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.

IPR2025–00316
U.S. Patent No. 10,805,687

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

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I. INTRODUCTION AND DISCUSSION OF THE TOTALITY OF THE CIRCUMSTANCES

Patent Owner has recently stipulated that it will ***no longer assert <u>any</u> of the claims challenged in the present IPR in the parallel district court litigation***[1]. Exs. 1058, 1059. In effect, currently there is no parallel proceeding involving the claims of US 10,805,687 ("the '687" patent) challenged by the current petition. Thus, *Fintiv* is of little relevance here.

This only serves to underscore the fact that the only forum available to comprehensively challenge *all* of the claims raised thus far by Patent Owner in litigation is the PTAB. Denying review in favor of the parallel district court proceedings will only serve to leave loose ends unaddressed, that could ultimately form the basis of additional future disputes. The exercise of discretionary denial would facilitate piecemeal litigation and future disputes, and would be both unfair and inefficient. *See Tesla Inc. v. Intellectual Ventures II LLC*, IPR2025–00217, Paper 10, at 2–3 (Director June 13, 2025) (denying request for discretionary denial at least in part based on the finding that the PTAB was to most appropriate forum to address the scope of the invalidity issues presented).

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[1] *SportsCastr Inc. v. Sportradar Group AG*, No. 2:23–cv–04771–JRG (E.D.Tex.) ("the district court litigation").

Patent Owner does not address this issue its request for discretionary denial. To the contrary, Patent Owner incorrectly alleges that "this Petition asks the Board to decide the validity of *the same '687 patent claims* that are already set to be adjudicated in parallel district court litigations . . ." Patent Owner's Discretionary Denial Brief, Paper 10, p. 1 (emphasis added). Patent Owner made this assertion in its brief filed May 19, 2025, more than a month after stipulating on April 11, 2025 that it would pursue claims 1–2, 10–13, 15–16 and 19–20 of the '687 patent in district court litigation. Exs. 1058, 1059.

Likewise, *General Plastic* is not on point with the facts presented here. *Savant Technologies LLC d/b/a GE Lighting et al. v. Feit Electric Co. Inc.*, IPR2025–00260, Paper 16 (Director June 12, 2025) (finding discretionary denial not warranted by *General Plastic* under similar facts).

Patent Owner filed its original complaint in the district court litigation on October 5, 2023, and coordinated Petitioner's acceptance of service of the complaint on December 14, 2023. Ex. 1014. Patent Owner then served its infringement contentions on January 18, 2024, alleging infringement of claims 1–9, 19–25 and 27–30 of the '687 patent. Ex. 1060, p. 3.

The above-noted claims of the '687 patent have been challenged in earlier IPR petitions filed by codefendant Genius Sports Ltd. Trial has been instituted in

these cases. Petitioner has filed "copycats" of those original petitions along with motions for joinder.

Long after serving its infringement contentions, Patent Owner sought leave from the district court to amend those contentions, seeking to add *117* new claims to the case. Ex. 1061. Petitioner opposed the Motion. Ex. 1062, pp. 10–13. Ultimately the district court permitted the amendment of Patent Owner's infringement contentions, including the assertion of claim 26, in an order dated September 30, 2024. Ex. 1048.

Patent Owner then served its amended contentions on Petitioner on September 30, 2024. Ex. 1063[2]. Petitioner then prepared and filed the current challenge[3], a little over two months later. Petitioner has done nothing more than pursue a filing strategy that addresses all of the claims eventually asserted by Patent Owner in the district court litigation in the most efficient manner possible.

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[2] The copy of the amended contentions attached to the service email of September 30, 2024 was also attached as an exhibit to the sealed version of Patent Owner's redacted motion (Ex. 1061), and bears the label "Filed Under Seal." Thus, a copy of the served contentions has not been provided.

[3] Petitioner filed the current Petition along with a counterpart petition on the same day challenging the later-asserted claims – IPR2025–00315 and IPR2025–00316 ("Petitioner's Original Petitions").

This background is believed helpful in understanding that both the number of challenges lodged against the '687 patent, as well as the timing of those challenges, are the direct result of Patent Owner's own litigious conduct.

The following is a summary of the petitions filed challenging the '687 patent.

	"The Genius IPRs"	**"Petitioner's Copycat Petitions"**	**"Petitioner's Original Petitions"**
Petitioner	Genius Sports Ltd.	Sportradar Group	Sportradar Group
IPR Nos.	IPR2024–01305 IPR2024–01307	IPR2025–00268 IPR2025–00269	IPR2025–00315 IPR2025–00316
Claims Challenged	('1305): 1–9 ('1307): 19–25, 27–30	('268): 1–9 ('269): 19–25, 27–30	('315): (1), 10–18 ('316): (23, 24), 26
Filing Date	August 22, 2024	December 11, 2024	December 14, 2024

The Genius IPRs were filed by different party, and directed to different claims. Given that there is no alleged "special relationship" between the petitioner in the Genius IPRs and the current Petitioner, these petitions do not support discretionary denial under a *General Plastic* analysis.

Furthermore, Petitioner's Original Petitions and Petitioner's Copycat Petitions were filed contemporaneously[4]. The Petitioner's Copycat Petitions were filed for purposes of joinder with the Genius IPRs, while the contemporaneously filed Petitioner's Original Petitions were filed to challenge the later-asserted claims that were not originally challenged. Thus, Petitioner's Original Petitions directed to the '687 patent are not follow-on petitions of the type addressed by *General Plastic*. With the exception of claims 23–24, which were included in the asserted grounds of the current Petition in order to reach the claim at issue (claim 26), there is no overlap with either the instituted Genius IPRs or the Petitioner's Copycat Petitions. Clearly, no attempt has been made to "roadmap" based on the contents of Patent Owner Preliminary Responses or institution decisions in either the Genius IPRs or Petitioner's Copycat Petitions.

Additionally, although Patent Owner has recently stipulated that it will not pursue the currently challenged claims in the district court litigation, this has been done arguably without prejudice. It is feasible that Patent Owner could attempt to assert these claims and future proceedings. Given that the statutory deadline for filing an IPR directed to the '687 patent has expired, Petitioner will not be able to

[4] Petitioner's Copycat Petitions were filed on December 11, 2024, and the current petition was filed on December 14, 2024.

access *inter partes* review of this patent in the future. Thus, under the circumstances the exercise of discretionary denial would potentially encourage or enable patent owners to assert a patent in litigation to trigger the statutory bar, then once litigation has commenced, withdraw at least some of the claims, and try to reassert them in the future, after expiration of the statutory bar. The exercise of discretionary denial so as to enable such gamesmanship is believed contrary to the spirit and intent of the AIA.

Given the above, principles of efficiency and fairness dictate that institution of trial should be granted.

II. *FINTIV* DOES NOT WARRANT DISCRETIONARY DENIAL

Fintiv seeks to address questions around efficiency – will the PTAB be duplicating efforts already undertaken in the district court? This concern is not implicated by the current petition because the Patent Owner has stipulated that ***it will not pursue any of the claims challenged in current petition in the district court***. Exs. 1058, 1059. Namely, the current petition challenges claim 26[5] of the '687 patent. However, Patent Owner has stipulated that it will only pursue claims 1–2, 10–13, 15–16 and 19–20 of the '687 patent in the district court litigation. *Id*. Furthermore, Petitioner has offered a *Sotera* stipulation. Although the Director's

[5] Along with claims 23 and 24, from which claim 26 depends.

June 2022 Guidance Memorandum was recently rescinded, the Petitioner's *Sotera* stipulation referenced above nonetheless resolve the Fintiv analysis strongly against discretionary denial. *Guidance Memorandum dated March 24, 2025 from Chief Administrative Patent Judge Boalick*, at p. 2–3 ("a timely-filed *Sotera* stipulation. . . is highly relevant"). Ex. 1064. Thus, instituting *inter partes* review based on the current petition does not represent a duplication of effort relative to the district court proceedings.

Consideration of the individual *Fintiv* factors themselves do not lead to a different conclusion.

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

As acknowledged by Patent Owner, "[t]o date, no stay in the district court has been granted or requested." Patent Owner's Discretionary Denial Brief at 4. Thus, how the district court could choose to treat such a request should not be inferred. *Google LLC et al. v. Mullen Industries LLC*, IPR2025–00019, Paper 14 at 10 (P.T.A.B. May 12, 2025) ("Given that [Judge Gilstrap] denied Samsung's motion to stay 'WITHOUT PREJUDICE . . .', we decline to speculate whether the District Court will grant a stay").

Patent Owner argues for discretionary denial asserting that "the district court does not have a track record of granting stays ***prior to institution***." Patent Owner's Discretionary Denial Brief, Paper 10 at 4 (emphasis added). As noted above, this

argument should be rejected because it is speculative. This argument is also circular – Patent Owner argues on the one hand that the Director should not institute because a stay has not yet been granted, and on the other, that the district court will not grant a stay without institution.

