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.

IPR2025-00429
U.S. Patent No. 9,450,884

PETITIONER'S BRIEF AGAINST DISCRETIONARY DENIAL

TABLE OF CONTENTS

PETITIONER'S EXHIBIT LIST 3

I. INTRODUCTION 7

II. *FINTIV* DOES NOT FAVOR DISCRETIONARY DENIAL 7

A. No evidence regarding a stay 7

B. Parallel proceeding trial date 7

C. Investment in the parallel proceeding 11

D. Overlapping issues with the parallel proceeding 12

E. Identity of the parties 16

F. Other circumstances 16

III. ADDITIONAL FACTORS DO NOT FAVOR DISCRETIONARY DENIAL 19

A. Strength of Petitioner's Challenge Favors Institution 19

B. Petitioner's Expert Testimony Favors Institution 19

C. There are no Settled Expectations of the Parties 22

D. Compelling Economic and National Security Interests Favor Institution 23

IV. CONCLUSION 25

CERTIFICATE OF WORD COUNT 27

CERTIFICATE OF SERVICE 28

PETITIONER'S EXHIBIT LIST

Ex.1001	U.S. Patent No. 9,450,884 to Hwang, et al. ("Hwang")
Ex.1002	Prosecution History of U.S. 9,450,884
Ex.1003	Declaration of Paul Min, Ph.D. under 37 C.F.R. § 1.68
Ex.1004	*Curriculum Vitae* of Paul Min, Ph.D.
Ex.1005	U.S. Patent No. 7,453,804 to Feroz, et al. ("Feroz")
Ex.1006	U.S. Patent No. 7,406,522 to Riddle ("Riddle")
Ex.1007	U.S. Patent No. 8,949,444 to Ma et al. ("Ma")
Ex.1008	U.S. Patent Publication No. 2007/0248009 to Petersen ("Petersen")
Ex.1009	U.S. Patent Publication No. 2009/0097495 to Palacharla ("Palacharla")
Ex.1010	Robert Breyer and Sean Riley, SWITCHED, FAST, AND GIGABIT ETHERNET, 3d ed. (Macmillan Technical Publishing 1999), selected pages.
Ex.1011	Complaint - *WSOU Investments, LLC v. Cisco Systems, Inc.* EDTX-2-24-cv-00332.
Ex.1012	Federal Court Trial Statistics – June 30, 2024.
Ex.1013	Docket Control Order - *WSOU Investments, LLC v. Cisco Systems, Inc.*, No. 2-24-cv-00332, (E.D. Tex. August 5, 2024).
Ex.1014	The Ethernet, A Local Area Network, Data Link Layer and Physical Layer Specifications, version 2.0 (Nov. 1982) ("DIX Ethernet")
Ex.1015	IEEE Standard 802.3i-1990 (selected pages)
Ex.1016	IEEE Standard Dictionary of Electrical and Electronics Terms, 4th ed. (1988) (selected pages)

Ex.1017	Newton's Telecom Dictionary, 17th ed. (2001) (selected pages).
Ex.1018	US 2003/0174649 to Shankar et al.
Ex.1019	U.S. Patent No. 7,869,366 to Muppala et al.
Ex.1020	U.S. Patent No. 7,822,837 to Urban et al.
Ex.1021	US 2013/0100858 to Kamath et al.
Ex.1022	US 2006/0209858 to Blum
Ex.1023	US 2003/0014624 to Maturana et al.
Ex.1024	US 2003/0091165 to Bearden et al.
Ex.1025	US 2006/0013221 to De Cnodder et al.
Ex.1026	US 2009/0097494 to Yuan
Ex.1027	US 2008/0123649 to Wang et al.
Ex.1028	US 2003/0041146 to Davis et al.
Ex.1029	U.S. Patent No. 6,496,478 to Choi et al.
Ex.1030	US 2006/0013133 to Peng et al.
Ex.1031	US 2004/0153460 to Corl, Jr.
Ex.1032	U.S. Patent No. 5,999,538 to Haddock et al.
Ex.1033	US 2007/0277228 to Curtis
Ex.1034	US 2004/0105467 to Goodman
Ex.1035	US 2012/0250728 to Pischl et al.
Ex.1036	US 2012/0314794 to Powell et al.
Ex.1037	US 2005/0063370 to Beshai et al.
Ex.1038	US 2015/0156096 to Roh

