UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTEL CORPORATION,

Petitioner

v.

PROXENSE, LLC

Patent Owner.

IPR2025-00329

U.S. Patent 8,457,672

OPPOSITION TO PATENT OWNER'S DISCRETIONARY DENIAL BRIEF

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Patent Trial and Appeal Board
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EXHIBIT LIST

Exhibit	Reference
1001	U.S. Patent 8,457,672 to Brown
1002	File History for U.S. Patent 8,457,672
1003	Declaration of Dr. James Lansford in Support of Petition
1004	Curriculum Vitae of Dr. James Lansford
1005	"Wireless Multimedia … A Guide to the IEEE 802.15.3 Standard" by Gilb ("Gilb")
1006	Part 15.3: Wireless Medium Access Control (MAC) and Physical Layer (PHY) Specifications for High Rate Wireless Personal Area Networks (WPANs) ("IEEE 802.15.3")
1007	WO 02/067009 to Ward, et al. ("Ward")
1008	File History for U.S. Patent 8,219,129
1009	U.S. Patent Publication 2007/0016637A1 to Brawn, et al. ("Brawn")
1010	Declaration of June Ann Munford
1011	Declaration of David Ringle
1012	Patent Owner's List of Proposed Claim Constructions from *Proxense, LLC v. Intel Corp*., No. 6-24-cv-00283 (WDTX)
1013	Intel's List of Proposed Claim Constructions from *Proxense, LLC v. Intel Corp*., No. 6-24-cv-00283 (WDTX)
1014	U.S. Patent No. 7,209,955 to Major ("Major")
1015	Patent Owner's Revised Infringement Contentions for '672 patent from *Proxense, LLC v. Intel Corp*., No. 6-24-cv-00283 (WDTX)
1016	U.S. Patent Publication 2006/0002349 to Demirhan ("Demirhan")

Exhibit	Reference
1017	U.S. Patent Publication 2003/0152059 to Odman ("Odman")
1018	"A Novel Scheduling Scheme and MAC Enhancements for IEEE 802.15.3 High-Rate WPAN" to Zeng, et al.
1019	Draft Running Comment Resolution, IEEE P802.15 Wireless Personal Area Networks by James P. K. Gilb, July 2004 ("Multicast Group Submission")
1020	Wireless Communication Standards, A Study of IEEE 802.11™, 802.15™, and 802.16™, by Todor Cooklev ("Cooklev")
1021	"Welcome to Standards Information Network," IEEE (2004) https://web.archive.org/web/20040603154924/http://www.standards.ieee.org/StandardsPress/
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1024	"IEEE-SA Template," IEEE (2005), https://web.archive.org/web/20050529084555/http://standards.ieee.org/getieee802/download/802.15.3-2003.pdf
1025	"Get IEEE 802 Update," IEEE Standards Association (2018), https://mentor.ieee.org/802-ec/dcn/18/ec-18-0210-00-00SA-ieee-802-november2018-standardsdownloadreport.pdf
1026	U.S. Patent Publication 2004/0025179 to Russ
1027	U.S. Patent Publication 2005/0113102 to Kwon
1028	U.S. Patent Publication 2005/0265371 to Sharma

