

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMERICAN AIRLINES, INC. AND SOUTHWEST AIRLINES CO.,

Petitioners

v.

INTELLECTUAL VENTURES I LLC,

Patent Owner.

Inter Partes Review No. IPR20254-00785

U.S. Patent No. 7,257,582 B2

Issue Date: August 14, 2007

Title: LOAD BALANCING AND SHARED DATA

**PETITIONERS' BRIEF IN OPPOSITION TO PATENT OWNER'S
REQUEST FOR DISCRETIONARY DENIAL**

Mail Stop Patent Board
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	THE DIRECTOR SHOULD ALLOW THE PETITION TO PROCEED ON THE MERITS	3
A.	Petitioners and Unified Patents Are Not Affiliated With Each Other and Did Not Coordinate in Their Challenges to the Validity of the '582 Patent	3
1.	Patent Owner's Baseless (and Incorrect) Accusation of Affiliation or Coordination Between Either Petitioner and Unified Patents Lacks Evidence.....	3
2.	The Indisputable Facts Show that Neither Petitioner is Affiliated in Any Way with Unified Patents and Neither Petitioner Coordinated in Any Way with Unified Patents	7
B.	The Petition is Not “Facially Deficient,” as Patent Owner Wrongly Contends.....	8
C.	The Expert Testimony Provides Supporting Evidence and Technical Reasoning and Therefore is Not a Reason to Discretionarily Deny the Petition.....	12
D.	A “Persuasive Reason” for the Board to Review is that the '582 Patent Has Not Previously Been Asserted In Petitioners’ “Technology Space”— Airlines	16
E.	The <i>Fintiv</i> Factors Do Not Favor Discretionary Denial	19
1.	Factor 1 Weighs Against Discretionary Denial Because Judge Mazzant Could Issue a Stay in the American District Court Litigation.....	25

2.	Factor 2 Weighs Against Discretionary Denial When Considering the Correct Pre-Trial and Trial Dates in the District Court Litigations	25
3.	Factor 3 Weighs Against Discretionary Denial, Particularly Given the Multiple Different District Courts Currently Considering these Validity Challenges.....	26
4.	Factor 4 Weighs Against Discretionary Denial as There is Not Significant Overlap Between the Petition and the District Court Litigations	27
5.	Factor 6 Weighs Against Discretionary Denial Because the Merits are Strong.....	30
F.	There is no Inconsistency Between Petitioners' Claim Construction Positions That Would Warrant Discretionary Dismissal	31
III.	CONCLUSION.....	33

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Facebook, Inc. v. Windy City Innovations, LLC</i> , 973 F.3d 1321 (Fed. Cir. 2020)	14, 15
<i>Fox Group, Inc. v. Cree, Inc.</i> , 700 F.3d 1300 (Fed. Cir. 2012)	28
<i>Intel Corp. v. Proxense, LLC</i> , IPR-2025-00434, Paper 12	2
<i>Intel Corp. v. Proxense, LLC</i> , IPR2025-00327, Paper 12.....	16, 17
<i>MG Freesites Ltd. v. WellcomeMat, LLC</i> , IPR2024-00710, Paper 13 (P.T.A.B. Sept. 5, 2024).....	29
<i>Primerica Life Ins. Co. v. Woodall</i> , 975 F.3d 697, 699 (8th Cir. 2020).....	24
<i>Shenzen Tuozhu Technology Co., Ltd.</i> , IPR2-25-00438; Paper 10 at 3 (Director July 17, 2025)	17, 19
<i>Shenzen Tuozhu Technology Co., Ltd.</i> , IPR2025-00531; Paper 10 at 3 (Director July 17, 2025).....	17, 19
<i>Shenzen Tuozhu Technology Co., Ltd.</i> , IPR2025-00532; Paper 10 at 3 (Director July 17, 2025).....	17, 19
<i>Shenzen Tuozhu Technology Co., Ltd.</i> , IPR2025-00585; Paper 10 at 3 (Director July 17, 2025).....	17, 19
<i>Shenzen Tuozhu Technology Co., Ltd.</i> , IPR2025-00611, Paper 10 at 3 (Director July 17, 2025).....	17, 19
<i>Telefonaktiebolaget LM Ericsson v. Lenovo (United States), Inc.</i> , 120 F.4th 864 (Fed. Cir. 2024)	24
<i>Xerox Corp. v. Bytemark, Inc.</i> , IPR2022-00624, Paper 9	13, 14, 15