Ex.1039	US 2009/0031038 to Shukla et al.
Ex.1040	US 2003/0223414 to Wong
Ex.1041	U.S. Patent No. 5,606,668 to Shwed
Ex.1042	U.S. Patent No. 6839767 to Davies et al.
Ex.1043	US 2011/0205895 to Chen et al.
Ex.1044	U.S. Patent No. 7,046,665 to Walrand et al.
Ex.1045	US 2001/0048683 to Allan et al.
Ex.1046	U.S. Patent No. 6,301,251 to Kim et al.
Ex.1047	US 2005/0175014 to Patrick
Ex.1048	U.S. Patent No. 7,061,861 to Mekkittikul et al.
Ex.1049	U.S. Patent No. 6,038,216 to Packer
Ex.1050	US 20020161923 to Foster et al.
Ex.1051 **(NEW)**	Recusal Order (May 15, 2025).
Ex.1052 **(NEW)**	Docket History (May 19, 2025).
Ex.1053 **(NEW)**	Patent Trial and Appeal Board Boardside Chat: AIA Discovery Practice (Sept. 19, 2024).
Ex.1054 **(NEW)**	Cisco Catalyst 9300 Series Switches
Ex.1055 **(NEW)**	Assignment Record for the '884 Patent
Ex.1056 **(NEW)**	DocketNavigator Litigation Report for the '884 Patent

Ex.1057 **(NEW)**	DocketNavigator Litigation Report for WSOU v. Arista
Ex.1058 **(NEW)**	Cisco Systems, Britannica Money
Ex.1059 **(NEW)**	Cisco Systems, Statista 2024
Ex.1060 **(NEW)**	Cisco, Solutions for Federal Government
Ex.1061 **(NEW)**	Amended Docket Control Order - *WSOU Investments, LLC v. Cisco Systems, Inc.*, No. 2-24-cv-00332, (E.D. Tex. May 23, 2025).
Ex.1062 **(NEW)**	EDTX Pacer - Schroeder Trials 4-20-2026

I. INTRODUCTION

Arguments in Patent Owner's (PO) discretionary denial brief (Paper 9) are the epitome of why Cisco's Petition must be reviewed on its merits. PO's *Fintiv* analysis is unpersuasive and is overcome by the facts of record. PO's discussion of the Acting Director Stewart's additional considerations merely highlights that PO—a non-practicing entity—should not be able to prevent a merits review of Cisco's timely and strong Petition.

II. *FINTIV* DOES NOT FAVOR DISCRETIONARY DENIAL

A. No evidence regarding a stay

A District Court determines whether to stay any individual case based on a variety of circumstances and facts beyond the Board's control or privy. *Sand Revolution II LLC v. Continental Intermodal Group – Trucking LLC*, IPR2019-01393, Paper 24 at 7 (June 16, 2020) (informative). Despite PO's speculations, a stay has not yet been requested, and the Board should not infer the outcome of any such motion that might be filed in the future. *Id.*; *see also Dish Network L.L.C. v. Broadband iTV, Inc.*, IPR2020-01359, Paper 15 (Feb. 12, 2021).

This factor is neutral.

B. Parallel proceeding trial date

PO's arguments are premised on Judge Rodney Gilstrap of the Eastern District of Texas presiding over the case. After PO's filing, however, Judge

Gilstrap recused himself from the case. Ex.1051. The case is now assigned to Judge Robert W. Schroeder, III and Magistrate Judge Roy Payne. Ex.1052. Magistrate Judge Payne issued an amended Docket Control Order with a new estimated trial date of April 20, 2026. Ex.1061, 1. That change shrinks the difference between the estimated jury trial date (April 2026) and the Final Written Decision deadline (July 2026) to three months.

