UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SPORTRADAR AG,
Petitioner,

v.

SPORTSCASTR INC.
(d/b/a PANDA Interactive),
Patent Owner.

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IPR2025-00268

U.S. Patent No. 10,805,687

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**PATENT OWNER OPPOSITION TO PETITIONER'S MOTION FOR JOINDER**

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Patent Trial and Appeal Board
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## I. STATEMENT OF THE PRECISE RELIEF REQUESTED

Patent Owner SportsCastr Inc. (d/b/a PANDA Interactive) opposes Petitioner Sportradar AG's ("Sportradar") Motion for Joinder with *Genius Sports Ltd v. SportsCastr Inc.*, IPR2024-01305 (the "Genius IPR"), which was instituted on March 6, 2025. Pursuant to Acting Director Stewart's March 26, 2025 memorandum ("Stewart Memo") (EX-2004) and in view of the abrogation of the 2022 Vidal Memo (EX-2016), joinder is not appropriate here because the '687 patent is asserted against two defendants in parallel litigations that are scheduled for ***trial in January 2026 — <u>two months before</u> the Board's final written decision***. [1]

## II. INTRODUCTION

Joinder is not appropriate here because the Board should exercise its discretion to deny institution of the petition in view of parallel district court litigation involving the same patent, overlapping claims, the same prior art, and the same parties that is scheduled to be resolved by January 23, 2026 — two months before the Board's final written decision.

By the time the Board reaches an institution decision in this proceeding, the parties and the district court will have already invested significant time and resources in the cases, which were filed on October 5, 2023 – ***over 21 months*** before the

[1] Had this new guidance been issued earlier, the Board likely would not have instituted the Genius IPR in the first place, and there would have been no IPR for Petitioner to join.

Board's institution decision is due on July 8, 2025. The parties have already completed claim construction disclosures and discovery. A claim construction hearing will be held May 9, 2025. Additionally, the parties will have completed fact discovery and served opening invalidity expert reports in August , 2025.

The Board must consider whether to exercise discretion under § 314(a) before permitting joinder. *See Facebook, Inc. v. Windy City Innov., LLC*, 973 F.3d 1321, 1332 (Fed. Cir. 2020) (determining that § 315(c) requires "two different decisions," first "whether the joinder applicant's petition for IPR 'warrants' institution under § 314," and then whether to "exercise . . . discretion to decide whether to 'join as a party' the joinder applicant"). Under 35 U.S.C. § 315(c), the Director's discretion to join a party to an ongoing IPR is premised on the Director's determination that the petition warrants institution. Under *General Plastic*, the Board may deny a petition based on the Director's discretionary authority under § 314(a). *See, e.g.*, *General Plastic Indus. Co., Ltd. v. Canon Kabushiki Kaisha*, IPR2016- 01357, Paper 19 at 17 (PTAB Sept. 6, 2017) (precedential as to § II.B.4.i)).

Section 314(a) also gives the Board discretion to deny institution given the advanced state of parallel district court litigation regarding the same issues. *See NHK Spring Co. v. Intri-Plex Techs., Inc.*, IPR2018-00752, Paper 8 (PTAB Sept. 12, 2018) (precedential, designated May 7, 2019), where the Board set forth six factors for determining whether discretionary denial due to parallel litigation is appropriate (the "*Fintiv* factors"). The *Fintiv* factors, like the *General Plastic* factors, provide

another basis to deny an "understudy" joinder request, under "a holistic view of whether efficiency and integrity of the system are best served" by rejecting it. *See LG Elecs., Inc. v. Ancora Techs., Inc.*, IPR2021-00581, Paper 16 at 7 (June 10, 2021) (applying *Fintiv* and denying an "understudy" joinder request).

Moreover, as outlined in the Stewart Memo, additional factors in this case, such as "[t]he extent of the petition's reliance on expert testimony" and "compelling economic [interests]" weigh in favor of discretionary denial. (EX-2004, 2.) First, the Board instituted the Genius IPR because the Board chose to "give Dr. Rubin's [Patent Owner's expert] testimony less weight than Dr. Wicker's [Petitioner's expert] testimony at this preliminary stage." (IPR2024-01305, Paper 8, 37.) Second, compelling economic interests favor discretionary denial because of Petitioner's anti-competitive conduct that deprives consumers of a free market. (EX-2044, ¶¶18-31.)

The *Fintiv* and *General Plastic* factors, along with the additional factors outlined in the Stewart Memo, a discretionary denial under § 314(a). Therefore, the Board should exercise its discretion to deny joinder.

