

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC,
Petitioner,

v.

WSOU INVESTMENTS d/b/a BRAZOS LICENSING AND
DEVELOPMENT,
Patent Owner.

Case IPR2025-00188
Patent 8,982,691

**BRIEF IN SUPPORT OF PATENT OWNER'S REQUEST FOR
DISCRETIONARY DENIAL**

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	PETITIONER’S PROPOSED SECOND STIPULATION STILL WILL NOT PREVENT DUPLICATIVE EFFORTS.....	2
III.	ADDITIONAL FACTORS SET FORTH IN THE DIRECTOR’S MEMORANDUM SUPPORT DISCRETIONARY DENIAL	5
	A. The Strength of the Unpatentability Challenge.....	5
	B. The Extent of the Petition’s Reliance on Expert Testimony.....	6
	C. Settled Expectations of the Parties	8
	D. Compelling Economic Interests	10
IV.	CONCLUSION	13

TABLE OF AUTHORITIES

CASES

<i>Alivacor, Inc. v. Apple Inc.</i> , 130 F.4th 1006 (Fed. Cir. 2025)	5
<i>Motorola Solutions v. Stellar, LLC</i> , IPR2024-01205 Paper 19 (PTAB Mar. 28, 2025).....	3, 4
<i>WSOU Investments LLC d/b/a Brazos Licensing and Development v.</i> <i>Cisco Sys., Inc.</i> , Case No. 6:21-cv-00128, Dkt. 1 (Feb. 5, 2021).....	9
<i>Xerox Corp. v. Bytemark, Inc.</i> , IPR2022-00624, Paper 9 (PTAB August 24, 2022)	7

STATUTES

35 U.S.C. § 102	2
35 U.S.C. § 103	2, 4

EXHIBIT LIST

Exhibit No.	Exhibit Description
2001	<i>WSOU Investments LLC v. Cisco Systems</i> 24-cv-00332 (EDTX) Complaint
2002	<i>WSOU Investments LLC v. Cisco Systems</i> 24-cv-00332 (EDTX) Docket Control Order
2003	'884 Patent 2025-01-30 [4] Filing Date Accorded
2004	Docket Navigator Statistics
2005	Legal Metrics Report
2006	2024-09-23 Defendant's Invalidity Contentions
2007	Ex. D1 - Invalidity Chart – '691 Patent – Elie-Dit-Cosaque
2008	Ex. D3 - Invalidity Chart - '691 Patent – Hanif
2009	U.S. Patent No. 7,113,481
2010	Invalidity Chart - '691 Patent – Park
2011	Ex. D9 - 2024-09-23 Cisco's Ineligibility Contentions
2012	Ex. D - Ineligibility Chart - '691 Patent
2013	U.S. Patent No. 7,352,703
2014	2025-02-28 USPTO Rescinds Memorandum Addressing Denial Procedures
2015	<i>WSOU Investments LLC v. Cisco Systems</i> 24-cv-00332 (EDTX) Protective Order
2016	U.S. Patent No. 8,982,691 Maintenance Fee Details
2017	U.S. Patent 6,778,492 "Charny et al.,"
2018	Director's CSIS Statement
2019	U.S. Patent 8,982,691 Patent Assignment

2020	<i>WSOU Investments LLC v. Cisco Systems</i> 24-cv-00128 (WDTX) Jury Trial Proceeding Transcript Excerpts
-------------	--

I. INTRODUCTION

Patent Owner WSOU Investments d/b/a Brazos Licensing and Development (“Brazos” or “Patent Owner”) writes in connection with Petitioner’s subsequent-filed updated *Sotera* stipulation, as well as the Director’s March 26, 2025 Memorandum setting forth the “Interim Process for PTAB Workload Management” (hereinafter “Director’s Memorandum”), in connection with which the Board permitted Brazos to “file a supplemental brief on discretionary denial.”

As described in Patent Owner’s Preliminary Response, there already exists ground to deny institution based on the Board’s *Fintiv* precedent. And Petitioner’s new purported *Sotera* stipulation does not cure the flaws raised previously.

In addition, the Director’s Memorandum establishes further grounds based on which the Board should deny review. Specifically, the Director’s Memorandum lists, *inter alia*, the following non-exclusive factors:

- The strength of the unpatentability challenge;
- The extent of the petition's reliance on expert testimony;
- Settled expectations of the parties, such as the length of time the claims have been in force; and
- Compelling economic, public health, or national security interests.

Patent Owner’s supplemental brief below addresses the manner in which these select factors weigh in favor of discretionary denial.

