UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SPORTRADAR AG,
Petitioner,

v.

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

IPR2025-00273

U.S. Patent No. 11,039,218

PATENT OWNER'S DISCRETIONARY DENIAL BRIEF

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Patent Trial and Appeal Board
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Pursuant to Acting Director's Stewart's March 26, 2025 Memorandum titled "Interim Processes for PTAB Workload Management" (the "Stewart Memo," EX-2004) and in view of the abrogation of the 2022 Vidal Memo (EX-2016), Patent Owner SportsCastr Inc. (d/b/a PANDA Interactive) ("PANDA" or "Patent Owner") respectfully requests that the Director exercise discretion and deny institution of Petitioner Sportradar AG's ("Sportradar" or "Petitioner") Petition for *Inter Partes* Review of U.S. Patent No. 11,039,218 (the "'218 patent").

Petitioner asks the Board to commence precisely the kind of wasteful, duplicative Patent Office litigation that the Board's *Fintiv* precedent was designed to prevent. Specifically: (1) this petition is **one of <u>four</u> IPR petitions**[1] filed against the '218 patent, all relying on identical arguments and prior art references; and (2) this petition asks the Board to decide the validity of the same '218 patent claims that are already set to be adjudicated in parallel litigations scheduled for **trial in January 2026—<u>two months before</u> the Board's final written decision**.

[1] IPR2024-01310; IPR2024-01311; IPR2025-00275; and IPR2025-00273. IPR2024-01310 and IPR 2024-01311 were filed by Genius Sports Ltd. (the "Genius IPRs").

I. INTRODUCTION

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 cases that were filed on October 5, 2023—***21 months*** before the institution decision is due on July 8, 2025. The parties have already completed claim construction disclosures and discovery. A hearing to construe the claims will be held May 9, 2025. And the parties will complete fact discovery and serve opening invalidity expert reports in August 2025.

Section 314(a) 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) ("*NHK Spring*"). The Board set forth six factors for determining whether discretionary denial due to such parallel litigation is appropriate (the "*Fintiv* factors"). *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 5-6 (PTAB Mar. 20, 2020). In this case, all six *Fintiv* factors favor discretionary denial.

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, which this petition is a copycat of, 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." (IPR2024-01310, Paper 10, 43.) Second, compelling economic interests favor discretionary denial because of Petitioner's anti-competitive conduct that deprives consumers of a free market. (EX-2048, ¶¶18-31.)

Fintiv and the additional factors outlined in the Stewart Memo strongly favor discretionary denial under § 314(a).

II. *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.

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-2040); *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-2041).

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 '218 patent is scheduled for January 23, 2026—two months before the Board's final written decision is expected.[2] (EX-2042.) The median time-to-trial for patent cases in EDTX is 721 days (i.e., roughly 24 months). (EX-2044.) 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

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[2] On March 7, 2025, Petitioner filed a motion to amend the previous docket control order. (EX-2045.) On March 28, 2025, the district court denied Petitioner's request for a 7-month extension, granting only a 75-day extension to the previous trial date of November 7, 2025, and denying Petitioner's request to extend patent-related deadlines, including those for claim construction. (EX-2043.)

the time of the institution decision on or around August 20, 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 '218 patent will be held May 9, 2025—two months before the Board's institution decision deadline. (EX-2042.) Additionally, the parties will have completed fact discovery by August 22, 2025 and served opening invalidity expert reports by August 29, 2025. (EX-2042.)

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 and the parallel litigation.

Petitioned Prior Art Reference (Petition, 7)	Petitioner's Invalidity Contentions (EX-2046, 14.)	Genius's Invalidity Contentions (EX-2047, 23.)
Ellis	Yes	Yes
Spivey	Yes	Yes
Herzog	Yes	Yes

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 (Paper 10), Petitioner fails to show a "reasonable likelihood" that Petitioner would prevail on any challenged claim. 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 at 3-4 (PTAB Feb. 27, 2023). Furthermore, even if the unpatentability challenge were 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 the 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." (IPR2024-01310, Paper 10, 43)