Notably, the Final Written Decision deadline is essentially fixed, as it is set by statute and rarely extended by the Board. 35 U.S.C. § 316(a)(11). In contrast, district courts change their schedules frequently and often unexpectedly—just as it happened here. *In re Apple Inc*., 979 F.3d 1332, 1344 (Fed. Cir. 2020) ("a court's general ability to set a fast-paced schedule is not particularly relevant…."). And further schedule changes are reasonably expected owing to Judge Schroeder's caseload, including at least the following **twenty** patent litigation cases recently reassigned from Judge Gilstrap to Judge Schroeder:

1. WSOU Investments, LLC v. Cisco Systems, Inc. EDTX-2-24-cv-00332
2. Torus Ventures LLC v. SHA, LLC EDTX-2-25-cv-00138
3. Ramot at Tel Aviv University Ltd. v. Cisco Systems, Inc. EDTX-2-19-cv-00225

4. Zilkr Cloud Technologies, LLC v. Cisco Systems, Inc. EDTX-2-22-cv-00166
5. Lionra Technologies Limited v. Cisco Systems, Inc. EDTX-2-23-cv-00207
6. Lionra Technologies Limited v. Fortinet, Inc. EDTX-2-23-cv-00206
7. Lionra Technologies Ltd. v. Cisco Systems, Inc. EDTX-2-24-cv-00097
8. Video Solutions Pte. Ltd. v. Cisco Systems, Inc. EDTX-2-23-cv-00222
9. Cobblestone Wireless, LLC v. Hewlett Packard Enterprise Company et al EDTX-2-23-cv-00457
10. Cobblestone Wireless, LLC v. Cisco Systems, Inc. EDTX-2-23-cv-00454
11. Croga Innovations Ltd. v. Cisco Systems, Inc. EDTX-2-24-cv-00065
12. Croga Innovations Ltd. v. Fortinet, Inc. EDTX-2-24-cv-00206
13. Eire Og Innovations Ltd. v. Palo Alto Networks, Inc. EDTX-2-24-cv-00227
14. Eire Og Innovations Ltd. v. International Business Machines Corporation EDTX-2-24-cv-00226
15. Eire Og Innovations Ltd. v. Fortinet, Inc. EDTX-2-24-cv-00225

16. Eire Og Innovations Ltd. v. Cisco Systems, Inc. EDTX-2-24-cv-00224
17. QPrivacy USA LLC v. Cisco Systems, Inc. EDTX-2-24-cv-00855
18. Quicker Connections LLC v. Cisco Systems, Inc. EDTX-2-24-cv-01074
19. Orckit Corporation v. Cisco Systems, Inc. EDTX-2-25-cv-00181
20. Dynamic Mesh Networks, Inc. d/b/a MeshDynamics v. Cisco Systems, Inc. EDTX-2-25-cv-00472

Further district court schedule changes are also likely because Judge Schroeder currently has four other patent litigations set for jury trial on the same date as the copending litigation. Ex.1062. Obviously, Judge Schroeder cannot conduct five patent jury trials on the same day. Absent settlement, most of them will have to be rescheduled.

Moreover, PO's cited Board decisions (Paper 9 at 10-11) are not binding and of little persuasive force for at least three reasons: first, none of the decisions have been designated precedential or informative; second, none of the cases were decided ***after*** Acting Director Stewart's March 26, 2025, memorandum; and, in any case, third, factor 2 is just one of several non-dispositive *Fintiv* factors. Notably, the Board has instituted multiple IPR trials after Acting Director Stewart's March 26, 2025 memorandum with differences between the anticipated

trial date and date for final written decision equal to or greater than that here. *See Google LLC v. Mullen Industries LLC*, IPR2025-00019, Paper 14 at 10 (May 12, 2025) (instituting an IPR trial despite a more than ***six-month*** gap); *Liberty Energy, Inc. v. U.S. Well Services, LLC*, IPR2025-00031, Paper 9 at 10-12 (April 29, 2025) (instituting an IPR trial despite a ***three-month*** gap); *Solus Advanced Materials Co. Ltd. v. SK Nexilis Co., Ltd.*, IPR2024-01463, Paper 14 at 13-14 (April 25, 2025) (instituting an IPR trial despite a more than ***six-month*** gap).

