, IPR2020-00665, Paper 11 at 17 (P.T.A.B. Feb. 16, 2021), the Board found that a petitioner and defendant in nearly identical circumstances were *not* related for purposes of the *Fintiv* analysis. See Paper 10 at 4-6. The DDD failed to address this case law, explain why it should be disregarded in this case, or explain its apparent conclusion that any two companies with any business relationship should be considered “related” for purposes of determining whether to discretionarily deny a petition. The DDD must be reversed on this basis alone.

2. The DDD Did Not Account For The Reduction in Asserted Claims

The DDD also constituted an abuse of discretion and should be reversed because it inappropriately ignored the fact that only *one dependent claim* out of the

nine total challenged claims of the '903 patent remains asserted in the Delaware litigation. See Paper 12 at 2 (failing to acknowledge the claim reduction); Paper 11 (Petitioner's Updated Mandatory Notices filed June 27, 2025). Indeed, contrary to the assertion made in the DDD, the “issues presented in the Petition” are not “the same as, or substantially similar to, those already or about to be litigated,” Paper 12 at 2, because the validity of the *eight out of nine challenged claims* will *not* be determined in the Delaware litigation.

Ignoring this claim narrowing undermines the very purpose of IPR proceedings—established by Congress to improve patent quality and restore confidence in the presumption of validity that attaches to issued claims. See *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 272 (2016) (Congress granted the Office “significant power to revisit and revise earlier patent grants” as a mechanism to “improve patent quality and restore confidence in the presumption of validity that comes with issued patents” (quoting H.R. Rep. No. 112-98, pt. 1, at 45, 48)).

Each claim of a patent is, in effect, its own legal right. A patent owner can license or assert a single claim, and the validity of one claim stands independently of its siblings. For these reasons, a single invalid claim can continue to chill innovation and impose costs on the public—even if other claims in the same patent are struck down. That is why the public policy underlying IPR proceedings applies

with full force to every challenged claim, particularly those that will not be litigated in district court even if that action reaches trial.

Entegris’s Updated Mandatory Notices explained this, noting that only *one* of the challenged claims remain in the district court case. Paper 11 at 4 (“Inpria has elected to pursue only one claim of the ’903 Patent—claim 3.”). That distinction indisputably weighs against discretionary denial under *Fintiv* Factor 4. The PTAB recognized the same principle in *Apple Inc. v. Seven Networks, LLC*, IPR2020-00156, Paper 10 at 17 (P.T.A.B. June 15, 2020), where the Board found that addressing eleven claims not being litigated in district court favored institution. Yet the DDD here gave no weight to the fact that most of the Petition’s challenged claims are now outside the scope of the district court action. DDD at 2. That was an error of law and an abuse of discretion.

C. The DDD Is Contrary to Public Policy

Finally, public policy concerns dictate reversal of the DDD in this case. Congress established post-grant proceedings, including IPR, post-grant review, and covered business method proceedings to improve and ensure patent quality by providing “quick and cost effective alternatives to litigation” for challenging issued patents. H.R. Rep. No. 112-98, pt. 1, at 48. Specifically, the “post-grant review system” was intended to “give *third parties*”—like Entegris—“a quick, inexpensive, and reliable *alternative to district court litigation to resolve questions of patent*

validity.” S. Rep. No. 110-259, at 20 (emphasis added). Here, the DDD has stripped Entegris of that alternative and as such, contravenes Congress’s stated public policy.

Moreover, the DDD’s application of a hypothetical trial date in a district court case to which Entegris is not a party, and involving only one challenged claim, to deny Entegris’s Petition is fundamentally unfair. The Delaware litigation will not address the validity of eight out of nine of the claims challenged in the Petition, and the progress of that case should not outweigh Entegris’s statutory right to challenge the validity of a patent that claims a broad class of compounds relevant to Entegris’s business.

IV. CONCLUSION

Given these clear errors and critical policy considerations, rehearing is warranted. Entegris respectfully requests that the DDD be overturned and *inter partes* review of the ’903 patent be instituted.

Respectfully submitted,
BAKER BOTTS L.L.P.

August 1, 2025

Date

/ Eliot D. Williams /

Eliot D. Williams (Reg. No. 50,822)
LEAD COUNSEL FOR PETITIONER

CERTIFICATE OF COMPLIANCE

1. Pursuant to 37 C.F.R. §42.24(d), the undersigned certifies that the foregoing Petitioner's Request For Rehearing of Decision Denying Institution of Inter Partes Review is no more than 15 pages and therefore complies with the limitations of 37 C.F.R. §42.24(a)(1)(v). The page count does not include the Table of Contents, the Table of Authorities, the Certificate of Compliance, or the Certificate of Service.

2. This Petition complies with the general format requirements of 37 C.F.R. § 42.6(a) and has been prepared using Microsoft® Word in 14-point Times New Roman.

Respectfully submitted,
BAKER BOTTS L.L.P.

August 1, 2025

Date

/ Eliot D. Williams /

Eliot D. Williams (Reg. No. 50,822)
LEAD COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

In accordance with 37 C.F.R. §§42.6(e) and 42.105, the undersigned certifies that on the 1st day August 2025, a complete and entire copy of the foregoing Petitioner's Request For Rehearing of Decision Denying Institution of Inter Partes Review was served via email to Patent Owner at the following addresses:

PH-Entegris-Inpria-IPR@paulhastings.com

Respectfully submitted,
BAKER BOTTS L.L.P.

August 1, 2025

Date

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