Exhibit	Reference
1029	"Comparison of IEEE 802.11e and IEEE 802.15.3 MAC" by Wang, et al., Proceedings of the IEEE 6th Circuits and Systems Symposium on Emerging Technologies: Frontiers of Mobile and Wireless Communication (2004)
1030	"Intra-superframe power management for IEEE 802.15.3 WPAN," by Guo et al., IEEE Communications Letters, Volume 9, Issue 3 (March 2005)
1031	U.S. Patent Publication 2006/0205408 to Nakagawa ("Nakagawa")
1032	United States District Courts National Judicial Caseload Profile, September 30, 2024, https://www.uscourts.gov/sites/default/files/2024-12/fcms_na_distprofile0930.2024.pdf
1033	Amendment to Part 15.3: Wireless Medium Access Control (MAC) and Physical Layer (PHY) Specifications for High Rate Wireless Personal Area Networks (WPANs), Amendment 1: MAC Sublayer
1034	United States District Courts National Judicial Caseload Profile, December 31, 2024, https://www.uscourts.gov/sites/default/files/2025-02/fcms_na_distprofile1231.2024.pdf
1035	"Fintiv Fails: PTAB Uses 'Remarkably Inaccurate' Trial Dates," by Kass, https://www.law360.com/articles/1436071/
1036	Dkt. 29, Scheduling Order, Civ. Act. No. 6:24-cv-00472-ADA
1037	Dkt. 35, Scheduling Order, Civ. Act. No. 1:24-cv-00438-ADA
1038	Dkt. 32, Scheduling Order, Civ. Act. No. 6:24-cv-00163-ADA
1039	Dkt. 52, Scheduling Order, Civ. Act. No. 1:24-cv-00416-ADA
1040	Dkt. 18, Scheduling Order, Civ. Act. No. 6:24-cv-00304-ADA

Exhibit	Reference
1041	Dkt. 43, Scheduling Order, Civ. Act. No. 1:24-cv-00398-ADA
1042	Dkt. 5, Notice of Extension of Time for Defendant to Respond to Plaintiff's Complaint (July 2, 2024)

I. Introduction

The Petition establishes a strong case of unpatentability of U.S. Patent 8,457,672 (the "'672 patent"). The Patent Owner Preliminary Response (Paper 8, "POPR") raises a single issue on the merits—alleged "conflicting" claim construction positions—which first disregards Petitioner's clear statement that Grounds 1 and 2 were presented in the alternative, in the event PO's (incorrect) claim construction was adopted, and second rests on unsupported attorney argument that is in conflict with the disclosures in the prior art. Rather than make any meaningful attempt to rebut Petitioner's compelling showing of unpatentability, PO instead relies on a Request for Discretionary Denial (Paper 7, "Request"), which was filed late, without leave. To the extent the Board nonetheless entertains PO's arguments, discretionary denial is inappropriate under a holistic assessment of the *Fintiv* factors. For example, there has been relatively little investment in the District Court action overall, let alone in terms of invalidity—no depositions have occurred, and fact discovery has only just begun. The trial date in the district court will, at best, be within a few months of the deadline for a final written decision ("FWD") should the Petition be instituted. Further, the integrity of the patent system would benefit from institution because of the strong merits presented by the Petition.

Petitioner respectfully requests that the Director not exercise discretion and institute *inter partes* review.

II. The Board Should Not Exercise its Discretion Under 35 U.S.C. § 314(a) to Deny Institution.

A. The *Fintiv* Factors Taken Together Weigh Against Discretionary Denial

1. Factor 6

The Petition presents compelling evidence of unpatentability, which PO fails to refute. In fact, PO fails to address this factor at all other than to vaguely reference Petitioner's allegedly "inconsistent claim construction positions" and refer to its POPR. (Request, 10.) Regardless, PO is wrong—Petitioner's claim construction positions are not inconsistent.

First, the Petition, which was filed before the court entered its claim construction order, clearly indicates that Ground 1 presents an obviousness challenge "***under PO's interpretation*** of '*class*' and '*synchronization information*.'" (Petition, 8.) The Petition presents, as an alternative, Grounds 2 and 3, under "the correct construction" of the "*class*" limitations. (*Id.*, 59, 71.) Therefore, PO's argument about the allegedly "inconsistent" claim construction for Ground 1 is misdirected and irrelevant. (POPR, 4-9.)

Second, Petitioner does not "ignore[]" the proper construction of "*class*" in Grounds 3-6. (*Id.*, 9, 13.) In fact, Petitioner demonstrated how Ward meets the

district court's construction and PO has not presented any evidence to rebut that showing.