This factor weighs against discretionary denial.

C. Investment in the parallel proceeding

The Board's institution decision is expected by July 30, 2025. The parties will have made only minimal investment in the co-pending district court case by the time the Board's institution decision is issued. Claim construction briefing is scheduled to begin with a Joint Claim Construction Statement just two days earlier, on July 28, 2025. Ex.1061, 4. But all the claim construction briefing—and the *Markman* hearing on October 17, 2025—will occur after the Board's institution deadline. Ex.1061, 3. Expert discovery—including opening and rebuttal reports and associated depositions—is not scheduled to be completed until January 5, 2026, and dispositive motions will not be fully briefed until January 26, 2026. Ex.1061, 2-3. In short, the substantive development of the claim construction and

invalidity issues in district court will take place well after the Board's institution decision.

PO faults Cisco for "offer[ing] no explanation for its delay" in filing the instant IPR petition. Paper 9 at 14. In the Petition, however, Cisco explained that it acted with diligence to prepare this Petition simultaneously with Cisco's diligent efforts to prepare IPR petitions "on two other patents asserted in the litigation, plus a third patent that [PO] withdrew from the litigation just as [Cisco] was preparing to file an IPR against it. *See, e.g.*, IPR2025-00188, IPR2025-00241." Pet. at 80-81. Cisco also explained that it "expended significant resources attempting to understand" PO's infringement allegations, especially those relating to claims 11 and 20, which Cisco ultimately elected not to challenge. Pet. at 81. Cisco did not delay its IPR filing; rather, it proceeded diligently in view of PO's convoluted and confusing case.

This factor weighs against discretionary denial.

D. Overlapping issues with the parallel proceeding

As an initial matter, there is no perfect overlap in issues between the district court case and this IPR. Cisco argues in the district court that claims 1, 11, 17, and 20 of the '884 patent are invalid on a variety of bases, including that the recitation of "*over-subscription ratio*" in claims 11 and 20 renders them invalid under 35 U.S.C. §112. Cisco specifically narrowed its challenge in this IPR to claims 1 and

17 to avoid the wasting the Board's resources attempting to grapple with § 112 issues that the Board cannot address directly. *See* Pet., 81. The lack of claim overlap weighs against discretionary denial. *See Klein Tools, Inc. v. Milwaukee Elec. Tools Corp.*, IPR2024-01400, Paper 17 at 18-19 (Apr. 8, 2025).

Cisco's *Sotera* stipulation (Paper 8) significantly reduces duplicative efforts, contrary to PO's assertion. First, PO complains that Cisco's *Sotera* stipulation does not relinquish Cisco's ability to challenge "non-Challenged Claims" in the district court case. Paper 9 at 18. This makes perfect sense. As PO concedes, a *Sotera* stipulation is intended to accelerate "the natural consequences of the case proceeding to a final written decision." Paper 8 at 20. And it is beyond dispute that estoppel arising from a final written decision is claim-specific:

> The petitioner in an inter partes review of a claim in a patent under this chapter that results in a final written decision under section 318(a), or the real party in interest or privy of the petitioner, may not assert either in a civil action arising in whole or in part under section 1338 of title 28 or in a proceeding before the International Trade Commission under section 337 of the Tariff Act of 1930 ***that the claim*** is invalid on any ground that the petitioner raised or reasonably could have raised during that inter partes review.

35 U.S.C. §315(e)(2) (emphasis added); *see also Cal. Institute of Tech. v. Broadcom Ltd.*, No. 20-2222, Dkt. 67 (Errata) (Fed. Cir. Feb. 22, 2022) (correcting

the court's opinion, reported at 25 F.4th 976, that estoppel applies to grounds that "reasonably could have been against ***the claims*** included" in a petition) (emphasis added).

