

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ADVANCED MICRO DEVICES, INC. AND PENSANDO SYSTEMS, INC.,

Petitioners,

v.

CONCURRENT VENTURES, LLC AND XTREAMEDGE, INC.,

Patent Owners.

Case No. IPR2025-00486
U.S. Patent No. 10,873,753

**BRIEF IN SUPPORT OF PATENT OWNERS' REQUEST FOR
DISCRETIONARY DENIAL OF INSTITUTION
OF *INTER PARTES* REVIEW**

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PATENT OWNERS' EXHIBIT LIST

Exhibit	Description
2001	Text Order Denying AMD/Pensando's Motion to Stay Case (Judge Robert Pitman) in <i>Concurrent Ventures, LLC and XstreamEdge, Inc. v. Advanced Micro Devices, Inc. and Pensando Systems, Inc.</i> , No. 1-24-cv-00335 (W.D. Tex. 2024)
2002	First Amended District Court Scheduling Order (Dkt. 77) in <i>Concurrent Ventures, LLC and XstreamEdge, Inc. v. Advanced Micro Devices, Inc. and Pensando Systems, Inc.</i> , No. 1-24-cv-00335 (W.D. Tex. 2024)
2003	Webpage printouts of Docket Navigator Time to Trial regarding the District Court for the Western District of Texas and Judge Alan D. Albright
2004	Webpage printout of "AMD Reports Fourth Quarter and Full Year 2024 Financial Results" dated March 4, 2025 (https://ir.amd.com/news-events/press-releases/detail/1236/amd-reports-fourth-quarter-and-full-year-2024-financial-results)
2005	AMD/Pensando's Invalidity Contentions (Cover Pleading) in <i>Concurrent Ventures, LLC and XstreamEdge, Inc. v. Advanced Micro Devices, Inc. and Pensando Systems, Inc.</i> , No. 1-24-cv-00335 (W.D. Tex. 2024)
2006	AMD/Pensando's Opening Claim Construction Brief in <i>Concurrent Ventures, LLC and XstreamEdge, Inc. v. Advanced Micro Devices, Inc. and Pensando Systems, Inc.</i> , No. 1-24-cv-00335 (W.D. Tex. 2024)
2007	Declaration of Dr. R. Jacob Baker submitted by AMC/Pensando in support of AMD/Pensando's Opening Claim Construction Brief in <i>Concurrent Ventures, LLC and XstreamEdge, Inc. v. Advanced Micro Devices, Inc. and Pensando Systems, Inc.</i> , No. 1-24-cv-00335 (W.D. Tex. 2024)
2008	Declaration of Darrell Long submitted by AMC/Pensando in support of AMD/Pensando's Opening Claim Construction Brief in <i>Concurrent Ventures, LLC and XstreamEdge, Inc. v. Advanced Micro Devices, Inc. and Pensando Systems, Inc.</i> , No. 1-24-cv-00335 (W.D. Tex. 2024)

2009	Declaration of Bill Lin submitted by AMC/Pensando in support of AMD/Pensando's Opening Claim Construction Brief in <i>Concurrent Ventures, LLC and XtreamEdge, Inc. v. Advanced Micro Devices, Inc. and Pensando Systems, Inc.</i> , No. 1-24-cv-00335 (W.D. Tex. 2024)
2010	Declaration of Kevin Jeffay submitted by AMC/Pensando in support of AMD/Pensando's Opening Claim Construction Brief in <i>Concurrent Ventures, LLC and XtreamEdge, Inc. v. Advanced Micro Devices, Inc. and Pensando Systems, Inc.</i> , No. 1-24-cv-00335 (W.D. Tex. 2024)
2011	CV/XE's Responsive Claim Construction Brief in <i>Concurrent Ventures, LLC and XtreamEdge, Inc. v. Advanced Micro Devices, Inc. and Pensando Systems, Inc.</i> , No. 1-24-cv-00335 (W.D. Tex. 2024)
2012	Declaration of Dr. Paul Min submitted by CV/XE in support of CV/XE's Responsive Claim Construction Brief in <i>Concurrent Ventures, LLC and XtreamEdge, Inc. v. Advanced Micro Devices, Inc. and Pensando Systems, Inc.</i> , No. 1-24-cv-00335 (W.D. Tex. 2024)
2013	AMD/Pensando's Reply Claim Construction Brief in <i>Concurrent Ventures, LLC and XtreamEdge, Inc. v. Advanced Micro Devices, Inc. and Pensando Systems, Inc.</i> , No. 1-24-cv-00335 (W.D. Tex. 2024)
2014	CV/XE's Objection to the Report and Recommendation of the U.S. Magistrate Judge in <i>Concurrent Ventures, LLC and XtreamEdge, Inc. v. Advanced Micro Devices, Inc. and Pensando Systems, Inc.</i> , No. 1-24-cv-00335 (W.D. Tex. 2024)

