

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TANKLOGIX, LLC,
Petitioner,

v.

SITEPRO, INC.,
Patent Owner.

U.S. Patent No. 8,649,909

Case No.: IPR2025-00648

SITEPRO, INC.'S BRIEF FOR DISCRETIONARY DENIAL

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EXHIBIT LIST

No.	Exhibit Description
Ex. 2001	Docket Navigator - Motion Success for Stay Pending IPR for Judge Xavier Rodriguez
Ex. 2002	Scheduling Order for <i>SitePro, Inc. v. TankLogix, LLC</i> , 6:24-cv-00642-XR-DTG, pending in the United States District Court for the Western District of Texas.
Ex. 2003	SitePro's Preliminary Infringement Contentions, 6:24-cv-00642-XR-DTG, pending in the United States District Court for the Western District of Texas.
Ex. 2004	U.S. Patent No. 12,019,461
Ex. 2005	SitePro's Response to TankLogix's Motion to Stay, <i>SitePro, Inc. v. TankLogix, LLC</i> , 6:24-cv-00642-XR-DTG, Dkt. 33.

I. Introduction

Under the *Interim Process for PTAB Workload Management Memorandum* (the “Memorandum”) issued on March 26, 2025, the decision whether to institute an *inter partes* review is bifurcated between: (i) discretionary denial; and (2) merits and other non-discretionary statutory decisions. Pursuant to the Memorandum, Patent Owner, SitePro Inc., requests that the Board discretionarily deny TankLogix’s Petition for *Inter Partes* Review (“IPR”) of U.S. Patent No. 8,649,909 (the “’909 patent”) for the reasons below.

In short, discretionary denial is warranted here for several reasons. First, the schedule in the district court proceeding will require the court to evaluate many of the same validity questions raised here regardless of the Board’s institution decision. The district court litigation will be nearly complete before the final written decision would issue from the Board as to this IPR, and will be fully complete before any Board decision as to IPR 2025-00761, challenging a related continuation patent. The Petition is also substantively flawed and severely lacking in merit. It fails to distinguish between § 102 and § 103 challenges and fails to identify any prior art disclosures for several claim limitations in the challenged patent. Furthermore, several of the references relied upon in the Petition may not qualify as prior art.

Therefore, the totality of circumstances strongly favors discretionary denial of the Petition.

II. The *Fintiv* Factors Favor Denial

As established in the precedential case of *Apple v. Fintiv*, the Board considers six factors when exercising its discretion to deny an *inter partes* review in view of a parallel proceeding. *Apple v. Fintiv*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential). Those factors are: (1) whether the district 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 district 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. *Id.* Here, there is a parallel district court proceeding pending in the United States District Court for the Western District of Texas between SitePro, Inc. and Petitioner TankLogix, LLC. The case is *SitePro, Inc. v. TankLogix, LLC*, 6:24-cv-00642-XR-DTG (the "District Court Proceeding"), and has been assigned to District Court Judge, Xavier Rodriguez. As discussed below, the *Fintiv* factors weigh in favor of the Board denying institution in view of the District Court Proceeding.