Second, PO contends that, regardless of institution, Cisco will remain free to assert any prior art ground that was not presented to the Board "even if Petitioner could reasonably have done so." Paper 9 at 19. Not so. Cisco's stipulation is clear: if the PTAB institutes an IPR trial, Cisco "***will not pursue*** in the co-pending district court litigation…the specific grounds asserted [here], or ***any other ground that could have been reasonably raised***" against the Challenged Claims. Paper 8 at 2. This is a direct contradiction to PO's argument.

Third, PO claims that Cisco retained the right to "assert products or systems in combination with prior art that it has raised or could have raised before the Board." Paper 9 at 21. This is simply contrary to statute and Federal Circuit precedent. According to § 311(b) of the Patent Act, a ground that is based on system art, whether combined with other art, cannot be raised at the PTAB in an IPR. Indeed, the Federal Circuit has confirmed the same:

> Therefore, we hold that IPR estoppel applies only to a petitioner's assertions in district court that the claimed invention is invalid under 35 U.S.C. §§ 102 or 103 because it was patented or described in a printed publication (or would have been obvious ***only*** on the basis of prior art patents or printed publications. ***IPR***

> ***estoppel does not preclude a petitioner from asserting that a claimed invention was known or used by others, on sale, or in public use in district court***. These are different grounds that could not be raised during an IPR.

Ingenico Inc. v. IOENGINE, LLC, No. 2023-1367, 2025 WL 1318188, at *7 (Fed. Cir. May 7, 2025). There, the Court held that Ingenico was not precluded from relying on system art "with related printed publications at trial to prove the claimed invention was known or used by others, on sale, or in public use." *Id*. at *8. Here too, Cisco would not be statutorily estopped from asserting system art or the combination of system art with other art to challenge the validity of the asserted claims. And, since PO agrees that a *Sotera* stipulation is intended to achieve "the natural consequences of the case proceeding to a final written decision" (Paper 9 at 20), Cisco's *Sotera* stipulation is perfectly proper.

Finally, it is premature and improper to speculate how Cisco ***might*** challenge the validity of the '884 patent at a trial estimated to occur nearly a year from now. The Board evaluates cases "based on the facts before us, not on how Petitioner *might* challenge the validity of the patent at trial." *See Dell Inc. v. Univ. Connectivity Techs. Inc.*, IPR2024-01479, Paper 11 at 7-8 (Apr. 7, 2025) (denying institution on other grounds). As such, any minimal overlap between Cisco's invalidity contentions in the district court case and grounds asserted in this IPR are fully addressed and resolved by Cisco's *Sotera* stipulation (Paper 8).

This factor weighs heavily against discretionary denial.

E. Identity of the parties

Cisco is the defendant in the district court case, but this is true of most Petitioners in IPR proceedings. As such, the Board sometimes finds that Factor 5 follows Factor 2. *See Nikon Corp. v. Optimum Imaging Techs., LLC*, IPR2024-01372, Paper 17 at 23-24 (Apr. 23, 2025) (citing supporting cases). As explained above, Factor 2 weighs against discretionary denial. This factor too weighs against discretionary denial.

F. Other circumstances

PO asserts that the Petition "suffer[s] from significant weaknesses" that favor discretionary denial. Paper 9 at 24-28. This is wrong. PO states, without support, that none of the asserted prior art "contain[] the core teaching of the '884 Patent, namely that network traffic is monitored and adjusted at a 'target port' of a 'network switching element' (claim 1) or 'edge switch' claim (17)." Paper 9 at 25. PO further states, again without support, that the asserted prior art "generally describe network traffic management, but with implements in other components such as 'application traffic management devices' that are unrelated to, and materially different from a switch." Paper 9 at 25. PO's positing, however, is premised on a fundamental misunderstanding of the underlying technology.

First, Cisco's Petition identifies copious disclosure of the "*network switching element*" in Feroz and corresponding Material Facts. *See* Pet. at 14 ("Switches and routers were well-known network devices that would forward data packets—sometimes called data frames—between ports using layer 2 address information (such as an Ethernet MAC address) or layer 3 address information (such as an IP address)," citing Ex.1025, [0019]; Ex.1018, [0005], [0029]; Ex.1027, [0020]; Ex.1028, [0013]; Ex.1024, [0008]); Pet. at 23 ("Feroz's bandwidth allocation techniques are performed by an "application traffic management device 130" that is 'deployed at the edge of network 40,'" citing Ex.1005, 5:62-6:3, 7:10-28); Pet. at 23 ("The 'application traffic management device 130 is operative to classify and manage data flows traversing access link 21'" citing Ex.1005, 5:65-67; Material Facts #11-12).