Finally, this factor is clearly not dispositive, especially in situations such as this one, where a number of other factors clearly favor institution. *Tesla*, IPR2025–00217, Paper 10 at 2 (refusing to exercise discretionary denial despite finding insufficient evidence that the district court is likely to grant a stay even if the Board were to institute trial).

Fintiv factor 1 does not favor discretionary denial.

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

As noted above, Patent Owner has stipulated that ***it will no longer assert any of the challenged claims in the district court litigation***. Exs. 1058, 1059 (confirming that only claims 1–2, 10–13, 15–16 and 19–20 of the '687 patent will be pursued). This, coupled with the petitioner's *Sotera* stipulation eliminate or at least strongly mitigate concerns related to overlap in the trial schedule and the risk of conflicting decisions between the related litigation and the current requested IPR proceedings. Thus, even if trial concludes first, the institution of the current petition will not result in duplication of efforts by the PTAB relative to the district court.

Patent Owner cites median time-to-trial trial statistics in the Eastern District of Texas of "721days." However, such median statistics are not reliable indicators in the present case, due in no small part to the Patent Owner's own litigation conduct, as outline above. Most recently, on the last possible day to amend its complaint (February 14, 2025), added new antitrust allegations:

> Plaintiff filed its initial Complaint in October 2023 asserting only patent claims. ECF 1. Plaintiff filed an Amended Complaint in March 2024, adding a fourth asserted patent. ECF 17. The parties engaged in dispositive motion practice (e.g., ECF 40, 57), began discovery (ECF 43, 45, 94, 103), ***twice sought and obtained leave to amend the Docket Control Order*** (ECF 70, 93), and supplemented the protective order (ECF 99). On August 8, 2024, Plaintiff sought leave to amend its infringement contentions to add 117 new claims and numerous additional accused products (ECF 42), which the Court granted on September 30, 2024 (ECF 61). ***As a result, the DCO was amended to provide additional time necessitated by plaintiff's addition of new claims and accused products***. (ECF 61, 70; see also ECF 93.)
>
> Then, on February 14, 2025—the last day to amend under the DCO—Plaintiff filed a Second Amended Complaint ('SAC') adding extensive new antitrust allegations . . .

Ex. 2040, p. 3 (emphasis added).

As noted above, this has necessitated multiple changes in the schedule, including the most recent 10 week delay in the trial date. Ex. 2039, p. 1. Whether Patent Owner is finished with its attempts to pile-on in the district court litigation remains to be seen.

Moreover, the Board has found on several occasions that this factor is not outcome determinative. The Board has reached similar conclusions, ***even under the holistic approach adopted after rescission of the Director's June 2022 Fintiv Guidance Memorandum***. *Tesla*, IPR2025–00217, Paper 10 at 2 (refusing to exercise discretionary denial despite scheduled trial date preceding the final written decision due date); *Samsung Display Co., Ltd., v. Pictiva Displays Int'l Ltd.,* IPR2024–01222, Paper 12 at 9 (P.T.A.B. Mar. 6, 2025) ("[o]n balance, after weighing the *Fintiv* factors, we decline to exercise our discretion to deny institution," even when the expected trial date was seven months before the final written decision deadline); *Posco Co., Ltd., v. Arcelormittal,* IPR2024–01376, Paper 11 at 13–14, 17 (P.T.A.B. Mar. 18, 2025) (declining to exercise discretionary denial despite a trial date five months earlier than the expected final written decision in light of other factors); *Palo Alto Networks, Inc. v. Croga Innovations Ltd.,* IPR2024–01421, Paper 8 at 11, 13–14 (P.T.A.B. Mar. 14, 2025) (instituting trial despite an expected litigation trial date approximately five months prior to the

deadline for issuing a final written decision citing, *inter alia*, the petitioner's proffered *Sotera* stipulation).

Furthermore, the currently scheduled trial date in the related litigation is far from certain. Judge Gilstrap's trial schedule is chronically overbooked. Apparently Judge Gilstrap currently has ***fourteen trials*** scheduled during the same time as the trial in the related litigation. Ex. 1065. It is of course impossible for Judge Gilstrap to preside over fourteen trials at the same time. Therefore, unless *all* of these matters settle, something has to give, and trials will need to be rescheduled.

Finally, as previously noted, whenever trial does occur, it will not have the same scope as that of the Genius IPR for the current petition. Namely, the current petition challenges claim ***26*** of the '687 patent. However, the court has ordered that the Patent Owner shall assert "no more than ***five*** asserted claims per patent." Ex. 1066, p.2. In fact, Patent Owner has already stipulated that it will ***no longer assert <u>any</u> of the claims challenged in the present IPR***. Exs. 1058, 1059. This fact also weighs *against* exercising discretionary denial according to *Fintiv* factor 2. *Samsung Bioepis Co. v. Regeneron Pharm., Inc.,* IPR2023–00739, Paper 9 at 58 (P.T.A.B. Oct. 20, 2023) ("Because the district court action does not include all of the challenged claims within the scope of the litigation, we find that Fintiv factors 2 and 3 favors institution.").

Fintiv factor 2 does not favor discretionary denial.

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

Again, this factor is irrelevant, or at least mitigated – given the Patent Owner's stipulation that it will not pursue any of the challenged claims in district court, coupled with Petitioner's *Sotera* stipulation, the investment in those proceedings will not overlap with the requested IPR trial. Furthermore, this factor is not dispositive where numerous other factors weigh in favor of instituting trial, as is the case here. *Tesla*, IPR2025–00217, Paper 10 at 2 (refusing to exercise discretionary denial despite finding meaningful investment in the parallel proceedings by the parties).

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. *Apple Inc. v. Fintiv Inc.,*IPR2020–00019*,* Paper 11 at 10 (P.T.A.B. March 20, 2020) (precedential) ("If, at the time of the institution decision, the district court has not issued orders related to the patent at issue in the petition, this fact weighs against exercising discretion to deny institution . . . ."). Although a *Markman* hearing was held on May 9, 2025, to date no claim construction ruling has been issued by the court. It is unclear whether any such ruling will be issued prior to the institution deadline.

As acknowledged by Patent Owner, much remains to be done in the related litigation, including completion of fact and expert discovery. Patent Owner's

Discretionary Denial Brief, Paper 10 at 6–7. Specifically, the deadline to complete expert witness discovery is October 10, 2025, and deadline to complete fact discovery of August 22, 2025. Ex. 2039, pp. 4–5. Thus, the court and parties have not yet invested sufficient time in the parallel proceeding. *See Samsung,* IPR2024–01222, Paper 12 at 7 (finding this factor weighs against exercise of discretionary denial, despite the fact that a *Markman* hearing had already been conducted, citing "much remains to be done, including expert discovery"); *Hulu, LLC v. SITO Mobile R&D IP, LLC*, IPR2021–00298, Paper 11 at 12–13 (P.T.A.B. May 19, 2021) (finding factor 3 favors institution of trial even after issuance of a Markman ruling citing, *inter alia*, incomplete fact and expert discovery, as well as future dispositive and *Daubert* motion deadlines).

Petitioner's proffered *Sotera* stipulation also mitigates if not eliminates redundancy of efforts undertaken by the district court. Patent Owner argues that "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." Patent Owner's Discretionary Denial Brief at 7. This is inaccurate. According to the court's current docket control order, expert reports are not due until August 29, 2025. Ex. 2039, p.5.

Finally, as noted above in the discussion of *Fintiv* factor 2, whatever trial is undertaken by the district court will not be of the same scope as that of the Genius

IPR or the current petition. Namely, the current petition challenges claim 26 of the '687 patent. However, the court has ordered that the Patent Owner shall assert "no more than five asserted claims per patent." Ex. 1066, p.2. Patent Owner has already stipulated that it will only pursue claims 1–2, 10–13, 15–16 and 19–20 in the district court litigation. In other words, Patent Owner stipulates that it will not pursue ***any*** of the claims challenged in the current petition in the district court litigation. Exs. 1058, 1059. Furthermore, given the court's mandate that no more than *five* claims per patent can be asserted, Patent Owner will be required to further reduce the number of claims pursued in the district court litigation. Ex. 1066, p. 2. This fact also weighs *against* exercising discretionary denial according to *Fintiv* factor 3. *Samsung,* IPR2023–00739, Paper 9 at 58 ("Because the district court action does not include all of the challenged claims within the scope of the litigation, we find that Fintiv factors 2 and 3 favors institution.").

Fintiv factor 3 does not favor discretionary denial.

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

As previously noted, there is virtually no overlap between the district court and the present IPR petition. Granting the current IPR petition will not result in a duplication of effort.