A. The evidence is unclear as to whether the district court is likely to grant a stay.

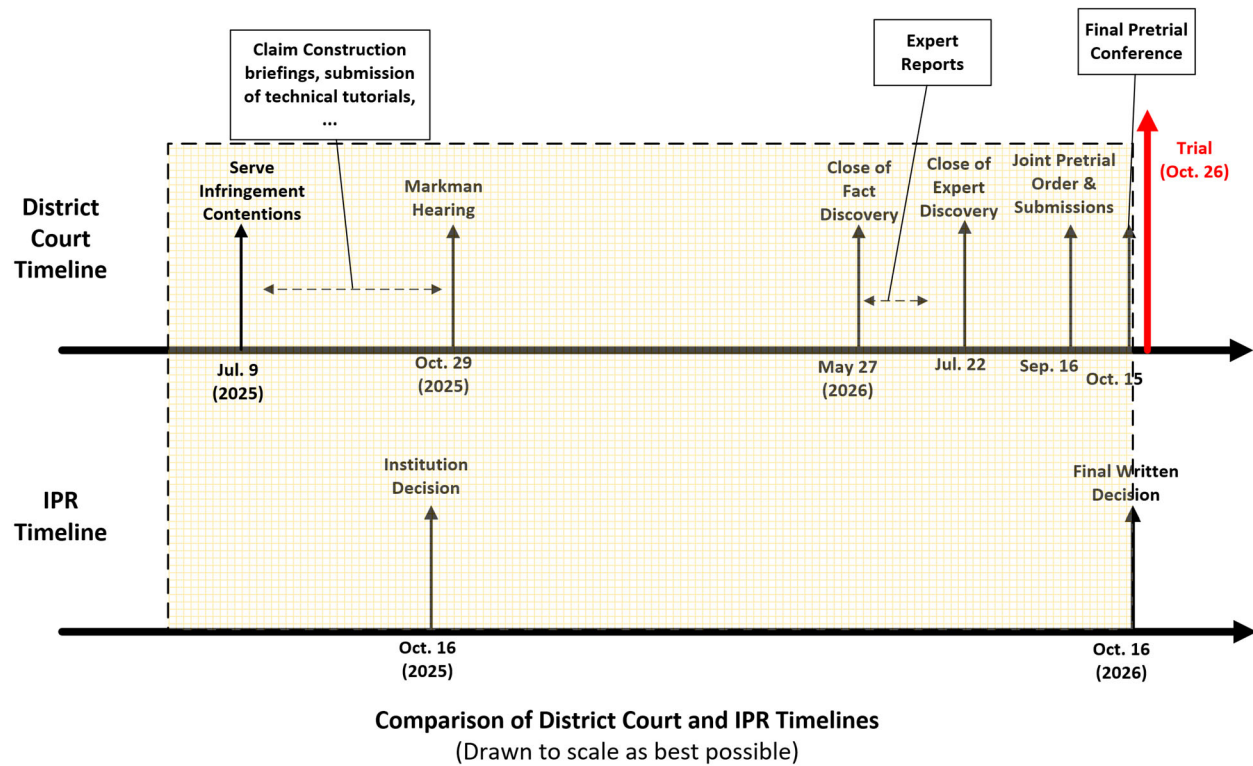
Petitioner has sought a stay in the District Court Proceeding, and to date, the district court has not issued a decision. While Judge Rodriguez has not previously ruled on any contested motions to stay pending IPR (Ex. 2001)¹, SitePro has opposed the motion to stay (Ex. 2005), which is expected to significantly reduce the likelihood of a stay. Therefore, this factor likely favors Patent Owner, but conservatively, it can be considered neutral.

B. The district court trial will begin only days after the Board's statutory deadline to issue a final written decision.

When the district court's trial date is earlier than the expected statutory deadline for Board's final written decision, "the Board generally has weighed this fact in favor of exercising authority to deny institution." *Fintiv*, IPR2020-00019, Paper 11 at 9. Here, the statutory final written decision deadline is October 16, 2026.

¹ In Ex. 2001, the option "Postures of Motion: Motion by a Party" is used in Docket Navigator to filter the results to only display opposed motions. Ex. 2001 shows Judge Rodriguez did not grant any opposed motions for stay pending IPR. Removing this filter would show that Judge Rodriguez has previously granted several motions for stay pending IPR when the motion was stipulated to by both parties (not relevant here).

In the District Court Proceeding, the final pretrial conference is set for October 15, 2026, with trial set to begin October 26, 2026, *See* Ex. 2002. Although this trial date falls slightly after the final written decision deadline, essentially all of the effort and resources required to litigate validity in district court would have been spent before the final written decision date, as illustrated in the below diagram. *Id.*



As illustrated above, the two proceedings would have a significant amount of overlap, and all pretrial activities, including claim construction, fact discovery, expert discovery, and dispositive motions would be complete, with the parties only awaiting the trial itself, scheduled to begin 10 days after the final written decision deadline. As such, any IPR decision would provide little simplification to the district

court, and not only would the two proceedings continue at the same time, but the parties would also be likely litigating duplicative and overlapping issues in parallel, consuming unnecessary resources for both the parties, the district court, and the Board.

The Petition argues that “[t]he expected trial date based on the court’s median time-to-trial date statistics is approximately September 2027.” Petition (Paper 2) at 72. But this statistic is now irrelevant since, after the filing of the Petition, the district court set a trial date for October 26, 2026. And, there are no situations in connection with the case that would merit the district court moving the trial date.

Because nearly all litigation work in the District Court Proceeding would be complete before issuance of a final written decision, with the trial to follow less than two weeks later, this factor favors discretionary denial.

