

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD. and
SAMSUNG ELECTRONICS, AMERICA, INC.,
Petitioners,

v.

CERENCE OPERATING COMPANY,
Patent Owner.

Case IPR2025-00457
U.S. Patent No. 7,680,334

**PATENT OWNER'S RESPONSE TO PETITIONERS' REQUEST
FOR DIRECTOR REVIEW OF DECISION
DENYING INSTITUTION OF INTER PARTES REVIEW**

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Statutes

35 U.S.C. § 314(a)	1, 14, 15
35 U.S.C. § 314(c)	2, 14

PATENT OWNER’S EXHIBIT LIST

No.	Description
2001	Docket Navigator Stay Statistics
2002	May 20, 2025, 3 rd Amended DCO
2003	Docket Navigator Median Time-to-Trial Statistics
2004	Samsung’s May 12, 2025, Invalidity Contentions
2005	Expert declaration of Eric Koskinen (“Koskinen Decl.”)
2006	Koskinen CV

I. Introduction

Petitioners' request for Director review should be denied. The Board properly exercised its discretion under 35 U.S.C. § 314(a) to deny institution, and Petitioners' arguments do not establish any abuse of discretion. As the Board expressly stated, its denial was based on a holistic assessment of all the evidence and arguments presented, consistent with the precedential framework in *Apple v. Fintiv*. The Federal Circuit has made it clear that an agency's decision may be upheld so long as its reasoning can be reasonably discerned, and there is no requirement that the Board provide written analysis of each *Fintiv* Factor when rendering its decision.

Nor is there merit to Petitioners' challenge to the Board's finding on the likelihood of a stay in the district court. The district court's order denying Petitioners' motion to stay did not indicate that the denial was without prejudice, and, in fact, confirmed the court's universal practice of denying stays where the PTAB has not yet acted on an IPR petition. Empirical data from the Eastern District of Texas further confirms that stays pending IPR are statistically unlikely. Petitioners' effort to reframe the court's ruling cannot overcome this record.

Petitioners also dispute the Board's application of *Fintiv* Factor 2, but the Board correctly found that the district court's trial—*set more than five months before the statutory deadline for a final written decision*—weighs strongly in favor of discretionary denial. Petitioners' reliance on median time-to-trial statistics and

selective cases is misplaced; the Director has repeatedly found that *Fintiv* Factor 2 favors denial even with *shorter* intervals, and the trial date here is credible under Judge Gilstrap's scheduling practices. Likewise, Petitioners' rehashed arguments on the remaining *Fintiv* Factors fail. The record shows that Petitioners delayed filing their petition despite knowing of Patent Owner's asserted claims and invalidity contentions, ensuring substantial district court investment before any institution decision. Moreover, Petitioners' purported *Sotera* stipulation does not render IPR a true alternative to district court litigation, and their attempts to minimize factors 5 and 6 are contradicted by the evidence and precedent.

Finally, Petitioners' reliance on 35 U.S.C. § 314(c) is misplaced. The Supreme Court has held that the Director possesses unreviewable discretion to deny institution even where the § 314(a) threshold is met. *See Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 273 (2016). And the Federal Circuit has confirmed that "the Director has complete discretion to deny institution of review." *Mylan Labs. Ltd. v. Janssen Pharmaceutica, N.V.*, 989 F.3d 1375, 1380 (Fed. Cir. 2021). Here, the Board issued a written decision providing notice of its determination under subsection (a), which is all the statute requires.

II. Argument

A. The Board Expressly Stated That It Applied The *Fintiv* Factors Holistically, And It Is Not Required To Address Every Factor In Its Decisions

First, Petitioners assert that the Board abused its discretion by purportedly failing to apply the *Fintiv* Factors holistically. Paper 14 at 2. Not so. As even Petitioners recognize, the Board’s decision explicitly states that “[a]lthough certain arguments are highlighted above, the determination to exercise discretion to deny institution is ***based on a holistic assessment of all of the evidence and arguments presented.***” See Paper 13 (Board’s Decision) at 2 (emphasis added).