II. PETITIONER’S PROPOSED SECOND STIPULATION STILL WILL NOT PREVENT DUPLICATIVE EFFORTS

Following Patent Owner’s Preliminary Response identifying the shortcomings of Petitioner’s first proposed stipulation regarding prior art raised in both the Petition and the parallel District Court proceeding, Petitioner now proposes a second stipulation. *See* Paper 6 at 18 and Paper 7 at 2. However, while Petitioner again styles its second proposed stipulation as a *Sotera* stipulation, Petitioner’s second stipulation still does not reduce duplication of efforts. Specifically, Petitioner states in one portion of its proposed second stipulation that “[i]f the Board institutes an IPR trial . . . , Petitioner Cisco Systems, Inc. hereby stipulates that Petitioner will not pursue in the co-pending district court litigation . . . the specific grounds asserted in the . . . petition, or any other ground that could have been reasonably raised . . . in an IPR (i.e., grounds that could have been raised under §§102 or 103 on the basis of prior art patent or printed publications).” *See* Paper 7 at 2. But the stipulation further states that “[n]otwithstanding this stipulation, Petitioner does not relinquish any rights or opportunities to pursue in the co-pending district court litigation . . . any ground on which the PTAB declines to institute an IPR trial.” *Id.* at 2.

These two provisions conflict with each other because, under the language of the proposed second stipulation, if a ground is not presented to the Board (even though it be a ground that “that could have been reasonably raised”) then the Board necessarily will not grant institution on that ground. And as a result, under the

“[n]otwithstanding . . .” clause, Petitioner can continue to pursue such grounds in District Court. Thus, Petitioner’s proposed second stipulation fails to embody a true *Sotera* stipulation because regardless of the institution decision, Petitioner will remain free to assert any prior art ground in the District Court proceeding that was not presented to the Board—even if Petitioner could reasonably have done so.

In addition, even if Petitioner’s second stipulation were a proper *Sotera* stipulation (which it is not), the Board should give it less weight because Petitioner does not stipulate that it will not assert purported prior art based on products or systems in combination with prior art that it has raised or could have raised before the Board. *See* Paper 7 at 2 (“Petitioner also does not relinquish any rights or opportunities to challenge the ’691 patent claims on any other ground (i.e., any ground that could not have been raised under §§102 or 103 on the basis of prior art patent or printed publications).”); *Motorola Solutions v. Stellar, LLC*, IPR2024-01205 *et seq.*, Order Granting Director Review, Vacating the Decision Granting Institution, and Denying Institution of *Inter Partes* Review, Paper 19 (PTAB Mar. 28, 2025) (“Petitioner’s stipulation does not ensure that these IPR proceedings would be a ‘true alternative’ to the district court proceeding. Petitioner’s invalidity arguments in the district court are more expansive and include combinations of the prior art asserted in these proceedings with unpublished system prior art, which Petitioner’s stipulation is not likely to moot.”) (citation omitted).

As in *Motorola*, here Petitioner also raises in the parallel District Court proceeding purported prior art systems in combination with the asserted prior art in its Petition. *See* Ex. 2006 at 37 (listing as primary references U.S. Patent No. 7,352,703 (“Elie-Dit-Cosaque”) and U.S. Patent Publication No. 2009/0292943 (“Hanif”), the disclosures of which are the subject of this Petition); *id.* at 38 (“***Defendant identifies the following systems***—including constituent software, hardware, methods, and processes—as prior art that anticipate or render obvious the Asserted Claims of these patents . . . ***Cisco IOS 12.1 and/or 12.2 running on Cisco platforms***”) (“***Defendant identifies each of the references listed above as primary references . . . these primary references may be combined with each other or with the secondary references listed below to render this patent obvious under 35 U.S.C. § 103.***”) (emphasis added). Thus, Petitioner’s second proposed stipulation also explicitly preserves its ability to pursue nearly all of the prior art references at issue in the Petition within the parallel District Court proceeding, as part of combination with its purported system prior art. Petitioner’s proposed second stipulation should thus be given no or little weight in terms of tending to counteract the overlap in proceedings under *Fintiv* Factor No. 4. Petitioner’s proposed second stipulation—as with its first proposal—therefore continues to weigh in favor of discretionary denial.

III. ADDITIONAL FACTORS SET FORTH IN THE DIRECTOR'S MEMORANDUM SUPPORT DISCRETIONARY DENIAL

A. The Strength of the Unpatentability Challenge

The Director's Memorandum lists "[t]he strength of the unpatentability challenge" as one factor based upon which the Director may determine to deny institution. Director's Memorandum at 1.

