UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SPORTRADAR AG,
Petitioner,

v.

SPORTSCASTR INC.
(d/b/a PANDA Interactive),
Patent Owner.

IPR2025-00634

U.S. Patent No. 11,871,088

PATENT OWNER'S DISCRETIONARY DENIAL BRIEF

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Patent Trial and Appeal Board
U.S. Patent & Trademark Office
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EX-2002	*Reserved for POPR, due July 14, 2025*
EX-2003	*Reserved for POPR, due July 14, 2025*
EX-2004	*Reserved for POPR, due July 14, 2025*
EX-2005	*Reserved for POPR, due July 14, 2025*
EX-2006	*SB IP Holdings, LLC v. Vivint, Inc.*, No. 4:21-cv-00912 (E.D. Tex. Apr. 6, 2023) Order Denying Stay
EX-2007	*Portsmouth Network Corp. v, Cisco Systems, Inc.*, No. 2:23-CV00441 (E.D. Tex. Oct. 21, 2024) Order Denying Stay
EX-2008	*Reserved for POPR, due July 14, 2025*
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I. INTRODUCTION

Pursuant to Acting Director Coke Morgan Stewart's March 26, 2025 Memorandum titled "Interim Processes for PTAB Workload Management" (the "Stewart Memo," EX-2015) and in view of the abrogation of the 2022 Vidal Memo (EX-2014), Patent Owner SportsCastr Inc. (d/b/a PANDA Interactive) ("PANDA" or "Patent Owner") respectfully requests that the Director exercise its discretion and deny institution of Petitioner Sportradar AG's ("Sportradar" or "Petitioner") Petition for *Inter Partes Review* of U.S. Patent No. 11,871,088 (the "'088 patent").

Petitioner asks the Board to commence precisely the kind of wasteful, duplicative Patent Office litigation that the Board's *Fintiv* precedent was designed to prevent. Specifically: (1) this Petition is ***one of four IPRs***[1] filed against the '088 patent all relying on identical arguments and prior art references; and (2) this Petition asks the Board to decide the validity of the same '088 patent claims that are already set to be adjudicated in parallel district court litigations scheduled for ***trial in January 2026—nine months before the Board would reach a final written decision in this proceeding***.

By the time the Board reaches an institution decision in this proceeding, the

[1] IPR2025-00251 (Petitioner: Genius); IPR2025-00252 (Petitioner: Genius); IPR2025-00635 (Petitioner: Sportradar). This -634 IPR is a copycat of the -251 IPR, while the -635 IPR is a copycat of the -252 IPR. The -251 and -252 IPRs are collectively referred to herein as the "Genius IPRs."

parties and the district court will have already invested significant time and resources in district court litigations that were filed on October 5, 2023—over ***24 months*** before the institution decision would be due on October 14, 2025. The parties have already completed claim construction disclosures and discovery. A hearing to construe the claims was held on May 9, 2025, and EDTX typically issues a decision on claim construction about 1.5 months post-hearing.[2] The parties will also complete fact discovery and serve opening invalidity expert reports in August 2025 and rebuttal expert reports in September 2025.

Section 314(a) gives the Board discretion to deny institution given the advanced state of parallel district court litigation regarding the same issues. *See NHK Spring Co. v. Intri-Plex Techs., Inc.*, IPR2018-00752, Paper 8 (P.T.A.B. Sept. 12, 2018 (precedential, designated May 7, 2019) ("*NHK Spring*"). The Board set forth six factors for determining whether discretionary denial due to such parallel litigation is appropriate (the "*Fintiv* factors"). *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 5-6 (P.T.A.B. Mar. 20, 2020) ("*Fintiv*"). In this case, all six *Fintiv* factors favor discretionary denial.

Moreover, as outlined in the Stewart Memo, additional factors in this case, such as "[w]hether the PTAB or another forum has already adjudicated the validity

[2] Source: Docket Navigator (last accessed: June 11, 2025).

or patentability of the challenged patent claims," "[t]he strength of the unpatentability challenge," and "compelling economic, public health, or national security interests" weigh in favor of discretionary denial. (EX-2015, 2.)