STATUTES

35 U.S.C. § 102(g)	28
35 U.S.C. §§ 302-307	6
35 U.S.C. §§ 311-319	6

OTHER AUTHORITIES

37 C.F.R. §§ 1.501 – 1.570	6
37 C.F. R. §§ 41.1 – 42.80	6
11A Wright & Miller § 2946, p. 106	24

PETITIONERS' LIST OF EXHIBITS

Exhibit No.	Description of Document
1001	U.S. Patent No. 7,257,582 B2 (the '582 Patent) to Rothschild (filed February 27, 2003; issued August 14, 2007)
1002	File history for the '582 Patent
1003	U.S. Patent No. 6,304,866 (Chow) to Chow et al. filed on June 27, 1997; issued October 16, 2001
1004	U.S. Patent No. 6,330,583 (Reiffin) to Reiffin filed on September 9, 1994; issued December 11, 2001
1005	U.S. Patent Application No. 2002/0019844 (Kurowski) to Kurowski et al. filed January 12, 2001; published February 14, 2002
1006	Complaint, <i>Intellectual Ventures I LLC et al. v. American Airlines, Inc.</i> , No. 4:24-cv-980-ALM (E.D. Tex. Nov. 2, 2024)
1007	Claim Chart for '582 Patent, <i>Intellectual Ventures I LLC et al. v. American Airline, Inc.</i> , No. 4:24-cv-980-ALM (E.D. Tex. Nov. 2, 2024) (Dkt. 1-14) (Hadoop)
1008	Claim Chart for '582 Patent, <i>Intellectual Ventures I LLC et al. v. American Airline, Inc.</i> , No. 4:24-cv-980-ALM (E.D. Tex. Nov. 2, 2024) (Dkt. 1-15) (Spark)
1009	“Some Thoughts on Parallel Processing,” Lynn D. Yarbough, Communications of the ACM, Vol. 3, Issue 10, page 539, October 1, 1960 (available at: https://dl.acm.org/doi/10.1145/367415.367426).
1010	“A Survey of Some Theoretical Aspects of Multiprocessing,” J. L. Baer, ACM Computing Surveys (CSUR), Volume 5, Issue 1 Pages 31 – 80, March 1, 1973 (available at: https://dl.acm.org/doi/10.1145/356612.356615)
1011	“Parallel Sorting Algorithms for Tightly Coupled Multiprocessors,” Michael J. Quinn, Parallel Computing 6 (1988) 349-357.

Exhibit No.	Description of Document
1012	“Removing Skew Effect in Join Operation on Parallel Processors,” Ron-Chung Hu, Richard R. Muntz, Computer Science Technical Report, University of California, Los Angeles, June 1989.
1013	“Parallel Architectures for Database Systems,” A.R. Hurson, L.L. Miller, S.H. Pakzad, M.H. Eich, B. Shirazi, Advances in Computers, Vol. 28, pages 107-151, 1989.
1014	“Parallel Algorithms for Merging and Sorting,” Narsingh Deo, Dilip SarKar, Information Sciences, Vol. 56, pages 151-161, 1991.
1015	“Parallel Algorithms for lcast Median of Squares Regression,” Chong-Wei Xu and Wei-Kei Shiue, Computational Statistics & Data Analysis, Vol. 16, pages 349-362, 1993.
1016	“On the Average Running Time of Odd-Even Merge Sort,” Christine Rub, Max Plank-Institute Fur Informtik, Research Report, April 1995.
1017	“Parallel Algorithms,” Guy E. Blelloch and Bruce M. Maggs, a chapter in “The Computer Science and Engineering Handbook.” CRC Press, 1997, ISBN: 0-8493-2909-4. Available at https://dl.acm.org/doi/pdf/10.5555/1882723.1882748 .
1018	“An Approach to Parallelizing Isotonic Regression,” Anthony J. Kearsley, Richard A. Tapia, Michael W. Trosset, Applied Mathematics and Parallel Computing, H. Fisher et. al. (eds.), Physica-Verlag Heidelberg (1996), pages 141-147.
1019	“Part 1: The Parallel Computing Environment, Alice E. Koniges, Morris A. Jette, and David C. Eder, in “Industrial Strength Parallel Computing,” Morgan Kaufmann, (2000). ISBN 9781558605404. Available at: http://wayback.cecm.sfu.ca/PSG/book/intro.html and at https://books.google.com/books?id=mWalawBciCQC&pg=PA1&source=gbs_toc_r&cad=2#v=onepage&q&f=false .
1020	GPFS: A Parallel File System, Jason Barkes, Marcelo R. Barrios, Francis Cougard, Paul G. Crumley, Didac Marin, Hari Reddy, Theerapong Thitayanun, IBM International Technical Support