C. The parties and the court have invested substantial resources in the district court case.

The District Court Proceeding was filed on December 20, 2024. Since that time, the parties have invested substantial resources in the case. Patent Owner has completed and served its initial infringement contentions on Petitioner. *See* Ex. 2003. Further, by the October 16, 2025 institution deadline, the parties will have

fully briefed their claim construction arguments, with the *Markman* hearing set for October 29, 2025.

Thus, this case is not at the very early stages of litigation, and it will be even further along by the Institution Deadline. Thus, this factor favors discretionary denial.

D. There is substantial overlap between the issues raised in the Petition and the parallel District Court Proceeding.

All claims challenged in this Petition are also at issue in the District Court Proceeding. Petitioner had initially stated that if the petition is instituted it will not pursue the same grounds for the '909 patent in the district court, per *Sand Revolution*, arguing that “the Grounds presented in the instant IPR will be materially different from the grounds that will be presented in the district court,” and this factor therefore favors institution. Petition (Paper 2) at 72. Petitioner has further recently filed what appears to be a *Sotera* stipulation in the IPR, stating that Petitioner will not pursue in litigation “any ground that could be raised under §§ 102 or 103 on the basis of prior art patent or printed publications,” and “in the Litigation, it will not rely on any product or system art that is “based on the same evidence presented” in this IPR.” Ex. 1009.

As an initial matter, Petitioner's *Sotera* stipulation does not foreclose the possibility that Petitioner could pursue other invalidity challenges in the District

Court Proceeding, including those based on prior art systems that are not based on the references used in the IPR.

Petitioner's statements further ignore the timeline of the District Court Proceeding. Notably, Petitioner's *Sotera* stipulation is conditioned on the Board instituting review—a condition that may not be resolved until October 16, 2025. In the meantime, Petitioner's preliminary invalidity contentions will be due in the District Court Proceeding in July of 2025, and the parties will complete claim construction briefing by October 15, 2025. *See* Ex. 2002. While Petitioner awaits the Board's institution decision, Petitioner in fact will be *required* to raise overlapping invalidity grounds in the District Court Proceeding or waive them, and the parties will have to account for those overlapping grounds during the claim construction phase, requiring significant duplication of effort. In effect, the district court schedule eliminates much or all of the resource savings a *Sotera* stipulation might otherwise provide, and in this case, renders it largely meaningless. Thus, this factor weighs in favor of exercising discretion to deny institution.

E. Petitioner and the defendant in the parallel District Court Proceeding are the same party.

Where the petitioner and the defendant in the parallel proceedings are the same party, this factor favors denial. *See Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 (PTAB Dec. 1, 2020) (precedential as to § II.A); see also

Comcast Cable Communications, LLC v. Touchstream Technologies, Inc., IPR2024-00324, Paper 13 at 15 (PTAB July 24, 2024). Here, the parties in this proceeding and in the District Court Proceeding are the same. Indeed, Petitioner is the defendant in the District Court Proceeding. Thus, this factor weighs in favor of discretionary denial.

F. There are no other circumstances that would disfavor denial.

As discussed above, *Fintiv* factors 2–5 weigh in favor of denial, with Factor 1 being neutral (or favoring Patent Owner). Petitioner's only additional argument under Factor 6 is that “the evidence of unpatentability is compelling, as evidenced by Grounds laid out [in the Petition].” Petition (Paper 2) at 73. On the contrary, Petitioner's Grounds crumble even under a cursory review and are significantly flawed when examined closely. While those shortcomings are described in more detail in the forthcoming Patent Owner Preliminary Response,² the following provides a few highlights that illustrate significant deficiencies of the Petition.

² See Q25 in FAQs for Interim Processes for PTAB Workload Management (<https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management>), stating that “a patent owner may direct attention to an anticipated POPR and evidence for a discussion of the merits.”

1. The purported § 102 arguments in each Ground fail to account for all elements of the challenged claims.

Each Ground of the Petition argues that its primary reference anticipates the majority of the challenged claims under 35 U.S.C. § 102. Petition (Paper 2) at 10 (Ground 1), 29 (Ground 2), 52–53 (Ground 3). A claim, however, is only unpatentable under § 102 if “each and every element as set forth in the claim is found . . . in a single prior art reference.” MPEP 2131; *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, (Fed. Cir. 1987). Not only do Petitioner’s Grounds fail to satisfy this standard, they do not even *attempt* to identify each claim limitation.