Despite recognizing that the Board expressly stated that it considered the facts holistically, Petitioners nevertheless assert that the Board failed to consider the other *Fintiv* Factors purportedly because the Board’s decision “does not discuss any of the other *Fintiv* Factors, nor does it explain how denial is reasonable in view of factors 3, 4 and 6 weighing against or strongly against denial.” Paper 14, n2. But there is no requirement that the Board provide written analysis of every single *Fintiv* Factor in rendering a response. As the Federal Circuit has explained, “[w]e may affirm an agency ruling if we may reasonably discern that it followed a proper path, even if that path is less than perfectly clear.” *Ariosa Diagnostics v. Verinata Health, Inc.*, 805 F.3d 1359, 1365 (Fed. Cir. 2015). Here, the Board expressly stated that they considered all of the relevant facts and evidence holistically, and the Board was not

required to provide written analysis on every *Fintiv* Factor in its decision denying institution. Moreover, as addressed in Patent Owner’s Request for Discretionary Denial, and as discussed further below, Petitioners’ assertion that *Fintiv* Factors 3, 4, and 6 weigh against institution lacks merit.

B. The Board Properly Found That There Was Insufficient Evidence That The District Court Is Likely To Stay Its Proceedings

Second, Petitioners assert that “under the Board’s binding precedent it was an abuse of discretion to find ‘insufficient evidence that the district court is likely to stay its proceeding.’” Paper 14 at 3 (citing Paper 13 at 2). According to Petitioners, when a request to stay a case has been denied without prejudice and there is an indication that the court will consider a renewed motion, “[t]his fact has usually weigh against exercising authority to deny institution.” Paper 14 at 3 (citing *Fintiv*, IPR2020-00019, Paper 11, at 6-7). But here, the district court’s order denying Petitioners’ request for a stay does **not** indicate that the denial is made “without prejudice,” nor does it provide any indication that the court would consider a renewed motion. *See Cerence Operating Company v. Samsung Electronics Co. et al.*, 2:24-cv-00181-JRG-RSP, Dkt. No. 85 (August 3, 2025). Indeed, the order merely confirms that it is the “universal practice” “to deny a motion for stay when the Patent Trial and Appeal Board has not yet acted on a petition for inter partes review,” and thus, “[a]ccordingly, the motion is **DENIED.**” *Id.* (emphasis in original).

Moreover, while Petitioners cite to cases in the Eastern District of Texas where motions to stay were denied without prejudice (*see* Paper 14 at 3-4), tellingly in those cases, the district court *explicitly* stated when the denials were “without prejudice.” Furthermore, even if the district court did intend for Petitioners’ requested stay to be denied “without prejudice,” the evidence of record suggests that any future request for a stay is statistically unlikely to be granted. *See* Paper 10 at 3-5; *see also* Ex. 2001 (Docket Navigator Stay Statistics). Indeed, an analysis of the outcomes for motions to stay pending IPR before Judge Gilstrap demonstrates that the vast majority of these motions have been denied, as only *five (5)* such motions have been granted, while *sixty-five (65)* have been denied in the past five years. *Id.*

In short, the district court’s order denying Petitioners’ request for a stay includes no indication that it was made without prejudice, nor any indication that the Court would consider a renewed motion. And the evidence of record, including an analysis of stay statistics in the Eastern District of Texas before Judge Rodney Gilstrap, confirms that a stay is statistically unlikely. Thus, Petitioners’ argument that the Board abused its discretion in finding that there is “insufficient evidence that the district court is likely to stay its proceeding” is without merit. Indeed, the record of evidence strongly suggests that a stay is very unlikely.