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	Organization, April 1998.
1021	“Analysis of First-Come-First-Serve Parallel Job Scheduling,” Uwe Schwiegelshohn and Ramin Yahyapour. Proceedings of the Annual ACM-SIAM Symposium on Discrete Algorithms (1998). Available at http://dx.doi.org/10.1145/314613.315031 .
1022	Declaration of Dr. Michael Shamos regarding the invalidity of U.S. Patent No. 7,257,582 B2
1023	CV for Dr. Michael Shamos
1024	Claim Chart for ’582 Patent, <i>Intellectual Ventures I LLC et al. v. Southwest Airlines Co.</i> , No. 7:24-cv-277 (W.D. Tex. Nov. 2, 2024) (Dkt. 1-13) (Hadoop)
1025	Claim Chart for ’582 Patent, <i>Intellectual Ventures I LLC et al. v. Southwest Airlines Co.</i> , No. 7:24-cv-277 (W.D. Tex. Nov. 2, 2024) (Dkt. 1-14) (Spark)
1026	<i>Intentionally Blank</i>
1027	American’s Opposition to IV’s Motion for Leave to File an Amended Complaint, <i>Intellectual Ventures I LLC et al. v. American Airline, Inc.</i> , No. 4:24-cv-980-ALM (E.D. Tex. Nov. 2, 2024) (Dkt. 56)
1028	IV’s Reply in Support of its Motion for Leave to File an Amended Complaint, <i>Intellectual Ventures I LLC et al. v. American Airline, Inc.</i> , No. 4:24-cv-980-ALM (E.D. Tex. Nov. 2, 2024) (Dkt. 60)
1029	IV’s Disclosure of Preliminary Infringement Contentions, <i>Intellectual Ventures I LLC et al. v. American Airline, Inc.</i> , No. 4:24-cv-980-ALM (E.D. Tex. Nov. 2, 2024) (cover pleading only) (redacted)
1030	IV’s Disclosure of Preliminary Infringement Contentions, <i>Intellectual Ventures I LLC et al. v. Southwest Airlines Co.</i> , No. 7:24-cv-277 (W.D. Tex. Nov. 2, 2024) (cover pleading and exhibits 6 and 7 only)
1031	Defendant American Airlines, Inc.’s P.R. 3-3 Invalidity Contentions,

Exhibit No.	Description of Document
	<i>Intellectual Ventures I LLC et al. v. American Airline, Inc.</i> , No. 4:24-cv-980-ALM (E.D. Tex. Nov. 2, 2024) (cover pleading and Exhibit A-5 only)
1032	Defendant Southwest Airlines Co.’s Preliminary Invalidity Contentions, <i>Intellectual Ventures I LLC et al. v. Southwest Airlines Co.</i> , No. 7:24-cv-277 (W.D. Tex. Nov. 2, 2024) (cover pleading and Exhibit 582-5 only)
1033	Defendant American Airlines, Inc.’s Rule 4-2 Disclosures, <i>Intellectual Ventures I LLC et al. v. American Airline, Inc.</i> , No. 4:24-cv-980-ALM (E.D. Tex. Nov. 2, 2024)
1034	Brief in Support of Patent Owner’s Request for Discretionary Denial, <i>American Airlines, Inc. and Southwest Airlines Co.</i> , IPR2025-00782 (July 29, 2025)
1035	Joint Motion to Amend Scheduling Order dated May 24, 2025, <i>Intellectual Ventures I LLC et al. v. Southwest Airlines Co.</i> , No. 7:24-cv-277 (W.D. Tex. Nov. 2, 2024) (Dkt. 38)
1036	Complaint, <i>Intellectual Ventures I LLC et al. v. Southwest Airlines Co.</i> , No. 7:24-cv-277 (W.D. Tex. Nov. 2, 2024)