Concurrent Ventures, LLC (“CV”) and XtreamEdge, Inc. (“XE”) (collectively “CV/XE” or “Patent Owners”) respectfully submit this Brief In Support of Their Request for Discretionary Denial of Institution (“Discretionary Denial Brief”) of *Inter Partes* Review (“IPR”) of U.S. Patent No. 10,873,753 (“the ’753 patent”) by Advanced Micro Devices, Inc. (“AMD”) and Pensando Systems, Inc. (“Pensando”) (collectively “AMD/Pensando” or “Petitioners”).

I. INTRODUCTION

The Director and the Board should exercise discretion under 35 U.S.C. § 314(a) and *Fintiv* to deny institution based on parallel litigation involving the same patent and parties. Critically, trial in the parallel litigation is scheduled more than ***three months before*** the Board’s Final Written Decision (if any) will issue—and that trial date is unlikely to be stayed or pushed back. Further, Petitioners have incorporated ***every*** piece of prior art and argument in the petition in the parallel litigation. Defendants also assert other alleged prior art in the parallel litigation; indeed, Petitioners’ top three listed references in its district court invalidity contentions are system prior art. Among these system references is one attributed to Breaking Point Systems, Inc.—the assignee of the Stroud reference (EX1003) that is the primary reference for every ground in the Petition. Thus, even Petitioner’s *Sotera*-type stipulation would not make this proceeding a “true alternative” to the parallel litigation, as Petitioners can pursue their invalidity claims in both proceedings in parallel—including system invalidity claims that appear to overlap

with the very art that provides the primary basis for the Petition.

Moreover, the parties and the district court have already made significant investment in the parallel proceedings. Petitioners will soon have fully briefed claim construction (Petitioners' opening and reply claim construction briefs and Patent Owners' opposition and sur-reply claim construction briefs). The parties have already exchanged infringement and invalidity contentions; fully briefed Petitioners' motion to transfer (filing a total of eight briefs);¹ fully briefed Petitioners' motion to dismiss; fully briefed and received rulings on three discovery or scheduling related motions (a motion to stay, which was denied, a motion to extend deadlines, and a motion to compel); and completed more than eight months of fact discovery.

By the time of the institution decision, the parties' and the district court's investment will be even higher. The institution decision is expected no later than October 4, 2025. By then the Court will have ruled on Petitioners' motion to transfer and motion to dismiss; the Court will have held the *Markman* hearing and likely have issued a claim construction order; and the parties will have completed over a year of fact discovery and served final infringement and invalidity contentions. Given this

¹ Patent Owners' request for discretionary denial presumes that the Magistrate's report recommending transfer will not be adopted and Petitioners' transfer motion will be denied—a highly reasonable presumption in view of serious errors of facts and law baked into the Magistrate's report and recommendation. EX2014. While the magistrate judge did recommend transfer, that recommendation has been objected to and is subject to *de novo* review, and Judge Albright has given no indication that he intends to grant the motion. In any event, transfer will be decided before the Board's institution decision in this proceeding.

substantial investment in the parallel proceedings, there is no reason for the Board to waste resources—both its own and the Patent Owners’—in proceeding here on a mere subset of the validity issues that will be tried to a jury before any Final Written Decision would issue.

II. INSTITUTION SHOULD BE DENIED UNDER 35 U.S.C. § 314(a) AND *FINTIV*

The Director and the Board should exercise its discretion under 35 U.S.C. §314(a) and *Fintiv* to deny institution “because institution of a trial at the PTAB would be an inefficient use of Board resources in light of the ‘advanced state’ of the parallel district court litigation....” *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 2 (PTAB. Mar. 20, 2020) (precedential) (“*Fintiv*”).