First, the Board denied institution of the Genius IPRs on June 3, 2025, which advanced identical arguments and prior art grounds to those raised in this Petition, because the Board found, among other things, that none of Ellis, Spivey, or Herzog taught the claimed "webserver" or motivated a POSITA to add one because it would "undermine Petitioner's foundational rationale for combining these references." *See, e.g., Genius Sports Ltd. v. Sportscastr Inc.*, IPR2025-00251, Paper 9, 22-25 (PTAB Jun. 3, 2025).

Second, compelling economic interests favor discretionary denial because of Petitioner's anti-competitive conduct that deprives consumers of a free market. (EX-2017, ¶¶18-31.)

Fintiv and the additional factors outlined in the Stewart Memo strongly favor a discretionary denial under Section 314(a).

II. *FINTIV* WEIGHS AGAINST INSTITUTION

The Board has discretion to deny institution due to the advanced state of parallel district court litigation regarding the same issues. *See NHK Spring*. The Board has set forth six factors for determining whether discretionary denial due to such parallel litigation is appropriate:

1. whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted;
2. proximity of the court's trial date to the Board's projected statutory deadline for a final written decision;
3. investment in the parallel proceeding by the court and the parties;
4. overlap between issues raised in the petition and in the parallel proceeding;
5. whether the petitioner and the defendant in the parallel proceeding are the same party; and
6. other circumstances that impact the Board's exercise of discretion, including the merits.

Fintiv at 5-6; *see also* Stewart Memo (identifying additional factors relevant to discretionary denial). As set forth below, the *Fintiv* factors and the additional Stewart Memo factors weigh against institution.

A. Factor 1: The District Court Has Not Granted A Stay

The first *Fintiv* factor asks "whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted." *Fintiv* at 6. Here, the undisputed answer to both questions is ***no***.

The Board has found Factor 1 to favor discretionary denial where "Petitioner present[ed] no evidence that it has requested a stay [] or that a stay is likely." *Luxshare Precision Industry v. Amphenol Corp.*, IPR2022-00132, Paper 10 at 9 (P.T.A.B. May 3, 2022). To date, no stay in the district court has been granted or requested.

Further, the district court does not have a track record of granting stays before

institution. *See, e.g.*, *SB IP Holdings, LLC v. Vivint, Inc.*, No. 4:21-cv-00912, slip op. at 2 (E.D. Tex. Apr. 6, 2023 ("When a motion to stay is filed before the PTAB institutes post-grant review, courts in this district typically refrain from ruling on the motion pending action by the PTAB.") (EX-2006); *Portsmouth Network Corp. v. Cisco Systems, Inc.*, No. 2:23-CV-00441, slip op. at 2 (E.D. Tex. Oct. 21, 2024 ("[T]his Court has a consistent practice of denying motions to stay when the PTAB has yet to institute post-grant proceedings.") (EX-2007).

Factor 1 favors discretionary denial.

B. Factor 2: District Court Trial Is Expected After The Statutory Deadline

Factor 2, which addresses the implications of the district court and IPR schedules, also weighs in favor of denial. *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 15 at 11-12, 17 (P.T.A.B. May 13, 2020) (*informative*).

Trial on the '088 patent is scheduled at the district court for January 23, 2026—nine months before the Board's final written decision is expected. (EX-2046.) The median time-to-trial for patent cases in EDTX is 721 days (*i.e.*, roughly 24 months). (EX-2009.) Therefore, the current trial date in January 2026 will likely stick, particularly since the median time-to-trial would have put the trial date in October 2025.

Accordingly, Factor 2 favors discretionary denial.

C. Factor 3: The Parties Will Have Invested Significant Resources In The Parallel Proceedings

Factor 3—the resources invested in parallel proceedings—favors denial if, at the time of the institution decision on or around October 14, 2025, the district court has issued substantive orders related to the patent, such as "claim construction orders." *Fintiv* at 9-10, n.17 (collecting cases).

Both the parties and the district court have invested significant resources in the two parallel proceedings for over 18 months since the filing of the complaints on October 5, 2023. A claim construction hearing in both cases involving the '088 patent was already held on May 9, 2025—five months before the Board's institution decision deadline. (EX-2046.) Given that the average it takes EDTX to issue a claim construction decision after the hearing is about 1.5 months,[3] a claim construction decision is also expected well before the Board's institution decision. Additionally, the parties will have completed fact discovery by August 22, 2025 and served opening invalidity expert reports by August 29, 2025—about two months before the time the Board's institution decision is due. (EX-2046.) Rebuttal expert reports will also be served before the Board's institution decision. (EX-2046.)