I. INTRODUCTION

Three weeks after filing its request for Discretionary Denial, Patent Owner sent an email to the Director informing her that Patent Owner based its brief on incorrect dates for the Markman Hearing and Trial Dates in the Southwest District Court Litigation. Doc. No. 3101. But instead of requesting authorization to file an amended brief to correct this error and offer argument based on the correct dates, Patent Owner simply requested authorization to add the correct scheduling order as an exhibit. *Id.*

Patent Owner's misrepresentation of facts underlying its Discretionary Denial request creates a problem for Director review. Specifically, adding exhibits without making any changes to the Brief accomplishes nothing as Patent Owner's Brief argues for discretionary denial *based on the erroneous dates*. The Director should not be required to consider arguments based on incorrect information caused by Patent Owner's error and its subsequent failure to correct that error in the Brief. Under these circumstances, which are of Patent Owner's own making, Patent Owner's request for discretionary denial should be denied.

There are at least five other reasons why the Director should deny Patent Owner's Request.

First, Patent Owner presents no evidence that Petitioners coordinated with Unified Patents in bringing this Petition. Speculation and baseless conjecture is not

evidence. Even if there was coordination (there was not), there is no overlap between this Petition and Unified Patent's *Ex Parte* Reexamination, each of which addresses different prior art under different standards and before different tribunals. Regardless, the indisputable facts show that there is no coordination.

Second, the Petition is not "facially deficient." Patent Owner misleads by focusing exclusively on three paragraphs regarding "motivation to combine." Patent Owner overlooks the fact that Petition also contends that each reference, by itself, discloses (or renders obvious) the claims of the '582 patent.

Third, Petitioners' expert testimony contains supporting evidence and technical reasoning and therefore, contrary to the cases relied on by Patent Owner, Petitioners' expert testimony is entirely proper and not a reason for the Director to discretionarily deny the Petition.

Fourth, consistent with the Director's recent guidance in *Intel Corp. v. Proxense, LLC*, IPR-2025-00434, Paper 12, although the '582 patent has been in force for years, it has not been "commercialized, asserted, marked, licensed, or otherwise applied" in Petitioners' technology space—airlines. This weighs against Patent Owner's claim of settled expectations.

Fifth, Petitioners' claim construction positions in its Petition and in the respective district court litigations are not inconsistent and therefore do not warrant discretionary dismissal.

Accordingly, the Director should deny Patent Owner's Request and allow the Petition to proceed on the merits to preserve the resources of two different district courts.

II. THE DIRECTOR SHOULD ALLOW THE PETITION TO PROCEED ON THE MERITS

A. Petitioners and Unified Patents Are Not Affiliated With Each Other and Did Not Coordinate in Their Challenges to the Validity of the '582 Patent

As its lead argument, Patent Owner asks the Director to exercise her discretion to dismiss the Petition without addressing its merits because Patent Owner contends that Petitioners are affiliated with Unified Patents and Petitioners coordinated with Unified Patents in bringing this Petition and Unified Patent's *ex parte* Request for Reexamination ("Reexamination"). Patent Owner's contentions must fail, however, because Patent Owner has not come forward with any *evidence* of coordination between Petitioners and Unified Patents. Patent Owner's lack of evidence is unsurprising given the indisputable facts set forth herein demonstrate that Petitioners and Unified Patents are not related in any way and Petitioners and Unified Patents have not coordinated at all.

1. Patent Owner's Baseless (and Incorrect) Accusation of Affiliation or Coordination Between Either Petitioner and Unified Patents Lacks Evidence

Patent Owner asks the Director to exercise her discretion to deny the Petition but fails to provide any *evidence* of the alleged "memberships" and "coordination"

between Petitioners and Unified Patents. Instead, Patent Owner offers only *speculation* that Petitioners are “members” of Unified Patents, that one or both of Petitioners paid “membership fees” to Unified Patents, and that “Petitioners and Unified Patents are coordinating multiple attacks on Patent Owner’s patents for the purpose of harassing Patent Owner.” Request at 5-6. To the extent the Director would like evidence of the alleged “coordination” (or lack thereof), the Director can order discovery on the issue. The Director should not exercise her discretion to deny the Petition based on Patent Owner’s unsupported (and false) allegations.