Further, given the Petitioner's *Sotera* stipulation, concerns related to overlap with the related litigation are mitigated if not rendered irrelevant. Recent panels

have found that a stipulation commensurate with the stipulation Petitioner has proffered in this case strongly favors institution ***under the holistic approach taken after rescission of the Director's June 2022 Fintiv Guidance Memorandum***. *Palo Alto Networks,* IPR2024–01421, Paper 8 at 12 ("A broad stipulation by a petitioner to not pursue in a parallel district court proceeding any ground raised or that could have been reasonably raised in its *inter partes* review petition mitigates any concerns of duplicative efforts between the district court and the Board, as well as concerns of potentially conflicting decisions."); *Samsung Elecs. Co. v. Headwater Rsch. LLC*, IPR2024–01407, Paper 9 at 8 (P.T.A.B. Mar. 20, 2025) ("Based on Petitioner's stipulation, we determine there would be no overlap between issues raised in the Petition and in the parallel proceeding, thereby saving the resources of the district court. *Fintiv* factor 4, therefore, weighs strongly against exercising our discretion to deny institution"); *SAP Am., Inc. v. Cyandia, Inc.*, IPR2024–01433, Paper 13 at 12 (P.T.A.B. Apr. 7, 2025) ("In light of the stipulation and nature of the asserted ground...this [factor] strongly favors institution."); *Google*, IPR2025–00019, Paper 14 at 12 ("We find that Petitioner's stipulation mitigates some, but not all of the concerns of overlap, and weighs against exercising discretionary denial.").

Therefore, the claims at issue in this proceeding will not be coextensive with those challenged in district court. *See Hanwha Sols. Corp. v. Maxeon Solar PTE.*

LTD., IPR2024–01203, Paper 17 at 19 (P.T.A.B. Feb. 26, 2025) (weighing factor 4 against denial where 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).

Fintiv factor 4 weighs strongly in favor of institution.

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

Fintiv did not suggest Factor 5 *favors denial* when the petitioner and the defendant in the parallel proceeding are the same. *Fintiv*, IPR2020–00019, Paper 11 at 13–14 ("If a petitioner is *unrelated* to a defendant in an earlier court proceeding, the Board has weighed this fact ***against exercising discretion to deny institution*** under NHK") (emphasis added). Petitioner is also a defendant in the related litigation, as is true of most petitioners in IPR proceedings.

Fintiv factor 5 does not favor discretionary denial.

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

This factor weighs heavily in favor of institution. The current Petition challenges claim 26 of the '687 patent. This claim depends from claims 23 and 24. The Board has previously found that the teachings of Ellis and Spivey suffice to establish the obviousness of all features recited in claim 23. Thus, an adequate basis

exists to institute trial for this reason alone. *Genius*, IPR2024–01307, Paper 8 at 42–43. *See also Google*, IPR2025–00019, Paper 14 at 12–13 ("The issues raised by Petitioner are similar, if not identical, to those raised in IPR2023–00091, which we instituted . . . we find that the merits are strong . . . [t]his factor weighs against exercising discretionary denial."); *SAS Institute Inc. v. Iancu*, 584 U.S. 357 (2018).

Similarly, claim 26, which depends from claim 23, simply further specifies that the media sources recited in claim 1 constitutes at least one of a well-known RTMP or WebRTC type media server coupled with an equally well-known HLS caching server architecture, including an HLS mother server, a plurality of HLS child servers and HLS CDN. As explained in the Petition, the Kellicker reference discloses an arrangement as illustrated below. Petition, Paper 3 at 40.

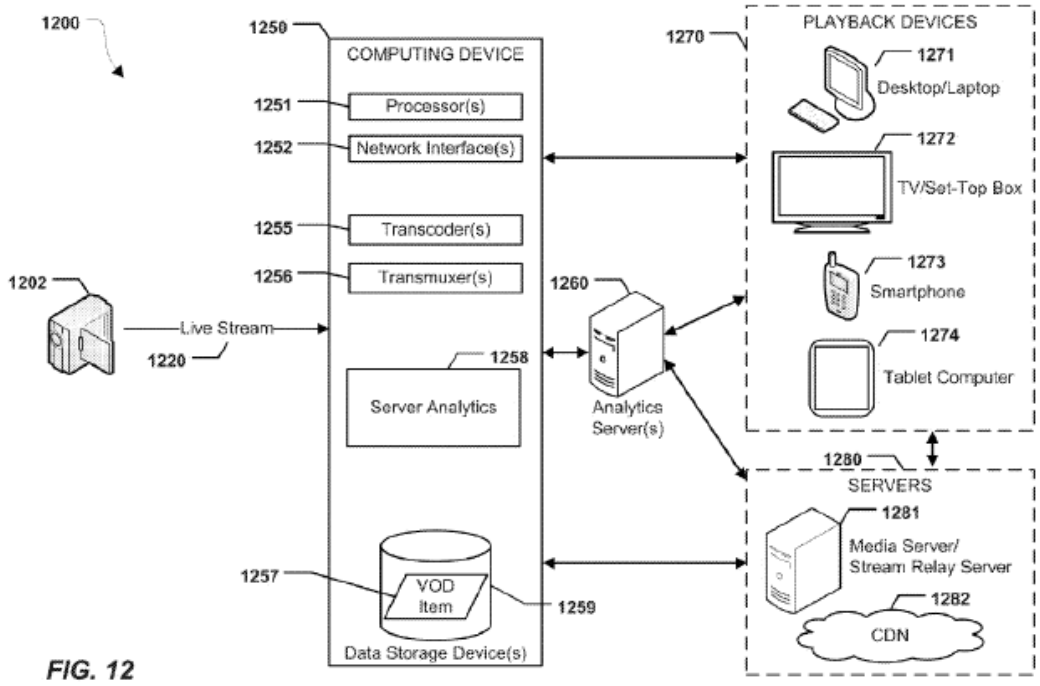

FIG. 12

The computing device 1250 of Kellicker is a server that receives incoming live media stream 1220 from a capture source (*e.g.*, broadcasting client) 1202, processes the incoming media, and serves it to playback devices 1270 either directly, or through other servers 1260, 1280. *Id*. at 41 (citations omitted). Kellicker teaches that server 1250 supports a number of real–time data communication protocols, including HLS, RTMP and/or WebRTC. *Id*.

Kellicker specifically teaches providing the real–time streaming server(s) with the HLS streaming protocol ability. *Id*.

Kellicker does not expressly describe the CDN architecture, conventional prior art CDN architectures routinely included both "parent" and "children" (regional, edge or point of presence (PoP)) servers. An exemplary CDN architecture that may be employed to distribute HLS media streams is described by Phillips. *Id*. at 42 (citations omitted).

It would have been obvious in view of Kellicker for a POSA to have implemented the content source(s) 130 of Ellis in the form of a real—time a RTMP media server or a real—time WebRTC server. A POSA would have been motivated to do so in order to provide the content source of Ellis with the processing and transmission ability to conform with these well—known and widely utilized protocols. *Id*. at 45.

It would have been obvious to a POSA to have provided this HLS caching server CDN in the form of a hierarchal server structure wherein a central or national distribution node may in turn operate as a parent node to one or more child regional distribution nodes. Consistent with the teachings of Phillips, a POSA would have been motivated to provide this hierarchal server architecture in order to provide high—performance streaming to subscribers using one or more Internet—based infrastructures, and to provide content to subscribers with greater efficiency. *Id.* at 47-48 (citations omitted).

Thus, the combination of Ellis, Spivey and Kellicker clearly disclose each and every aspect of the well-known arrangement of claim 10, with ample motivation provided to one of ordinary skill in the art to arrive at the claimed combination of well-known components.

Fintiv factor 6 weighs strongly in favor of institution.

III. *GENERAL PLASTIC* DOES NOT WARRANT DISCRETIONARY DENIAL

A. *General Plastic* is of Minimal Relevance Under the Facts of this Case

Patent Owner improperly conflates petitions filed by different parties in its *General Plastic* arguments in a manner that is contrary to the *General Plastic* case itself, and the precedent of this Board. The present petition is the first original

petition filed by the current Petitioner directed to claims of the '687 patent[6] that have not been previously challenged.

As previously explained, the petitions challenging the '687 patent are as follows.

	The Genius IPRs	**Petitioner's Copycat Petitions**	**Petitioner's Original Petitions**
Petitioner	Genius Sports Ltd.	Sportradar Group	Sportradar Group
IPR Nos.	IPR2024–01305 IPR2024–01307	IPR2025–00268 IPR2025–00269	IPR2025–00315 IPR2025–00316
Claims Challenged	('1305): 1–9 ('1307): 19–25, 27–30	('268): 1–9 ('269): 19–25, 27–30	('315): (1) 10–18 ('316): (23, 24) 26
Filing Date	August 22, 2024	December 11, 2024	December 14, 2024

General Plastic involved a situation where the *same* petitioner filed subsequent petitions directed to *all of the same claims* of the challenged patent, *after their previously filed petitions were denied on the merits*. This is clearly not the situation here – the current Petitioner has simply filed copycat petitions with motions for joinder as authorized by statute, and parallel original petitions directed to different claims that were asserted later in litigation by the Patent Owner.