In particular, **Ground 1**, based on U.S. Patent Application No. 2015/0308244 to Cardamone (“Cardamone”), either fails to map or provides unclear or incorrect element mappings for at least seven limitations among the eleven claim sections of Claim 1 (parsed 1[pre] to 1[j]).

Similarly, **Ground 2**, based on U.S. Patent No. 8,667,091 to Almadi (“Almadi”), includes at least seven instances of missed element mappings or unclear or incorrect element mappings for Claim 1.

Ground 3, based on U.S. Patent Application No. 2008/0316048 to Abdallah (“Abdallah”), also includes at least six instances of missed element mappings or unclear or incorrect element mappings for Claim 1.

For instance, in Ground 1, right off the bat, Petitioner fails to cogently map Claim 1's "*multiple user accounts*" stored at the "*command-center server*" for 1[a] (Petition (Paper 2) at 11-12). Petition's only cited disclosure in Cardamone as to "*multiple user accounts*" is software application 131 of GUI computer 130 or its interface for presenting views and statuses of known pumps.³ To the extent this is even a mapping, neither Cardamone's software application 131 nor its interface describe "*multiple user accounts*." Moreover, Cardamone's software application 131 and its interface are not stored on Cardamone's data server 134, which Petitioner maps to the claimed "*command-center server*," and therefore cannot possibly correspond to Claim 1's "*multiple user accounts*" in any case.

Yet even more egregious, Petition in Ground 1 provides no mapping in Cardamone to the claimed "*translating*" feature of 1[i] (that Petition acknowledged at pg. 8-9 was part of the Examiner's reasons for allowance) and instead resorts to

³ Petition states "GUI Computer 130 includes software application 131 to provide an interface for connecting to control and communication computer 126 which presents 'a graphical geographical view of known pumps,' and provides 'basic operation statuses for each of the known pumps,' *thereby disclosing "multiple user accounts"* according to the Claim. EX1005, ¶0041." (Petition (Paper 2) at 12 (emphasis added)).

“[a] POSITA would understand” argument that is not substantiated. *See* Petition (Paper 2) at 17-19.

Similarly, Grounds 2 and 3, based on Almadi and Abdallah, each fail to provide any mapping for Claim 1's “*multiple user accounts*.” In Ground 2, Petitioner again makes an unsupported “POSITA would understand” argument that Almadi's disclosure of ‘multiple different network operating environments and applications applicable to different entities’ supposedly discloses “*the respective user account*.” *See* Petition (Paper 2) at 32. Petitioner's statement, however, even if true relates to “*the respective user account*” and not the “*multiple user accounts*,” as the claim requires. Further, Petitioner's statement about “*the respective user account*” is unsubstantiated because it does not cite anything in Almadi and instead refers to Petitioner's expert declaration (i.e., citing ¶104 of Ex. 1002, at pg. 41), which similarly lacks any citations to Almadi regarding “*user accounts*.” *Id.* Petitioner's circular logic does not satisfy a showing in Almadi.

As for Ground 3, Petitioner maps Claim 1's “*multiple user accounts*” to the Abdallah's well sites—not to any type of user accounts. *See* Petition (Paper 2) at 54, stating (with emphasis added) “**Abdallah discloses that multiple accounts, i.e. well sites**, may be connected to the gateways. EX1007, ¶206 (“Multiple well sites may be monitored using more local gateways”).” And, Petitioner's expert declaration is

absolutely silent about the claimed “*multiple user accounts*” in Ground 3. *See* ¶155 of Ex. 1002 at pg. 58.

As these isolated examples illustrate, the merits of the Petition are far from compelling, and these examples are far from exhaustive. The Petition lacks a complete element mapping as required to meet the § 102 standard; and for what mapping is provided, it is difficult to track and is confusing and inconsistent for several claim limitations (one example demonstrated above).