As previously described in Patent Owner's Preliminary Response with respect to *Fintiv* Factor No. 6, Petitioner does not assert anticipation of any of the challenged claims, and instead raises only obviousness arguments. *See* Paper 6 at 19-22. In turn, factual determinations concerning obviousness, including but not necessarily limited to secondary consideration of non-obviousness, are best explored via the robust discovery process of the parallel District Court proceeding. And as noted in Patent Owner's Preliminary Response, trial in that proceeding will have concluded before any final written decision issues in this case. *See* Paper 6 at 10.

The Federal Circuit has recently recognized that additional evidence may be available for consideration in a district court case such as the parallel proceeding here, noting that protective orders in parallel proceedings may impede a patent owner's ability to present evidence uncovered in that parallel proceeding to the Board. *See AliveCor Inc. v. Apple Inc.*, 130 F.4th 1006 at *12-15 (Fed. Cir. 2025) (petitioner denied patent owner permission to disclose to PTAB evidence of secondary consideration of non-obviousness produced in a parallel proceeding by

claiming it would violate the operative protective order, where the parallel proceeding “found that [patent owner] had presented secondary consideration evidence sufficient to rebut [petitioner’s] ‘strong’ *prima facie* showing of obviousness”). Likewise, here the protective order entered in the parallel District Court proceeding (ordered before Petitioner filed the instant petition) may prevent Patent Owner’s use of evidence from the District Court Proceeding in any *inter partes* review proceeding instituted by the Board. *See* Ex. 2015 at 5 (“Documents, information, or material produced pursuant to any discovery request in this Action . . . shall be used by the Parties only in the litigation of this Action and shall not be used for any other purpose.”).

Finally, as previously explained in Patent Owner’s Preliminary Response regarding *Fintiv* Factor No. 6, the strength of Petitioner’s unpatentability challenge is lacking, as Petitioner has failed to make out a *prima facie* case for obviousness, having failed to show where each element of the claims appear in the asserted prior art references. *See* Paper 6 at 19-22

B. The Extent of the Petition’s Reliance on Expert Testimony

As further enumerated in the Director’s Memorandum, a relevant consideration for discretionary denial is “[t]he extent of the petition’s reliance on expert testimony.” Director’s Memorandum at 1. In other words, when a petition relies on an expert declaration that is duplicative of the attorney arguments in the

petition, such circular citations are afforded little weight by the Board and should favor discretionary denial. *See, e.g., Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 at 15-17 (PTAB August 24, 2022) (designated precedential) (Director approving the Board’s denial of institution, as the petitioner’s expert declaration “merely repeats, verbatim, the conclusory assertion for which it is offered to support . . . and is entitled to little weight”).

Here, Cisco’s Petition relies heavily on its expert’s 150-page declaration, in which many of the paragraphs repeat verbatim or are nearly identical to the portions of the Petition that cite those paragraphs. For example, paragraph 86 of Cisco’s expert’s declaration is a verbatim copy of the paragraph in the Petition that cites it.

Petition at 27-28.	Expert Declaration (Ex. 1003) ¶ 86.
EDC_525 and EDC_892 are both analogous art because they pertain to computer networks that use backup paths, like the ’691 patent. Ex. 1001, 1:6-10, Abstract; Ex. 1005, [0001]-[0009], Abstract, FIGS. 4, 6-9, Claims 1, 31; Ex. 1006, [0031], Abstract. Additionally, both EDC_525 and EDC_892, like the ’691 patent, address the additional problems of using network topology information, SRLG information, or shortest path information to calculate backup paths. Ex. 1001, 2:10-13, 3:1-25; Ex. 1005, [0022], [0026]-[0030], [0042], Claim 32; Ex. 1006, [0012], [0025]-[0033], [0038], [0047]; Ex. 1003, ¶86.	86. EDC_525 and EDC_892 are both analogous art because they pertain to computer networks that use backup paths, like the ’691 patent. Ex. 1001, 1:6-10, Abstract; Ex. 1005, [0001]-[0009], Abstract, FIGS. 4, 6-9, Claims 1, 31; Ex. 1006, [0031], Abstract. Additionally, both EDC_525 and EDC_892, like the ’691 patent, address the additional problems of using network topology information, SRLG information, or shortest path information to calculate backup paths. Ex. 1001, 2:10-13, 3:1-25; Ex. 1005, [0022], [0026]-[0030], [0042], Claim 32; Ex. 1006, [0012], [0025]-[0033], [0038], [0047].