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[6] A companion petition was filed on the same day as the current petition, directed to other claims of the '687 patent. IPR2025–00315, Paper 3. See also, Petitioner's Showing of Cause for Parallel Petitions. *Id*., Paper 2.

The facts in the current case are similar to those in the recently issued *Savant* decision, where the Director found:

> Although . . . the scope of the challenges, particularly as to independent claim 1, are substantially the same as in [the previous challenge], Petitioners persuasively explain that Patent Owner's subsequent assertion of [previously unchallenged claims] of the '678 patent—in district court after Savant and LEDVANCE challenged a different set of claims of the '678 patent—necessitated the filing of this Petition. Petitioners acted diligently in filing this Petition less than three months after Patent Owner asserted claims 11 and 12 in district court.

Savant, IPR2025–00260, Paper 16 at 3.

1. The Genius IPRs are not Relevant to Petitioner's Original Petitions Under *General Plastic*

Petitioner acknowledges that, in limited circumstances, the Board has applied *General Plastic* in situations involving successive petitions filed by different petitioners. *Valve Corp. v. Elec. Scripting Prods., Inc.,* IPR2019–00062, Paper 11 at 2, 9–10 (P.T.A.B. Apr. 2, 2019) (precedential). However, *Valve* explains that application of *General Plastic* in such situations is appropriate ***if*** the two petitioners have a "significant relationship" with each other. *Id*. at 9–10. The current Petitioner in Petitioner's Original Petitions, and the petitioner in the Genius IPRs, are not real parties-in-interest or privies, and have not been shown as having a "significant relationship." Patent Owner fails to even allege otherwise. *Videndum*

Production Solutions, Inc., v. Rotolight Ltd., IPR2023–01218, Paper No. 12 at 6 (P.T.A.B. Apr. 19, 2024) ("I determine that ***where, as here, the first and second petitioners are neither the same party, nor possess a significant relationship under Valve, General Plastic factor one necessarily outweighs the other General Plastic factors***.") (emphasis added).

Therefore, *General Plastic* does not support the exercise of discretionary denial of Petitioner's Original Petitions based on the previously filed Genius IPRs.

2. *General Plastic* Does Not Support Discretionary Denial of Petitioner's Original Petitions Based on the Contemporaneously-Filed Petitioner's Copycat Petitions

General Plastic addresses the situation where the same petitioner files "follow-on petitions" against the same patent, after a failed first attempt to challenge that patent. *General Plastic Industrial Co. Ltd. v. Canon Kabushiki Kaisha*, IPR2016–01357, Paper 19 at 2–3 (P.T.A.B. September 6, 2017) (precedential as to Section II.B.4.i.). That is clearly not the case here.

Petitioner filed its Original Petitions ***three days*** after filing its Copycat Petitions. Clearly, there was no attempts to "roadmap" the contents of the Original Petitions based upon any filings by Patent Owner or decisions by the Board in Petitioner's Copycat Petitions. The same is true for the Genius IPRs.

The only overlap in subject matter between Petitioner's Copycat Petitions and Petitioner's Original Petitions is with respect to claims 23–24. However, claim

26 depends from claims 23–24. Thus, the challenge to claims 23–24 in Petitioner's Original Petitions is a prerequisite to challenge claim 26. However, Petitioner is clearly not attempting to get a "second bite at the apple" with respect to the patentability of claims 23–24 – the same prior art relied upon in both the Genius IPRs, and Petitioner's Copycat Petitions is cited with respect to the grounds directed to claims 23–24 in the Original Petitions.

Again, the challenge of claim 26 is the direct result of Patent Owner's assertion of these claims later in the district court litigation. The filing of separate petitions to challenge *only* the previously unasserted and unchallenged claims of the '687 patent, coupled with copycat petitions and motions for joinder with the previously challenged claims in existing proceedings as an understudy, is the most efficient and practical manner to reach all of the claims asserted by Patent Owner in the district court litigation.

Patent Owner cites a number of Board decisions in support of its arguments that Petitioner's Original Petitions should be discretionary denied. Patent Owner's Discretionary Denial Brief, at 16–17 (*citing Bytedance LTD. et al. v. Triller, Inc.*, IPR2021–00774, Paper 6 (P.T.A.B. Oct. 12, 2021); *Masimo Corp. v. Apple Inc.*, IPR2024–00071, Paper 7 (P.T.A.B. Apr. 25, 2024); *Fujifilm Corp. v. Sony Corp.*, IPR2018–00060, Paper 8 (P.T.A.B. Apr. 19, 2018); *Club Champion LLC v. True Spec Golf LLC*, IPR2019–01569, Paper 9 (P.T.A.B. Mar. 17, 2020); and *Metall*

Zug Ag et al. v. Carl Zeiss Meditec AG, IPR2020–01074, Paper 8 (P.T.A.B. Jan. 5, 2021). However, these decisions are unavailing.

Under the facts of *Bytedance*, petitioner's second challenge was filed ***five months*** after the first challenge, and over seven weeks after the patent owner filed its preliminary response in the first challenge, with no explanation for the delay. *Bytedance*, IPR2021–00774, Paper 6 at 5, 9–10. Furthermore, petitioner's first challenge was not a copycat petition seeking joinder with an existing proceeding filed by another petitioner.

Masimo involved a situation wherein the petitioner's second challenge was filed nearly ***8 months*** after the filing of the first challenge directed to the same patent, and after both the filing of the patent owner's preliminary response and decision on institution of the first–filed challenge. The Board expressed significant "road mapping concerns," and found that petitioner had modified its prior positions to account for both arguments made in the preliminary responses as well as the decision on institution. *Masimo,* IPR2024–00071, Paper 7 at 13, 19, 26. Also, petitioner's first challenge was not a copycat petition seeking joinder with an existing proceeding filed by another petitioner.

In *Fujifilm*, the cited decision deals mainly with a time-bar issue under section 315(b). Nevertheless, the patent at issue was the subject of a previous PTAB trial brought by the same petitioner ***which had already concluded with a***

final written decision by the time the institution decision was rendered in the subsequent challenge. *Fujifilm*, IPR2018–00060, Paper 8 at 8–9 ("Because the entire trial has concluded in the 1183 proceeding, the third *General Plastic* factor weighs especially strongly against institution . . ."). Petitioner's first challenge was not a copycat petition seeking joinder with an existing proceeding filed by another petitioner, as is the case here.

The circumstances at issue in *Club Champion* are also considerably different. There, petitioner filed a subsequent challenge ***three months*** after a previous challenge. *Club Champion*, IPR2019–01569, Paper 9 at 6. The subsequent challenge relied on the exact same references, and no others, as the first challenge. *Id*. Further, all of the claims asserted in the related litigation were challenged in the initial *inter partes* review, and not precipitated by a later assertion of previously unchallenged claims. *Id*. Finally, the petitioner's first challenge was not a copycat petition seeking joinder with an existing proceeding filed by another petitioner, as is the case here.

In *Metall Zug*, the petitioner filed an initial petition, then after an unjustified ***six month*** delay, filed follow-on petitions. The Board had instituted review on the first filed petition more than six months before the institution decision was rendered with respect to the follow-on petition at issue. *Metall Zug,* IPR2020–01074, Paper 8 at 2, 9. The follow-on petition cited the same references relied upon

in the previous challenge. *Id*. at 3. The follow-on petition was also filed after the filing of a preliminary response in the previous petition, and the Board found that the petitioner tailored its follow-on challenge based on information gleaned from the preliminary response. *Id*. at 8. Furthermore, petitioner's first challenge was not a copycat petition seeking joinder with an existing proceeding filed by another petitioner.

As evident from the above, none of the decisions cited by Patent Owner are on point with the facts at issue here. The situation presented here is more closely aligned with that of the recent *Savant* decision:

> [T]he facts in this proceeding do not demonstrate that the Petition raises concerns of the 'potential for abuse of the review process by repeated attacks on patents' under *Gen. Plastic Indus. Co. v. Cannon Kabushiki Kaisha*, IPR2016–01357, Paper 19 at 17 (PTAB Sept. 6, 2017) (precedential as to § II.B.4.i). . . Savant and LEDVANCE filed a petition in IPR2024–01357 challenging claims 1–3, 6, 7, 9, 10, 16–21, 25, 26, and 29 of the '678 patent on August 26, 2024. . . Subsequently, on September 20, 2024, Patent Owner additionally asserted claims 11 and 12 of the '678 patent against Savant. DD Opp. 4. In response, on December 9, 2024, Savant, Elong, and Xiamen filed this Petition challenging claims 11–14 of the '678 patent. *Id*.

Savant, IPR2025–00260, Paper 16 at 3.

Another more closely aligned case is *Mercedes-Benz USA, LLC v. Carucel Investments, L.P.*, IPR2019–01644, Paper 9 (P.T.A.B. March 26, 2019).