Second, Cisco demonstrates that claim 1's "*network switching element*" includes "*a target port*" with citation and discussion of Feroz. Pet. at 25 ("Especially in embodiments where the application traffic management device 130 has three or more Ethernet interfaces, it would have been obvious to a POSITA for application traffic management device 130 to be a 'network switching element,' since application traffic management device 130 would need to decide how to forward packets received at any one of its network interfaces…Any of the

application traffic management device 130's network interfaces corresponds to the claimed 'target port'" citing to Ex.1003, ¶61, ¶65).

Third, Cisco identifies how Feroz discloses claim 17's "*edge switch*." Pet., 57-58 ("Feroz explains that 'application traffic management device 130, in one implementation, is deployed at the edge of network 40'" (citing Ex.1005, 5:62-64)). PO's throwaway comments do not provide any analysis and fail to engage with the Petition. PO offers only high-level assertions without any supporting detail or evidence to refute the Petition's well-supported arguments.

PO further argues that the "limited nature of IPR proceedings" counsels against institution because the district court can resolve issues outside the Board's jurisdiction. Paper 9 at 26. This argument is nonsensical because, followed to its logical conclusion, it would bar all IPRs filed where there is a co-pending district court case. Congress knew—and intended—that IPRs would be filed in parallel with district court cases, as reflected not only in the legislators' debates surrounding the America Invents Act, but in the statutes themselves. *See* 35 U.S.C. § 315(b) (setting a one-year deadline for an accused infringer to file an inter partes review petition). A contrary conclusion would be in error.

III. ADDITIONAL FACTORS DO NOT FAVOR DISCRETIONARY DENIAL

A. Strength of Petitioner's Challenge Favors Institution

Cisco presents three strong independent Grounds for obviousness challenge of the '884 patent claims 1 and 17. PO suggests that the operating protective order in the district court might interfere with PO being able to present evidence of some ***unidentified*** secondary considerations of non-obviousness. Paper 8 at 29. First, PO ignores that the PTAB has procedures for obtaining evidence pertaining to, for example, secondary considerations. 35 U.S.C. § 316(a)(5); 37 C.F.R. § 42.51(b)(2). Of course, PO might not want to engage in the PTAB's additional discovery process because it would have to tailor its discovery requests rather than engage in a fishing expedition. Ex.1053 at 23. Second, PO has not identified any instance where Cisco had denied PO using documents from the district court in the PTAB nor any requests to do so. PO's argument here is entirely speculative. Cisco's multiple independent Grounds that challenge claims 1 and 17 of the '884 patent, are strong and should be considered on the merits.

This additional consideration weighs against discretionary denial.

B. Petitioner's Expert Testimony Favors Institution

There is no defect in Petitioner's declaration, contrary to PO's suggestion. Petitioner's expert—Dr. Min—prepared a 106-page declaration of his opinions

regarding the unpatentability of the '884 patent and PO complains about ***28 of the 206 paragraphs*** in the declaration. These paragraphs relate to the following:

(a) Reasons to combine the asserted prior art (¶¶158-160); and

(b) Portion of the analysis of the claims (¶¶88, 92, 95, 99, 101-102, 110-111, 117, 122, 126, 130, 142-143, 165-166, 176, 178, 182, 184, 186, 188, 191, 193, 196).

Paper 9 at 32-33.

This is a far cry from the situation in *Xerox Corp. v. Bytemark, Inc*. that PO cites. There, the only evidence to support Petitioner's argument was the opinion of its expert who merely repeated a one sentence conclusory assertion in the Petition. IPR2022-00624, Paper 9 at 15 (Aug. 24, 2022). The PTAB noted that the expert did "not cite to any additional supporting evidence or provide any technical reasoning to support his statement." *Id*. This was particularly problematic, according to the PTAB, where the expert's testimony was offered "to supply a limitation missing from the prior art." *Id*. at 16.