The Board has previously discretionarily denied Petitions with weak invalidity grounds that could only meet the “reasonable likelihood of prevailing” threshold for a handful of claims (“RLP claims”). For instance, the Board has exercised its statutory discretion elucidated by the court in *SAS Inst. v. Iancu*, 138 S. Ct. 1348 (2018) on multiple occasions. *See*, IPR2018-00923, *Chevron Oronite Company LLC v. Infineum USA L.P.*, Paper 9, Institution Decision at 10-11, and IPR2018-01310, *Deeper, UAB v. Vexilar, Inc.*, Paper 7, Institution Decision at 42-43, both denying institution despite two RLP claims for “not [being] an efficient use of the Board’s time and resources.”⁴ Here the Petition fails to meet the threshold for *any* claim, which strongly favors discretionary denial.

⁴ *See* Q9 in FAQs for Interim Processes for PTAB Workload Management (<https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload->

2. The Grounds fail to delineate between § 102 and § 103 arguments or properly assert either category.

Each Ground of the Petition asserts unpatentability under both the anticipation standard of § 102 and the obviousness standard of § 103, but fails to fully or clearly articulate either theory. *See* Petition (Paper 2) at 10 (Ground 1), 29 (Ground 2), 52–53 (Ground 3). Due to this lack of clarity, the grounds of the Petition are substantively deficient and noncompliant with 35 U.S.C. § 312(a)(3),⁵ thereby favoring discretionary denial.

First, it is unclear whether the Petition intends to raise both § 102 and § 103 arguments. Each Ground is titled “[Reference] Anticipates Claims [list of claim

management), stating that “the Board panel will not address discretionary considerations, except where the petition presents an insufficient number of challenges that meet the reasonable likelihood standard indicating that institution is an inefficient use of resources, as explained in *Chevron* ... and *Deeper*”

⁵ 35 U.S. Code § 312(a) Requirements of Petition.—A petition filed under section 311 ***may be considered only if***— . . . (3) the petition identifies, in writing ***and with particularity***, each claim challenged, ***the grounds on which the challenge to each claim is based***, and the evidence that supports the grounds for the challenge to each claim, (emphasis added)

numbers],” indicating only § 102 arguments. However, within each Ground, the Petition also uses boilerplate language to assert an obviousness theory. *See, e.g.*, Petition (Paper 2), at 10 (The challenged claims “are anticipated by [reference] under 35 U.S.C. § 102, or would be obvious to a POSITA in view of [reference].”). The Petition then follows a robotic pattern. For each claim limitation, the Petition recites the limitation, lists paraphrased disclosure from the reference, then presents a conclusory statement that the reference “therefore, anticipates, or renders obvious to a POSITA [the claim or limitation].” *See, e.g.*, Petition (Paper 2) at 19.

For anticipation under § 102, Petitioner fails to map each element of the claim to the disclosures in the cited prior art reference, as described above, so any § 102 argument fails from the start.

For obviousness under § 103, not only does Petitioner fail to show the requisite teaching or suggestion in the prior art of each claimed feature, Petitioner fails to explain any reasoning for why any claim would be obvious within the framework for objective analysis articulated in *Graham v. John Deere Co.*, 383 U.S. 1 (1966) and reiterated in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398 (2007). The court has “repeatedly emphasized that an obviousness inquiry requires examination of all four Graham factors and that an obviousness determination can be made only after consideration of each factor.” *Nike, Inc. v. Adidas AG*, 812 F.3d 1326, 1335 (Fed. Cir. 2016)

Here, for every claim element of the challenged claims, the Petition lacks any articulation of the second *Graham* factor (ascertaining the differences between the claimed invention and the prior art). While arguing such differences risks undercutting one's anticipation arguments, Petitioner in this case chose to avoid taking the risk at the expense of ignoring the legal standard of obviousness. The Petition uses boilerplate language to assert the dual anticipation-obviousness theory and follows a robotic pattern. Specifically, the Petition recites the limitation, lists paraphrased disclosure from the reference, then presents a conclusory statement for each element that "[a] POSITA would understand" and, for each claim, that the claim "[reference], therefore, anticipates, or renders obvious to a POSITA [claim]." *See, e.g.,* Petition (Paper 2) at 19, 41, and 65. The Petition lacks any explanation as to *why* the prior art disclosure would render a limitation obvious to a POSITA. These boilerplate assertions of anticipation and obviousness do not fully articulate either invalidity theory.