In *Mercedes-Benz*, the patent at issue had been previously challenged by a different petitioner (Volkswagen Group). Mercedes then filed a first challenge, followed less than ***two months*** later by a second challenge. Mercedes argued that its second challenge was precipitated by the later assertion of previously unchallenged claims by the Patent Owner in the corresponding district court litigation. *Id*. at 3, 10.

When considering both the first and subsequent petitions, both filed by Mercedes, the Board observed that neither the patent owner nor the Board had addressed Mercedes' first petition at the time it filed its subsequent petition, that need for the subsequent challenge, and the delay between the first petition and second petition was justified. *Mercedes-Benz, L.P.*, IPR2019–01644, Paper 9 at 14–15.

The same reasoning applies to the facts presented here. Furthermore, in this case the Petitioner's first challenge was a copycat petition with a motion to join an existing proceeding as an understudy, and Petitioner's Original Petitions were filed ***three days*** after Petitioner's Copycat Petitions. Thus, the facts presented here are even *less* amenable to the exercise of discretionary denial under *General Plastic* compared with the facts in *Savant* or *Mercedes-Benz*.

With respect to the number parallel petitions, the Genius IPRs included (two) parallel petitions challenging the originally asserted claims of the '687 patent. Genius filed, as a separate paper, an explanation justifying the need for multiple petitions. *Genius*, IPR2024–01305, Paper 3 at 1–2; *Genius*, IPR2024–01307, Paper 3 at 1–2.

Patent Owner never challenged the need for multiple petitions, and trial was instituted on both petitions. *Id*., Paper 8.

By necessity, Petitioner's Copycat Petitions were likewise split into two separate challenges. *Sportradar AG v. SportsCastr Inc, d/b/a PANDA*, IPR2025–00268, Paper 2; *Sportradar AG v. SportsCastr Inc, d/b/a PANDA*, IPR2025–00269, Paper 3. Petitioner also filed, as a separate paper, an explanation justifying the need for multiple petitions for essentially the same reasons relied upon in the Genius IPRs. *Id.*, Paper 3, Paper 2. While Patent Owner has argued that Petitioner's Copycat Petitions should be discretionary denied under *Fintiv* and *General Plastic* due to parallel district court proceedings and the previous challenges filed by Genius, ***it does not challenge the necessity of the filing multiple copycat petitions by Petitioner***.

For essentially the same reasons tracing back to the original Genius IPRs, Petitioner's Original Petitions have also been split into two separate challenges. *Sportradar AG v. SportsCastr Inc, d/b/a PANDA*, IPR2025–00315, Paper 3;

Sportradar AG v. SportsCastr Inc, d/b/a PANDA, IPR2025–00316, Paper 3. Petitioner again filed a showing of cause for parallel petitions, arguing:

> First, the claims cannot be addressed in one petition because of length of the claims and because of the additive nature of the claim dependencies. Claims 10–18 depend either directly or indirectly in claim 1. Claim 1 itself is a rather lengthy claim with several recited elements . Claim 11 depends from claim 10, claim 12 from claim 11, claim 13 from claim 12, claim 14 from claim 13, and so on. Claim 17 alone occupies at least a column and a half of the '687 patent, and claim 18 depends from claim 17. This of course necessitates a longer discussion to address all of the challenged elements of these newly asserted claims.
>
> Second, each petition challenges different claims. The first Petition challenges claims 1 and 10 through 18. The second Petition challenges claims 23, 24 and 26. Thus, the Petitions are not duplicative and address as efficiently as possible the patentability of the newly asserted '687 claims.
>
> Third, the two Petitions cite essentially the same art against all claims, and rely on essentially the same rationale, thus minimizing the burden on the Board from instituting both petitions.

Id., Paper 2, Paper 1, at 2.

Once again, ***Patent Owner failed to challenge the necessity of the filing of two Original Petitions***.

The need for separate parallel challenges in the form of Petitioner's Copycat Petitions and Petitioner's Original Petitions is also justified for at least the same reasons noted above. Namely, given the number of claims at issue between the claims challenged and both the Copycat Petitions and Original Petitions, the lengthy nature of the challenged claims, and the nested dependency structure thereof, the filing of multiple challenges is justified. *AliveCor, Inc. v. Apple Inc.*, IPR2023–00949, Paper 8 at 25–30 (P.T.A.B. January 9, 2024). Furthermore, given that a number of the claims asserted against Petitioner in the district court litigation had already been challenged by Genius, the most efficient manner to reach these claims is by filing a copycat petition limiting the grounds to those already under consideration in an existing proceeding, coupled with a motion to join these proceedings as an understudy. The alternative – trying to present a single challenge including multiple claims already at issue in existing proceedings, combined with additional previously unchallenged claims, is clearly less efficient and much more vulnerable to discretionary denial under *General Plastic*.

Thus, for at least the reasons explained above, the discretionary denial of Petitioner's Original Petitions based on the contemporaneously filed Petitioner's Copycat Petitions is contrary to the principles of *General Plastic*, as well as the principles of efficiency and fairness in the administration of these proceedings.

B. Application of the General Plastic Factors Make Clear that the Exercise of Discretionary Denial is Unsupported

As noted above, with respect to the Genius IPRs, the Director's holding in *Videndum* dictates that under the facts of the present case *General Plastic* factor 1 is resolved in the favor of Petitioner, and that this necessarily outweighs the other *General Plastic* factors.

For at least the reasons explained above, the exercise of discretionary denial of Petitioner's Original Petitions based upon the contemporaneously filed Petitioner's Copycat Petitions is likewise contrary to the principles of *General Plastic*.

Even if one were to consider each individual factor, this would not lead to a different result.

1. *General Plastic* Factor 1: whether the same petitioner previously filed a petition directed to the same claims of the same patent

With respect to the Genius IPRs, the current Petitioner and the petitioner in the Genius IPRs are not the same party, nor do they have a significant relationship. Patent Owner admits as much. Patent Owner Opposition to Petitioner's Motion for Joinder, IPR2025–00269, Paper 11 at 13. Application of this factor clearly, and overwhelmingly, favors institution. *Videndum*, IPR2023–01218, Paper No. 12 at 6.

As explained above, Petitioner's Original Petitions are not "follow-on" petitions under *General Plastic*. They are contemporaneously filed parallel petitions filed to address different claims asserted at different times during parallel district court litigation. The current petition challenges a later-asserted claim (claim 26) not challenged in the Genius IPRs or Petitioner's Copycat Petitions. Clearly, given that the current petition was filed ***three days*** after the corresponding copycat petition, no attempt has been made to roadmap the contents of the current petition. As such, factor 1 favors institution of the current petition.

Finally, the inquiry at issue in factor 1 is whether the ***same claims*** of the same patent were challenged in the previous petition. Here, claim 26 has been challenged, and was undisputedly previously not challenged in prior petitions. Thus, factor 1 favors institution. *DexCom, Inc. v. Abbott Diabetes Care Inc.*, IPR2024–00521, Paper 12 at 13–14 (P.T.A.B. Aug. 22, 2024) (rejecting the argument that an overlap consisting of only a commonly challenged independent claim favors discretionary denial under factor 1).

2. *General Plastic* Factor 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

With respect to the Genius IPRs, the petitioners are not the same party. This was previously admitted by Patent Owner. Patent Owner Opposition to Petitioner's Motion for Joinder, IPR2024–000269, Paper 11 at 13.

With regard to the contemporaneously filed Petitioner's Copycat Petitions, this is clearly not a situation where Petitioner held prior art in reserve in order to assert it in subsequent petition. Petitioner filed its second challenge ***three days*** after filing the first challenge. Moreover, Petitioner relies upon the same prior art cited in the first petition with respect to the challenge of common claims 23–24, which is a prerequisite to reach target claim 26. This factor favors institution. *Amazon.com, Inc. v. Jawbone Innov., LLC*, IPR2023–00284, Paper 12 at 10 (P.T.A.B. May 15, 2023) ("Factors 2, 4, and 5 are designed 'to assess and weigh whether a petitioner should have or could have raised the new challenges earlier.'") (citation omitted).

3. *General Plastic* Factor 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

This factor also is not relevant to consideration of the Genius IPRs for at least the reasons previously explained herein, and because the petitioners are not the same party. Clearly, no attempt has been made to "roadmap" Petitioner's Original Petitions based on the contents of a preliminary response or institution decision received in the contemporaneously filed Petitioner's Copycat Petitions. This factor favors institution.

4. *General Plastic* Factor 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

This factor favors institution for at least the same reasons discussed above in connection with factor 3. Petitioner's Original Petitions and Petitioner's Copycat Petitions were filed ***three days*** apart. No attempt has been made to roadmap the contents of Petitioner's Original Petitions. This factor favors institution. *Id*. *See Savant*, IPR2025–00260, Paper 16 at 3 (previous awareness of prior art asserted in subsequent challenge excused because subsequent challenge was necessitated by Patent Owner's later assertion of the challenge claims in corresponding district court litigation).