Under *Fintiv*, to determine whether to deny institution, the Board considers the following list of non-exhaustive factors:

1. [W]hether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted;
2. [P]roximity of the court’s trial date to the Board’s projected statutory deadline for a final written decision;
3. [I]nvestment in the parallel proceeding by the court and the parties;
4. [O]verlap between issues raised in the petition and in the parallel proceeding;
5. [W]hether the petitioner and the defendant in the parallel proceeding are the same party; and
6. [O]ther circumstances that impact the Board’s exercise of discretion, including the merits.

Id. at 6. The Board may consider the advanced state of the related district court proceedings as “factor that weighs in favor of denying the Petition under § 314(a).” *NHK Spring Co. v. Intri-Plex Techs., Inc.*, IPR2018-00752, Paper 8 at 20 (PTAB Sept. 12, 2018) (precedential).

Here, there is ongoing parallel district court litigation between the same parties. Patent Owners, CV/XE, are presently asserting the ’753 patent—as well as four other patents—in the following district court action: *Concurrent Ventures, LLC and XtreamEdge, Inc. v. Advanced Micro Devices, Inc. and Pensando Systems, Inc.*, No. 1-24-cv-00335 (W.D. Tex. 2024). Each *Fintiv* factor strongly favors denial. In particular, (1) a stay has been already been denied in the case, there is currently no stay or pending request in the parallel litigation, and a stay will likely be denied if requested again; (2) trial is scheduled more than three months before any Final Written Decision is likely to issue; (3) the district court case is well into discovery and there has been heavy investment in it by both the parties and the Court; (4) Petitioners rely on the same prior art and arguments included in the Petition in Petitioners’ invalidity contentions in district court; (5) Petitioners here and the Defendants in district court are the same parties; and (6) Petitioners’ merits arguments are not compelling, Petitioners rely heavily on unfocused expert testimony that merely parrots the language of the Petition, and the size and resource disparity between the parties favors denial of institution. Under these circumstances, institution would be a waste of resources for both the Board and the parties and should be denied.

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

Factor 1 weighs heavily in favor of denial. The PTAB has held that Factor 1 favors denial of institution when a district court stay is unlikely. *See 10x Genomics, Inc. v. President & Fellows of Harvard Coll.*, IPR2023-01299, Paper 15 at 16 (PTAB Mar. 7, 2024) (“10x Genomics”); *Samsung Elecs. Co., Ltd. v. California Inst. of Tech.*, IPR2023-00133, Paper 10 at 14 (PTAB May 4, 2023) (“Samsung”); *see also Fintiv*, Paper 11 at 6-9.

Here, not only has the district court not granted a stay—it has already denied one (based on Petitioners’ pending motion to transfer). EX2001 (December 17, 2024 Text Order Denying Motion to Stay). Petitioners have not requested another stay, and a stay is extremely unlikely to be granted even if they do. While the Board typically does not speculate as to whether a district court will grant a stay, *see Fintiv*, Paper 11 at 6-9, here a stay is unlikely to be issued in light of the district court’s previous denial of a stay, Judge Albright’s well-known aversion to granting stays when final written decisions are expected to issue late in the game,² and the fact that

² *See, e.g., Sonrai Memory Ltd. v. LG Elecs. Inc.*, No. 6:21-CV-00168-ADA, 2022 WL 2307475, at *1 (W.D. Tex. June 27, 2022) (advanced stage of the case weighed against a stay); *Kirsch Rsch. & Dev., LLC v. Tarco Specialty Prods., Inc.*, No. 6:20-

Petitioners have not filed IPRs on all patents asserted in the parallel proceeding (and are time barred from doing so)—meaning that the IPRs **will not** resolve the litigation in its entirety. Judge Albright rarely grants stays, and, to Patent Owners’ knowledge, has never granted a stay under facts similar to those here.

“District courts typically consider three factors when determining whether to grant a stay pending inter partes review of a patent in suit: (1) whether the stay will unduly prejudice the nonmoving party, (2) whether the proceedings before the court have reached an advanced stage, including whether discovery is complete and a trial date has been set, and (3) whether the stay will likely result in simplifying the case before the court.” *Sonrai Memory*, 2022 WL 2307475, at *1.