## III. *FINTIV* WEIGHS AGAINST INSTITUTION

The Board has discretion to deny institution due to the advanced state of parallel district court litigation regarding the same issues. *See NHK Spring*, IPR2018-00752, Paper 8 (PTAB Sept. 12, 2018) (precedential, designated May 7, 2019). The Board has set forth six factors for determining whether discretionary

denial due to such parallel litigation is appropriate:

1. whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted;
2. proximity of the court's trial date to the Board's projected statutory deadline for a final written decision;
3. investment in the parallel proceeding by the court and the parties;
4. overlap between issues raised in the petition and in the parallel proceeding;
5. whether the petitioner and the defendant in the parallel proceeding are the same party; and
6. other circumstances that impact the Board's exercise of discretion, including the merits.

*Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 5-6 (PTAB Mar. 20, 2020). Furthermore, the Stewart Memo identified additional factors, such as "the extent of the petition's reliance on expert testimony" and "compelling economic, public health, or national security interests," relevant to discretionary denial.

As set forth below, the *Fintiv* factors and additional Stewart Memo factors weigh against institution and joinder.

### A. Factor 1: The District Court Has Not Granted A Stay

The first *Fintiv* factor asks "whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted." *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 6 (PTAB Mar. 20, 2020) (precedential). Here, the undisputed answer to both questions is ***no***.

To date, no stay in the district court has been granted or requested. Further, the district court does not have a track record of granting stays before institution.

*See, e.g.*, *SB IP Holdings, LLC v. Vivint, Inc.*, No. 4:21-cv-00912, slip op. at 2 (E.D. Tex. Apr. 6, 2023) ("When a motion to stay is filed before the PTAB institutes post-grant review, courts in this district typically refrain from ruling on the motion pending action by the PTAB.") (EX-2035); *Portsmouth Network Corp. v, Cisco Systems, Inc.*, No. 2:23-CV-00441, slip op. at 2 (E.D. Tex. Oct. 21, 2024) ("[T]his Court has a consistent practice of denying motions to stay when the PTAB has yet to institute post-grant proceedings.") (EX-2036).

The Board has found Factor 1 to favor discretionary denial where "Petitioner present[ed] no evidence that it has requested a stay [] or that a stay is likely." *Luxshare Precision Industry v. Amphenol Corp.*, IPR2022-00132, Paper 10 at 9 (PTAB May 3, 2022). Factor 1 favors discretionary denial.

### B. Factor 2: District Court Trial Is Expected After The Statutory Deadline

Factor 2—the implications of the district court and IPR schedules—also weighs for denial. *Fintiv*, IPR2020-00019, Paper 15 at 11-12, 17 (PTAB May 13, 2020) (*informative*).

Trial on the '687 patent is scheduled for January 23, 2026—two months

before the Board's final written decision is expected.[2] (EX-2037.) The median time-to-trial for patent cases in EDTX is 721 days (i.e., roughly 24 months). (EX-2039.) Therefore, the new trial date in January 2026 will likely stick, particularly since the median time-to-trial would have put the trial date in October 2025. Accordingly, factor two favors discretionary denial.

### C. Factor 3: The Parties Will Have Invested Significant Resources In The Parallel Proceedings

Factor 3—the resources invested in parallel proceedings—favors denial if, at the time of the institution decision on or around July 8, 2025, the district court has issued substantive orders related to the patent, such as "claim construction orders." *Fintiv*, IPR2020-00019, Paper 11 at 9-10, n.17 (collecting cases).

Both the parties and the district court have invested significant resources in the two parallel proceedings for over 18 months since the filing of the complaints on October 5, 2023. The parties have already completed claim construction disclosures and discovery, and Patent Owner submitted its claim construction brief addressing 40 disputed terms on March 21, 2025. A claim construction hearing in both cases involving the '687 patent will be held May 9, 2025—two months before the Board's

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[2] On March 7, 2025, Petitioner filed a motion to amend the current docket control order. (EX-2040.) On March 28, 2025, the district court denied Petitioner's request for a 7-month extension, granting only a 75-day extension to the current trial date of November 7, 2025, and denying Petitioner's request to extend patent-related deadlines, including those for claim construction. (EX-2038.)

institution decision deadline. (EX-2037.) Additionally, the parties will have completed fact discovery and served opening invalidity expert reports by August 29, 2025 — 18 days before the Board's institution decision is due. (EX-2037.) On March 28, 2025, the district court denied Petitioner's request to extend patent-related deadlines, stating that "[t]he Court further does not find that proportional extensions of patent-related deadlines are appropriate." (EX-2038, 2.)