For example, Patent Owner contends that Petitioners “likely” made payments to Unified Patents: “Patent Owner is arguing that the specific evidence of quid pro quo that is plainly apparent here -- namely, substantial membership payments *likely* made by one or both of Petitioners to Unified Patents, in combination with a track record of Unified Patents filing post-grant challenges supporting one or both of Petitioners’ litigation positions -- is a basis for discretionary denial of the present inter partes review.” Request at 9 (emphasis added). Stating that one “likely” made payments is not *proof* that any payments were made. In any event, Petitioners have not made any payments to Unified Patents.

Patent Owner further contends that coordination is “evident from the fact that aspects of the Reexamination Request filed by Unified Patents (Ex. 2003) on

the '582 Patent (subject to this IPR) parrot the present Petition almost verbatim.” Request at 8. In a table on page 9, Patent Owner shows two excerpts from the Petition and the Reexamination which Patent Owner contends “show the lengths to which Unified Patents has gone to maintain consistency with the positions taken by Petitioners herein.” *Id.* Patent Owner found two alleged instances of “coordination.” That Patent Owner could find only two alleged instances of “coordination” in the *48-page* Petition and the *68-page* Reexamination demonstrates a *lack of coordination*.

In the first excerpt relied on by Patent Owner, the similarity between the Petition and the Reexamination is that both quote the same sentences from the '582 patent specification at 1:14-17 and 1:48-54 summarizing the field of the invention (“[This invention] deals with a way...”) and the objects of the invention (“The principal object of the present invention is...”), respectively. Request at 9 (comparing Petition at 5-6 to Ex. 2003 at 8). It would be surprising if the Petition and the Reexamination to did not quote these two summary sentences from the '582 patent specification as the Petition and the Reexamination each address the invalidity of the '582 patent and these two sentences summarize the “invention” in sections that are only three sentences long. This is not evidence of “coordination.”

In the second excerpt, the Petition and the Reexamination offer the same descriptions for the level of skill in the art of a POSITA. Request at 9 (comparing

Petition at 7 to Ex. 2003 at 13). Petitioner filed the Petition more than two months before Unified Patents filed its Request. As the Petition is publicly available, it is reasonable to believe that Unified Patents accessed the Petition on its own, agreed with Petitioner's description of the level of skill in the art of a POSITA, and adopted it in its Request. This, too, is not evidence of "coordination."

Patent Owner further contends that proof of Petitioners' and Unified Patent's coordination is the fact that Petitioners and Unified Patents filed a Petition and Reexamination Request, respectively, on a different patent, U.S. Patent No. 8,332,844. Again, this is not evidence of any coordination, given that Patent Owner has widely asserted these two patents across various industries.

Further, there is no overlap between the Petition and the Reexamination for at least the following reasons:

- Different statutes and regulations govern the Petition and the Reexamination: 35 U.S.C. §§ 311-319 and 37 C.F.R. §§ 41.1 – 42.80 for the Petition and 35 U.S.C. §§ 302-307 and 37 C.F.R. §§ 1.501 – 1.570 for the Reexamination;
- Different tribunals will decide the issue of invalidity: for the Petition, the decision whether to grant the Petition and the merits of the Petition, if granted, is decided by a panel of three PTAB ALJs, whereas, for the Reexamination, the Director or her designated

representative will decide whether to order the Request, and, if ordered, the Central Reexamination Unit of the PTO will examine the '582 patent in view of the asserted prior art;

- The Petition and Reexamination address different prior art: the Petition addresses the validity of the '582 patent in view of Chow (Ex. 1023), Reiffin (Ex. 1024), and Kurowski (Ex. 1025), whereas the Request addresses the validity of the '582 patent in view of Iyer and Reeve (Ex. 2003).

Thus, these differences between the Petition and the Reexamination mean that there is no concern of inconsistent results or inefficiencies that would caution against the Petition and the Reexamination proceeding. This compels against the exercise of the Director's discretion to deny the Petition.

2. The Indisputable Facts Show that Neither Petitioner is Affiliated in Any Way with Unified Patents and Neither Petitioner Coordinated in Any Way with Unified Patents

Apart from Patent Owner's unsupported, speculative contentions, the following facts show that there was (and is) **no** coordination between Petitioners and Unified Patents:

- Petitioner American Airlines, Inc.: (1) is not a member of Unified Patents; (2) has never paid any membership fees to Unified Patents; (3)

had no knowledge that Unified Patents would be filing its Request; and (4) has never coordinated with Unified Patents regarding anything.

