

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TWITCH INTERACTIVE, INC.

Petitioner,

v.

RAZDOG HOLDINGS LLC

Patent Owner.

IPR2025-00307

Patent No. 9,729,658

**OPPOSITION TO PATENT OWNER'S REQUEST FOR
DISCRETIONARY DENIAL**

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I. INTRODUCTION

Discretionary denial is not warranted in this proceeding. Although there is co-pending litigation in the Northern District of California, that litigation presently has no set trial date (the previously set trial date was recently vacated without setting a new one). Because of this, re-assignment to a new district court judge, and relevant time-to-trial statistics, the Final Written Decision (“FWD”) in this IPR will likely issue well before any district court trial. In addition, to avoid potential overlap, Twitch Interactive, Inc. (“Petitioner” or “Twitch”) has provided a *Sotera* stipulation. RazDog Holdings LLC (“RazDog Holdings” or “PO”) asserts that the Director should shield its patents from review at the Office, but both the *Fintiv* factors and additional considerations here show exactly the opposite: the Director should decline to exercise discretion to deny institution so that this case can proceed to an institution determination on the merits.

II. BACKGROUND

A. The Parties

Twitch operates a popular online service for watching and streaming primarily live, online video broadcasts. EX1051. Twitch began as Justin.tv, an American internet startup that launched in 2007 and was designed to allow anyone to broadcast video online. *Id.*, 1; EX1052, 1-2. In 2011, the company spun off its video gaming section to a new website called Twitch.tv. EX1052, 1-2. Twitch is now home to creators who stream live video game play and commentary, esports tournaments,

real-life streams and live chats, music, creative arts, games, video, sports, and other content, as well as the hundreds of millions of viewers who tune in to watch those creators' channels. EX1051, 3; EX1052, 3. Over seventeen years after its founding, Twitch remains popular in the live content space, is headquartered in the U.S., and employs over 1,000 people. EX1051, 1, 6; EX1053, 1-2.

Patent Owner RazDog Holdings, on the other hand, incorporated just over one year ago, on April 5, 2024. EX1054. Five days later, two patents were assigned to it: U.S. Patent Nos. 9,729,658 (“’658 patent”) and 10,334,068 (“’068 patent”) (collectively, “RazDog patents”). EX1055. And two months after the assignment, RazDog Holdings sued Twitch in the Northern District of California (Case No. 3:24-cv-3638, hereafter “co-pending litigation”) asserting both patents. EX1013; EX1056. Since filing, the case has been reassigned three times and presently does not have a schedule for hearings, pre-trial, or trial, as discussed below.

The RazDog patents issued many years before they were assigned to RazDog Holdings (the ’658 patent issued on August 8, 2017 (EX-1001 in IPR2025-00307), and the ’068 patent issued on June 25, 2019 (EX-1001 in IPR2025-00308)¹). Shortly after the ’068 patent’s issuance in July 2019, the named inventors assigned both

¹ The earliest possible priority date for both patents is October 12, 2010, based on the earliest-cited provisional application.

patents to RazDog LLC, which was incorporated in 2018. EX1057; EX1058. And in July 2019, RazDog LLC began a short-lived litigation campaign, asserting the patents in three separate Northern District of Illinois cases against three small businesses. *Razdog LLC v. Cooling Equip. Svc., Inc.*, 1-19-cv-05704 (N.D. Ill. Aug. 25, 2019); *Razdog LLC v. Cont'l Salvage Co.*, 1-19-cv-04610 (N.D. Ill. July 9, 2019); *Razdog LLC v. Cook Brothers Inc.*, 1-19-cv-05703 (N.D. Ill. Aug. 25, 2019). In all three cases, RazDog LLC voluntarily dismissed its complaint before any of the defendants answered. EX1059-EX1061 (Case dockets).

Following this aborted litigation campaign, the RazDog patents lay dormant for almost five years, before they were assigned to a new entity (RazDog Holdings) and asserted without warning against Twitch.

B. The Co-Pending Litigation

RazDog Holdings filed suit against Twitch on June 17, 2024, in the Northern District of California asserting both RazDog patents.² EX1013. The case was initially assigned to Magistrate Judge Nathanael M. Cousins before being reassigned to Judge Jacqueline Scott Corley on July 1, 2024. EX1056 (Dkt. Nos. 8 and 23). Judge Corley issued a case schedule on September 27, 2024, setting trial for June 1,

² The '068 patent is a continuation of the '658 patent and is the challenged patent in co-pending IPR2025-00308.

2026. On February 24, 2025, the district court case was reassigned once again, this time to the newly confirmed Judge Noël Wise, who further “received more than 150 new or transferred cases, dozens of which have motions pending.” EX1062. On March 24, 2025, Judge Wise asked RazDog Holdings and Twitch “whether they consent to have a Magistrate Judge conduct all further proceedings.” *Id.*, 2. But the parties declined on April 7, 2025, leaving the case on Judge Wise’s docket. EX1063. On April 28, 2025, Judge Wise issued an Order of Recusal “request[ing] that the case be reassigned pursuant to the Assignment Plan” and ordering that “[a]ll pending dates of motions, pretrial conferences and trial are hereby vacated and will be reset by the newly assigned judge.” EX1077. On April 29, 2025, the case was reassigned yet again, this time to Judge Haywood S. Gilliam, Jr., who ordered that “[a]ll hearing and trial dates presently scheduled are vacated. However, existing briefing schedules for motions remain unchanged.” EX1078.