5. *General Plastic* Factor 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

This factor is likewise inapplicable for at least the reasons previously explained herein. *Id*. To reiterate, Petitioner's Original Petitions were filed in response to Patent Owner's assertion of these claims later in parallel district court litigation. The current petition addresses previously unchallenged claim 26. Only minimal overlap exists due to the dependency of claim 26 upon claims 23–24. Even so, there is clearly no attempt made at obtaining "a second bite at the apple" with regard to the patentability of claims 23–24 – Petitioner cites the same prior art cited in both the Genius IPRs and Petitioner's Copycat Petitions. A difference of *three*

days in filing the current petition relative to Petitioner's Copycat Petitions is *de minimus* – driven by the volume of materials to be filed and the schedules of those involved. Petitioner certainly gained no strategic advantage by not filing the petitions on exactly the same day, and no prejudice was suffered by Patent Owner as a result. This factor favors institution.

6. *General Plastic* Factor 6: the finite resources of the Board

Factor 6 does not support discretionary denial based on the previously filed Genius IPRs for at least the reasons previously explained herein. *Videndum*, IPR2023–01218, Paper No. 12 at 6.

With respect to Petitioner's Copycat Petitions, Petitioner has brought its challenges in a manner that conserves the resources of the Board to the greatest extent possible. For those claims asserted against Petitioner that have already been challenged and are subject to an existing proceeding, Petitioner seeks joinder with those proceedings as an understudy. Only those claims that were asserted against Petitioner later in the district court litigation have been raised in a contemporaneously-filed separate challenge.

Congress created *inter partes* review proceedings as an alternative forum for adjudicating the validity of a granted patent, as an alternative to district court litigation. Carrying out its statutorily directed mission is not a "burden" on the PTAB. *General Plastic* factor 6 favors institution.

7. *General Plastic* Factor 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

Factor 7 does not favor discretionary denial because the Genius IPRs are not a legitimate basis for the exercise of discretionary denial, and Petitioner's Copycat Petitions seeking joinder with ongoing proceedings wherein Petitioner explicitly stipulated ". . . to be bound by the Scheduling Order Issued in IPR2024–01307." Motion for Joinder, IPR2025–00269, Paper 9, p. 9. Patent Owner offers no reason why institution of Petitioner's Original Petitions would somehow prevent the Board from issuing a final written decision no later than one year from the date of institution.

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

Patent Owner cites the *Stewart Memo*[7] in support of its arguments that the Director should exercise discretionary denial because of Petitioner's "heavy reliance" on expert witness testimony, and alleged "anticompetitive" conduct on part of the Petitioner. However, the *Stewart Memo* provides no indication as to what constitutes "heavy reliance" on expert witness testimony, and contains no

[7] *Interim Process for PTAB Workload Management*, Acting Director Coke Morgan Stewart, March 26 2025 ("*Stewart Memo*"). Ex. 2004.

mention whatsoever of alleged and unproven "anticompetitive" conduct as being a form of compelling economic interest supporting a request for the exercise of discretionary denial.

As further noted below, it is respectfully submitted that the procedure established by the *Stewart Memo*, including the retroactive application of the procedure to cases having previously-filed petitions, and the reliance upon the "additional factors" described therein, is not supported by prior PTAB precedent and is contrary to both the American Invents Act and the Administrative Procedures Act.

A. Reliance on Expert Testimony is Appropriate in This Case

Patent Owner's arguments and cited examples, to the extent that they can be understood, disregard critical facts, including the fact that the Board has already at least preliminarily determined that the same argument and same substantive expert witness evidence at issue in the examples cited by Patent Owner have merit, and Patent Owner's objections and rebuttal evidence related thereto do not defeat a *prima facie* showing. *Genius*, IPR2024–01307, Paper 8 at 42–43.

1. Reliance upon Expert Witness Evidence is Sanctioned by Statute and PTAB Practice Norms and Guidance

The use of expert witness testimonial evidence by petitioners in these proceedings is expressly contemplated by statute: "[a] petition filed under section 311 may be considered ***only if*** . . . the petition identifies . . . the ***evidence that***

supports the grounds for the challenge to each claim, including . . . ***affidavits or declarations of supporting evidence*** and opinions, if the petitioner relies on ***expert opinions***" 35 U.S.C. § 312(a) (emphasis added).

The Board has long recognized the useful role of expert testimony in explaining complex technologies and how a person of ordinary skill in the art would understand them, among other purposes. *Consolidated Trial Practice Guide* – November 2019, at 34–36. 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."

2. There Has Been No Inappropriate Reliance on Expert Witness Testimony

Patent Owner 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." Patent Owner's Discretionary Denial Brief, Paper 10 at 9 (emphasis added).

As an initial matter, the *Board* has broad discretion to consider and weigh expert witness testimony when reaching its determinations. *Yorkey v. Diab*, 601 F.3d 1279, 1284 (Fed. Cir. 2010). Therefore, criticizing the *Board's* reliance on expert witness testimony is not a valid basis for the exercise of discretionary denial.

The *Trial Practice Guide* provides the following nonlimiting examples of circumstances where expert testimony may be offered to assist the PTAB:

(i) ***explain the relevant technology***;

(ii) ***establish the level of skill in the art*** and describe the POSITA;

(iii) ***explain the teachings of the prior art and how they relate to the patent's claims***;

(iv) address whether a POSITA would have found a ***reason to modify the prior art*** and, if so, whether there would have been ***a reasonable expectation of success***;

(v) explain how evidence of objective indicia of non-obviousness should be weighed against evidence of unpatentability; and

(vi) explain the nature and import of such objective indicia.

Trial Practice Guide at 34–35 (emphasis added).

The expert declaration in this case (Ex. 1001) is provided exactly for the purposes enumerated above and specified by the Trial Practice Guide. It supports the strength of the Petition because it provides detailed explanations of the presence of each limitation in the prior art and why a person of ordinary skill in the art would have found the prior art obvious to combine, including extensive citations to the prior art references themselves in support of this testimony.

The presence of all of the limitations recited in the claims has been shown to be present from the teachings of the prior art references themselves. The Petitioner does not solely rely on expert witness testimony to establish the presence of any of the claim limitations.

Patent Owner first argues that:

> [T]he Board 'agree[d] with Petitioner (Pet. 40 n.7) that Spivey suggests the intermediary live data access server is optional' based solely on a footnote citing Petitioner's expert declaration. (IPR2024–01307, Paper 8 at 36.) The Board also concluded that 'Spivey at least suggests a direct connection between the message queue server device and client devices' again based on a footnote stating, 'these passages better support Petitioner's and Dr. Wicker's assertions at this stage.' (IPR2024–01307, Paper 8 at 36.) Furthermore, the Board 'also credit[ed] 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. (IPR2024–01307, Paper 8 at 37.)

Patent Owner's Discretionary Denial Brief, Paper 10 at 9–10.

This is simply not true. The Board in the Genius IPR Institution Decision (IPR2024-01307, Paper 8) referenced the disclosure of the Spivey reference extensively in support of its finding of fact with regard to the teachings of that

reference with respect to the optional nature of the live access data server 130. For example, the Board found:

> We agree with Petitioner (Pet. 40 n.7) that Spivey suggests the intermediary live data access server is optional. Specifically, Spivey discloses that "system 100 *may* include a live data access server 130." ***Ex. 1017 ¶ 38*** (emphasis added). Spivey also teaches that MQS communication component 308, which is included in message queue server device 310, "*may* . . . receive requests to subscribe to topics in a topic set 330, and may push data from topic queues 332-1, 332-n to the subscribers of the topics corresponding to those topic queues." ***Id. ¶ 46*** . . . ***Spivey discloses*** user interface 900 presented by live data app 210 residing on client device 200 that 'allow[s] an operator 108 of a client device 110 to view and select topics of live data to subscribe to,' which may comprise, for example, 'the topics available from a message queue server." ***Ex. 1017 ¶84, Figs. 2, 9***. Taken together, these passages better support Petitioner's and Dr. Wicker's assertions at this stage that Spivey at least suggests a direct connection between the message queue server device and client devices.

Genius, IPR2024–01307, Paper 8 at 36 (emphasis added).

The Board's findings in this regard are clearly based upon the teachings of the prior art references themselves, and not solely upon Petitioner's expert witness testimony.