Here, none of the factors support a stay. First, a stay would unduly prejudice CV/XE for at least two reasons: (a) a stay risks the loss of testimonial and documentary evidence potentially valuable to Patent Owners’ case, for example, as witnesses become unavailable and memories fade,³ and (b) Patent Owners have an interest in the timely enforcement of its patent rights. *See id* at *2. Second, the

CV-00318-ADA, 2021 WL 4555804, at *2 (W.D. Tex. Oct. 4, 2021) (case was no longer in early stages and weighed against a stay); *Intell. Ventures I LLC v. Hewlett Packard Enter. Co.*, No. 6:21-CV-00596-ADA, 2022 WL 22870184, at *3 (W.D. Tex. Dec. 22, 2022) (advanced stage of proceedings weighed against a stay).

³ This is not mere speculation—many of the events at issue in the parallel proceeding happened in 2014 and Petitioners began developing many of the accused products in 2017, which means that staying the case will exacerbate the issues of fading memories and departing employees.

proceedings before the district court have reached an advanced stage—by the time of any institution decision, the parties will be four months from the close of fact discovery, all claim construction briefing and a *Markman* hearing will have been completed, and a claim construction order will likely have issued. *See* EX2002 (Amended District Court Scheduling Order); *see also Sonrai Memory*, 2022 WL 2307475, at *3 (*Markman* hearing having occurred and fact discovery closing in several months indicated a relatively advanced stage that weighed against granting a stay).

Finally, a stay will not meaningfully simplify the case before the court. Notably, Petitioners have not filed IPRs on each patent asserted in the parallel litigation, and the statutory deadline to do so has passed.² There is thus no possibility that the IPR proceedings will resolve the entire litigation—a trial will occur regardless of what happens at the Patent Office. And Petitioners filed one of their IPRs even later than the Petition in this proceeding, making it yet more susceptible to discretionary denial. IPR2025-00478 (accorded a notice date of April 15, 2025, making the institution deadline October 15, 2025 and the FWD deadline October 15, 2026, almost four months after trial). Thus, even if Petitioners invalidate each challenged claim in this proceeding, the case would continue with minimal simplification. And, if Petitioners fail to invalidate a challenged claim (as is likely, given the lack of merit

² Petitioners have not filed an IPR on U.S. Patent No. 9,529,767.

in the Petition’s arguments), the case will not be simplified at all, particularly since Petitioners have set forth other cited prior art (not in this Petition) in their invalidity contentions and raised other defenses in the parallel case.

Because there is no stay and it is extremely unlikely there ever will be, this factor weighs heavily in favor of discretionary denial.

B. Factor 2: Proximity of the court’s trial date to the Board’s projected statutory deadline for a final written decision.

This factor weighs against institution in this case. “If the district court’s trial date is before the projected deadline for the final written decision, the Board has generally weighed this fact in favor of exercising discretion.” *10x Genomics*, Paper 15 at 16; *see Fintiv*, Paper 11 at 9.

Here, the district court’s trial date is set for June 29, 2026 (EX2002)—***more than three months before*** the October 4, 2026 statutory deadline for a FWD. Thus, since “the district court will complete trial well before [the] final written decision is due,” this factor “weighs strongly in favor of exercising discretion to deny the Petition.” *Cipla Ltd. v. Gilead Sciences, Inc.*, IPR2025-00033, Paper 22 at 10 (PTAB May 15, 2025); *see also Cisco Sys., Inc. v. Portsmouth Network Corp.*, IPR2024-00503, Paper 7 at 11- 12 (PTAB Aug. 6, 2024) (the scheduled trial date being before the statutory deadline for a final written decision weighed in favor of discretionary denial where the trial date and the statutory deadline were two months apart); *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 15 at 13 (PTAB May 13,

2020)(informative) (“Because the currently scheduled District Court trial is scheduled to begin two months before our deadline to reach a final decision, this factor weighs somewhat in favor of discretionary denial in this case”); *Next Caller Inc. v. TrustID, Inc.*, IPR2019-00961, Paper 10 at 8-16 (PTAB Oct. 16, 2019) (denying institution where trial was scheduled to conclude “several months before a final decision would be due”).