Case Schedule: As of the filing date of this brief, the co-pending litigation does not have a schedule for hearings, pretrial conferences, or trial. *See id.*

Fact Discovery: To date, the parties have engaged in little fact discovery in the district court, including:

- The parties have exchanged Infringement, Invalidity, and Damages Contentions pursuant to the requirements of the court’s Patent Local Rules. In particular, RazDog Holdings served Infringement

Contentions on November 22, 2024, followed by Twitch's Invalidity Contentions on January 13, 2025. RazDog Holdings then served Damages Contentions on March 18, 2025, and Twitch served responsive Damages Contentions on April 17, 2025.

- RazDog Holdings has only served 4 Interrogatories and 65 Requests for Production.³ RazDog Holdings has not served any Requests for Admission.
- Twitch has served 18 Interrogatories, 18 Requests for Admission, and 67 Requests for Production to RazDog Holdings. RazDog Holdings has responded to 13 of the Interrogatories and 50 of the Requests for Production. (RazDog Holdings has not yet responded to any of the Requests for Admission.) Notably, RazDog Holdings has refused to provide a substantive response to certain Twitch Interrogatories,

³ Under Fed. R. Civ. P. 33(a)(1), parties are allowed to serve up to 25 written interrogatories. And in a September 19, 2024, Case Management Statement, the parties agreed “to limit the number of requests for admissions to 50 per side, not including requests for admission for the sole purpose of document authentication.” EX1064, 4.

including No. 4 regarding alleged validity of the '658 patent, because RazDog Holdings asserts it is a “contention interrogator[y], and we believe that supplemental responses are premature at best.” EX1065.

- RazDog Holdings has produced only 623 documents, and Twitch has produced 170 documents.
- Twitch has served third-party document and/or deposition subpoenas to Apple, Microsoft, Epic Games, Mojang, and Rockstar Games seeking information regarding system prior art—*i.e.*, art that Petitioner could not have raised in this IPR proceeding.⁴ No third-party depositions have taken place or even been scheduled.

No depositions have taken place (or even been noticed). RazDog Holdings has not reviewed any of Twitch’s produced source code. Under the schedule previously set

⁴ In the district court, Petitioner asserts invalidity based on third-party system art (*i.e.*, Justin.tv, Windows Live Mobile, and Apple Cover Flow UI and Related Applications (*see* EX2004, 7-12)) that is materially different from—and does not substantively overlap with—the patents or printed publications in the Petition. RazDog Holdings has not asserted any such overlap in its Request for Discretionary Denial.

by Judge Corley before the case was reassigned (first to Judge Wise and then to Judge Gilliam), fact discovery is not scheduled to close until August 5, 2025. EX2001.

Expert Discovery: No expert discovery has taken place. The parties have only disclosed some of their experts. *See* EX1066 (RazDog Holdings disclosing the identity of its damages expert); EX1067 (Twitch disclosing the identity of its damages expert); EX1068 (RazDog disclosing the identity of its “technical and validity expert”). Under the schedule previously set by Judge Corley, opening expert reports would not be due until September 19, 2025, and rebuttal reports would be due on October 17, 2025, followed by the close of expert discovery on November 21, 2025, and dispositive motions on December 5, 2025. EX2001.

Claim Construction: The parties exchanged proposed terms for construction on January 27, 2025, and exchanged preliminary proposed constructions and extrinsic evidence on February 17, 2025. They filed a Joint Claim Construction and Prehearing Statement on March 14, 2025, and an Amended Joint Claim Construction and Prehearing Statement on April 25, 2025. Under the schedule previously set by Judge Corley, opening claim construction briefs would be due on May 5, 2025; responsive briefs would be due May 19, 2025; and reply briefs would be due May 26, 2025. EX2001. No *Markman* hearing is currently scheduled following the latest reassignment of the case to Judge Gilliam. *See* EX1077, EX1078.

C. *Inter Partes* Reviews

Twitch filed petitions for *inter partes* review on December 23, 2024, challenging all claims of the '658 patent in this proceeding and the only issued claim (claim 1) of the '068 patent in IPR2025-00308. Both petitions assert grounds based on U.S. Patent Application Publication 2008/0086484 (“Darnell,” EX1004), U.S. Patent Application Publication 2007/0016609 (“Kim,” EX1005), and U.S. Patent 8,640,052 (“Dasgupta,” EX1006).

These IPRs were filed about one month after RazDog Holdings served infringement contentions and before Twitch served its invalidity contentions in the district court. At the time these IPRs were filed, the June 21, 2022, memorandum as to *Fintiv* was still in effect, and the district court case had not yet been reassigned to Judge Wise (and then subsequently reassigned to Judge Gilliam). After the IPR petitions were filed, the Board issued Notices of Filing Date Accorded (“NOFDAs”) on January 30, 2025 (almost 6 weeks later). If the Board were to institute IPRs, the expected date for FWDs would be on or before July 30, 2026.

On April 21, 2025—just two business days after the PTAB’s Boardside Chat regarding “the new interim process relating to institution in AIA proceedings”—Twitch served a stipulation to RazDog Holdings that, if the PTAB institutes IPR2025-00307, “Petitioner will be bound by the full scope of the estoppel under 35 U.S.C. §315(e)(2) in *RazDog Holdings LLC v. Twitch Interactive, Inc.*, Case No.

5:24-cv-03686 (N.D. Cal.) as of the date of the PTAB’s institution decision on the merits (i.e., Petitioner will forgo invalidity in district court based on ‘any ground that the petitioner raised or reasonably could have raised during that inter partes review’).” EX1070. Given the unique timing in this proceeding—RazDog Holdings filed its request for discretionary denial only two days after the Acting Director’s March 26, 2025, memorandum regarding “Interim Processes for PTAB Workload Management” (hereafter, “Director’s Memorandum”)—RazDog Holdings’ discretionary brief did not address Twitch’s stipulation. Twitch therefore proactively reached out to RazDog Holdings to propose that the parties jointly seek authorization from the Acting Director to adjust the discretionary briefing schedule as follows:

- “Within one week of authorization, PO to file a supplemental brief in each IPR limited to address the stipulation”
- “Within one week of PO’s supplemental filing, Petitioner to file its discretion opposition brief in each IPR.”