The "*class*" limitation of claim 1 reads:

> wherein the ***first class is associated with one or more of the first client device and a user of the first client device***, and the ***second class is associated with one or more of the second client device and a user of the second client device***

(INTEL-1001, cl. 1.) The District Court's construction, and the relevant disclosures from Ward are shown in the table below:

District Court construction	**Ward (INTEL-1007)**
Plain and ordinary meaning in which the class is associated with the client device or user of the client device, not data items or network characteristics	Day traders can pay a higher subscription so as to be informed more often of their current share prices and a scheduling process ***allocates time slots on the radio channel to investors based on the level of subscription paid by such investors*** so as to ensure fair allocation of the system resources. It is possible to offer a ***premium service, which may not be available for everyone but which may be made available to nervous small-scale traders*** who wish to take advantage of a stock-crash feature and for which they pay a small additional fee. Thus, if the value of a stock in ***an investor's portfolio*** falls to less than, for example,

	half of what they paid for it, the ***scheduler allocates the next available time slot to that investor*** so that they may be informed of a market catastrophe with minimal latency, thus allowing the investor to sell the investment immediately. (INTEL-1007, 12-13.)

As explained in the Petition, Ward teaches assigning time slots based on user subscription level and/or premium service subscription. (Petition, 67-692.) Specifically, Ward's system includes different subscription levels, which constitute the "[*first/second] class.*" (*Id.*) Ward further teaches that these classes are ***associated with a user of the client device***. (*Id.*) Specifically, users that pay for the particular subscription level have a higher priority and receive more time slots than users that do not pay for the particular subscription level. (*Id.*) In other words, Ward's system allocates time slots based on the user's subscription level, which is ***associated with a user of the client device***. (*Id.*; INTEL-1007, 12-13 (Ward's "scheduling process ***allocates time slots*** on the radio channel to investors ***based on the level of subscription paid by such investors***").)

PO argues, incorrectly, that time slots are allocated ***not*** based on the user's subscription but rather on "data," i.e., market information. (POPR, 12-13.) PO's unsupported attorney argument is inconsistent with Ward's disclosures. As explained in the Petition and above, Ward's "*classes*" are determined based on the

user's subscription level and, therefore, are "*associated with a user of the client device*." (Petition, 67-69.)

Also resting on mere attorney argument, PO misrepresents that the Petition's cited disclosures from Ward "disclose[] no such algorithm" that assigns time slots depending on the users' subscription level. (POPR 13.) As PO's quotations demonstrate, however, Ward discloses that "a scheduling process ***allocates time slots*** on the radio channel ***to investors based on the level of subscription paid by such investors*** so as to ensure fair allocation of system resources." (INTEL-1007, 12-13.) Contrary to PO's argument, the "system resources" that Ward describes are time slots that are allocated (assigned) based on subscription level (class) of a user—consistent with the "class" term construction. Regardless, the '672 patent itself does not disclose any algorithm for determining the respective "*specified time slot[s]*" as required by claim 1 of the '672 patent. (INTEL-1001, cl. 1.)

Further, as explained in the Petition, in order to overcome rejections and obtain issuance of parent patent U.S. 8,219,129 (the "'129 patent"), PO distinguished over prior art by arguing that "*class*," as used in the '129 patent, is not associated with "data items or network characteristics." (Petition, 6-7.) Thus, it was PO's argument that the "*class*" limitations were distinguishable over the prior art that secured the issuance of this patent. Ward's disclosure of a first and second

"class … associated with a user of the client device," which was not before the Examiner, presents a strong showing of unpatentability based on the allegedly distinguishing limitation that led the Examiner to allow the patent. During prosecution, as in the POPR, PO did not dispute that any other limitation was known in the art. (INTEL-1008, 234-37, 295-316, 392-404, 439-47.)

Thus, PO's only attempts at rebutting the strong merits presented in the Petition are based on: (1) a misrepresentation of Petitioner's Grounds 1-2; and (2) distortion of Ward's disclosures. In addition, because Petitioner filed this Petition and two others challenging related patents at the same time (IPR2025-00327, IPR2025-00329) based on the same combinations of references and similar, equally compelling grounds, the Board can efficiently review the patentability of all three related patents at once.

The compelling grounds of unpatentability presented in the Petition, and the statutory purpose of *inter partes* review to facilitate efficient review of patents that should never have issued, therefore strongly weigh against discretionary denial, particularly in view of the policy considerations outlined below. *See infra* § II.B.