Any speculation by Petitioners that the trial date is unreliable should be rejected. For example, in the related IPR2025-00223 proceeding, Petitioners suggested that the trial date might be moved because Judge Albright has a large caseload and sometimes schedules multiple trials during the same week. IPR2025-00223, Paper 8 at 11-12. This is pure conjecture. Judge Albright only recently issued an order establishing the June 29, 2026 trial date and there is no factual basis for questioning it. Further, the median time to trial for WDTX is 25 months and for Judge Albright it is 24 months (*see* EX2003 (Docket Navigator Metrics)). Here, the June 29, 2026 schedule trial date falls right around the 27-month mark—already longer than the median times to trial for both the district and Judge Albright. Thus to the extent Judge Albright schedules other trials for the same time, the data indicates that those trials, not this one, are likely to move.

The facts here are nothing like those in *Amazon.com, Inc. v. NL Giken Inc.*, IPR2025-00250, Paper 14 (PTAB May 16, 2025). In *Amazon*, the scheduled trial was only 9 days away from the FWD deadline, and the time-to-trial statistics

indicated that the typical trial would occur six months *after* the scheduled trial date. *Id.*, 2. Here, the FWD deadline is over three months before the scheduled trial, and the time-to-trial statistics strongly support the reliability of the trial date.

Accordingly, this factor weighs heavily in favor of discretionary denial.

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

In evaluating factor 3, the Board should “consider[] the amount and type of work already completed in the parallel litigation by the court and the parties *at the time of the institution decision.*” *Fintiv*, Paper 11 at 9 (emphasis added). Here, both the Court and the parties have already invested substantial time and resources in the parallel litigation and will continue to do so before the institution decision. At the time of filing this Discretionary Denial Briefing, the parties in the parallel litigation have already undergone more than eight months of fact discovery, including: producing thousands of documents, exchanging dozens of letters and emails relating to discovery issues, responding to multiple sets of written discovery, and examining Petitioners’ source code for multiple days. The parties have already submitted three of four claim construction briefs, including three briefs, five expert declarations, and months of negotiations. *See* EXs 2006-2013. The parties have already exchanged infringement and invalidity contentions; fully briefed Petitioners’ motion to transfer (filing a total of eight briefs); fully briefed Petitioners’ motion to dismiss; fully briefed and received rulings on three discovery or scheduling related motions (a

motion to stay, which was denied, a motion to extend deadlines, and a motion to compel); and completed eight months of fact discovery.

By the time of potential institution in October 2025, the Court will have ruled on Petitioners' motion to transfer and likely ruled on their motion to dismiss, and the parties will have done even more work. The parties will have substantially completed document production and will have completed a year of fact discovery, which ends in January 2026. EX2002. The parties will have completed claim construction briefing, which will be completed on June 11, 2025 with Patent Owners' sur-reply brief—three months before the statutory institution decision deadline. *Id.* The court will have also already held a claim construction hearing on June 25, 2025, *id.*, and possibly issued the resulting claim construction order. The parties will also have served their final infringement and, most importantly, final invalidity contentions, which are due on August 20, 2025, about a month before the October 4, 2025 institution decision.

Finally, at that time, the parties will be well into drafting expert reports, including validity-related expert reports, which are due in January 2026. *Samsung*, Paper 10 at 15-16 (“We consider [validity expert] work significant because it relates directly to the merits of the parties’ invalidity positions.”) (citing *Sand Revolution II, LLC v. Continental Intermodal Group – Trucking LLC*, IPR2019-01393, Paper 24 at 10-11 (PTAB June 16, 2020) (informative) (“*Sand Revolution*”)). Thus, the investment by the parties in the district court litigation weighs against institution.

See Samsung Elecs. Co., Ltd. v. Mojo Mobility Inc., IPR2023-01091, Paper 11 at 13-14 (PTAB Jan. 8., 2024) (finding factor 3 weighed in favor of denial because “Fact discovery is well underway (the deadline to ‘substantially complete’ (document production has passed, fact discovery is set to close a little more than two months after the issuance of this decision) and substantial preparation for a . . . *Markman* Hearing (including briefing) will be completed by [institution date].”); *Roku, Inc. v. Ioengine, LLC*, IPR2022-01553, Paper 11 at 11-12 (PTAB May 5, 2023) (finding factor 3 weighed heavily in favor of denial due to the “completion of preliminary disclosures and claim construction, and the near-completion of discovery.”).

