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. 10,488,871

Case No.: IPR2025-00650

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 *SitePro, Inc. v. TankLogix, LLC*, 6:24-cv-00643-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-00643-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, *SitePro, Inc. v. TankLogix, LLC*, 6:24-cv-00643-XR-DTG, Dkt. 34.
Ex. 2006	File History of U.S. Patent Application No. 12/794,898
Ex. 2007	File History of U.S. Patent Application No. 14/579,141
Ex. 2008	Screenshots of Patent Center website of U.S. Patent Application No. 12/794,898

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. 10,488,871 (the "'871 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, cites a reference that is not in fact prior art, and fails to identify any prior art disclosures for several claim limitations in the challenged patent.

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-00643-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.

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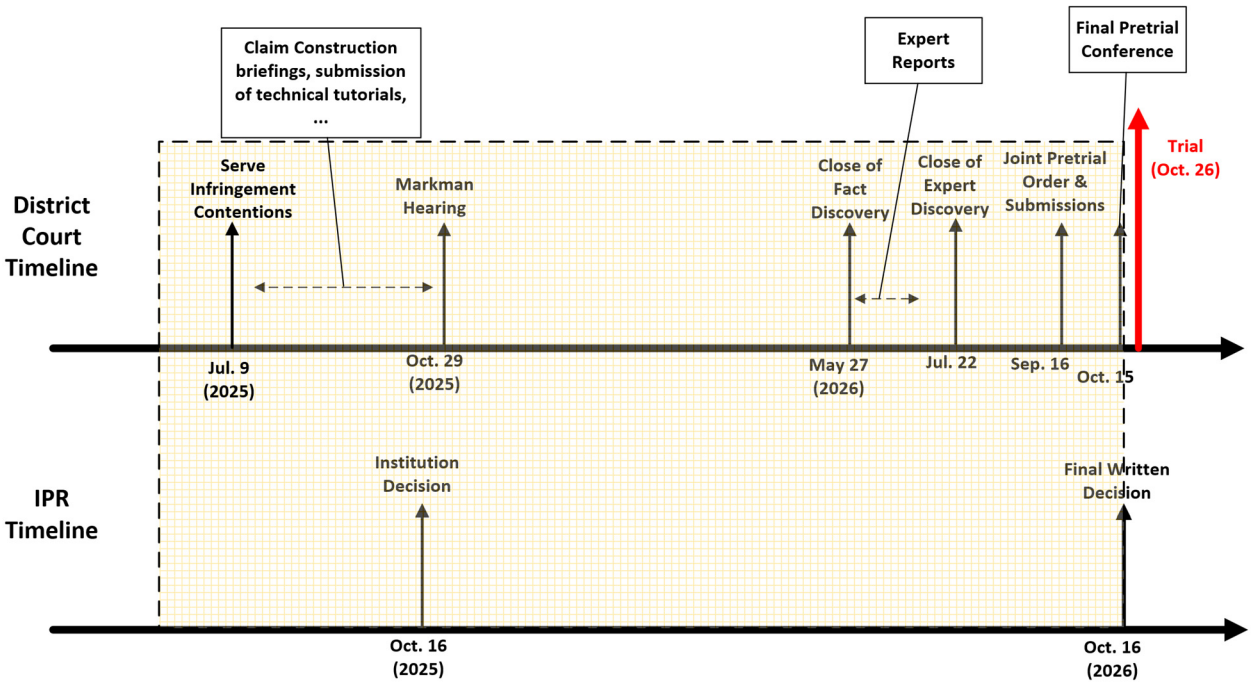
[1] In Ex. 2001, the option "Postures of Motion: Motion by a Party" is used in Docket Navigator to filter the results to only display opposed motions. Ex. 2001 shows Judge Rodriguez did not grant any opposed motions for stay pending IPR. Removing this filter would show that Judge Rodriguez has previously 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*.



Comparison of District Court and IPR Timelines
(Drawn to scale as best possible)

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 65. 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 implied that if the petition is instituted it will not pursue the same grounds for the '871 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 66. 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." *See* Ex. 1011.