This pattern repeats throughout the Petition. *Compare also, e.g.*, Pet. at 37-39 *with* Ex. 1003 ¶¶ 112-117, Pet. at 22 *with* Ex. 1003 at ¶¶ 70-71 (nearly identical), Pet. at 23 (last paragraph) *with* Ex. 1003 at ¶ 73 (nearly identical); Pet. at 24 *with* Ex. 1003 at ¶¶ 73-74 (nearly identical); Pet. at 25 (bottom paragraph) *with* Ex. 1003 at ¶¶ 79-80 (nearly identical), Pet. at 30 *with* Ex. 1003 at ¶¶ 94-95 (nearly identical), Pet. at 79 *with* Ex. 1003 at ¶¶ 228-229 (nearly identical), and Pet. at 83 *with* Ex. 1003 at ¶ 237 and ¶ 239. Therefore, the expert testimony relied upon by the Petition should be given little weight and should be considered as a relevant factor in favor of discretionary denial.

C. Settled Expectations of the Parties

The Director’s Memorandum also lists “[s]ettled expectations of the parties, such as the length of time the claims have been in force” as another factor based upon which the Director may determine to deny institution. Director’s Memorandum at 1.

The expectations of the parties for ’691 Patent claims are well settled. Specifically, the ’691 Patent claims were issued over ten years ago, and Patent Owner has made multiple maintenance payments thereon. *See* Ex. 2016

In addition, the Director has noted the ability of companies such as Petitioner to “scour issued patents for commercial opportunities and to review issued patents to determine if and how they impact these companies’ freedom to operate” (though

the Director has also regretted that “these early tools are rarely used because there are other portions of the AIA that encourage competitors to wait until they are actually sued for infringement to participate in this joint exercise to improve the IP system”). *See* Ex. 2018 at 7-8. To that end, during prosecution of the ’691 Patent, a Cisco patent was cited by the Examiner as potentially relevant prior art—thus putting Petitioner Cisco on notice of the ’691 Patent’s original owner (and Cisco competitor) Alcatel-Lucent’s patenting activity in a relevant technology area to Cisco. *See* Ex. 1001 ’691 Patent (56) References Cited citing US6,778,492B2 to Petitioner; Ex. 2017 US 6,778,492B2.

When purchasing the ’691 Patent from Alcatel-Lucent’s successor Nokia in 2017—more than two years after the ’691 Patent’s September 2015 issuance—the present Patent Owner further settled its own expectations, as no post-grant challenge to the ’691 Patent had been initiated during that period. *See* Ex. 2019 at 153. Moreover, the parties to this proceeding have been engaged in a patent-licensing dispute starting approximately four years ago. *See WSOU Investments LLC d/b/a Brazos Licensing and Development v. Cisco Sys., Inc.*, Case No. 6:21-cv-00128, Dkt. 1 (Feb. 5, 2021). But not until the filing of this Petition approximately five months ago has Petitioner ever sought to challenge the ’691 Patent at the PTAB. As a result, because of the well settled expectations of the parties—including the length of time the claims have been in effect and Petitioner’s prior decision not to challenge the

'691 Patent, despite notice and opportunity to do so—this factor weighs in favor of denying institution.

D. Compelling Economic Interests

The '691 Patent was one of the fruits of the extensive investments in research and development made by Patent Owner's predecessor Alcatel-Lucent, as described in sworn testimony by former in-house patent counsel for Alcatel-Lucent, Mr. Ozer Teitelbaum:

Q. And how did your career progress during your 16 years at Lucent and then as it became Alcatel-Lucent?

A. . . . My responsibilities included managing the entire portfolio of the merged company of Alcatel-Lucent Managing it meant the cost structure and controlling all the patents, making sure that they were used and kept making money from the portfolio and managing its cost structure.

Q. So would you say that Alcatel-Lucent monetized patents in its general course of business?

A. Well, research costs money, paying people costs money, real estate costs money, paying for laboratories costs money, taxes cost money. So the parent company for Bell Laboratories, Lucent, then Alcatel-Lucent, was paying a lot of money for this research. And my job is to recapture the costs of that money spent and try to get back a return.

Ex. 2020 at 100:3-24. Such investments into research and development—as embodied by subsequent patent protection—represents a compelling economic interest.