EX1071. Three days later, RazDog Holdings responded that “we believe the most straightforward path is for Petitioner to file its opposition to the request for discretionary denial by the current deadline. If necessary to respond to Petitioner’s *Sotera* stipulation or otherwise, Patent Owner will request authorization to file a reply to Petitioner’s opposition[.]” EX1072. The parties therefore jointly emailed the Acting Director on April 25, 2025, to propose that “PO may request authorization to

file a reply to Petitioner's oppositions in each IPR to address Petitioner's stipulation, if necessary, following the filing of Petitioner's opposition[]." EX1073.

III. DISCRETIONARY DENIAL IS NOT WARRANTED

In its Request for Discretionary Denial, RazDog Holdings asserts this IPR should be discretionarily denied based on the *Fintiv* factors, including certain additional considerations outlined in the Director's Memorandum. Discretion Request ("Request," Paper 11), 2-3. Contrary to RazDog Holdings' assertions, however, discretionary denial is not warranted in this case because each of the *Fintiv* factors is either neutral or favors institution. No trial date is presently scheduled in the district court after the case was just reassigned for a third time (EX1078), and the most recent time-to-trial statistics for Judge Gilliam show a median of 31.8 months (EX1069). Fact discovery will be ongoing at the time of an institution decision on the merits, and expert discovery will not yet have begun.

Moreover, Twitch was diligent and expeditious in filing its Petition, and to avoid any possibility of conflicting decisions and overlap between this IPR and the co-pending litigation, Twitch served a stipulation that "if the PTAB institutes an inter partes review ('IPR') in IPR2025-00307, [Twitch] will be bound by the full scope of the estoppel under 35 U.S.C. § 315(e)(2) in *RazDog Holdings LLC v. Twitch Interactive, Inc.*, Case No. 5:24-cv-03638 (N.D. Cal.) as of the date of the PTAB's institution decision on the merits (i.e., [Twitch] will forgo invalidity in district court

based on ‘any ground that the petitioner raised or reasonably could have raised during that inter partes review’).” EX1070. Moreover, the Petition presents compelling, well-supported (e.g., particularly strong) unpatentability grounds demonstrating that all claims of the ’658 patent are unpatentable as obvious; RazDog Holdings’ arguments to the contrary are unsupported and misguided.

Below Twitch addresses each of the six *Fintiv* factors before addressing additional considerations relevant to discretion here, including those identified in the Director’s Memorandum.

A. Factor 1: whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted

The Director should weigh Factor 1 as neutral.

Although neither party has yet moved to stay the district court case, the parties have already informed the Court of the filed IPRs (EX2003, 2-3), and Twitch intends to move for a stay.⁵ *See, e.g., Hulu, LLC v. SITO Mobile R&D IP, LLC*, IPR2021-00298, Paper 11 at 10-11 (May 19, 2021) (because “neither party has produced evidence that a stay has been requested[,]” “[w]e decline to infer, based on actions taken in a different case with different facts, how the District Court would rule

⁵ Because of the recent reassignment (for the third time) to a new district court judge, Twitch is considering a motion to stay prior to an institution decision.

should a stay be requested by the parties in the parallel case here.”) (partially quoting *Fintiv*).

There is good reason to believe that a stay will be granted. Judges in the Northern District of California routinely grant stays after IPR institution. EX1074. Over the past twelve years, judges in the district have granted or partially granted 76% of all post-institution motions to stay pending *inter partes* review. *Id.* And in 2025 alone, **all** such motions have been granted. *Id.* Similarly, Judge Gilliam has granted all post-institution stay motions since 2016. EX1079.

RazDog Holdings ignores these data points and instead incorrectly suggests that Twitch has “la[id] in wait for months in district court, where they can collect intel...such as claim construction positions and contentions.” Request, 7. That is demonstrably incorrect. Twitch moved quickly in preparing and filing the Petition just a month after receiving RazDog Holdings’ infringement contentions in the district court (on November 22, 2024), more than a month **before** the parties exchanged proposed terms for construction (on January 27, 2025), and more than six weeks **before** the parties exchanged preliminary proposed constructions and extrinsic evidence (on February 17, 2025). *See supra* §II.B (Procedural Background). Twitch thus received no benefit for the unpatentability grounds in its Petition from any developments related to claim construction in the district court because Twitch did not have them at the time the Petition was filed. As to contentions, the Board has

repeatedly found—including in the precedential *Fintiv* decision—that there is nothing wrong with a petitioner filing an IPR petition a reasonable amount of time after receiving infringement contentions from the patent owner/plaintiff. *See, e.g., Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11, 11 (Mar. 20, 2020) (precedential) (“it is often reasonable for a petitioner to wait to file its petition until it learns which claims are being asserted against it in the parallel proceeding.”); *Corning Optical Comm’ns LLC v. Dali Wireless, Inc.*, IPR2021-00762, Paper 8, 9-10 (Oct. 13, 2021) (crediting petitioners for filing petitions as many as four months after receiving infringement contentions). All of Patent Owner’s unfounded arguments for this factor should therefore be rejected.

B. Factor 2: proximity of the court’s trial date to the Board’s projected statutory deadline for a final written decision

The Director should find that Factor 2 weighs strongly against denial.