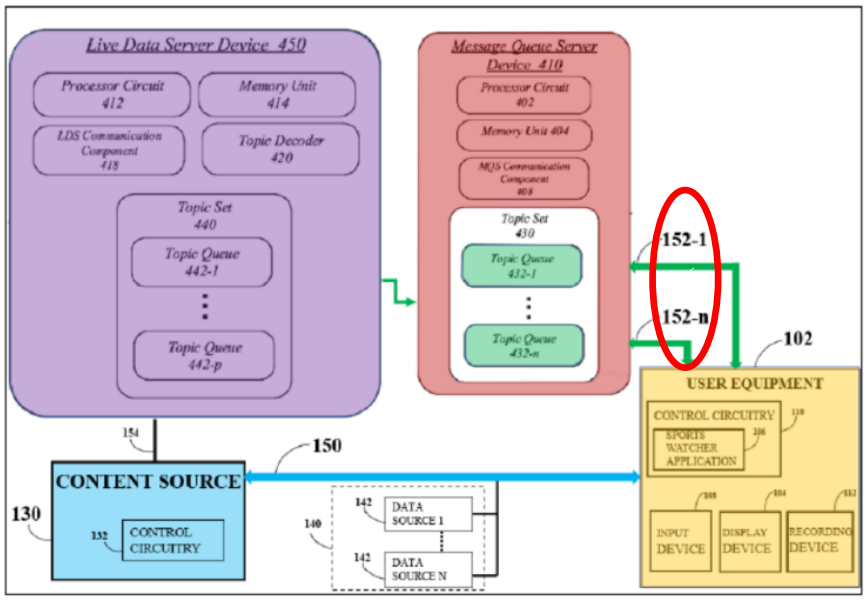
Next, Patent Owner argues:

> 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 . . . The Board adopted this 'illustration of [Petitioner's] conception of the combined system' in deciding the Genius IPR. (IPR2024–01307, Paper 8 at 18.) As illustrated in the figure, however, the '151–1'[**sic: 152–1**] and '151–2' [**sic: 152–n**] ***connections are entirely fictional creations*** by Petitioner's expert and ***do not originate from intrinsic evidence*** (Petition, 19.)

Patent Owner's Discretionary Denial Brief, Paper 10 at 10–11 (emphasis added).

These assertions are also demonstrably false.

The diagram in question is reproduced below (further annotated with a red circle):



This diagram is admittedly a graphical representation of the verbal description of the combined teachings of the combined prior art references themselves.

As correctly noted in the Board's Genius IPR institution decision, the contents of this diagram are based, at least in part on the combination of elements contained in Ellis' Figure 1 and Spivey's Figure 4:

> In this illustration from the Petition, Petitioner has modified Ellis's Figure 1 such that Spivey's live data server device 450 and message queue server device 410 from Spivey's Figure 4 replace supplemental content source 120 in Ellis's Figure 1. Id. (citing Ex. 1001 ¶ 111; Ex. 1016, Fig. 1; Ex. 1017, Fig. 4).

Genius, IPR2024–01307, Paper 8 at 18.

Figure 1 of Ellis is reproduced below (annotated with a red circle):

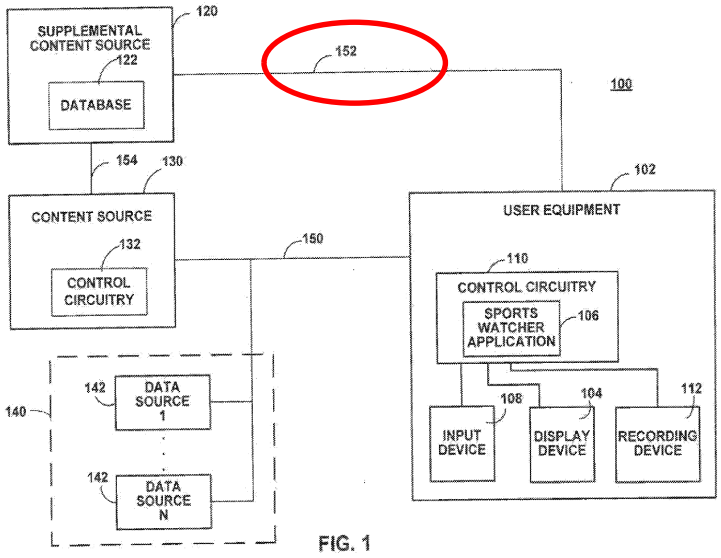


FIG. 1

Ex. 1016.

As evident from the above, Ellis discloses and teaches the formation of a connection (152) between a database comprising a supplemental content source and user equipment.

Furthermore, as correctly noted by the Board in the Genius IPR institution decision, for example:

> Petitioner cites Spivey's teaching that the MQSD 'may push data from topic queues . . . to the subscribers of the topics corresponding to those topic queues.' Pet. 42 (quoting ***Ex. 1017 ¶ 46***). Petitioner also cites Ellis's teaching that the supplemental content source may be configured 'to provide real-time sports scores and game summary information . . . to user equipment 102.' *Id*. (quoting ***Ex. 1016 ¶ 41***).

Genius, IPR2024–01307, Paper 8 at 34 (emphasis added).

The cited disclosures of both Spivey and Ellis expressly teach pushing data ***from a plurality of topic cues to subscribers or users***. Ex. 1017, ¶ 46 ("MQS communication component 308 may also. . . push data ***from topic queues*** 332–1, 332–n ***to the subscribers*** of the topics corresponding to those topic queues"); Ex. 1016, ¶ 41 ("***Each data feed may be individually accessed*** or subscribed to ***by user equipment 102***") (emphasis added).

Thus, the examples cited above clearly demonstrate that the contents of the diagram and Petitioner's arguments related thereto are derived from the teachings of the prior art references themselves and are not some sort of "fabrication" as Patent Owner contends. Petitioner's expert has properly opined on the manner in which the teachings of the prior art references would have been combined by a person having ordinary skill in the art, using the above-mentioned diagram as a visual aid in conveying these opinions. This is not improper reliance on expert witness testimony.

Patent Owner fails to provide one valid example where the *Petitioner* has relied upon expert witness testimony to provide a single claim limitation otherwise not found in the prior art. Thus, Patent Owner's arguments are unavailing. *See Advanced Micro Devices Inc. v. Realtek Semiconductor Corp*., IPR2023–00789, Paper 9 at 39 (P.T.A.B. Oct. 26, 2023) (finding Petitioner's citation of prior art and

argument constituting sufficient support and rejecting Patent Owner's assertions of improper gap filling with expert testimony).

B. No Compelling Economic Interests Justify the Exercise of Discretionary Denial

First, Patent Owner's meritless and belated claims around alleged unproven "anticompetitive" conduct are part of a transparent litigation tactic intended to gain leverage in the corresponding district court litigation. Petitioner has moved for dismissal of these meritless claims. Ex. 1067.

Second, the *Stewart Memo* never identifies alleged und unproven "anticompetitive" behavior as a "compelling economic interest" warranting exercise of discretionary denial. Patent Owner cites absolutely no authority establishing otherwise.

Third, Patent Owner argues that its claims of allegedly anticompetitive behavior on behalf of the current Petitioner (Sportradar AG) consists of excerpts from alleged email correspondence sent from personnel bearing a "***geniussports***.com" domain. Patent Owner's Discretionary Denial Brief, at 12–13 (emphasis added). Patent Owner Fails to explain how email correspondence apparently sent by persons associated with a geniussports.com domain demonstrates anticompetitive behavior on behalf of the current Petitioner (Sportradar AG).

Fourth, respectfully, the Director is not in a position to adjudicate Patent Owner's heavily disputed, unproven and meritless antitrust law-based claims. *See* Ex. 1067.

V. THE INTERIM PROCESS OF THE MARCH 26, 2025 MEMORANDUM AND THE *FINTIV* AND *GENERAL PLASTIC* RULES ARE UNLAWFUL

Petitioner reserves the right to challenge the *Stewart Memo*, and the *Fintiv* and *General Plastic* rules, as unlawful for one or more of the following reasons: (1) they are contrary to the letter and spirit of the America Invents Act, (2) they exceed the Director's authority, (3) they are arbitrary and capricious, and (4) they are substantive rules that were adopted without notice-and-comment rulemaking.

VI. CONCLUSION

For the reasons explained herein, discretionary denial of the current petition is inappropriate. Considering the lack of overlap with the parallel district court litigation, and that the Petitioner has proffered a *Sotera* stipulation, under the facts presented here the concerns of *Fintiv*, *General Plastic* and the March 26, 2025 Stewart Memorandum are not implicated. It is respectfully requested that the Director refer this case to a panel of the Board for consideration on the merits.

Date: June 18, 20025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This Petitioner's Opposition to Request for Discretionary Denial complies with the type–volume limitations as mandated in 37 C.F.R. §42.24 and the memorandum entitled Interim Processes for PTAB Workload Management dated March 26, 2025. According to the word processing system used to prepare this document, the brief contains 10,196 (14,000 limit) words.

Date: June 18, 2025

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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 Opposition to Request for Discretionary Denial was served by email correspondence on the following correspondence email addresses of record for Patent Owner:

acochran@cahill.com; and

ctracyjames@cahill.com.