Petitioners exacerbated the district court and parties’ significant investment in resources due to their delay in filing this Petition. Petitioners filed the Petition on February 12, 2025, despite being on notice of CV/XE’s infringement theories from its detailed complaint served on March 29, 2024. ***Petitioners thus waited roughly 11 months*** to file their Petition.

Moreover, the timing of this proceeding, if instituted, would also cause significant hardship on CV/XE, since as it stands CV/XE will be undertaking some of the most burdensome tasks in district court at the same time as it would be required to serve a Patent Owners’ Response in this IPR. Indeed, January 4, 2025 (which is three months after the October 4 deadline for institution in this case) is not only immediately after the holidays, it is just weeks before the close of fact discovery on January 21, 2026 and the opening of expert reports on January 28, 2026; often one

of the busiest times in litigation. *See* EX2002. This timing would significantly disadvantage CV/XE, a small company represented by the same counsel in this IPR proceeding as in district court.

CV/XE's investment in the district court is particularly significant here, as it is a small operating company that relies on its patent rights in trying to compete with the much-larger AMD. AMD is a public company that saw nearly \$8 billion in revenue last year (EX2004 (AMD Q4 2024 Financial Results)), whereas CV/XE is a small company with fewer than ten employees. Forcing CV/XE to litigate the same prior art here as in district court cuts directly against the goals of IPRs to be a cost-effective alternative to district court proceedings.

Accordingly, this factor also weighs in favor of discretionary denial.

D. Factor 4: Overlap between issues raised in the petition and in the parallel proceeding.

This factor favors denial “if the petition includes the same or substantially the same claims, grounds, arguments, and evidence as presented in the parallel proceeding.” *Fintiv*, Paper 11 at 12; *Ericsson Inc. v. Godo Kaisha IP Bridge 1*, IPR2022-00726, Paper 11 at 11 (PTAB Nov. 2, 2022) (“*Godo Kaisha*”) (same).

Here, every single piece of prior art and invalidity ground raised by Petitioners in the Petition is also raised in the district court. *See* EX2005 at 43-44 (AMD/Pensando's Invalidity Contentions). Thus, this overlap weighs in favor of discretionary denial.

Moreover, while Petitioners have offered a *Sotera*-type stipulation, it does not weigh against discretionary denial. A *Sotera*-type stipulation is merely a factor in the *Fintiv* analysis and is not dispositive. Here, a *Sotera*-type stipulation would not make this proceeding a “true alternative” to the district court proceeding because “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.” *Motorola Solutions, Inc. v. Stellar, LLC*, IPR2024-01205, Paper 19 at 3-4 (PTAB Mar. 28, 2025) (granting Director Review and denying institution); *see, e.g.*, EX2005 at 45 (combining Stroud with “Cray Supercomputer System(s)”), 45-51 (offering numerous other system/publication combinations).

Indeed, ***Petitioners’ top three alleged prior art references in the parallel proceeding are all system prior art***, which will not be affected by Petitioners’ *Sotera*-type stipulation. EX2005 at 43 (listing “Cray Supercomputer System(s),” “BreakingPoint Scalable System(s),” and “SeaMicro Computing Systems”); *id.* at 46-51 (using system prior art as primary references in the first three sets of alleged obviousness combinations). Further, Petitioner’s primary reference for every ground (Stroud, EX1003), is assigned to BreakingPoint Systems, Inc., the source of one of Petitioners’ system references. Given the Federal Circuit’s recent holding that IPR estoppel is limited 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,” *Ingenico Inc. v. IOENGINE, LLC*, No. 2023-1367, 2025 WL 1318188, at *7 (Fed. Cir. May 7, 2025), this overlap raises the specter that Petitioner will effectively get two bites at the invalidity apple using similar art—a circumstance that weighs in favor of denial. *See SAP America, Inc. v. Cyandia, Inc.*, IPR2024-01496, Paper 13 at 9 (PTAB Apr. 7, 2025) (stating that “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” in part because of factual overlap between system prior art and published prior art relied on in IPR petition); *Motorola*, IPR2024-01205, Paper 19 at 3-4 (PTAB Mar. 28, 2025). Thus, Petitioners’ *Sotera*-type stipulation here does not save them from a discretionary denial.