As explained above, the district court case was recently re-assigned for a third time, and the Reassignment Order vacated “[a]ll hearing and trial dates presently scheduled” (EX1078). *See supra* §II.B (Procedural Background). Thus, contrary to RazDog Holdings’ assertion that the “trial date of June 1, 2026 is not likely to change” (Request, 8), that date *has* changed, and there is currently no trial scheduled. In addition, the time-to-trial statistics for Judge Gilliam show a median of 31.8 months, which would put the trial in February 2027—*i.e.*, more than eight months *after* the expected FWD. EX1069. These statistics generally align with the Northern District

of California as a whole, which has a median time to trial of 34.5 months (EX1075, 9).

RazDog Holdings either does not address these points or dismisses them without explanation. *See* Request, 8-9. In support of its arguments, RazDog Holdings cites cases that it alleges show “a trial date which precedes a final written decision deadline by a mere few months favors discretionary denial.” Request, 9-10. But every one of those cases is distinguishable, especially now that the co-pending litigation no longer has a trial date. First, RazDog Holdings points to *Samsung Elecs. Co. v. Mojo Mobility Inc.*, IPR2023-01092, Paper 11, 11-12 (Jan. 8, 2024), where the district court trial was scheduled about five months before the projected FWD date. RazDog Holdings neglects to mention, however, that in *Mojo Mobility*, time-to-trial statistics showed an even earlier trial date, which the Board found made the trial date “credible” and entitled to weight. *Id.* Here, in contrast, time-to-trial statistics predict a trial date long after the expected FWD.

For *Immersion Sys. LLC v. Midas Green Techs., LLC*, PGR2021-00104, Paper 15, 11 (Jan. 31, 2022), in addition to the trial being scheduled four months before expected FWD, the district court had denied a motion to modify the schedule and twice stated that such motions would be “disfavored” and not be granted absent good cause (facts not present here). Further, *NXP USA, Inc. v. Impinj, Inc.*, PGR2022-00005, Paper 18, 8-9 (May 2, 2022); *Fintiv*, Paper 15, 12-13 (informative); and

eClinicalWorks, LLC v. Decapolis LLC, IPR2022-00229, Paper 10, 9 (Apr. 13, 2022)—all cited by RazDog Holdings—were decided before the Board considered average time to trial statistics as part of *Fintiv* factor 2. These cases are distinguishable because the Board took the trial date at face value, whereas here, no trial is currently scheduled.

RazDog Holdings also points to cases that issued prior to the precedential *Fintiv* decision. For *Bentley Motors Ltd. v. Jaguar Land Rover Ltd.*, IPR2019-01539, Paper 9, 14 (Mar. 10, 2020), the Board focused on district court investment rather than the set trial date alone in considering the “[s]tage of the [l]itigation” (*id.*, 12-15). Similarly in *E-One, Inc. v. Oshkosh Corp.*, IPR2019-00161, Paper 16, 6-9 (May 15, 2019), the Board did not separately weigh the trial date, other than noting that the set date was before the expected FWD, and the Board focused on district court investment which included issuance of a preliminary injunction and a Markman order (*id.*, 6-7).

Not a single one of RazDog Holdings’ cases addresses a situation similar to the one the Director is presented with here: no trial date is set, and time-to-trial statistics indicate that trial would happen after the expected FWD. More closely analogous cases support the Director finding this factor weighs strongly against denial. For example, in *Beckman Coulter, Inc. v. Sirigen II Ltd.*, the Board weighed factor 2 “strongly against discretionary denial of institution” because “no trial date

is set” and PO’s expectations of trial dates “is purely speculative.” IPR2022-01207, Paper 12, 18 (Jan. 6, 2023); *see also Bio-Rad Labs., Inc. v. Cal. Inst. of Tech.*, IPR2024-01451, Paper 11, 9 (Mar. 27, 2025) (the Board weighed factor 2 against denial where the district court case was assigned to a new judge, and had no scheduled trial date, and Petitioner’s median time-to-trial statistics forecast the trial trailing the FWD by nearly 19 months); *Savant Techs. LLC v. FEIT Elec. Co.*, IPR2024-01357, Paper 17, 9-12, 15 (Mar. 5, 2025) (weighing factor 2 against denial in the absence of scheduled trial dates in two parallel forums with statistics indicating trial trailing the Board’s FWD significantly). Factor 2 likewise weighs strongly against discretionary denial here.

C. Factor 3: investment in the parallel proceeding by the court and the parties

The Director should weigh Factor 3 against discretionary denial.

Contrary to RazDog Holdings’ assertion that the “current and projected investment by the district court and parties in the NDCA Litigation is immense,” most of the case investment actually lies ahead. As set forth comprehensively in the Procedural Background section above (§II.B), much of fact discovery remains left to complete—no party depositions have been noticed; no third-party depositions have been taken; neither party has produced more than 623 documents; RazDog Holdings has not performed a single inspection of the source code for Twitch’s accused products; RazDog Holdings has served only four Interrogatories while

refusing to substantively respond to Twitch's Interrogatories regarding, for example, alleged validity of the '658 patent; and RazDog Holdings has neither responded to any of Petitioner's Requests for Admission nor served any such requests of its own.