Accordingly, while Petitioner proffers a *Sotera* stipulation, by the time of the Board's institution decision, the parties will have already expended resources to

[3] Source: Docket Navigator (last accessed: June 11, 2025).

litigate validity of the challenged patent through opening and rebuttal expert reports.

In view of the overlapping schedules here and the redundant resources that will be wasted should IPR be instituted, this Factor favors discretionary denial. *Fintiv* at 6; *NXP USA, Inc. v. Impinj*, Inc., PGR2022-00005, Paper 20 at 7 (P.T.A.B. Aug. 25, 2022) (Board should consider "the duplicative efforts that will occur during the [] duration of [IPR]"); *Regeneron Pharmas. Inc. v. Novartis Pharma AG*, IPR2020-01317, Paper 15 at 17 (P.T.A.B. Jan. 15, 2021.

D. Factor 4: The Issues Overlap

Factor 4—the degree of overlap between the issues in the petition and those before the district court—also supports denial. "[C]oncerns of inefficiency and the possibility of conflicting decisions [are] particularly strong" where "the Board [is] presented with substantially identical prior art arguments." *Fintiv* at 12. There is complete overlap between the petitioned grounds and the parallel litigation.

Petitioned Prior Art Reference (Petition, 5)	Petitioner's Invalidity Contentions (EX-2013, 14)
Ellis	Yes
Spivey	Yes
Herzog	Yes
Abulikemu	Yes

Again, Petitioner's *Sotera* stipulation should carry no weight here because the parties will have already expended resources to litigate the same prior art through the completion of opening and rebuttal invalidity expert reports before the Board's institution decision. In view of these parallel tracks, instituting IPR will multiply

the burden on Patent Owner and create the possibility of inconsistent decisions between the district court and the Board.

Furthermore, Chief Judge Boalick's March 24, 2025 guidance states a "*Sotera* stipulation… will not be dispositive by itself. Instead, the Board will consider such a stipulation as part of its holistic analysis under *Fintiv*." (EX-2014, 2-3). Because Petitioner's stipulation does not "mitigate[] any concerns of duplicative efforts between the district court and the Board," or "of potentially conflicting decisions," Factor 4 weighs heavily in favor of discretionary denial. *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 at 19 (P.T.A.B. Dec. 1, 2020).

E. Factor 5: Both Petitioner and Patent Owner Are Parties In The Parallel Litigation

Factor 5 weighs in favor of denial because Petitioner is a defendant in the parallel district court litigation and will have a full and fair opportunity to litigate its invalidity contentions. *See Vizio, Inc. v. Maxell, Ltd.*, IPR2022-01459, Paper 7 at 21-22 (P.T.A.B. Apr. 11, 2023).

F. Factor 6: The Petition Does Not Present Compelling Evidence Of Unpatentability

Factor 6—the merits of the petition—also weighs against institution because, as will be detailed in Patent Owner's forth coming Preliminary Response, the Petition fails to show a "reasonable likelihood" that Petitioner would prevail on any challenged claim. The Petition certainly does not pass the higher threshold of a

"compelling" unpatentability challenge, which requires a determination that Petitioner is "highly likely" to succeed on the merits. *Commscope Techs. v. Dali Wireless, Inc.*, IPR2022-01242, Paper 23 at 3-4 (P.T.A.B. Feb. 27, 2023).

Added to the weight of this factor is the fact that this Petition is an identical copycat of the one filed by Genius Sports—*i.e.*, Petitioner's district court co-defendant—as IPR2025-00251, the institution of which was denied on the merits on June 3, 2025. *See, e.g., Genius Sports Ltd. v. Sportscastr Inc.*, IPR2025-00251, Paper 9 (PTAB Jun. 3, 2025). Among other reasons, the Board found that "adding a webserver" would "undermine Petitioner's foundational rationale for combining these references, which is the reduction of latency." *Id*. at 22-23; *see also id*. at 24-25 (adding the webserver "undermines Petitioner's assertion about improving latency issues."). Moreover, the Board found that "Petitioner d[id] not establish how Herzog's application server acts as a webserver that transmits instructions to clients, or how the application server enables clients to make connections, receive audio/video feed and event information, and then render them on a display, as is recited in claim 1." *Id*. at 30.