2. Factor 2

As explained in the Petition, the median time to trial for civil cases in the Western District of Texas, as of September 30, 2024, was 33.1 months, which

would result in a trial in February 2027, seven months after a FWD would be expected at the end of July 2026. (Petition, 82; INTEL-1032, 37.) As of the December 2024 report, median time to trial increased slightly to 33.9 months. (INTEL-1034, 37.) Contrary to PO's arguments, trial dates do not always stick and are subject to many factors beyond the parties' control. In fact, an analysis of *Fintiv* denials based on trial date between May and October 2020 found that in 94% of those cases, the trial dates were ultimately pushed out by several months. (INTEL-1035.) For example, judges often schedule multiple trials for the same week on the assumption that one or more of the cases will settle.

In fact, the judge in the District Court action here, Judge Albright, has two other cases scheduled for trial starting May 18, 2026, the same day this case is currently scheduled for trial. (INTEL-1036, 4; INTEL-1037, 3.) He also has a trial scheduled to begin the following week, on May 26, another trial (of three consolidated cases) scheduled to begin the week after that, on June 1, another scheduled for June 8, and another for June 15. (INTEL-1038, 3; INTEL-1039, 4; INTEL-1040, 6; INTEL-1041, 3.) Since trials in front of Judge Albright typically last about one week, several of these trials will need to be pushed out by at least several weeks.

Even taking the current schedule in the District Court action at face value, trial is scheduled to begin on May 18, 2026, which is within just two and a half months prior to the FWD date. (EX2003, 4.) In view of the policy considerations outlined below, the close proximity of the FWD date to the trial date weighs against discretionary denial or is at least neutral and not outweighed by the other factors, including the compelling merits. *See Apple Inc. v. Fintiv, Inc.*, IPR2020-00019 ("Fintiv"), Paper 11 at 9 ("If the court's trial date is ***at or around the same time as the projected statutory deadline*** … the decision whether to institute will likely implicate other factors discussed herein, such as the resources that have been invested in the parallel proceeding.") (emphasis added).

3. Factor 3

There is still significant work to be done in the District Court action, particularly directed to invalidity. At this time, no depositions have occurred, no expert reports have been exchanged, and fact discovery has only just begun. The parties only provided responses to initial Interrogatories and Requests for Production earlier this month and to date, PO has not even produced any documents relating to the claimed inventions apart from their file histories. While the court has issued a claim construction order, the fact that Judge Albright's standard patent case schedule requires a very early *Markman* process does not

mean the parties and court have made substantial investment at this point, particularly where virtually all of fact discovery, all of expert discovery, and dispositive motions all lie ahead. *See Fintiv*, Paper 11 at 9 (Board should consider "the ***amount and type*** of work already completed in the parallel litigation") (emphasis added).

Furthermore, Petitioner was diligent in filing the Petition. Petitioner filed less than six months after being served with the Complaint, within three months of receiving infringement contentions, and within one month of providing invalidity contentions. (INTEL-1042, 1; INTEL-1015; EX2003, 1.) *See Fintiv*, Paper 11 at 11 ("If the evidence shows that the petitioner filed the petition expeditiously, such as promptly after becoming aware of the claims being asserted, this fact has weighed against exercising the authority to deny institution."). Based on Petitioner's diligence, in view of the significant amount of work yet to be done in the district court, this factor weighs against discretionary denial.

4. Factor 4

As of the filing date of this Opposition, PO has only asserted independent claim 1 of the '672 patent in the District Court action. (INTEL-1015.) In contrast, the Petition challenges independent claim 1 and dependent claims 2, and 5-10. (Petition, 2.) The scope of the additional challenged claims is different from those

asserted in the District Court action. As non-limiting examples, the following limitations, each of which is directed to meaningfully narrower subject matter, are absent from asserted independent claim 1:

- "wherein reassigning the first specific time slot is dependent on a network traffic load" in claim 5;
- "wherein the first specified time slot and the second specified time slot are on different wireless channels" in claim 6;
- "reassigning the first specific time slot to a third client device in response to a detection that the first client device is unavailable" in claim 7;
- "determining that the first client device should switch to a different channel; and sending a message to the first client device, the first client device, responsive to receiving the message, switching the channel upon which the first client device wirelessly communicates with a fixed proximity-based reader device" in claim 8; and
- "wherein the message includes information identifying the first client device, information identifying the fixed proximity-based reader device, a designation of a channel and a command to switch to the designated channel" in claim 9.