These improper grounds not only require Patent Owner to respond to multiple incomplete arguments but also impel the Board to analyze multiple unarticulated invalidity grounds under multiple legal standards. The gaps in Petitioner's claim mapping (discussed above) raise doubts that any § 102 argument was made in good faith. Yet Patent Owner is forced to respond to both anticipation and obviousness arguments within the limited word count requirements, despite neither theory being

sufficiently explained for Patent Owner to appropriately rebut. The Board is also burdened with sifting through Petitioner's positions to look for hidden obviousness assertions. While the Petition includes no credible obviousness explanations, Petitioner has improperly shifted the burden to the Board and to Patent Owner, which warrants dismissal of the Petition based on discretionary considerations.

3. Additional shortcomings of the Petition.

a. Lack of *Dynamic Drinkware* Analysis.

In Ground 1, the Petition asserts that Cardamone is prior art under pre-AIA § 102(e) (Pet., 9), but fails to conduct a *Dynamic Drinkware* analysis to establish that Cardamone is entitled to an early priority date. Notably, Cardamone is a U.S. Patent Publication published on October 29, 2015—close to three years after the December 7, 2012 priority date of the '909 patent—and claims priority to provisional application 61/729,815, filed November 26, 2012. Ex. 1005, front page. The Petition fails to satisfy its burden of showing that at least one claim of the Cardamone publication is supported by the earlier provisional, and that the portions of the Cardamone publication relied upon were in the provisional application. *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378-79, 1381-82 (Fed. Cir. 2015); *Ex parte Mann*, Appeal No. 2015-3571, 2016 WL 7487271, at *5-6 (PTAB Dec. 21, 2016); *Huawei Device Co. v. Optis Cellular Tech., LLC*, Case No. IPR2018-00658, Paper 14 at 26-27 (PTAB Oct. 9, 2018).

b. Reliance on Incorrect Section of pre-AIA § 102.

In Ground 2, the Petition cites Almadi as prior art under § 102(a). Petition (Paper 2) at 9. Pre-AIA 35 U.S.C. § 102(a), applicable here, renders a patent invalid when “the invention was . . . patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent.” However, the '909 patent has a priority date of December 7, 2012, and the Almadi patent did not issue until March 4, 2014. Therefore, the Almadi patent does not qualify as prior art under § 102(a).⁶

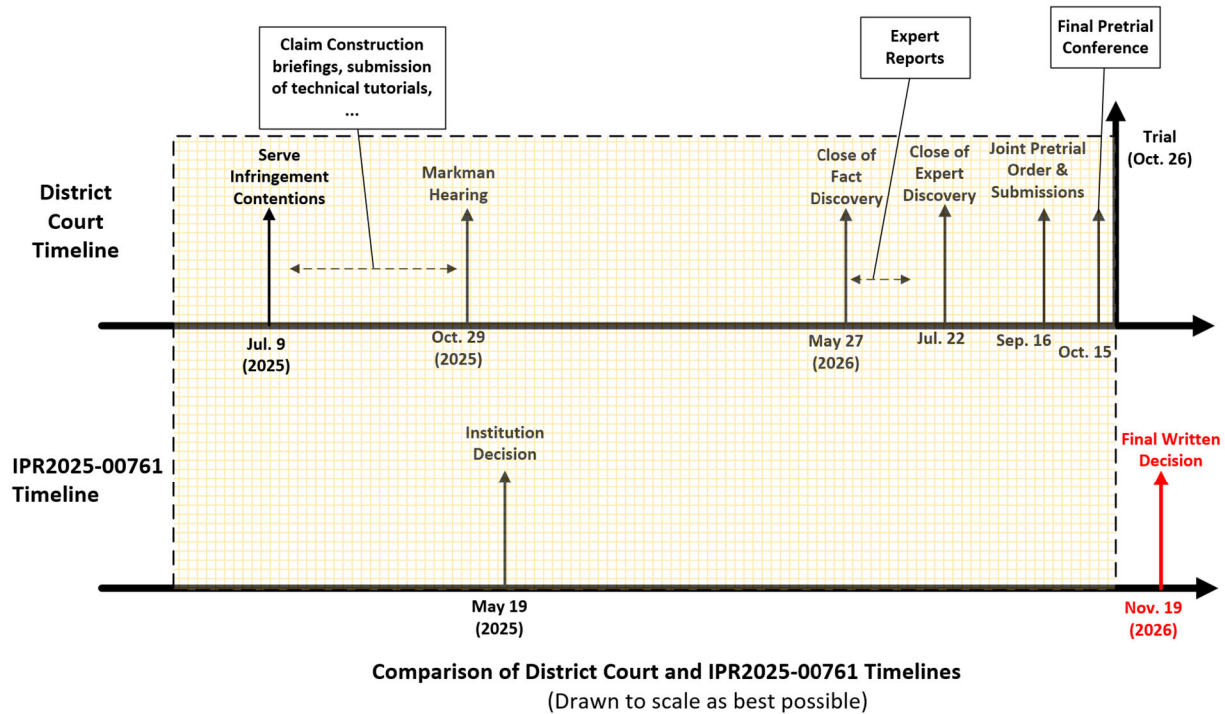
⁶ Petitioner purports this was a “typographical” error, and is attempting to correct this and numerous other purportedly “typographical” errors in its filings. *See* Petitioner’s email to the Board, dated May 15, 2025 (referring to errors listed in a prior email to the Board dated March 28, 2025). Petitioner, however, had ample time to review and correct any “typographical” errors, from the time it was served with the Complaint on January 7, 2025, until Petitioner filed this Petition on February 28, 2025. Petitioner’s actions are even more egregious considering that the current Petition is a virtual copy-cat of a petition filed by another petitioner in April 2024 (*see* IPR 2024-00724, Paper 2), and therefore Petitioner did not spend anytime developing technical or legal arguments of the Petition.