C. The Board Properly Found That The District Court’s Trial, Currently Set Five And A Half Months Before The Likely FWD, Weighed In Favor Of Discretionary Denial

Third, Petitioners assert “[i]t was also contrary to the Board’s historical practice and an abuse of discretion to deny institution because the district court’s likely trial date was a mere four and a half months prior to the final written decision due date.” Paper 14 at 4. Not so. As an initial matter, Petitioners engage in gamesmanship to adjust the actual time between the current trial date and the FWD. Specifically, while Petitioners recognize that the currently set trial date is April 20, 2026 (which is more than 5 months before the October 8, 2026 FWD date), Petitioners assert that “the latest statistics indicate the median time to trial in the Eastern District of Texas is 25.9 months” and thus “trial is actually more likely to occur mid-May 2026, approximately four and a half months before the projected final written decision date.” Paper 14 at 4-5. Petitioners then cite to a number of prior decisions declining discretionary denial where there was approximately four months between the trial date and FWD. *Id.* But Petitioners’ gamesmanship fails for three glaring reasons: 1) a comparison of the *actual* set trial date shows *more than 5 months* between the district court trial date and the FWD; 2) as shown in Patent Owner’s Request for Discretionary Denial, the Median Time-To-Trial for the Eastern District of Texas is actually twenty-three (23) months (not “25.9” as Petitioners assert) (*see* Ex. 2003 (Docket Navigator Median Time-to-Trial

Statistics); and 3) all of the cited IPR decisions that Petitioners rely on were issued *prior* to the PTAB’s updated guidance regarding the discretionary denial process and relevant factors.

Moreover, even considering decisions issued both before and after the updated discretionary denial guidance was promulgated, the Director has *repeatedly* found that this *Fintiv* Factor weighs in favor of denying institution – even with a shorter gap between the trial date and the date of FWD. *See, e.g., EClinicalWorks, LLC v. Decapolis LLC*, IPR2022-00229, Paper 10 at 9 (PTAB Apr. 13, 2022) (finding this *Fintiv* Factor weighed in favor of discretionary denial and denying institution where “the beginning of the jury trial in the WDTX Cases is *roughly one or two months before any final decision* would have been due had inter partes review been instituted”); *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 15 at 13 (PTAB May 13, 2020) (informative) (finding this *Fintiv* Factor weighed in favor of discretionary denial and denying institution where the district court trial was scheduled to occur *two months before* the deadline for the Board to reach a final written decision); *Samsung Elecs. Co. v. Secure Wi-Fi LLC*, No. IPR2024-01367, Paper 10 at 12-13 (P.T.A.B. Mar. 24, 2025) (finding that this *Fintiv* Factor weighed *heavily* in favor of denial and recognizing Judge Gilstrap’s time-to-trial statistics as lending credibility to the scheduled trial date, which was set to occur *five months before* the final written decision deadline).

Petitioners' cited cases are also inapposite; indeed, the majority of Petitioners' cited cases confirm that *Fintiv* Factor 2 weighs in favor of denying institution. *See, e.g.*, Paper 14 at 5-6 (citing *Zynga Inc. v. IGT*, IPR2022-00199, Paper 11 at 14 (P.T.A.B. Jun. 14, 2022)); *Samsung Elecs. Co. v. Cardware Inc.*, IPR2023-00211, Paper 13 at 10 (P.T.A.B. Jun. 13, 2023); *Nokia of Am. Corp. v. IPCOM, GmbH & Co., KG*, IPR2021-00533, Paper 10 at 9 (P.T.A.B. Aug. 12, 2021); *Cellco P'ship v. Huawei Device Co.*, IPR2020-01117, Paper 10 at 18-20 (P.T.A.B. Feb. 3, 2021)). For example, *Zynga Inc.* acknowledges that "if the district court's trial date is earlier than our projected statutory deadline for a final written decision, the Board usually has weighed this fact in favor of exercising authority to deny institution under NHK." *Zynga Inc.*, IPR2022-00199, Paper 11 at 13-14. Similarly, the Board in *Samsung*, *Nokia*, and *Cellco* all found that *Fintiv* Factor 2 weighs in favor of discretionary denial when the trial date is four months before FWD. *See Samsung Elecs. Co.*, IPR2023-00211, Paper 13 at 9-10; *Nokia of Am. Corp.*, IPR2021-00533, Paper 10 at 9; *Cellco P'ship*, IPR2020-01117, Paper 10 at 19-20.