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. Furthermore, the Petition states "that if the IPR is instituted, Petitioner will not pursue the same grounds for the **'909 patent** in the district court litigation"—not the grounds for the '871 patent. (emphasis added) *See* Petition (Paper 2) at 66. Petitioner has in fact filed a stipulation on file, which only references another IPR (the one filed against the '909 patent)—"the specific grounds [asserted in IPR2025-00647]" (Ex. 1011 at 2)—and not the instant IPR2025-00650, which includes different prior art references.

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 66. 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.

1. The purported § 102 and § 103 arguments in each Ground fail to account for all elements of the challenged claims.

Grounds 1 and 2 of the Petition argue that its references anticipate and/or render obvious the majority of the challenged claims under (pre-AIA) 35 U.S.C. § 102 or § 103, respectively. Petition (Paper 2) at 9-10 (anticipation or obviousness Ground 1), at 34 (obviousness Ground 2). 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). And, in *KSR International Co. v. Teleflex Inc*. ("*KSR*"), the Court reaffirmed the principles of obviousness based on the precedent that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." MPEP 2141; *KSR*., 550 U.S. 398, 416 (2007). Not only do Grounds 1 and 2 fail to

[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."

satisfy these legal standards, the grounds do not even *attempt* to identify each claim element and its limitation(s).

In particular, ***Ground 1***, based on U.S. Patent No. 7,424,399 to Khan et al. ("Khan"), either fails to map or provides unclear or incorrect element mappings for at least ***eight*** limitations among the fourteen claim sections of Claim 18 (parsed [18.1] to [18.14]).

Similarly, ***Ground 2***, based on a combination of Khan with U.S. Patent No. 9,709,995 to Gutierrez ("Gutierrez"), includes at least ***seven*** instances of missed element mappings or unclear or incorrect element mappings for Claim 18.

For instance, in Ground 1, Petitioner incorrectly maps two accounts in Khan to Claim 18's "*first account*" and "*second account*" recited in [18.10]-[18.12], which are accounts specifically "*authorized to send commands to remotely control fluid handling devices*" for different groups of fluid-handling facilities. Petitioner's analysis ceased at finding different accounts for different groups in Khan, ignoring that they must be "*authorized to send commands*."[3] Yet, a careful reading of Khan

[3] Petitioner maps Khan's "authorized account A" to the claimed "*first account*" and Khan's "authorized account B" for the claimed "*second account*." See Petition (Paper 2) at 16-18, stating at 16: "Kahn discloses an "authorized account A" for "a first entity" [and] "authorized account B" for "a second entity"."

shows that Khan's accounts A and B are associated with "test data" and not commands to control devices. *See* Ex. 1005 at 25:48-26:67. Rather, the only control discussed here in Khan is the "control[ling of] access to data generated by their respective sensors." *Id*., 25:63-26:2. Put simply, Khan's accounts A and B are for providing users the ability to "visualize" the data and control access ("grant authorization") for others, e.g., sharing, providing service fees or contracts, etc. *Id*., 26:3-61.

Petitioner does not make any showing that Khan's accounts A and B are "*authorized to send commands to remotely control fluid handling devices*." Both the Petition and Petitioner's expert do not even mention the feature in their arguments for [18.10]-[18.12]. *See* Petition (Paper 2) at 17-18; Ex 1002 at ¶¶63-64. Instead, Petitioner appears to conflate controlling access to accounts as taught by Khan with controlling fluid devices using commands as claimed in the '871 patent. Importantly, these "plurality of accounts" features in [18.10]-[18.12] were identified in the Examiner's reasons for allowance (Ex. 1004 at 27). Nevertheless, Petitioner made no showing of these features having been disclosed, taught, or suggested by Khan in the grounds.

