UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC, CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS, T-MOBILE USA, INC., AT&T SERVICES, INC., NOKIA OF AMERICA, CORP., AND ERICSSON INC.,
Petitioners,

v.

PEGASUS WIRELESS INNOVATION LLC,
Patent Owner.

Case IPR2025-00293
U.S. Patent No. 10,009,161

PATENT OWNER'S AUTHORIZED RESPONSE TO PETITIONERS' DIRECTOR REVIEW REQUEST[1]

[1] This Response was authorized by the Board via email (Ex. 3101).

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Petitioners' Request for Director Review ("Request") fails to present any justification for review and improperly raises new arguments not presented in the first instance. The Request should be denied.

I. Petitioners Never State Their Asserted Basis for Director Review

"Requests for Director Review … shall be limited to decisions presenting (a) an abuse of discretion, (b) important issues of law or policy, (c) erroneous findings of material fact, or (d) erroneous conclusions of law." *See* Director Review Process, available at https://www.uspto.gov/patents/ptab/decisions/director-review-process, updated May 23, 2025, Section 2.B.

While Petitioners quote this limitation on the Request process, they fail to identify the basis on which they seek review. Instead, they take issue with the Director's *Fintiv* analysis, and assert that the Director erred "because the decision did not consider the additional compelling economic interests at play in this case." Request, 4. Notably, these "additional compelling economic interests" were never raised before in this proceeding, and are not of record. This is improper. Petitioners also assert that the Director allegedly "mishandl[ed]" the *Fintiv* factors, but fail to acknowledge that the Director fully considered each factor and reached a holistic decision. Beyond the improper new issues raised in the Request, Petitioners simply try to relitigate issues already properly considered by the Director, without even attempting to establish that the Director's denial falls into an available category for

further review.

II. The Director's Decision was not an Abuse of Discretion

The Director's discretionary decision to deny institution based on *Fintiv* was not arbitrary and requires no review. In criticizing the Director's *Fintiv* analysis, Petitioners' Request attempts to relitigate individual *Fintiv* elements. Request, 4-6. But that is not the task before the Director, as a review for "abuse of discretion," including an "arbitrary and capricious" review, looks to the decision as a whole and not to the individual elements. *See Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd*., 821 F.3d 1359, 1367 (Fed. Cir. 2016) ("Abuse of discretion exists if ***the decision*** is … clearly unreasonable, arbitrary, or fanciful") (emphasis added); *see also Perry v. Raimondo*, 101 F.4th 55, 64-65 (D.C. Cir. 2024) (noting a reviewing court looks to the decision and stating "[t]he fact that some … factors might weigh in … favor [of a contrary conclusion] does not render arbitrary or capricious the Board's conclusion"). Moreover, as the Decision Denying Institution noted, "the determination to exercise discretion to deny institution is based on a holistic assessment of all of the evidence and arguments presented." DI, 4.

The Director's *Fintiv* analysis and holistic assessment of all the evidence and arguments presented confirm there was nothing "unreasonable, arbitrary, or fanciful" about its outcome.

Moreover, the evidence, Ex. 1100, Petitioners injected into the record following the Director's Decision (*see* Ex. 3100) demonstrates that the district court case is rapidly proceeding towards an efficient resolution without PTAB involvement. Petitioners fail to establish any reason that the Board should dedicate administrative resources to this dispute when the district court is already effectively managing the disputes between the litigants.

The Request should be denied.

III. New Arguments in a Request for Director Review are Improper

Petitioners improperly include in their Request a new argument that seeks favored treatment based on national status of the entities before the Board, without precedent. Request, 6-9.[2] The Request fails to address where this argument, and the alleged parade of horribles that could result from an infringement finding was presented below, for the simple reason that they were not. This new argument should be soundly rejected according to the Director's guidance. *See* Process, Section 3.E ("The Director will not consider new evidence or new arguments not part of the official record.").

[2] This same argument was originally presented by Petitioners against Patent Owner in Requests for Director Review of institution denials filed in IPR2025-00036 and IPR2025-00037. On August 5, 2025, the Director denied Petitioners' Requests.

Should this new argument be considered, it should be rejected as an attempt to gain favored status without basis. The United States patent system is strong because it allows all patent owners—small, large, foreign, domestic—to protect patented innovations, a fact underscored by the thousands of patent applications from foreign countries filed each year. Petitioners should not be allowed to make inflammatory arguments that certain entities should be entitled to different standards of scrutiny.

Finally, Petitioners also include a new argument about "settled expectations," (*see* Request, 9-11) but again point to nowhere in the record where this argument was previously presented. And even if this factor were considered, Petitioners fail to establish that it outweighs the Director's proper consideration and weighing of the *Fintiv* factors.

The Request fails to establish any error warranting reconsideration of the Director's correct denial of institution, and should be rejected.

Dated: September 12, 2025

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CERTIFICATE OF SERVICE

Petitioners have consented to e-mail service in this proceeding. Pursuant to 37 C.F.R. §42.6, the undersigned certifies that on this date, a copy of the foregoing document was served by email upon the following counsel at the below email addresses:

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