Petitioners also argue that there are multiple trials scheduled on the same day and thus the current trial date is unlikely to move forward, and also that the parties recently jointly requested and received a nearly four-months' extension of the trial date "and may do so again." Paper 14 at 6. But Petitioners' arguments do not change the balance of *Fintiv* Factor 2. As an initial matter, the fact that the parties have

already negotiated an extension to ensure sufficient time to prepare for trial indicates that no further extensions will be necessary. Moreover, the fact that there are multiple trials scheduled for the same date does not change the fact that the median time-to-trial statistics still indicate that the trial will occur *months* before the FWD.

D. Petitioners Are Wrong, The Remaining *Fintiv* Factors Also Weigh Against Institution

Fourth, Petitioners assert that “[h]ad the Decision engaged with the totality of the *Fintiv* Factors, the only reasonable conclusion would have been that the Director should not have exercised discretion to deny institution.” Paper 14 at 6. Indeed, central to Petitioners’ arguments is the assertion that the remaining *Fintiv* Factors weigh against discretionary denial, and thus the Board’s refusal to consider these factors amounted to an abuse of discretion. But as discussed above, the Board *did* consider each of the *Fintiv* Factors, even if it chose to only discuss two of the factors in detail in its decision denying institution. Moreover, as discussed in Patent Owner’s Request for Discretionary Denial, each of the remaining *Fintiv* Factors weigh in *favor* of granting discretionary denial. Paper 10 at *passim*. Petitioners’ Request for Director Review does nothing more than re-hash the same arguments made in its opposition to Patent Owner’s Discretionary Denial Briefing – *arguments the Board already carefully considered and rejected*.

For example, with respect to *Fintiv* Factor 3, Petitioners rehash their arguments that “significant work remained in the district court case,” and further that

the Board's precedent indicates that this factor weighs against discretionary denial if a claim construction order has not issued. Paper 14 at 7-8. But as discussed in Patent Owner's Request for Discretionary Denial, prior to the deadline for an institution decision, the parties had already invested significant resources in the parallel district court case. For example, the parties had: 1) served extensive infringement and invalidity contentions; 2) completed claim construction discovery and fully briefed opening and responsive *Markman* briefings; 3) prepared for the scheduled *Markman* hearing; and 4) substantially completed document production and nearly finished with fact discovery. *See* Ex. 2002 (May 20, 2025, 3rd Amended DCO).

Moreover, while the Board ordinarily looks to whether a claim construction order has been issued in deciding whether *Fintiv* Factor 3 weighs in favor of discretionary denial (*see, e.g., Facebook, Inc. v. Search and Social Media Partners, LLC*, IPR2018-01620, Paper 8 at 24 (PTAB Mar. 1, 2019)), *Fintiv* Factor 3 may still weigh in favor of denying institution where Petitioners did not file their Petition "promptly after becoming aware of the claims being asserted" (*Fintiv* 1, Paper 11 at 11); *see also id.* ("If, however, the evidence shows that the petitioner did not file the petition expeditiously, such as at or around the same time that the patent owner responds to the petitioner's invalidity contentions, or even if the petitioner cannot explain the delay in filing its petition, these facts have favored denial.").

Here: 1) the district court complaint was filed on March 15, 2024 (almost a full year before the Petition was filed); 2) Petitioners were served infringement contentions identifying asserted claims of the '334 patent on July 17, 2024 (more than seven months prior to the Petition was filed) (*see* Ex. 1028); and 3) Petitioners served their invalidity contentions on September 12, 2024 (five months before the Petition was filed) (*see* Ex. 2004 (Samsung's May 12, 2025 Invalidity Contentions)). Thus, despite Petitioners being aware of Patent Owner's specific infringement contentions, and ***already*** compiling its invalidity contentions against the '334 patent, Petitioners inexplicitly delayed a significant amount of time before filing their Petition, all but guaranteeing that the parties would have invested a significant amount of resources into the district court action prior to any institution decision, and further ensuring that the district court trial would take place many months prior to any Final Written Decision in this proceeding. *Fintiv* Factor 3 weighs against institution in this situation. *See Fintiv*, Paper 11 at 11-12; *see also AT&T Servs. v. ASUS Tech.*, IPR2024-00992, Paper 14 at 12 (P.T.A.B. Dec. 16, 2024) (five months between infringement contentions and the petition is a "substantial delay").