Similarly for Ground 2, which is based on the Khan-Gutierrez combination, Petitioner again fails to provide any mapping for Claim 18's "*first account*" and "*second account*" recited in [18.10]-[18.12]. First, Petitioner makes an

unsubstantiated conclusion that "[a] POSITA would recognize" Gutierrez's 'accounts'[4] based on supposed disclosure in Gutierrez about the need for multiple systems and components to transport fluids through Gutierrez's conduit system, citing only to five paragraphs in Petitioner's expert declaration that make similar conclusory statements citing disclosure in Gutierrez about a conduit system but not accounts. *See* Petition (Paper 2) at 44-45; *See also* Ex. 1002 at ¶¶153-157. Thus, Petitioner failed to map the claimed "*accounts*" to Gutierrez's disclosure, even in a general sense. Then, Petitioner "incorporate[s] by reference" the discussion about Khan's disclosure pertaining to the specific accounts A and B (Petition (Paper 2) at 45), but offers nothing from Gutierrez's disclosure to compensate for the clear deficiencies of Khan (discussed above).

Petitioner's Ground 2 constantly repeats vacuous "[a] POSITA would recognize" conclusory statements that effectively require Patent Owner and the Board to carry the burden of mapping claim features to Kahn's and Gutierrez's disclosures in order to support Petitioner's obviousness assertion. As shown above, Patent Owner has done the work for one exemplary set of claimed features and has

[4] Petitioner incorrectly mapped the "*plurality of accounts*" in [18.3] to Gutierrez's geographically disturbed fluid-handling facilities, which are not "*accounts*" stored in a datastore as required in the claim. *See* Petition (Paper 2) at 37-38.

demonstrated that neither Khan nor Gutierrez teach or suggest the claimed features of [18.10]-[18.12].

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 and 103 standards; 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."[5] Here the Petition fails to meet the threshold for ***any*** claim, which strongly favors discretionary denial.

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[5] *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.

For Ground 1, 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 9-10. Due to this lack of clarity, the grounds of the Petition are substantively deficient and noncompliant with 35 U.S.C. § 312(a)(3),[6] thereby favoring discretionary denial.

For anticipation under § 102, Petitioner fails to map each element of the claim to Khan's disclosure, as described above, so any § 102 argument fails from the start.

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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* … ."

[6] 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)

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 in Ground 1 using Khan, the Petition lacks any articulation of the second *Graham* factor (ascertaining the differences between the claimed invention and the prior art).[7] While arguing such differences risks undercutting Petitioner'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

[7] The Petition also lacks any articulation of the second *Graham* factor in Ground 2 for the combination of Khan and Gutierrez.

conclusory statement for each element and claim that "[a] POSITA would recognize." *See, e.g.*, Petition (Paper 2) at 19. 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. Gutierrez Is Not Prior Art.

Ground 2 relies on Gutierrez as prior art in its combination with Khan for its obviousness ground. However, Gutierrez is not prior art under any subsection of 35 U.S.C. § 102, leaving Ground 2 is effectively nullified.

The Petition cites U.S. Patent No. 9,709,995 B2 (referred to as "Gutierrez") as prior art under "pre-AIA § 102(a) and 102(e)." Petition (Paper 2) at 9. Gutierrez cannot be § 102(a) prior art because this document's publication date is July 18, 2017 (issue date), nearly four and a half years after the '871 patent's priority date of December 7, 2012. And, Gutierrez cannot be prior art under § 102(e) either because ***Gutierrez's priority chain was broken*** at the time of Gutierrez's filing due to Gutierrez's parent application having gone abandoned.

Gutierrez is the U.S. patent issued from U.S. Application No. 14/579,141 ("the '141 Application"), which was filed December 22, 2014 as a continuation of U.S. Application No. 12/794,898 ("the '898 Application"), which was filed June 7, 2010. The '898 Application went abandoned on October 31, 2014 after the applicant

failed to reply to an Office Action[8] within the fixed statutory period. *See* MPEP 711.04 ("the date of the abandonment is after midnight of the date on which the set shortened statutory period, including any extensions under 37 CFR 1.136, expired"). *Also see* MPEP 711.02 (citing 37 CFR 1.135(a): "[i]f an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise").

The applicant of the '898 Application did not pay an extension fee in accordance with § 1.136 between expiration of the shortened statutory period (October 31, 2014) and the filing of the '141 Application (December 22, 2014); and there was no further "Office action" indicating otherwise.[9] Ex. 2006, Ex. 2007. The diagram below illustrates these events chronologically.

