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

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

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. *FINTIV* DOES NOT WARRANT DISCRETIONARY DENIAL 2

III. *GENERAL PLASTIC* DOES NOT WARRANT DISCRETIONARY DENIAL..... 4

IV. PATENT OWNER'S "ADDITIONAL FACTORS" ARGUMENTS DO NOT WARRANT DISCRETIONARY DENIAL 5

TABLE OF AUTHORITIES

Page

Cases

Amazon.com, Inc. v. Jawbone Innov., LLC,
IPR2023-00284, Paper 12 (PTAB May 15, 2023) 4

Apple Inc. v. Fintiv, Inc.,
IPR2020-00019, Paper 11 (PTAB March 20, 2020) 3

Cent. Sec. Grp. – Nationwide, Inc. v. Ubiquitous Connectivity, LP,
IPR2019-01609, Paper 11 (PTAB Feb. 26, 2020) 4

Kyocera Corp. v. Softview LLC,
IPR2013-00004, Paper 15 (PTAB April 24, 2013) 1

LG Elecs., Inc. v. Gesture Tech. Partners, LLC,
IPR2022-00092, Paper 8 (PTAB May 9, 2022) 4

Sand Revolution II LLC v. Continental Intermodal Group,
IPR2019-01393, Paper 24 (PTAB June 16, 2020) 2

Sawai USA, Inc. v Biogen MA, Inc.,
IPR2019-00789, Paper 17 (PTAB Sept. 12, 2019) 2, 4

I. INTRODUCTION

Instead of addressing those factors actually relevant to the question of whether joinder is appropriate, the Patent Owner ("PO") focuses exclusively on the question of discretionary denial ***of the underlying IPR petition***, but not the propriety of the ***Motion for Joinder*** itself. *Kyocera Corp. v. Softview LLC*, IPR2013-00004, Paper 15 at 4. Thus, PO's Opposition to Petitioner's Motion for Joinder fails for this reason alone.

Since the merits panel of the PTAB assigned to this case will apparently decide Petitioner's Motion for Joinder, if the Joinder Motion briefing is being reviewed by the merits panel, the Director will have already determined that PO's discretionary denial arguments are unpersuasive. Thus, PO's Opposition to the Motion for Joinder will be unpersuasive for at least the same reasons supporting the Director's decision. Petitioner will address PO's redundant discretionary denial arguments in a more expansive manner in its discretionary denial opposition brief.

Moreover, PO's discretionary denial arguments miss the mark because they conveniently gloss over critical facts – the current Petition is a copycat petition associated with a Motion for Joinder, where the PTAB has already found that the underlying petition is strong on the merits and warrants trial. In other words, the PTAB *is already* conducting a trial considering the patentability of the *same claims* challenged by the current petition *on the same grounds*, regardless of what happens

in the District Court. Joining the current Petition to the existing trial, where the current Petitioner has offered a *Sotera* stipulation, and has stipulated to undertake an understudy role, simply does not implicate the same concerns that *Fintiv*, *General Plastic* and the March 26, 20205 Stewart Memo seek to address.

II. *FINTIV* DOES NOT WARRANT DISCRETIONARY DENIAL

Instituting the current petition and joining the current Petitioner as an understudy to the existing trial does not increase the workload of the PTAB, nor represent any additional duplication of efforts by the PTAB or the PO – a trial on the same claims and the same grounds at issue in the current petition is already underway. *See Sawai USA, Inc. v Biogen MA, Inc*., IPR2019-00789, Paper 17 at 11 ("We recognize that there is a trial in the related district court litigation which may occur before a Final Written Decision is issued in the Mylan IPR, but perceive limited prejudice to Patent Owner and little, if any, waste of Board resources in allowing Petitioner to join an ongoing inter partes review proceeding."). Consideration of the *Fintiv* factors themselves do not lead to a different conclusion.

Factor 1: As acknowledged by PO, "[t]o date, no stay in the district court has been granted or requested." Opposition, Paper 11, p.4. Thus, how the District Court chooses to treat such a request should not be inferred. *Sand Revolution II LLC v. Continental Intermodal Group*, IPR2019-01393, Paper 24 at 7. This factor does not favor discretionary denial. **Factor 2**: Trial is currently scheduled for January 23,