Thus, this factor weighs in favor of discretionary denial.

E. Factor 5: Whether the petitioner and the defendant in the parallel proceeding are the same party.

AMD/Pensando are both Petitioners and the defendants in the parallel proceeding, which weighs against institution. *See Int’l Bus. Machines Corp. v. Digital Doors, Inc.*, IPR2023-00970, Paper 7 at 13 (PTAB Jan. 12, 2024); *10x Genomics*, Paper 15 at 20; *Godo Kaisha*, Paper 11 at 13.

F. Factor 6: Other circumstances that impact the Board’s exercise of discretion, including the merits.

Other circumstances support the Board exercising its discretion not to institute including: (1) the overall weakness of the unpatentability challenges laid out in the

petition, (2) the petition’s heavy reliance on expert testimony which for the most part merely parrots the petition verbatim, and (3) the prejudice that the tremendous gap in resources between the parties would impose on Patent Owners if review is instituted.

1. The Petition Does Not Present Compelling Merits.

In accordance with the USPTO’s “FAQs for Interim Processes for PTAB Workload Management” (“FAQ”),³ FAQ No. 25, Patent Owners refer the Director to the forthcoming Patent Owners’ Preliminary Response (POPR) regarding the discussion of the merits. As will be set forth in the POPR, the Petition’s merits weigh against institution. *See CommScope Techs. LLC v. Dali Wireless, Inc.*, IPR2022-01242, Paper 23 at 4-5 (PTAB Feb. 27, 2023) (precedential) (“In circumstances where . . . the Board’s analysis of *Fintiv* factors 1– 5 favors denial of institution, the Board shall then assess compelling merits.”); “Interim Processes for PTAB Workload Management” Memorandum⁴ (“Memorandum”) at 2 (listing “The strength of the unpatentability challenge” as a “relevant consideration[.]”). As will be explained in the POPR, Petitioners’ unpatentability arguments on all grounds fall short of a “[c]ompelling, meritorious challenge[.]”—one “in which the evidence, if unrebutted in trial, would plainly lead to a conclusion that one or more claims are unpatentable

³ <https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-Management>.

⁴ <https://www.uspto.gov/sites/default/files/documents/InterimProcesses-PTABWorkloadMgmt-20250326.pdf>.

by a preponderance of the evidence.” *Roku*, Paper 11 at 14.

2. The Petition Heavily Relies On Unfocused Expert Testimony That Largely Parrots The Petition.

The Memorandum states that “[t]he extent of the petition’s reliance on expert testimony” is a “relevant consideration[]” in whether to discretionarily deny under §314 and *Fintiv*. Further, the USPTO has explained that “extensive reliance on expert testimony and/or reasonable disputes between experts on dispositive issues may suggest that the questions are better resolved in an Article III court,” and that “[t]he failure to provide *focused* expert testimony may weigh against institution.” FAQ No. 21 (emphasis added).

Here, the Petition relies extensively on expert testimony which for the most part just repeats the language of the Petition verbatim. As shown below in just one example, the prose in the declaration of Petitioners’ expert, Dr. Alpert, matches the Petition’s almost exactly, with only trivial variations:

[1c] one or more of the plurality of swappable pods or cards having a portion for user-definable hardware modules or user-definable software modules;

Stroud teaches **one or more of the plurality of swappable pods or cards having a portion for user-definable hardware modules** (e.g., CLD modules) or **user-definable software modules** (e.g., controller or network processor modules). For example, Stroud teaches that each **card** has one portion (highlighted red below) with multiple **CLD** modules and another portion (highlighted green below) having multiple **NP** modules and/or a **controller** module. Ex-1004, ¶83, ¶¶103-109, ¶188.

Pet., 31.