The vast majority of fact discovery is thus in the future, and RazDog Holdings' assertions to the contrary are, at best, misleading. RazDog Holdings points to the filing date of the co-pending litigation (Request, 11) without explaining how that date, standing alone, allegedly demonstrates the parties' investments in the case, particularly where, as here, the case has thrice been reassigned to a new judge, and all dates for hearings, pre-trial, and trial were recently vacated. RazDog Holdings also points to the service of various contentions as evidence of alleged investment (Request, 11), but those contentions were served early in the case to set the scope of discovery and help solidify the issues, and RazDog neglects to mention its own refusal to substantively respond to "contention interrogatories" that RazDog called "premature" (EX1065). *See Uniloc 2017 LLC v. Apple, Inc.*, No. 19-cv-01904-WHO, 2019 WL 8810168, at *10 (N.D. Cal. Dec. 16, 2019) ("[I]nfringement contentions are supposed to establish a basis for taking discovery, not the other way around."); *Bender v. Maxim Integrated Prods, Inc.*, No. C 09-01152 SI, 2010 WL 1135762, at *2 (N.D. Cal. Mar. 22, 2010) ("Until plaintiff meets the burden of providing infringement contentions compliant with Patent L.R. 3-1, the Court will not order defendant to proceed with discovery"). RazDog Holdings further points to the

issuance of Requests for Production and Interrogatories but fails to note both the small volume of responsive document production by the parties as well as the large number of interrogatories yet to be served at some future date. (For example, RazDog Holdings has served only four Interrogatories thus far, so it may serve up to twenty-one more.)

Similarly unhelpful is RazDog Holdings’ reliance on the mere identification of experts in the co-pending litigation. Request, 11. Opening expert reports are due (under the current schedule) on September 19, 2025, which is not only after the close of fact discovery, but it is also long after an institution decision is expected in this proceeding—and therefore after Petitioner’s *Sotera* stipulation would take effect to remove overlap between the proceedings as contemplated by §315(e)(2). *See, e.g., Adobe Inc. v. Jonathan E. Jaffe*, IPR2024-01352, Paper 8, 10-11 (Mar. 7, 2025) (instituting IPR with expert discovery deadlines “far in the future”); *Samsung Display Co. v. Pictiva Displays Int.’l Ltd.*, IPR2024-01222, Paper 12, 7 (Mar. 6, 2025) (instituting IPR when “the parties and the court have invested in the related district court litigation” yet “much remains to be done, including expert discovery”).

RazDog Holdings further asserts that “[t]he claim construction process is also well underway” but admits that all the parties have done to date is exchange proposed constructions and file a Joint Claim Construction and Prehearing Statement (on March 14, 2025). Request, 11-12. Opening briefs are not due until May 5th, and

no *Markman* hearing is currently scheduled (*see supra* §II.B). Thus, contrary to RazDog Holdings’ assertion, “by the time this proceeding reaches institution, the issues of claim construction, infringement, validity, and damages will” ***not*** “have been distilled for trial” (Request, 12) but will still be several months away.⁶ The Board has repeatedly found that such minimal investment in the co-pending litigation did not weigh in favor of discretionary denial. *See, e.g., Adobe*, IPR2024-01352, Paper 8, 11 (instituting despite parties’ *completed* claim construction briefing and argument); *Samsung Elecs. Co. v. Headwater Rsch. LLC*, IPR2024-01396, Paper 13, 7 (Apr. 1, 2025) (finding where “the parties have likely done some work” in the parallel litigation but claim construction proceedings had not *completed* by the time of the institution decision weighed *against* denial); *Mobileye*, IPR2024-01110, Paper

⁶ RazDog Holdings also points to Twitch’s “validity challenges in the district court based not only on prior art patents and printed publications, but also prior sale and public use, patent ineligibility, lack of enablement, and lack of written description” (Request, 12-13) without saying how, if at all, this allegedly relates to *Fintiv* Factor 3. Nor does RazDog Holdings cite any authority that a petitioner pursuing different defenses in a co-pending litigation that are statutorily unavailable in IPR somehow weighs in favor of discretionary denial, particularly where, as here, the petitioner has offered a *Sotera* stipulation. *See infra* §§III.D (Factor 4) and III.F (Factor 6).

16, 12-13 (weighing against denial and instituting in absence of claim construction and other substantive orders from the district court).

And RazDog Holdings’ final assertion that “[s]hould the Board institute, the parties will effectively duplicate the efforts expended in the NDCA Litigation to address the validity of the ’658 Patent” (Request, 13) is likewise incorrect. Twitch has offered a *Sotera* stipulation covering the full scope of statutory estoppel (EX1070), and as explained above for Factor 1 (*supra* §III.A), the district court is likely to stay the case if IPR is instituted. These should eliminate any concerns over potential duplication of effort.

D. Factor 4: overlap between issues raised in the petition and in the parallel proceeding

The Director should weigh Factor 4 heavily against discretionary denial.

Petitioner recognizes the Director’s and the Board’s desire to minimize the duplication of work by two tribunals in resolving the same issue. *See, e.g., Intel Corp. v. VLSI Tech. LLC*, IPR2019-01192, Paper 15, 11 (Jan. 9, 2020) (“When considering the impact of parallel litigation in a decision to institute, the Board seeks...to minimize the duplication of work by two tribunals to resolve the same issue.”). Therefore, to eliminate any potential overlap between the proceedings within the bounds of what is permitted for IPRs under 35 U.S.C. §311(b), Petitioner served a *Sotera* stipulation in which Twitch agreed to “be bound by the full scope of the estoppel under 35 U.S.C. §315(e)(2) in *RazDog Holdings LLC v. Twitch Interactive*,