Date: June 18, 2025

Respectfully submitted,

/Teresa C. Rodriguez/
Teresa C. Rodriguez

TABLE OF EXHIBITS

Exhibit No.	Description
Exhibit 1001	Declaration of Dr. Omid Kia, Ph.D.
Exhibit 1002	*Curriculum Vitae* of Dr. Omid Kia, Ph.D.
Exhibit 1003	U.S. Patent No. 10,805,687
Exhibit 1004	Claim Listing of U.S. Patent No. 10,805,687
Exhibit 1005	Certified File History of U.S. Patent No.10,805,687
Exhibit 1006	U.S. Patent No. 10,425,697
Exhibit 1007	Claim Listing of U.S. Patent No. 10,425,697
Exhibit 1008	Certified File History of U.S. Patent No. 10,425,697
Exhibit 1009	U.S. Patent No. 11,039,218
Exhibit 1010	RESERVED
Exhibit 1011	Certified File History of U.S. Patent No. 11,039,218
Exhibit 1012	RESERVED
Exhibit 1013	Director Vidal Memorandum re: *Sotera* Stipulations
Exhibit 1014	SportsCastr's Complaint for Patent Infringement against Genius Sports
Exhibit 1015	U.S. Patent Pub. No. 2015/0163379 ("Herzog")
Exhibit 1016	U.S. Patent Pub. No. 2014/0229992 ("Ellis")
Exhibit 1017	U.S. Patent Pub. No. 2016/0036910 ("Spivey")
Exhibit 1018	U.S. Patent Pub. No. 2015/0163379 ("Mitic")
Exhibit 1019 – 1020	RESERVED

Exhibit 1021	Genius Sports' proposed *Sotera* Stipulation to SportsCastr
Exhibit 1022	James F. Kurose & Keith W. Ross, *Application Layer*, in Computer Networking a Top–Down Approach (Michael Hirsch *et al.* eds., 4th ed. 2012) ("Kurose")
Exhibit 1023	John Dilley *et al.*, *Globally Distributed Content Delivery*, IEEE Internet Computing (Sept.–Oct. 2002).
Exhibit 1024	Mário Marques da Silva, Multimedia Communications and Networking (2012) ("Silva")
Exhibit 1025	*A Brief History of the Internet*, ONLINE LIB. LEARNING CENTER. (Feb. 9, 2024), https://www.usg.edu/galileo/skills/unit07/internet07_02.phtml ("Online Library")
Exhibit 1026	Hisayuuki Ohmata *et al.*, *Hybridcast: A new media experience by integration of broadcasting and broadband*, 2013 ITU Kaleidoscope: Building Sustainable Communities, April 2013 ("Ohmata")
Exhibit 1027	Henning Schulzrinne *et al.*, *RTP: A Transport Protocol for Real–Time–Applications*, DataTracker (January 1996), https://datatracker.ietf.org/doc/html/rfc1889 ("Schulzrinne")
Exhibit 1028	Brijesh Kumar, *Making Sense of Video Streaming Protocols*, LinkedIn. (Aug. 11, 2016), https://www.linkedin.com/pulse/making–sense–video–streaming–protocols–dr–brijesh–kumar/ ("Kumar")
Exhibit 1029	Ian Fette & Alexey Melnikov, *The WebSocket Protocol*, RFC Editor. (Dec. 2016), https://www.rfc–editor.org/rfc/rfc6455.html.
Exhibit 1030	Marcin Warczygłowa, *Real–time Web Application with Websockets and Vert.X* (Nov. 10, 2015), https://blog.allegro.tech/2015/11/real–time–web–application–with–websockets–and–vert–x.html.
Exhibit 1031	Randall Stewart & Chris Metz, *SCTP: new transport protocol for TCP/IP*, 5 IEEE 64, (2001) ("Stewart")

Exhibit 1032	Lydon Ong, John Yoakum &, *An Introduction to the Stream Control Transmission Protocol (SCTP)*, Datatracker. (May. 2002), https://datatracker.ietf.org/doc/rfc3286/ ("Ong")
Exhibit 1033	Jan Newmarch, *Introduction to Stream Control Transmission Protocol*, LINUX J. (Sep. 1, 2007), https://www.linuxjournal.com/article/9748 ("Newmarch")
Exhibit 1034	Kyung–Hoe Kim et al, *A transmission control SCTP for real–time multimedia streaming*, 54 Computer Networks 1418, (2010) ("Kim")
Exhibit 1035	High Scalability, *How Facebook Live Streams to 800,000 Simultaneous Viewers*, ByteByteGo (Jun. 27, 2016), https://blog.bytebytego.com/?utm_source=hs&utm_medium=ann&utm_campaign=top ("ByteGo")
Exhibit 1036	Hardeep Singh Parmar & Michael C. Thornburgh, *Adobe's Real Time Messaging Protocol*, Veriskope. (Dec. 21, 2002) ("Parmer")
Exhibit 1037	Ilya Grigorik, *WebRTC*, in High Performance Browser Networking, (2013) ("Grigorik")
Exhibit 1038	Sam Dutton, *Get started with WebRTC*, web.dev. (Jul. 23, 2012), https://web.dev/articles/webrtc–basics ("Dutton")
Exhibit 1039	Andy Salo, *MPEG DASH: A Technical Deep Dive and Look at What's Next*, RGB Networks, (2012) ("Salo")
Exhibit 1040	Jan Ozer, *Upstream, Justin.tv, Livestream, and Bambuser: Streaming Unplugged*, Streaming Media Magazine., Jun.–Jul. 2012 ("Ozer")
Exhibit 1041	Christopher Mueller, *MEPG–DASH vs. Apple HLS vs. Microsoft Smooth Streaming vs. Adobe HDS*, BITMOVIN. (Mar. 29, 2015), https://bitmovin.com/mpeg–dash–vs–apple–hls–vs–microsoft–smooth–streaming–vs–adobe–hds/ ("Mueller")
Exhibit 1042	Stefan Saroiu *et al.*, *An analysis of Internet Content Delivery Systems*, ACM SIGOPS Operating System Review, Vol. 36 (Dec. 31, 2002), https://doi.org/10.1145/844128.84415 ("Saroiu")

Exhibit 1043	Charles Marion & Julien Jomier, *Real–time Collaborative Scientific WebGL Visualization with Websocket*, Ass'n Computing Machinery, August 4–5, 2012 ("Marion")
Exhibit 1044	Mark Sweney, *First ads appear on YouTube Clips*, The Guardian, Aug. 22, 2007 ("Sweney")
Exhibit 1045	Richard Sandomir, *The Innovation That Grew and Grew*, N.Y. Times, June 12, 2014 ("Sandomir")
Exhibit 1046	Victoria Pimentel & Bradford G. Nickerson, *Communicating and Displaying Real–Time Data with WebSocket*, 16 IEEE (2012) ("Pimentel")
Exhibit 1047	Lucian Popa *et al.*, *HTTP as the narrow waist of the future internet*, 2010 ACM SIGCOMM Workshop, October 2013 ("Popa")
Exhibit 1048	Gilstrap Order of September 30, 2024 authorizing addition of Challenged Claims to the Complaint
Exhibit 1049	U.S. Patent Publication No. 2017/0250882 ("Kellicker")
Exhibit 1050	U.S. Patent Publication No. 2015/0127845 ("Phillips")
Exhibit 1051	U.S. Patent No. 9,246,965 ("Stoica")
Exhibit 1052	R. Pantos *et al.*, "HTTP Live Streaming," ("Pantos") published April 4, 2016
Exhibit 1053	Wayback Machine Pantos archive dated April 4, 2016
Exhibit 1054	US Patent No. 9,106,607,("Lepeska")
Exhibit 1055	EP2920708 ("Basile")
Exhibit 1056	U.S. Patent No. 9,973,785 ("Yang")
Exhibit 1057	Declaration of Alexander Walden in Support of Petitioner's Notice of Intent to Designate A Provisionally Recognized PTAB Attorney as Back-Up Counsel
	Newly Added Exhibits Appear Below

Exhibit 1058	Correspondence from Counsel for Patent Owner dated April 11, 2025, Stipulating Claims for Assertion in Litigation
Exhibit 1059	Correspondence from Counsel for Patent Owner dated April 14, 2025 Stipulating Claims for Assertion in Litigation
Exhibit 1060	Patent Owner's Infringement Contentions of January 18, 2024
Exhibit 1061	Patent Owner's Motion for Leave to Amend Its Infringement Contentions of August 2024
Exhibit 1062	Sportradar's Opposition to Patent Owner's Motion to Amend
Exhibit 1063	Patent Owner's Service Email of Amended Infringement Contentions dated September 30, 2024
Exhibit 1064	Guidance Memorandum dated March 24, 2025 from Chief Administrative Patent Judge Boalick
Exhibit 1065	U.S. District Court Eastern District of Texas, Calendar Events Set for 1/20/2026–1/26/2026, Judge Rodney Gilstrap Presiding
Exhibit 1066	Order dated March 23, 2025 – Limiting Asserted Claims and Prior Art
Exhibit 1067	Sportradar Group AG's Redacted Motion to Dismiss Counts V and VI of the Second Amended Complaint