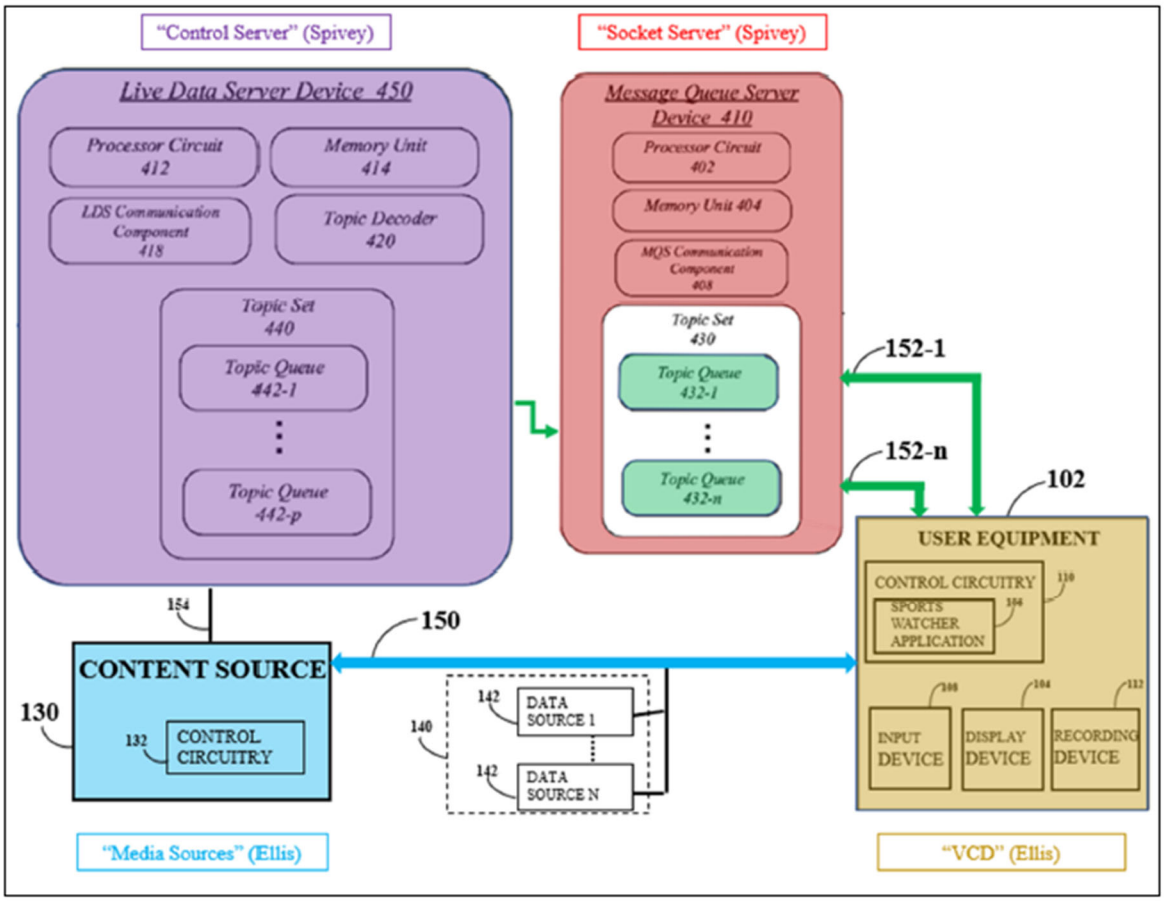
For example, the Board's finding that the "live data access server 130 is optional" is based solely on a footnote citing Petitioner's expert declaration. (IPR2024-01310, Paper 10, 40) The Board also concluded that "Spivey teaches or at least suggests that the firewall is optional" again based on the same footnote citing Petitioner's expert declaration. (IPR2024-01310, Paper 10, 40.) Furthermore, as shown below, the Board also credited 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:

> We also disagree with Patent Owner's argument that Spivey's live data access server was "omitted" without sufficient explanation. Prelim. Resp. 48. Dr. Wicker testifies in his opinion a person of ordinary skill in the art "would have used this implementation [the implementation of system 100 with a direct connection between client devices and MQSD]

> because reducing the amount of server transfers would reduce latency, which is Spivey's main purpose." Ex. 1001 ¶ 175 n.3. We find this explanation sufficient for purposes of institution.

(IPR2024-01310, Paper 10, 41.)

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, 23.) 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, 23.)

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-2048, ¶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-2048, ¶¶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 '218 patent. The '218 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.)

On Aug 21, 2019, at 15:07, Javier E. Altamirano <j.altamirano@sportradar.com> wrote:

Hi Andrew,

It was great meeting you at STT! Loved your presentation yesterday. We should work together, you are doing something quite innovative and love your traction.
+Cody Haugen our sales director as he should tell you about our Ad:s project, also I would love to carry on our conversation, as I said, I think you can get a lot more bang for your buck with us

What does your next week look like for you for a call?

(EX-2015 (annotated).)

From: Cody Haugen c.haugen@sportradar.com
Subject: Re: SPORTSCASTR
Date: August 23, 2019 at 8:11 AM
To: Andrew Schupak andrew@sportscastr.com, Javier E. Altamirano j.altamirano@sportradar.com
Cc: kevin@sportscastr.com

CH

Hi Andrew and Kevin,

Pleasure to meet you both!

Yes, I would love to setup a call to discuss how we can possibly work together. Are you available next week anytime?

Look forward to speaking.

Thanks,
Cody

—
Cody Haugen

Director of Sales, Digital Sport
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(EX-2015 (annotated).)

III. CONCLUSION

For the reasons set forth above, Patent Owner respectfully requests that the Director exercise discretion and deny institution under Section 314(a).

Dated: April 25, 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 DISCRETIONARY DENIAL BRIEF** was served by filing this document through the Patent Trial and Appeal Case Tracking System (P-TACTS) as well as via electronic mail on April 25, 2025, in its entirety on the following:

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