This mischaracterization of Almadi is reflective of the multitude of problems and overall inadequacy of the Petition, which should be denied.

III. Additional Considerations Favor Denial

A. Evaluation of Almadi reference at PTAB amounts to waste of judicial resources.

The District Court Proceeding asserts eight patents against TankLogix, including U.S. Patent No. 12,019,461 (the "'461 patent"), which is related to the '909 patent through a series of continuations. *See* Ex. 2004, front page. Petitioner is challenging all claims of the '461 patent in IPR2025-00761 by relying in-part on Almadi, which is also used in the present Petition. The Petition against the '461 patent was accorded a filing date of April 19, 2025 (*see* IPR2025-00761, Paper 6), and therefore its final written decision will issue *after* the trial date of the District Court Proceeding, as shown in below.



Due to the late filing of the Petition against the '461 patent, the District Court Proceeding will be concluded when the final written decision issues on November 19, 2026, making the likelihood of a stay even less at the District Court Proceeding. Therefore, the relevance of Almadi in connection with the claims of the related '461 patent would be determined at the District Court Proceeding regardless of the status of the present Petition. This results in duplicative work at the PTAB and waste of judicial resources in analyzing the same reference and adjudicating similar invalidity issues, which can be avoided by denying the institution of the present IPR.

B. Patent Owner is considering disqualifying Cardamone as a prior art reference.

Even if Petitioner intended to cite Cardamone as prior art under § 102(e) (and ignoring the lack of the requisite *Dynamic Drinkware* analysis), Cardamone's priority date is no earlier than November 26, 2012 (Ex. 1005, front page), which predates the December 7, 2012 priority date of the claims of the '909 patent by 11 days. Patent Owner is considering filing a declaration under 37 C.F.R. § 1.131 and associated evidence to antedate Cardamone. As noted in Section II.F above, the Petition's invalidity grounds are already weak on technical merits, and disqualification of Cardamone leaves an even weaker Petition with one or two remaining invalidity grounds with significant flaws.

C. Settled expectations.

The '909 patent was issued in 2014 and claims priority to December 7, 2012. Given that the '909 patent has been in force for over a decade, Patent Owner has the settled expectation that it can rely on its patent for enforcing its rights so many years after the patent issued. Therefore, this discretionary consideration favors Patent Owner.

IV. Conclusion

Taken together, the *Fintiv* factors and other issues discussed herein weigh in favor of the Board exercising its discretion to deny institution.

Dated: June 13, 2025

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CERTIFICATE OF WORD COUNT UNDER 37 CFR § 42.24(d)

Under 37 C.F.R. § 42.24(d), the undersigned certifies that the word count for this *Brief on Discretionary Denial* totals 4,134 words, excluding the parts exempted by 37 C.F.R. § 42.24(a). The word count was made using the built-in word count function in the Microsoft® Word software used to prepare this document.

Dated: June 13, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of June 2025, true and correct copies of the foregoing SITEPRO, INC.'S BRIEF FOR DISCRETIONARY DENIAL and EXHIBITS were served via electronic mail on Petitioner's counsel at the following address:

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