Here, in contrast, the paragraphs PO complains about in Dr. Min's expert declaration (Ex.1003) related to motivation to combine are replete with citations to the record evidence and are ***only a subset*** of Dr. Min's analysis. For example, Dr. Min's motivation to combine analysis (a) spans paragraphs 49-52 and 154-160. PO complains about just a few of these paragraphs. PO also omits from its brief that

Dr. Min's analysis of the claims (b) includes many ***additional*** paragraphs 53-149 and 161-205 providing further analysis and evidence. None of the challenged paragraphs rely on Dr. Min's testimony as a substitute for a limitation missing from the prior art, as in *Xerox*. The extent of Dr. Min's analysis and evidence he marshals to support his analysis favors institution.

More fundamentally, PO's argument that an expert declaration should provide only a "focused" analysis—e.g., limited to providing context or to explaining terms of art—would be an unjustified hinderance on a Petitioner's effort to prevail on the merits. Indeed, Section 312(a) of the Patent Act requires Petitioner to present 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." And it is well known that obviousness is analyzed from the point of view of a POSITA. *E.g.*, 35 U.S.C. §103. Therefore, the entirety of Dr. Min's declaration is not only highly relevant but fully justified as part of Cisco's case-in-chief.

Finally, PO states that it plans to submit an expert declaration with its Preliminary Response "that will dispute Dr. Min's analysis on key issues." Paper 9 at 30. That declaration argues that the Feroz reference lacks a "switch" based on little more than the say-so of the PO's declarant. Ex.2021, ¶25. Despite offering a definition of a "switch" as having "an input port" and "one or more specific output

ports" (Ex.2021, ¶23), the declarant summarily concludes that Feroz's two-port device does not have enough ports to be a switch. Ex.2021, ¶27. This is a weak basis for arguing that there are factual questions to be resolved at trial. Regardless, the mere existence of a disputed fact does not favor discretionary denial. To the extent that expert testimony is important to any factual dispute, that dispute should be resolved only ***after*** the parties have developed the record through depositions and other Board procedures.

This additional consideration weighs against discretionary denial.

C. There are no Settled Expectations of the Parties

There is no credible evidence to establish a "settled" expectation of the parties that the '884 patent is valid and/or infringed. Cisco certainly had no settled expectation regarding the '884 patent which is why Cisco is actively disputing all of PO's allegations in the district court. In fact, PO concedes that Cisco is prepared to show how Cisco's ***own prior art products***—Cisco Catalyst 3850 Series Switches—invalidate the '884 patent. Paper 9 at 22. Cisco was thus actively innovating on its own. Moreover, Cisco's accused product in the district court—the Cisco's Catalyst 9000 Switching Platforms (Ex.1011, ¶187)—was released on or around June 20, 2017. Ex.1054. PO took ownership of the '884 patent almost ***3 years later*** on April 10, 2020, yet PO waited more than ***4 additional years***—until May 6, 2024—to accuse Cisco of infringing the '884 patent. Ex.1055; Ex.1011.

PO also has no credible basis to suggest that it has a "settled" expectation. On the contrary, the '884 patent issued on September 20, 2016. Ex.1001, Cover. Since then, the '884 patent has only been asserted twice, once against Arista Networks, Inc. (originally filed in the Western District of Texas and then transferred to the Northern District of California) and once against Cisco. Ex.1056. Both cases remain pending. Ex.1057. At best, PO suggests that it has licensed the portfolio that contains some patents, but this statement is not connected to the '844 patent. Paper 9 at 36-37.

This additional consideration weighs against discretionary denial.