Accordingly, while Petitioner proffers a *Sotera* stipulation, by the time of the Board's institution decision, the parties will have already expended resources to litigate validity of the challenged patent through opening expert reports.

In view of the overlapping schedules here and the redundant resources that will be wasted should IPR be instituted, this factor favors discretionary denial. *Fintiv* at 6; *NXP USA, Inc. v. Impinj*, Inc., PGR2022-00005, Paper 20 at 7 (PTAB Aug. 25, 2022) (Board should consider "the duplicative efforts that will occur during the [] duration of [IPR]"); *Regeneron Pharmas. Inc. v. Novartis Pharma AG*, IPR2020-01317, Paper 15 at 17 (PTAB Jan. 15, 2021).

### D. Factor 4: The Issues Overlap

Factor 4—the degree of overlap between the issues in the petition and those before the district court—also supports denial. "[C]oncerns of inefficiency and the possibility of conflicting decisions [are] particularly strong" where "the Board [is] presented with substantially identical prior art arguments." *Fintiv*, IPR2020-00019, Paper 11 at 12. There is complete overlap between the petitioned grounds (*i.e.*, Ellis,

Herzog, and Spivey) and parallel litigations. (Petition, 7; EX-2041, 14; EX-2042, 23.)

Although Petitioner has submitted a *Sotera* stipulation, Petitioner's stipulation should carry no weight here because the parties will have already expended resources to litigate the same prior art through the completion of opening invalidity expert report before the Board's institution decision. In view of these parallel tracks, instituting IPR will multiply the burden on Patent Owner and create the possibility of inconsistent decisions between the district court and the Board.

Furthermore, Chief Judge Boalick's March 24, 2025 guidance states a "*Sotera* stipulation… will not be dispositive by itself. Instead, the Board will consider such a stipulation as part of its holistic analysis under *Fintiv*." (EX-2016, 2-3). Because Petitioner's stipulation does not "mitigate[] any concerns of duplicative efforts between the district court and the Board," or "of potentially conflicting decisions," Factor 4 weighs heavily in favor of discretionary denial. *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 at 19 (PTAB Dec. 1, 2020).

### E. Factor 5: Both Parties Are Parties In The Parallel Litigation

Factor 5 weighs in favor of denial because Petitioner is a defendant in the parallel litigation and will have a full, fair opportunity to litigate its invalidity contentions. *See Vizio, Inc. v. Maxell, Ltd.*, IPR2022-01459, Paper 7 at 21-22 (PTAB Apr. 11, 2023).

### F. Factor 6: The Petition Does Not Present Compelling Evidence Of Unpatentability

Factor 6—the merits of the petition—also weighs against institution because, as detailed in Patent Owner's Preliminary Response, the petition fails to show a "reasonable likelihood" that Petitioner would prevail on any challenged claim. (Paper 10.) The petition certainly does not pass the higher threshold of a "compelling" unpatentability challenge, which requires a determination that Petitioner is "highly likely" to succeed on the merits. *Commscope Techs. v. Dali Wireless, Inc.*, IPR 2022-01242, Paper 23, 3-4 (PTAB Feb. 27, 2023). Furthermore, even if the unpatentability challenge is compelling, the March 24, 2025 Board guidance states that "compelling merits alone is not dispositive in making the assessment [for discretionary denial]." (EX-2016, 3).

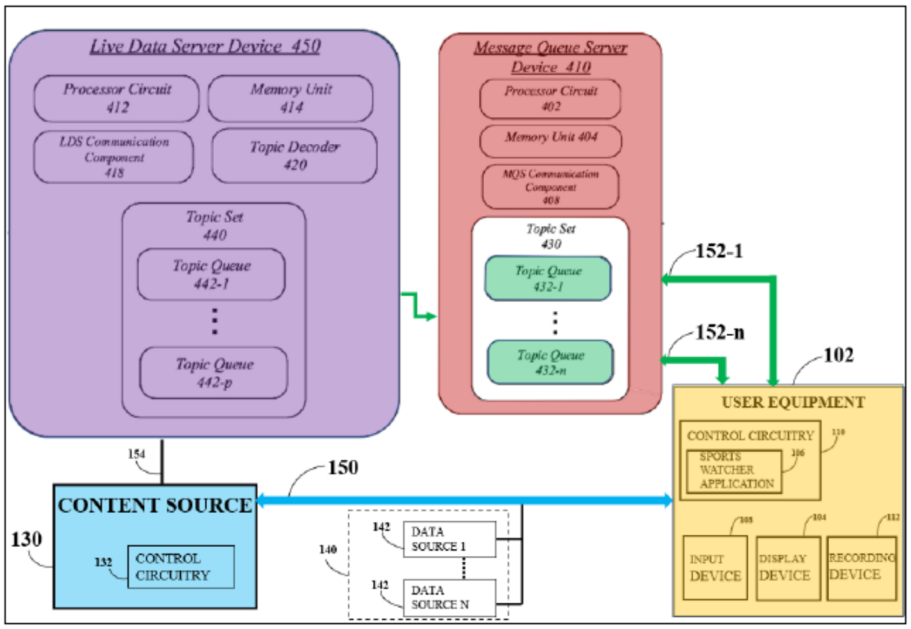
### G. Additional Factor 1: The Petition And The Instituted Matters Relied Heavily On Petitioner's Expert Testimony