Further, even if the unpatentability challenge were compelling, the March 24, 2025 Board guidance states that "compelling merits alone is not dispositive in making the assessment [for discretionary denial]." (EX-2014, 3).

G. Additional Factor 1: The Same Petition Has Already Been Adjudicated By The Board

As already mentioned, this Petition is a copycat of the -251 IPR filed by Genius against the ’088 patent. Institution of the -251 IPR was denied on the merits of the petition. *See, e.g., Genius Sports Ltd.*, IPR2025-00251, Paper 9. Thus, the Board already adjudicated the validity of the ’088 patent against the same prior art asserted in this Petition and found that Genius had not shown that there was a reasonable likelihood that it would prevail with respect to at least one of the challenged claims. As a copycat, institution of this Petitioner should be denied on the same grounds.

H. Additional Factor 2: The Strength Of The Petition Is Inadequate

Given that the Board has already determined that the identical prior art and grounds of unpatentability were inadequate to warrant institution of the -251 IPR filed by Genius, the strength of Petitioner’s challenge here is not sufficient to avoid discretionary denial.

I. Additional Factor 3: Compelling Economic Interests Favor Discretionary Denial Because Of Petitioner’s Anti-Competitive Conduct

The Stewart Memo states that “[c]ompelling economic [interests]” should be considered as a factor for discretionary denial. (EX-2015, 2.)

On February 25, 2025, Patent Owner filed an amended complaint, with evidence that Petitioner not only copied Patent Owner’s patented technology but also

coerced Patent Owner's potential customers into using Petitioner's infringing products through anticompetitive tying arrangements. (EX-2017, ¶1.) Petitioner's coercion involved, among other things, conditioning access to essential data—controlled by Petitioner via exclusive contracts—on the use of its sports betting app technology, which includes its infringing products, in violation of antitrust laws. (EX-2017, ¶¶1, 18-31, 361-382.)

Patent Owner developed technology for delivering broadcasts enriched with synchronized, contextually matched, and actionable live data and content, using technology claimed in the '088 patent. The '088 patent is embodied in Patent Owner's "SocketVision technology," which is incorporated in Patent Owner's consumer-focused "patented streaming platform" SportsCastr, as well as in the B2B "sports betting platform" PANDA Studio. (EX-2040-2043.) Petitioner learned of Patent Owner's products under the guise of exploring partnerships, but in reality, Petitioner was developing its own products by copying Patent Owner's patented technology.

On Feb 24, 2018, 3:10 PM -0500, Ben Turner <ben.turner@geniussports.com>, wrote:

> Hey Kevin,
>
> Thanks for your time yesterday. It is great to see what you guys are doing with SportsCastr. Let's organise a follow up call for when I am back in Australia and I will have a think about some potential intro's that might be of interest.

(EX-2044 (annotated).)

On Mon, 7 May 2018 at 7:15 am, Ben Turner <ben.turner@geniussports.com> wrote:

> Hi Kevin, Andrew and Luke,
>
> I wanted to introduce you all to each other. As I travel around I find many great companies working in the sports digital/tech space and like to make introductions where synergies may exist. So...
>
> Kevin April (CEO) and Andrew Schupak (CFO) founded Sportscastr - https://sportscastr.com/ - they are based in NY and doing amazing work around sports broadcast with social commentators, graphics and real time chat.

(EX-2045 (annotated).)

III. CONCLUSION

For the reasons set forth above, Patent Owner respectfully requests that the Director exercise discretion and deny institution under Section 314(a).

Dated: June 13, 2025

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CERTIFICATE OF SERVICE

I certify that I caused to be served a true and correct copy of the foregoing: **PATENT OWNER DISCRETIONARY DENIAL BRIEF** was served by filing this document through the Patent Trial and Appeal Case Tracking System (P-TACTS) as well as via electronic mail on June 13, 2025, in its entirety on the following:

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