With respect to *Fintiv* Factor 4, Petitioners argue that they filed a *Sotera*+ stipulation, which should purportedly "weigh[] strongly in favor of not exercising discretion." Paper 14 at 7 (citing *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12, at 19 (PTAB Dec. 1, 2020)). But Petitioners' *Sotera* stipulation is

not a true alternative to the district court litigation. The Director’s recent decision in *Motorola Solutions, Inc. v. Stellar, LLC* emphasized the non-dispositive nature of a *Sotera*-stipulation. *Motorola Solutions, Inc. v. Stellar, LLC*, IPR2024-01205, -01206, -01207, -01208, Paper 19 (P.T.A.B. Mar. 28, 2025) (“although Petitioner’s *Sotera* stipulation may mitigate some concern of duplication between the parallel proceeding and this proceeding, the stipulation does not outweigh the substantial investment in the district court proceeding or *Fintiv* factors 1, 2, and 5....”). And as the Board has explained in similar situations:

[A] majority of the parties’ work that would be done here will also be required in the litigation regardless of whether we institute review. Accordingly, we do not consider the presence of the *Sotera* stipulation in our case to ensure that inter partes review would be a “true alternative” to the Litigation. On balance, we find that *Fintiv* Factor 4 weighs in favor of discretionarily denying institution.

SAP America, Inc. v. Cyandia, Inc., IPR2024-01496, Institution Decision at 6 (P.T.A.B. Apr. 7, 2025).¹

Here, while Petitioners’ stipulation covers the combination of “prior art asserted in this IPR with unpublished system art” (Ex. 1023 at 1), it does **not** cover combinations of art not asserted in this IPR with unpublished system art, rendering

¹ See also FAQs for Interim Processes for PTAB Workload Management, <https://www.uspto.gov/patents/ptab/faqs> (“Where the petitioner is relying on corresponding system art in a co-pending proceeding and/or several other invalidity theories, a stipulation may not be particularly meaningful because the efficiency gained by any AIA proceeding will be limited.”).

Petitioners’ stipulation insufficient to ensure that the IPR proceedings are a “true alternative” to the district court proceedings. This is particularly salient in view of Petitioners’ expansive invalidity contentions in the district court proceedings. And as discussed in Patent Owner’s request for discretionary denial, Petitioners’ stipulation still permits repeated challenges to the same patent by the same defendant, in multiple venues, such as through re-exam.

With respect to *Fintiv* Factor 5, Petitioners do not dispute that they are defendants in the parallel district court case and that when “the petitioner and the defendant in the parallel proceeding are the same party, this factor weighs in favor of discretionary denial.” *Fintiv II* at 15.

With respect to *Fintiv* Factor 6, Petitioners merely assert that “PO presented no substantive arguments in its requests detracting from the strength of the presented grounds.” Paper 14 at 8. But Petitioners are plainly wrong. First, as explained in Patent Owner’s Request:

[T]he Petition fails to present any compelling merits of unpatentability. The Petition does not present anticipatory prior art under §102. Instead, the Petition relies solely on obvious combinations under §103 (some grounds including up to three different references in combination, weaving in 156 pages of expert testimony). Petition at *passim*; Ex. 1002 (Homayoon Beigi Decl.). Thus, the Petition only serves to highlight the novelty of the challenged claims, and the web of repurposed §103 prior art presented in the Petition fails to render the challenged claims obvious

Paper 10 at 16.

Second, Patent Owner submitted a POPR particularly detailing *why* Petitioners' obviousness arguments lacked merit. *See* Paper 13. Tellingly, Petitioners' Request for Director Review fails to address any of these arguments.