[1c] one or more of the plurality of swappable pods or cards having a portion for user-definable hardware modules or user-definable software modules;

94. Stroud teaches **one or more of the plurality of swappable pods or cards having a portion for user-definable hardware modules** (e.g., CLD modules) or **user-definable software modules** (e.g., controller or network processor modules). For example, Stroud teaches that each **card** (annotated in cyan) has one portion with multiple **configurable logic device (“CLD”)** modules (annotated in red) and another portion having **multiple network processor (“NP”)** modules and/or a **controller** module (annotated in green). Ex-1004, ¶83, ¶¶103-109 (“FIG. 4 is an high-level illustration of an example architecture 100A of a card

EX1003, ¶94; *see also, e.g.,* Pet., 12-13, EX1003, ¶¶30-34, Pet., 51-52 (“Additionally, while the combination does not necessarily rely on virtualization, both references teach it; therefore the inclusion of virtualization—though not needed for Ground 1 or a chassis ID—would not have precluded the combination either.”), EX1003, ¶135 (“Additionally, while the combination does not necessarily rely on virtualization, both references teach it; therefore the inclusion of virtualization—though not needed for Ground 1—would not have precluded the combination either.”).

This is the opposite of the “focused expert testimony” the Office has requested.

Petitioner’s extensive reliance on unfocused expert testimony that largely parrots the Petition weighs in favor of denial.

3. The Disparity in Size and Resources Between the Parties Weighs in Favor of Discretionary Denial

The USPTO has emphasized that in discretionary denial briefs the “Parties are encouraged to address any fact or circumstance they believe bears on whether the Office should or should not institute trial, including reasons not discussed in current Board precedent or the Process Memorandum.” FAQ No. 20. Here, the Board should consider the prejudice that institution would impose on Patent Owners as a result of the yawning gap in resources between Patent Owners and Petitioners.

As noted above, AMD is a publicly traded juggernaut that reported almost \$8 billion in revenue last year (EX2004 (AMD Q4 2024 Financial Results)). In contrast, CV/XE is a small operating company with fewer than ten employees. CV/XE is already defending its patents—which are core to its business—against a validity challenge in district court and, as discussed above, will be forced to do so even if IPR is instituted and CV/XE wins on the merits. Forcing a small company like CV/XE to litigate and win serial invalidity challenges against an adversary with essentially unlimited resources would be fundamentally unfair.

III. CONCLUSION

For each of the foregoing reasons, the Director and the Board should exercise its discretion to deny institution under 35 U.S.C. § 314(a) and *Fintiv* based on the

parallel litigation between the same parties where trial is scheduled more than two months before the Board's Final Written Decision is expected to issue.

Patent Owners may not have included all of their arguments in their Discretionary Denial Brief, and thus, Patent Owners reserve the right to present additional arguments in Patent Owners' Preliminary Response or Patent Owners' Response should the Board institute the IPR Petition or anytime up to the conclusion of trial.

Dated: June 4, 2025

By: /s/Michael Matulewicz-Crowley
Michael Matulewicz-Crowley
PTO Reg. No. 72,220

*Counsel for Patent Owners
Concurrent Ventures, LLC and
XtreamEdge, Inc.*

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that CV/XE's Brief in Support of Their Request for Discretionary Denial of Institution of IPR consists of 4,634 words, excluding the table of contents, table of authorities, certificate of service, this certificate of compliance, and table of exhibits. This Discretionary Denial Brief complies with the type-volume limitation of 14,000 words as mandated by the Memorandum. In preparing this certificate, counsel has relied on the word count of the word processing system used to prepare this paper (Microsoft Word).

Dated: June 4, 2025

By: /s/Michael Matulewicz-Crowley
Michael Matulewicz-Crowley
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*Counsel for Patent Owners
Concurrent Ventures, LLC and
XtreamEdge, Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that pursuant to 37 C.F.R. §42.6(e)(1), a copy of the foregoing **BRIEF IN SUPPORT OF PATENT OWNERS' REQUEST FOR DISCRETIONARY DENIAL OF INSTITUTION OF *INTER PARTES* REVIEW** was served on June 4, 2025, by filing this document through the Patent Trial and Appeal Board's P-TACTS System as well as delivering a copy via electronic mail upon the following attorneys of record for Petitioners:

Dated: June 4, 2025

By: /s/Michael Matulewicz-Crowley
Michael Matulewicz-Crowley
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