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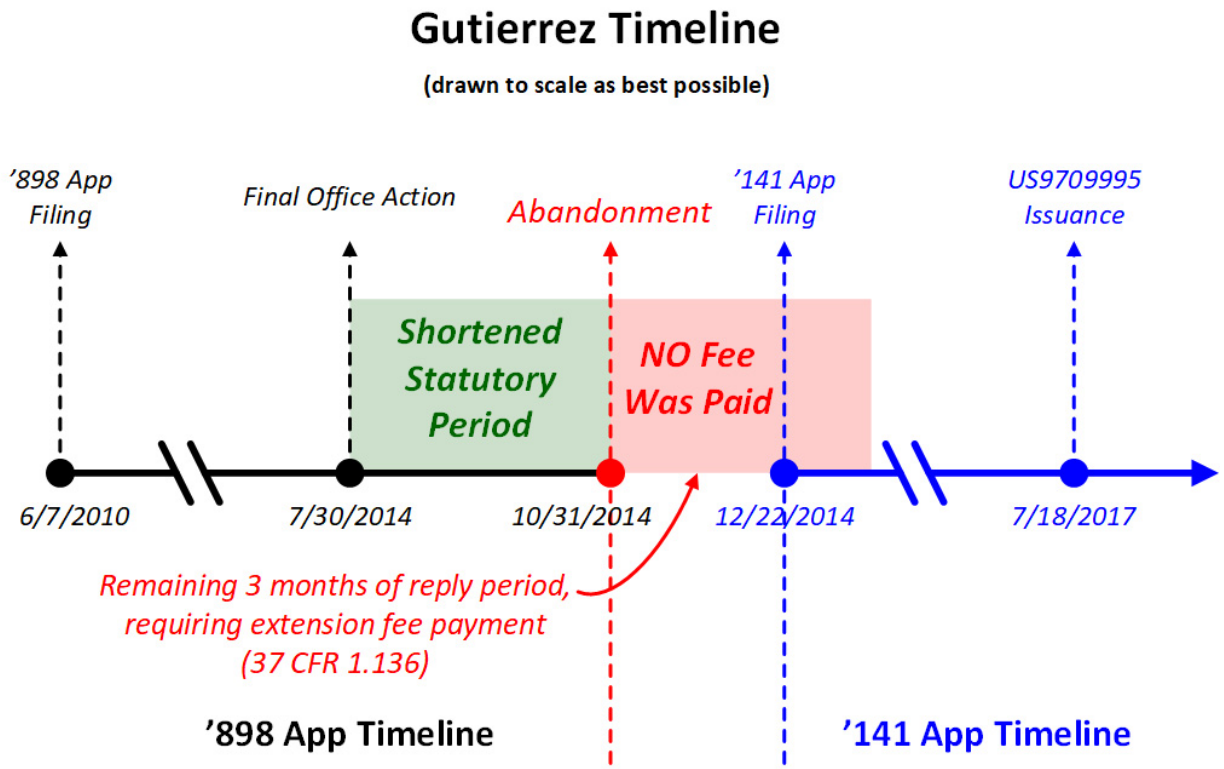
[8] The '898 Application received a Final Office Action dated July 30, 2014, to which no response was filed and no extension fees were paid after the three-month shortened statutory period expired. *See* Ex. 2006 at 199.

[9] The only action by the U.S. Patent and Trademark Office after the July 30, 2014 Final Office Action was the Notice of Abandonment of the '898 Application, which was mailed on February 4, 2015.



As the above diagram shows, the '141 Application (which issued as Gutierrez) was filed after the parent '898 Application was abandoned. Therefore, the '141 Application (and thereby the U.S. patent that issued as Gutierrez) is only entitled to a priority date of December 22, 2014, which is after the December 7, 2012 priority date of '871 patent.