2026, while a final written decision in the underlying IPR is due March 17, 2026 – a difference of a little over seven weeks. Given the uncertainty as to whether this date will stick given Judge Gilstrap's overbooking of overlapping concurrent trial dates, coupled with the proximity of these two dates, this factor does not favor discretionary denial. **Factor 3**: Given that the Board's expected institution decision is prior to any expected substantive orders being issued by the District Court related to validity, with the possible exception of a claim construction ruling, the court and parties have not yet invested sufficient time in the parallel proceeding. The Petitioner's proffered *Sotera* stipulation also mitigates or eliminates redundancy of efforts by the District Court. This factor disfavors denial. *Apple Inc. v. Fintiv, Inc.,* IPR2020-00019, Paper 11 at 9-10 (precedential). **Factor 4**: Again, Petitioner's *Sotera* stipulation mitigates if not eliminates redundancy with efforts undertaken by the District Court. This factor strongly disfavors denial. **Factor 5**: *Fintiv* did not suggest Factor 5 *favors denial* when the petitioner and the defendant in the parallel proceeding are the same. *Id*. at 13-14. Petitioner is also a defendant in the related litigation, as is true of most petitioners and IPR proceedings. This factor does not favor denial. **Factor 6**: This factor strongly disfavors denial. The current Petition is substantively the same as the one in IPR2024-01310, which has been instituted.

III. *GENERAL PLASTIC* DOES NOT WARRANT DISCRETIONARY DENIAL

With regard to *General Plastic*, PO's arguments are even more misplaced. The present petition is not a "follow-on" petition under *General Plastic*, but rather a copycat or me-too petition filed for purposes of preserving the current Petitioner's rights in the event that the original petitioner withdraws from the underlying IPR. *Sawai,* Paper 17 at 10-11*; Amazon.com, Inc. v. Jawbone Innov., LLC*, IPR2023-00284, Paper 12 at 9; *LG Elecs., Inc. v. Gesture Tech. Partners, LLC,* IPR2022-00092, Paper 8 at 5-6; *Cent. Sec. Grp. – Nationwide, Inc. v. Ubiquitous Connectivity, LP,* IPR2019-01609, Paper 11 at 8.

PO admits as much when it acknowledges that the majority of the *General Plastic* factors (**Factors 1-4**) are not relevant to facts presented here. Opposition, Paper 11, p.13. Thus, by PO's own admission, the majority of the *General Plastic* factors do not warrant discretionary denial. **Factor 5** is likewise inapplicable. This is the first petition filed by the current petitioner directed to the '218 patent. A companion copycat petition was filed on the same day, but directed to *different claims* of the '218 patent. **Factor 6** does not support discretionary denial because granting the current petition and joining to the existing IPR, where Petitioner stipulates to undertake an understudy role, will not serve to further increase the workload of the PTAB or the PO. **Factor 7** does not favor discretionary denial because Petitioner explicitly stipulated ". . . to be bound by the Scheduling Order

Issued in IPR2024-01310." Motion for Joinder, Paper 9, p.9. Granting the Motion for Joinder will in no way affect the Board's ability to meet the statutory deadline to render a final written decision.

IV. PATENT OWNER'S "ADDITIONAL FACTORS" ARGUMENTS DO NOT WARRANT DISCRETIONARY DENIAL

PO argues that "*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.'" Opposition, Paper 11, p.9 (emphasis added). Respectfully, the preliminary determination made by the Board that the Petitioner's evidence relied upon to support its petition is superior to the evidence relied upon by PO in its opposition thereto is not a reason to deny institution – it is a fact *supporting* institution. PO's assertions in this regard are conclusory and unsupported by citation to any persuasive authority.

Next, PO cites Petitioner's alleged "anticompetitive" behavior "in violation of antitrust laws." First and foremost, PO's thread-bare allegations are meritless. Second, the Stewart memo never identifies alleged "anticompetitive" behavior as a factor warranting exercise of discretionary denial. Third, and unsurprisingly, PO cites no authority whatsoever in support of its conclusory and unsubstantiated allegations. Fourth, the Board is not in a position to adjudicate such claims. For at least the reasons explained herein, Petitioner's Motion for Joinder should be granted.

Date: May 21, 2025

Respectfully submitted,

/Scott W. Cummings/

Scott W. Cummings
Reg. No. 41,567
BRYAN CAVE LEIGHTON PAISNER LLP
scott.cummings@bclplaw.com

Alexander Walden
Admitted *pro hac vice*
BRYAN CAVE LEIGHTON PAISNER LLP
alexander.walden@bclplaw.com

Frank Fabiani
Reg. No. 75,934
BRYAN CAVE LEIGHTON PAISNER LLP
frank.fabiani@bclplaw.com

Attorneys For Petitioner Sportradar AG

CERTIFICATE OF SERVICE

In compliance with 37 C.F.R. § 42.6(e), the undersigned hereby certifies that a copy of the foregoing Petitioner's Reply to Patent Owner's Opposition to Motion For Joinder was served by email correspondence on the following correspondence email addresses of record for Patent Owner:

Beutermoser@kslaw.com;

Mikela.stone@kslaw.com;

Kduffy@kslaw.com; and

PANDA_K&S_IPR@kslaw.com.

Date: May 21, 2025

Respectfully submitted,

/Teresa C. Rodriguez/
Teresa C. Rodriguez