Inc., Case No. 5:24-cv-03686 (N.D. Cal.) as of the date of the PTAB’s institution decision on the merits (i.e., Petitioner will forgo invalidity in district court based on ‘any ground that the petitioner raised or reasonably could have raised during that inter partes review’).” EX1070 (citing *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12, 18-19 (Dec. 1, 2020) (precedential as to §II.A)). This stipulation ensures that IPR2025-00307 would be a “true alternative” to the district court proceeding (*Sotera*, Paper 12, 18-19) because it covers the full breadth of estoppel that Congress prescribed under §315(e)(2)⁷ and thereby “mitigates any concerns of duplicative efforts between the district court and the Board, as well as concerns of potentially conflicting decisions” such that Factor 4 “weighs strongly in favor of not exercising discretion to deny institution under 35 U.S.C. §314(a).” *Sotera*, Paper 12, 19. Consistent with this approach, recent panels have found that a stipulation commensurate with what Petitioner has provided here strongly favors institution. *E.g.*, *Palo Alto Networks, Inc. v. Croga Innovations Ltd.*, IPR2024-01421, Paper 8, 11-14 (Mar. 14, 2025); *Samsung Elecs. Co. v. Headwater Rsch. LLC*,

⁷ Requiring a stipulation broader than *Sotera*—and thus broader than the §315(e)(2) estoppel—would exceed the Office’s authority since Congress expressly set both the scope of unpatentability grounds that can be raised in IPR and those that are estopped following a FWD. *See* 35 U.S.C. §§311(b) and 315(e)(2).

IPR2024-01407, Paper 9, 6-14 (Mar. 20, 2025); *SAP Am., Inc. v. Cyandia, Inc.*, IPR2024-01433, Paper 13, 12 (Apr. 7, 2025) (“In light of the stipulation and nature of the asserted ground...this [factor] strongly favors institution.”). None of the cases that RazDog Holdings cites says otherwise. *See* Request, 13-14. Twitch’s stipulation also moots nearly all of RazDog Holdings’ arguments for Factor 4. *See* Request, 13-15 (pointing to “Petitioner’s common prior art challenges to the claims” in the IPR and the co-pending litigation and faulting Petitioner for “not, to this point, offer[ing] a *Sotera* stipulation”).⁸

⁸ Notably, Twitch served its *Sotera* stipulation just two business days after the PTAB Boardside chat regarding the new interim process and four days *before* the Board published its “FAQs for Interim Processes for PTAB Workload Management.” *See supra* §II.B (Procedural Background). Regarding the considerations in FAQ 14, Twitch further notes that it proactively reached out to RazDog Holdings to ensure that PO has a chance to address the stipulation, but rather than seek supplemental discretionary briefing (as Twitch proposed), RazDog Holdings elected, “[i]f necessary to respond to Petitioner’s *Sotera* stipulation or otherwise...request authorization to file a reply to Petitioner’s opposition[.]” *See id.* (citing EX1072).

RazDog Holdings also acknowledges that Twitch challenges claims in the IPR that are not at issue in the district court,⁹ but then argues that “[e]ven when there is not a perfect alignment between the claims in IPR and litigation...the Board has repeatedly ruled that the assertion of additional claims does nothing to mitigate ‘substantial’ overlap in issues between the two proceedings where common prior art is presented and common independent claims are challenged.” Request, 15 (citing *Code200, UAB v. Luminati Networks Ltd.*, IPR2020-01506, Paper 10, 11-12 (Feb. 16, 2021); *Teso LT UAB v. Luminati Networks Ltd.*, IPR2021-00122, Paper 12, 10 (Apr. 20, 2021)). In neither of the cases RazDog Holdings cites, however, did the petitioner offer any stipulation, *Sotera* or otherwise. On the other hand, the Board has repeatedly found that challenging claims not asserted in a co-pending litigation while also offering a stipulation weighs against discretionary denial. *See, e.g., SAP Am., Inc.*, IPR2024-01433, Paper 13, 11-12 (finding factor 4 “strongly favors institution” where Petitioner filed a *Sotera* stipulation and its ground relied on prior art fundamentally different than the district court system art to challenge more claims than those asserted); *Hanwha Sols. Corp. v. Maxeon Solar PTE. LTD.*, IPR2024-01203, Paper 17, 18-19 (Feb. 26, 2025) (weighing factor 4 against denial where

⁹ Petitioner challenges all claims of the ’658 patent, while Razdog Holdings only asserts claims 1, 4-10, and 12, 13, 15, and 18 in the district court. Request, 15.

Petitioner challenged more claims in the IPR than in district court and noting that “some overlap of issues may exist” but “complete overlap does not exist” and that resolving the district court case will not address all challenged claims).

E. Factor 5: whether the petitioner and the defendant in the parallel proceeding are the same party

The Director should weigh Factor 5 against discretionary denial, or at worst neutral.

RazDog Holdings provides no analysis to support its argument that this factor “weighs strongly in favor of denial.” Request, 16-17. Instead, RazDog Holdings points to *Samsung Elecs. Co. v. Clear Imaging Research, LLC*, IPR2020-01401, Paper 12, 21-22 (Feb. 17, 2021) without explanation. But that case is distinguishable and unavailing because the Board’s institution decision was largely based on *other Fintiv* factors given that, unlike here, district court trial was “scheduled to begin...*more than ten months* before a Final Written Decision would be due in this IPR proceeding.” *Id.*, 11 (emphasis in original).

Importantly—and contrary to RazDog Holdings’ suggestion—*Fintiv* did **not** say that Factor 5 favors denial just because the petitioner is also the defendant in a parallel proceeding. Rather, *Fintiv* simply noted that “if a petitioner is unrelated,” the Board has weighed that “fact against exercising discretion.” *Fintiv*, Paper 11, 13-14. On the other hand, where a FWD “is likely to issue before the district court trial,” the Board has “weigh[ed] this factor against exercising discretion.” *BMW of N. Am.*,

LLC v. Mich. Motor Techs. LLC, IPR2023-01234, Paper 11, 14-15 (Jan. 26, 2024) (collecting cases). As discussed for Factor 1 (§III.A), available information here indicates the Board will issue a FWD before the district court trial, and that fact, taken together with the broad stipulation Twitch has offered, weighs against discretionary denial. *See* §§III.B and III.C.