In accordance with March 26, 2025 Stewart Memo, the Board should also consider "[t]he extent of the petition's reliance on expert testimony" as a factor for discretionary denial. (EX-2004, 2.) In instituting the Genius IPR, the Board relied heavily on Petitioner's expert testimony, stating "[w]e, therefore, give [Patent Owner's expert]'s testimony less weight than [Petitioner expert]'s testimony at this preliminary stage." (IPR2024-01305, Paper 8, 37.)

For example, the Board "agree[d] with Petitioner (Pet. 37 n.6) that Spivey suggests the intermediary live data access server is optional" based solely on a

footnote citing Petitioner's expert declaration. (IPR2024-01305, Paper 8, 34.) The Board also concluded that "Spivey at least suggests a direct connection between the message queue server device and client devices" again based on the same footnote stating, "these passages better support Petitioner's and Dr. Wicker's assertions at this stage." (IPR2024-01305, Paper 8, 35.) Furthermore, the Board "also credit preliminarily Petitioner's reason to omit the live data access server" based on expert testimony, rather than relying on specific disclosures from the prior art itself. (IPR2024-01305, Paper 8, 35.)

Another example of Petitioner's dependence on extrinsic testimony is its reliance on an entirely expert-created figure. This figure depicts an amalgamation of disparate prior art systems and fabricated components, purporting to represent a make-believe combined system that allegedly invalidates the claimed invention:




(Petition, 20.) The Board adopted this "illustration of [Petitioner's] conception of

the combined system" in deciding the Instituted Matters. (IPR2024-01305, Paper 8, 17.) However, as illustrated in the figure, the "151-1" and "151-2" connections are entirely fictional creations by Petitioner's expert and do not originate from intrinsic evidence (Petition, 20.)

Therefore, Petitioner's heavy reliance on expert testimony weighs in favor of discretionary denial. (EX-2004, 2.)

### H. Additional Factor 2: Compelling Economic Interests Favor Discretionary Denial Because Of Petitioner's Anti-Competitive Conduct

The Stewart Memo states that "[c]ompelling economic [interests]" should be considered as a factor for discretionary denial. (EX-2004, 2.)

On February 25, 2025, Patent Owner filed an amended complaint, with evidence that Petitioner not only copied Patent Owner's patented technology but also coerced Patent Owner's potential customers into using Petitioner's infringing products through anticompetitive tying arrangements. (EX-2043, ¶1.) Petitioner's coercion involved, among other things, conditioning access to essential data—exclusively controlled by Petitioner—on the use of its sports betting app technology, which includes its infringing products, in violation of antitrust laws. (EX-2043, ¶¶1, 18-31, 361-382.)

Patent Owner developed technology for delivering broadcasts enriched with synchronized, contextually matched, and actionable live data and content, using technology claimed in the '687 patent. The '687 patent is embodied in Patent

Owner's "SocketVision technology," which is incorporated in Patent Owner's consumer-focused "patented streaming platform" SportsCastr, as well as in the B2B "sports betting platform" PANDA Studio. (EX-2011-2014.) Petitioner learned of Patent Owner's products under the guise of exploring partnerships, but in reality, Petitioner was developing its own products by copying Patent Owner's patented technology. (EX-2015.)

## IV. INSTITUTION SHOULD BE DENIED UNDER *GENERAL PLASTIC*

The Board has discretion to deny "follow on" petitions. *General Plastic Indus. Co. v. Canon Kabushiki Kaisha*, IPR2016- 01357, Paper 19 (PTAB, Sept. 6, 2017) (precedential). The Board has set forth seven factors for determining whether discretionary denial is appropriate (the "*General Plastic* factors"):

1. whether the same petitioner previously filed a petition directed to the same claims of the same patent;
2. whether at the time of filing of the first petition the petitioner knew of the prior art asserted in the second petition or should have known of it;
3. whether at the time of filing of the second petition the petitioner already received the patent owner's preliminary response to the first petition or received the Board's decision on whether to institute review in the first petition;
4. the length of time that elapsed between the time the petitioner learned of the prior art asserted in the second petition and the filing of the second petition;
5. whether the petitioner provides adequate explanation for the time elapsed between the filings of multiple petitions directed to the same claims of the same patent;
6. the finite resources of the Board; and

7. the requirement under 35 U.S.C. § 316(a)(11) to issue a final determination not later than 1 year after the date on which the Director notices institution of review.