In short, the *Fintiv* Factors all weigh in favor of discretionarily denying Petitioners' IPR, and Petitioners present no salient reasons for deviating from the Board's well-reasoned decision.

E. Petitioners' Arguments Regarding 35 U.S.C. § 314(c) Are Without Merit

Finally, Petitioners assert a hail mary argument that it was purportedly an abuse of discretion for the Board to "fail to comply with 35 U.S.C. § 314(c)." Paper 14 at 9. Specifically, Petitioners assert that "Samsung is entitled to, and the Director must provide, a *written* decision setting out the Director's determination whether the Petition 'shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.'" *Id.* at 10 (citing 35 U.S.C. § 314(a), (c) (emphasis in original). But Petitioners plainly misapprehend the law here. The Supreme Court has held that the Director possesses unreviewable discretion to deny institution, even if the threshold showing under § 314(a) is met. *See, e.g., Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 273 (2016) ("[t]he agency's decision to deny a petition is a matter committed to the Patent Office's discretion."). The Court further emphasized that "the statute makes the decision 'whether' to institute inter partes review 'nonappealable.'" *Id.* at 273.

Consistent with this precedent, the Director and the Board have long applied § 314(a) as a source of discretionary denial authority. *See, e.g., Fintiv I* at 5 (“The Board’s cases addressing earlier trial dates as a basis for denial under NHK apply the Director’s discretion under 35 U.S.C. § 314(a).”). Nothing in § 314 requires the Director to issue a written finding that a petition has demonstrated a “reasonable likelihood” of prevailing when the proceeding is discretionarily denied; instead, the statute requires written notice of the “determination under subsection (a),” and a discretionary denial under § 314(a) *is such a determination*.

The Federal Circuit has recognized this interpretation as well. In *Mylan Labs. Ltd. v. Janssen Pharmaceutica, N.V.*, the court reiterated that “the Director has complete discretion to deny institution of review.” 989 F.3d 1375, 1380 (Fed. Cir. 2021) (citing *Cuozzo*, 579 U.S. at 273). Petitioners’ reliance on the word “shall” in § 314(c) cannot override this controlling authority. The statute requires a written decision, which the Board provided here, and it does not require a merits finding whenever the Director exercises discretion to deny.

III. Conclusion

Petitioners’ Request for Director Review identifies no actual abuse of discretion, fails to address key arguments and evidence undermining its *Fintiv* analysis, and misapprehends the governing law. As such, the Request should be denied.

Date: September 10, 2025

Respectfully submitted,

/Qi (Peter) Tong/
Qi (Peter) Tong (Reg. No. 74,292)
RUSS AUGUST & KABAT
8080 N. Central Expy, Suite 1503
Dallas, TX 75206
(310) 826-7474

Attorney for Patent Owner

CERTIFICATE OF WORD COUNT

I certify that there are 3,650 words in this paper, excluding the portions exempted under 37 C.F.R. § 42.24(a)(1), according to the word count tool in Microsoft Word.

/Qi (Peter) Tong/
Qi (Peter) Tong (Reg. No. 74,292)

CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e)(1))

The undersigned hereby certifies that the above document was served on September 10, 2025, by filing this document through the P-TACTS system as well as delivering a copy via electronic mail upon the following attorneys of record for the Petitioner:

Ali R. Sharifahmadian
ali.sharifahmadian@arnoldporter.com
Patrick Reidy
patrick.reidy@arnoldporter.com
Douglas L. Clark
douglas.clark@arnoldporter.com
Albert Boardman
albert.boardman@arnoldporter.com
xSamsungCerenceAP@arnoldporter.com

Date: September 10, 2025

Respectfully submitted,

/Qi (Peter) Tong/
Qi (Peter) Tong (Reg. No. 74,292)
RUSS AUGUST & KABAT
8080 N. Central Expy, Suite 1503
Dallas, TX 75206
(310) 826-7474

Attorney for Patent Owner