In addition, a company like Alcatel-Lucent (and its successor Nokia) also holds a compelling economic interest in preserving its ability to then further sell the patents embodying that research and development investment (and in particular such patents with long-settled expectations) to other parties to recoup some of that investment. *See* Ex. 2020. at 100:25-101:18 (“Q. Can you give us a few specific examples of how you recaptured value in your role? A. Sure. . . . We would also sell patents We sold a number of patents.”) And here Patent Owner made a corresponding investment in purchasing the ’691 Patent (and many other companion patents), as described in sworn testimony by Patent Owner’s General Counsel Sheyanna Pietras:

Q. At the time of the purchase, how many patents did Brazos buy from Nokia?

A. I believe it was around 8,500 or so. . . .

Q. Okay. What is Brazos’ current relationship with Nokia that it purchased the patents from?

A. It’s a good one. We wanted somebody to partner with But we wanted someone to work with as Nokia was a great innovator. And we kind of modeled ourselves after them with our patent portfolio to, you know, hold a portfolio and license it out to the others. . . .

Q. So is that why you were interested in buying this portfolio from Nokia in particular?

A. Yes. Nokia, I mean, has been around since—gosh. I remember them from when I was young. . . . They acquired Alcatel-Lucent, which . . . had a group called

Bell Labs Group. And Bell Labs is . . . a key thing . . . , a contributing factor in us purchasing it because Bell Labs had many notable awards.

Ex. 2020 68:1-69:8; *see also id.* 99:12-20 (“Q. And you mentioned protecting those big ideas. How did Bell Labs go about doing that? A. Well, the big ideas came in the form of what’s called invention submissions. Every scientist would reduce it to an invention submission, and the patent lawyers like me would work with the scientists, would write patent applications. And then the patent applications would become patents which we call patent assets.”). These investments, including at least Patent Owner’s millions of dollars invested in the purchase price of the portfolio containing the ’691 patent and others from Nokia and Alcatel-Lucent, as well as employees, marketing, licensing activity, and patent maintenance fees—and further including the economic interest of multiple licensees that have already taken a license to the portfolio containing the ’691 Patent—further represent concrete and compelling economic interests. See Ex. 2020 71:2-4 (“Q. Has Brazos . . . licensed the portfolio that contains the [then -asserted] ’216 patent? A. Yes. We have.”).

Thus, because of the compelling economic interest in encouraging the continued investment in research and development protected by patents, and allowing companies to recoup such investment through the sale of those patents to other parties—and not to mention the compelling economic interests and

investments of the purchasers, licensors, and licensees of such patents with long-settled expectations—this factor merits discretionary denial of the Petition.

IV. CONCLUSION

For the reasons above and those set forth in Patent Owner's Preliminary Response, the Board should exercise its discretion and decline to institute *inter partes* review.

Respectfully Submitted,

Dated: April 10, 2025

/David D. Schumann/

David D. Schumann (Reg. No. 53,569)

Folio Law Group PLLC

1200 Westlake Ave. N., Suite 809

Seattle, WA 98109

Tel: (206) 880-1802

Email: david.schumann@foliolaw.com

Timothy Dewberry (Reg. No. 62,947)

Folio Law Group PLLC

13492 Research Blvd.

Ste. 120, No. 177

Tel: (206) 880-1802

Email: timothy.dewberry@foliolaw.com

(Case No. IPR2025-00188)

Attorneys for Patent Owner

CERTIFICATION UNDER 37 C.F.R. § 42.24(d)

Pursuant to the Board's March 31, 2025 authorization to file additional briefing, the undersigned hereby certifies that the word count for all portions of the foregoing Patent Owner's Request for Discretionary Denial totals 2,948 words per Microsoft Word, which complies with the requirement of 4,637 words allowed.

Dated: April 10, 2025

/David D. Schumann/

David D. Schumann (Reg. No. 53,569)

Folio Law Group PLLC

1200 Westlake Ave. N., Suite 809

Seattle, WA 98109

Tel: (206) 880-1802

Email: david.schumann@foliolaw.com

(Case No. IPR2025-00188)

Attorneys for Patent Owner

CERTIFICATE OF SERVICE

As authorized by Patent Owner's Mandatory Notice, I hereby certify that on April 10, 2025, a copy of this document has been served in its entirety by electronic mail on Petitioner's lead and backup counsel.

Theodore M. Foster
Ipr.theo.foster@haynesboone.com

David L. McCombs
David.mccombs.ipr@haynesboone.com

Gregory P. Huh
Gregory.huh.ipr@haynesboone.com

Dated: April 10, 2025

/David D. Schumann /
David D. Schumann (Reg. No. 53,569)
Folio Law Group PLLC
1200 Westlake Ave. N., Suite 809
Seattle, WA 98109
Tel: (206) 880-1802
Email: david.schumann@foliolaw.com

(Case No. IPR2025-00188)

Attorneys for Patent Owner