*General Plastic Indus. Co.*, IPR2016-01357, Paper 19 at 16. Here, the *General Plastic* factors weigh against joinder or are neutral.

### A. Factors 1, 2, 3, And 4 Are Neutral

Factors 1 through 4 relate to successive petitions filed by the same petitioners, which is not at issue here.

### B. Factors 5, 6, And 7 Weigh Against Joinder

Factor 5 weighs against joinder because Petitioner did not provide any explanation for the time elapsed between the filings of multiple petitions directed to the same claims of the same patent, let alone an adequate explanation.

Factor 6 also weighs against joinder, because as stated in the Stewart Memo, "[t]o ensure that the PTAB continues to meet its statutory obligations as to *ex parte* appeals, while continuing to maintain its capacity to conduct AIA proceedings, the Director will exercise her discretion on institution of AJA proceedings under 35 U.S.C. §§ 314(a) and 324(a) … The processes described herein are temporary in nature due, in part, to the current workload needs of the PTAB." (EX-2004, 1, 3.)

Furthermore, notwithstanding Petitioner's understudy role, Petitioner would be able to continue the proceeding that would otherwise be terminated after settlement with the primary petitioner. As the Board noted, this possibility is relevant to Factor 6. *See T-Mobile USA, Inc. v. VoIP-Pal.com, Inc.*, IPR2023-00638, Paper

11 at 11-13 (PTAB, July 28, 2023); *Apple Inc. v. Uniloc 2017 LLC,* IPR2020-00854, Paper 9 (PTAB Oct. 28, 2020). Accordingly, Factor 6 weighs against joinder as well.

Likewise, Factor 7 weighs against joinder because Petitioner failed to timely arrange a conference call with the panel, Patent Owner, and the Genius IPR petition so that the panel can "timely manage the proceedings." (*See* Consolidated Trial Practice Guide (Nov. 2019), 76.) Petitioner's failure to request a conference call and the Board's limited resources, as outlined in the Stewart Memo, both could adversely impact the Board's ability to meet the one-year statutory deadline.

Accordingly, factors 5, 6, and 7 weigh against institution and joinder. This is also relevant to so-called proposed Factor 8:

> 8. the extent to which the petitioner and any prior petitioner(s) were similarly situated defendants or otherwise realized a similar-in-time hazard regarding the challenged patent.

*Shenzhen Silver Star Intelligent Tech. Co., Ltd. v. iRobot Corp.*, IPR2018-00898, Paper 9 at 7 (PTAB Oct. 1, 2018) quoting *Shenzhen Silver Star Intelligent Technology Co., Ltd. v. iRobot Corp.*, IPR2018-00761, Paper 15, 18 (PTAB Sept. 5, 2018) (Saindon, concurring). As the Board explained, factor 8 is intended to discourage tactical filing of petitions over time by parties that faced the same threat at the same time. *Id.* at 13-14.

Just as in *Shenzhen Silver Star*, here Petitioner and Genius Sports Ltd. ("Genius") are co-defendants who faced a similar-in-time hazard regarding the '687 patent, yet Petitioner waited more than 3 months after Genius' filing of IPR2024-

01305 to file its own petition and waited more than 6 months to file this joinder motion. This suggests an attempt to secure tactical advantage and, because proposed Factor 8 weighs against tactical filing of petitions, this factor weighs against joinder.

## V. CONCLUSION

Joinder is not appropriate because institution should be denied under 35 U.S.C § 314(a) under a holistic view of whether efficiency and integrity of the system are best served by denying review. The Director may join a party to an ongoing IPR only if the later-filed petition warrants institution under § 314(a). *See* 35 U.S.C § 315(c). Where, as here, institution should be denied under § 314(a), the Joinder Motion should be denied as well.

Dated: April 21, 2025

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## CERTIFICATE OF SERVICE

I certify that I caused to be served a true and correct copy of the foregoing: **PATENT OWNER OPPOSITION TO MOTION FOR JOINDER and EXHIBITS** were served by filing this document through the Patent Trial and Appeal Case Tracking System (P-TACTS) on April 21, 2025, in its entirety on the following:

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