F. Factor 6: other circumstances that impact the Board's exercise of discretion, including the merits

The Director should weigh Factor 6 against denial.

RazDog Holdings' argument for Factor 6 begins by focusing on validity challenges that lay *outside* the statutory bounds of IPR proceedings (e.g., “prior art on sale, public use, and knowledge arguments, as well as [] subject-matter eligibility, enablement and written description issues”). Request, 17. None of that should be relevant here. The scope of IPRs was set by Congress, and a petition should not be discretionarily denied because the petitioner pursues substantively and statutorily *different* invalidity theories in another forum, especially where, as here, the petitioner has already provided a stipulation covering the full scope of estoppel under 35 U.S.C. §315(e)(2). Moreover, despite RazDog Holdings' suggestion to the contrary, it is the district court's role to determine the limits of IPR estoppel and what invalidity arguments may proceed thereafter, not the role of the PTAB at the institution stage. *Contour IP Holding, LLC v. GoPro, Inc.*, No. 3-17-cv-04738, slip op at 23 (N.D. Cal. Mar. 24, 2025), ECF No. 721 (EX1076).

RazDog Holdings is likewise wrong that “the merits of the Petition are weak.” Request, 17. This argument is based on four misguided and largely unsupported assertions: (1) reliance on obviousness somehow indicates an unpatentability challenge is not compelling; (2) two prior art references presented in the Petition (Darnell and Dasgupta) “differ significantly from the invention described and claimed in the ’658 patent”; (3) reliance on expert testimony “demonstrates that the merits of Petitioner’s challenge are not strong”; and (4) “additional considerations” such as “settled expectations of the parties” “clearly favor denial.” Request, 18-20. Each of these assertions should be rejected.

Regarding assertion (1), RazDog Holdings ignores that obviousness has long been recognized as a basis for unpatentability and was expressly identified by Congress as a statutory basis for IPRs. *See Graham v. John Deere Co. of Kan. City*, 383 U.S. 1, 3-4 (1966) (obviousness “was intended to codify judicial precedents embracing the principle long ago announced by this Court in *Hotchkiss v. Greenwood*, 52 U.S. 248 (1850)"); 35 U.S.C. §311(b). The Board has therefore consistently instituted IPRs on obviousness grounds, and RazDog Holdings has failed to identify even a single instance in which the Board superficially found that reliance on obviousness alone somehow undermined the merits of a petition under *Fintiv* Factor 6.

Regarding assertion (2), RazDog Holdings does not provide any support or analysis other than accusing Twitch of “rel[ying] on its expert to adopt a contrived definition of ‘real time’ to fit the prior art.” Request, 18. RazDog Holdings does not explain what is supposedly “contrived” about Twitch’s interpretation of the claim language, nor does RazDog Holdings provide an alternative interpretation. RazDog Holdings does not even attempt to engage with the merits of Twitch’s explanation of how a POSITA would have understood the term at the time of the ’658 patent in view of the intrinsic record and how the prior art renders that claim element obvious. *See* Paper 1 (“Petition”), 26-30 (Ground 1A, limitations 1[b2]-1[b3]), 41-42 (Ground 1A, limitation 7[c]), 53 (Ground 1B, limitation 12[b2]), 67-72 (Ground 2A, limitations 1[b2]-1[b3]), 77-78 (Ground 2A, limitation 7[c]); EX1002, ¶¶178-91, 221-223, 282, 323-331, 348-350. RazDog Holdings’ assertion is conclusory and falls far short of demonstrating “weak” merits in the Petition. *See Klein Tools, Inc. v. Milwaukee Elec. Tool Corp.*, IPR2024-01400, Paper 17, 19-20 (Apr. 8, 2025) (rejecting PO’s assertion that the “merits are weak” where they were “particularly strong” and weighing factor 6 against denial); *Microsoft Corp. v. InterDigital Pat. Holdings, Inc.*, IPR2024-00537, Paper 10, 12-13 (Jul. 15, 2024) (rejecting Patent Owner’s argument addressing the priority rather than merits of the prior art and weighing factor 6 against denial).

Regarding assertion (3), the Board has long recognized the useful role of expert testimony in explaining complex technologies and how a POSITA would understand them. Consolidated Trial Practice Guide, 34-35 (Nov. 2019). This is particularly true under 35 U.S.C. §103, which necessarily considers whether “the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to *a person having ordinary skill in the art* to which the claimed invention pertains” (emphasis added). RazDog Holdings does not address any of this. Rather, RazDog Holdings faults Twitch for “cit[ing] its expert’s 269-page declaration at least 260 times in the Petition, often relying on large swatches of expert testimony to backfill and plug holes in its arguments.”¹⁰ Request, 18-19. But RazDog Holdings neither identifies specific examples of this alleged backfill nor points to any authority suggesting that the number of citations to a supporting declaration weighs in favor of discretionary denial. And critically, RazDog Holdings ignores that the Petition presents prior-art disclosure corresponding to each and every element of the challenged claims; there is not a single claim element for which Twitch relies solely on expert testimony to demonstrate invalidity. *See Advanced Micro Devices Inc. v. Realtek Semiconductor*

¹⁰ Petitioner’s expert submitted a combined declaration addressing both the ’658 patent at issue here and the ’068 patent challenged in co-pending IPR2025-00308.