Because there is not complete overlap between the challenged claims in the Petition and those asserted in the District Court, this factor weighs against discretionary denial.

5. Factor 1

At this time, neither party has requested a stay of the District Court action. Because the Board will not "infer, based on actions taken in different cases with different facts, how the District Court would rule should a stay be requested," this factor neither weighs in favor of nor against discretionary denial. *Fintiv*, Paper 15 at 12.

6. Factor 5

While the Petitioner is also the defendant in the District Court action, this factor alone does not outweigh the other factors, including the strong merits presented in the Petition.

B. The Efficiency and Integrity of the Patent System are Best Served by Not Exercising Discretion to Deny Institution

1. Congress Gave Petitioners One Year to File a Petition

The statutory framework for *inter partes* review establishes a one-year window for petitioners to file petitions for IPR after being served with a complaint. 35 U.S.C. § 315(b). This one-year window promotes efficiency, allowing the parties to at least exchange claim terms for construction and allowing petitioners to

evaluate patent owner's assertions associated with claims asserted in the parallel litigation, rather than allowing PO to lie in wait and identify claim construction positions only ***after*** seeing Petitioner's invalidity arguments.

Here, the district court has set a trial date for approximately two-and-a-half months prior to the statutory deadline for a FWD. Denying institution based solely on the proximity of trial date in a situation where the trial date is close to, but prior to, the FWD date, would be contrary to Congress's intent. In fact, denying institution based primarily on a scheduled trial date encourages forum shopping and essentially insulates from IPR challenges any patents asserted in certain jurisdictions, such as the Western District of Texas, that move quickly to trial.

2. Petitioner Was Diligent

Petitioner was diligent in seeking *inter partes* review. Petitioner filed less than six months after being served with the complaint and within three months of receiving PO's infringement contentions in the district court case. (INTEL-1042, 1; INTEL-1015.) Further, the parties did not exchange proposed claim constructions until one week prior to the date of filing—waiting for this exchange was necessary because PO's positions were unclear due to its vague infringement contentions. (EX2003, 1.) Further, Petitioner did not receive a filing date for over a month after filing. Thus, due to factors beyond Petitioner's control, the Petition could not have

been filed sooner. To penalize a diligent Petitioner simply because the scheduled trial date is a matter of weeks prior to the FWD date essentially cuts off IPR as a viable alternative to district court litigation and vitiates the purpose of the statute.

Here, as explained above, the Petition presents compelling merits that PO has not even attempted to rebut. A holistic view of the *Fintiv* factors supports not exercising discretion to deny institution. Furthermore, the efficiency and integrity of the patent system is best served where all litigants in patent suits are able to access the IPR system, Congress's intent is honored, and forum shopping is discouraged.

III. Conclusion

Taken together, particularly in view of the compelling merits presented in the Petition, the *Fintiv* factors weigh against discretionary denial. Petitioner respectfully requests that the Director not exercise discretion and institute *inter partes* review.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Pursuant to 37 C.F.R. § 42.24(d), the undersigned certifies that this Opposition to Patent Owner's Discretionary Denial Brief complies with the type-volume limits of FAQs for Interim Processes for PTAB Workload Management (https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management) because it contains 2,705 words according to the word-processing system used to prepare this Opposition, excluding the words in the Table of Contents, Table of Authorities, List of Exhibits, Certification Under §42.24(d), and Certificate of Service. This word count was prepared using Microsoft Word.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 16, 2025, a copy of the foregoing Petitioner's Opposition to Patent Owner's Discretionary Denial Brief was served via email on the following attorneys for the Patent Owner:

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