D. Compelling Economic and National Security Interests Favor Institution

Cisco is an American company headquartered in San Jose, California, that prides itself on its dedication to innovation. The company grew from a small business, founded by two Stanford University computer scientists in 1984, to a company that invests extensively in the US economy by employing over 43,000 US-based employees today. Ex.1058; Ex.1059. Cisco is also involved in the efficient operation of the US government and has multiple solutions for the Federal government and the Department of Defense. Ex.1060. Maintaining and encouraging cost-effective resolution of patent disputes at the PTAB by expert administrative patent judges is in the US economy's interest.

Cisco has compelling economic and national security interests to resolve patent disputes ***in a cost-effective manner*** before the PTAB.

PO, on the other hand, is a non-practicing entity; it does not contribute to US innovation on its own. Rather, PO acquires patents from others and licenses or litigates those patents against US entities. Paper 9 at 38. Nor does PO further innovation by those that sold PO its patents, at least because PO does not contend that it has any profit sharing or co-development agreement with patent sellers.

PO attempts to obscure these facts by talking about a portfolio of "around 8,500" patents that PO acquired and is now asserting. Paper 9 at 36-37. The proffered deposition testimony, however, is not about the '884 patent nor does it suggest that PO was motivated to purchase the portfolio (or to pay the price that it did) because of the '884 patent. PO merely states—without any evidence—that "multiple licensees have already taken a license to the portfolio containing the '884 Patent." Paper 9 at 38. Even if true, there is no argument or evidence to even suggest that these licenses were taken out as a result of the '884 patent itself.

Moreover, PO's purchase of a patent portfolio that includes the '884 patent does not establish a compelling economic interest. First, the original purported innovator(s) have already been paid by the predecessors in interest of the patents in the portfolio. Second, predecessors in interest that might have engaged in some measure of research and development have also been paid when PO purchased the

portfolio. As PO does not innovate on its own, does not make any product, and merely earns revenue by licensing or suing innovating market participants, PO does not have a compelling economic interest sufficient to keep its patents out of a cost-effective PTAB review.

As a policy matter, PO is seeking injunctive relief in the district court. Ex.1040, ¶229. If the PTAB institutes an IPR trial and finds that the '884 patent is unpatentable, the practical implication is that PO improperly held a legal monopoly and sought injunctions, unnecessarily blocking actual innovation and economic activity of others in the US. It is therefore in the Nation's best interest to end such improper blocking monopolies. Otherwise, real innovators and manufacturers risk being dragged into costly district court litigation or ITC investigations and potentially made to pay damages for allegedly infringing patents that should never have been issued. This fact—in and of itself—is a compelling economic interest urging review of the merits of Cisco's challenge of the '884 patent by the PTAB.

This additional consideration weighs against discretionary denial.

IV. CONCLUSION

The Board should decline to exercise its discretion to deny institution.

Respectfully submitted,

Dated: May 28, 2025

/Theodore M. Foster/

HAYNES AND BOONE, LLP
2801 N. Harwood St., Suite 2300
Dallas, Texas 75201
Customer No. 27683

Theodore M. Foster
Lead Counsel for Petitioner
Registration No. 57,456

CERTIFICATE OF WORD COUNT

Pursuant to Acting Director Stewart's March 26, 2026, memorandum, and the Board's March 28, 2025, order, Petitioner hereby certifies, in accordance with and in reliance on the word count provided by the word-processing system used to prepare this Petition, that the number of words in this paper is 4,137.

Dated: May 28, 2025

/Theodore M. Foster/
Theodore M. Foster
Lead Counsel for Petitioner
Registration No. 57,456

CERTIFICATE OF SERVICE

The undersigned certifies that, in accordance with 37 C.F.R. § 42.6(e), service was made on Patent Owner as detailed below.

Date of service	May 28, 2025
Manner of service	Electronic Email: david.schumann@foliolaw.com; timothy.dewberry@foliolaw.com; moses.xie@foliolaw.com
Documents served	Petitioner's Brief Against Discretionary Denial and Exhibits Ex.1051-Ex.1062.
Persons served	David D. Schumann Timothy Dewberry Moses Xie Folio Law Group PLLC 1200 Westlake Ave. N., Ste. 809 Seattle, WA 98109

/Theodore M. Foster/
Theodore M. Foster
Lead Counsel for Petitioner
Registration No. 57,456