Corp., IPR2023-00789, Paper 9, 39 (Oct. 26, 2023) (rejecting PO’s assertion that Petitioner improperly relied on expert testimony to fill a gap in its prior art analysis because Petitioner provided “sufficient evidence and argument” with citation to the prior art); *Samsung Elecs. Co. v. Acorn Semi, LLC*, IPR2020-01282, Paper 20, 28-29 (Feb. 10, 2021) (rejecting PO’s accusation Petitioner required expert testimony to fill in the gaps of its prior art because Petitioner cited sufficient support in the prior art that PO did not substantively address). Assertion (3) should therefore be rejected.¹¹

¹¹ Petitioner’s expert (Dr. Martin) provided his declaration prior to the Director’s Memorandum and prior to the Board’s April 25, 2025, “FAQs for Interim Processes for PTAB Workload Management.” Dr. Martin’s declaration was therefore in accordance with the rules and practices in effect at the time that Twitch filed its Petition. Nevertheless, regarding FAQ 21, Dr. Martin’s testimony is comprehensive (because he agrees with the unpatentability grounds in the Petition), but it is also focused because it provides helpful information beyond what is evident on the face of the prior art. *See, e.g.*, EX1002, ¶¶88-118 (discussing background knowledge and an overview of the technology), 123-124 (claim construction), 146-53 (discussing motivation to combine Darnell with Kim), 178-82 (discussing how a POSITA would

Finally, regarding assertion (4), RazDog Holdings does not identify what the alleged “settled expectations of the parties” are. Request, 19-20. Instead, RazDog Holdings merely notes the age of the ’658 patent (which issued on August 8, 2017) without explaining how that age is allegedly relevant to this factor. Request, 20. RazDog Holdings further ignores that Twitch did not know about the ’658 patent before RazDog Holdings filed suit on June 17, 2024—a point that RazDog Holdings tacitly acknowledges in its district court complaint.¹² *See generally* EX1013 (no allegation that Twitch was aware of the ’658 patent prior to the Complaint).

have understood “simultaneously” and “real time”), 188-89 (discussing “slide tool program”), 253-59 (discussing motivation to combine Dasgupta with Darnell and Kim), 298-301 (discussing motivation to combine Dasgupta with Darnell), 372-79 (discussing motivation to combine Kim with Dasgupta and Darnell).

¹² Prior to suing Twitch, RazDog Holdings asserted the ’658 patent three other times five years ago against small businesses, and each of those cases was voluntarily dismissed within a few months of filing. *See Razdog LLC v. Cooling Equip. Serv., Inc.*, 1-19-cv-05704 (N.D. Ill. Aug. 25, 2019); *Razdog LLC v. Continental Salvage Co.*, 1-19-cv-04610 (N.D. Ill. Jul. 9, 2019); *Razdog LLC v. Cook Bros. Inc.*, 1-19-cv-05703 (N.D. Ill. Aug. 25, 2019). EX1059-EX1061. There is thus no evidence of any “settled expectations” regarding the ’658 patent, for Twitch or otherwise.

Instead, RazDog Holdings suggests that because a company called Unified Patents, LLC—which is not a Real Party in Interest to this IPR—has challenged the '068 patent—which is a continuation of the '658 patent—in an *ex parte* reexamination (“EPR”), that somehow means Twitch would “get[] multiple bites of the apple” if institution is granted here. Request, 20-21 (citing *In re patent of Trahan et al.*, Reexam. Control No. U.S. 90/019,860). This is wrong on its face because it relates to a ***different*** type of proceeding (EPR rather than IPR) initiated by a ***different*** party (Unified Patents rather than Twitch) against a ***different*** patent (the '068 patent rather than the '658 patent). RazDog Holdings cites no authority for discretionary denial under such circumstances but nevertheless hypothesizes that “Petitioner’s parent company, Amazon, is likely a member of Unified Patents” and that “an *ex parte* reexamination proceeding may also be filed against the '658 patent.” Request, 20. Such unsupported conjecture ignores not only Twitch’s express identification of RPIs—which does not include Unified Patents (Petition, 84)—but also the fact that no Amazon entity is mentioned in the Unified Patents EPR. RazDog Holdings’ assertion (4) thus amounts to little more than a wish for discretionary denial based on allegations that someone else may do something at some unidentified time in the future. That is hardly a basis for rejecting the strong merits in the Petition. *Fintiv*,

Paper 11, 14-15 (“if the merits of a ground raised in the petition seem particularly strong...institution of a trial may serve...overall system efficiency and integrity”).¹³

IV. CONCLUSION

When weighing the factors holistically (with all factors weighing against denial or as neutral), the Director should not discretionarily deny institution.

Dated: April 30, 2025

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¹³ Although compelling merits alone are not dispositive, “the factors considered in the exercise of discretion are part of a balanced assessment of all the relevant circumstances in the case, including the strength of the merits.” Boalick Memo, 3 (March 24, 2025) (available at https://www.uspto.gov/sites/default/files/documents/guidance_memo_on_interim_procedure_recission_20250324.pdf (Board still considers time-to-trial statistics)).

CERTIFICATION OF COMPLIANCE

Pursuant to 37 C.F.R. §42.24 and the Interim Process for PTAB Workload Management, the undersigned hereby certifies that the word count for the foregoing OPPOSITION TO PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL U.S. Patent No. 9,729,658 totals 7,168. Accordingly, this Opposition is under the word count limit of 14,000 words.

This word count was calculated by using the built-in word-count tool in Microsoft Word, the software used to prepare the document.

Dated: April 30, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2025, true and correct copies of the foregoing
OPPOSITION TO PATENT OWNER'S REQUEST FOR DISCRETIONARY
DENIAL, and Exhibits 1051-1079 was served via electronic mail upon the following
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