The consequence of the applicant's non-responsiveness to the Office Action within the shortened statutory period for reply rendered the '898 Application abandoned, and any continuation application filed after abandonment, i.e., the '141 Application that resulted in the Gutierrez patent, is not entitled to an earlier priority date for failing the copendency requirement of 35 U.S.C. § 120. *See Urologix, Inc.*

v. Prostalund AB, 227 F. Supp. 2d 1033, 1035-1040 (E.D. Wis. 2002). The *Urologix* court also made clear that the burden is on the applicant to have "evidence" of the extension of time. *Id.*, 1038. Here, like in *Urologix*, the record shows no payment or petition for an extension of time after expiration of the shortened statutory period for the '898 Application (*see* Ex. 2006), thus cementing its abandonment immediately after the period's three-month duration elapsed.[10]

Thus, Gutierrez's actual priority date is December 22, 2014, more than two years after the '871 patent. Ground 2 fails because Gutierrez is not prior art.

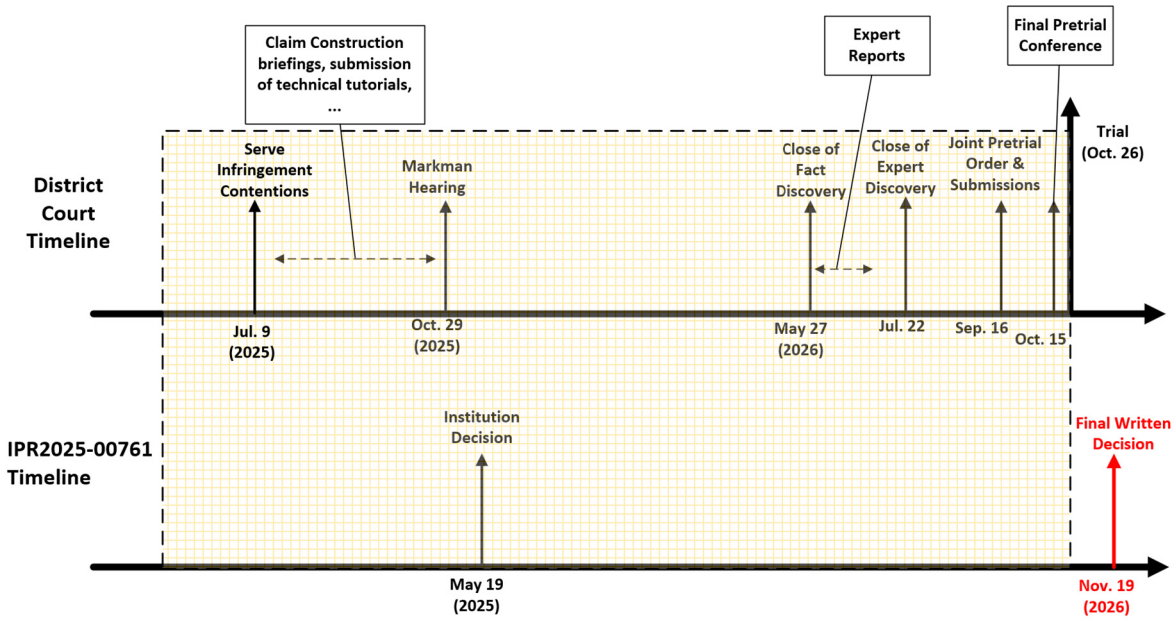
III. Additional Considerations Favor Denial

A. Evaluation of Khan and Gutierrez 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 '871 patent through a series of continuations. *See* Ex. 2004, front page. Petitioner is

[10] Patent Center website for the '898 Application shows no evidence of payment or petition for an extension of time after the July 30, 2014 Final Office Action: https://patentcenter.uspto.gov/applications/12794898/ifw/docs?application=
See also, Ex. 2008, which shows screen captures of the Documents and Transactions listing for the '898 Application.

challenging all claims of the '461 patent in IPR2025-00761 by relying on a combination involving Khan and Gutierrez, each of which is also used in the present Petition against the '871 patent. 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.



Comparison of District Court and IPR2025-00761 Timelines
(Drawn to scale as best possible)

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 Khan and Gutierrez 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. Settled Expectations.

The '871 patent was issued in November of 2019 and claims priority to December 7, 2012. Given that the '871 patent has been in force for over five and a half years, 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 C.F.R. § 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 4,380 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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