- Petitioner Southwest Airlines Co.: (1) is not a member of Unified Patents; (2) has never paid any membership fees to Unified Patents; (3) had no knowledge that Unified Patents would be filing its Request; and (4) has never coordinated with Unified Patents regarding anything.

B. The Petition is Not “Facially Deficient,” as Patent Owner Wrongly Contends

Patent Owner further contends that the Director should exercise her discretion and deny institution because the Petition is “facially deficient.” Request at 11. Patent Owner argues that both grounds of the Petition are “predicated on combining at least Chow and Reiffin,” but the Petition “makes only limited and conclusory allegations with respect to any motivation to combine the references.” *Id.*

Patent Owner misrepresents the Petition; the Petition contends that each reference (Chow and Reiffin) meets each limitation of each claim and therefore the claims are obvious over each of these references separately or in combination, as shown in the Table below. Patent Owner ignores these contentions, instead focusing only on the Petition’s “motivation to combine” arguments. Request at 11-16:

<u>Claim of the '582 Patent</u>	<u>Petitioner's Contention</u>
1(pre)	"Thus, Chow and Reiffin both disclose or suggest claim [1pre]. Ex.1022 ¶ 142." Petition at 13. "Thus, Chow, Reiffin, and Kurowski disclose or suggest claim [1pre]. Ex.1022 ¶ 256.
1(a)	"Thus, Chow and Reiffin both disclose or suggest claim 1a. Ex.1022 ¶ 147." Petition at 15. "Thus, Chow, Reiffin, and Kurowski disclose or suggest claim [1a]. Ex.1022 ¶ 260." Petition at 39.
1(b)	"Thus, Chow and Reiffin both disclose or suggest claim [1b]. Ex.1022 ¶ 151." Petition at 16. "Thus, Chow, Reiffin, and Kurowski disclose or suggest claim [1b]. Ex.1022 ¶ 264." Petition at 39.
1(c)	"Thus, Chow and Reiffin both disclose or suggest claim [1c]. Ex.1022 ¶ 155." Petition at 17. "Thus, Chow, Reiffin, and Kurowski disclose or suggest claim [1c]. Ex.1022 ¶ 268." Petition at 40.
1(d)	"Thus, Chow and Reiffin both disclose or suggest claim [1d]. Ex.1022 ¶ 159." Petition at 18. "Thus, Chow, Reiffin, and Kurowski disclose or suggest claim [1d]. Ex.1022 ¶ 272." Petition at 41.
1(e)	"Thus, Chow and Reiffin both disclose or suggest claim [1e]. Ex.1022 ¶ 164." Petition at 19. "Thus, Chow, Reiffin, and Kurowski disclose or suggest claim [1e]. Ex.1022 ¶ 276." Petition at 42.
Claim 1 as a whole	"Therefore, claim 1 was obvious over Chow and Reiffin separately and over their combination. Ex.1022 ¶ 165." Petition at 19; emphasis added. "Chow, Reiffin, and Kurowski disclose or suggest the method defined in claim 1. Ex.1022 ¶ 278." Petition at 43.

<u>Claim of the '582 Patent</u>	<u>Petitioner's Contention</u>
2	"Thus, Chow and Reiffin both disclose or suggest claim 2. Ex.1022 ¶ 170. Therefore, claim 2 was obvious over Chow and Reiffin separately or in combination. Ex.1022 ¶ 171." Petition at 21; emphasis added. "Thus, Chow, Reiffin, and Kurowski disclose or suggest claim 2. Ex.1022 ¶ 282." Petition at 44.
3	"Thus, Chow and Reiffin both disclose or suggest claim 3. Ex.1022 ¶ 176. Claim 3 was therefore obvious over Chow and Reiffin separately or in combination. Id." Petition at 22.
4	"Thus, Chow and Reiffin both disclose or suggest claim 4 and therefore claim 4 was obvious over Chow and Reiffin separately or in combination. Ex.1022 ¶¶ 181-182." Petition at 23; emphasis added.
5	"Thus, Chow and Reiffin both disclose or suggest claim 5 and therefore claim 5 was obvious over Chow and Reiffin separately or in combination. Ex.1022 ¶¶ 189-190." Petition at 24; emphasis added.
6	"Thus, Chow and Reiffin both disclose or suggest claim 6 and therefore claim 6 was obvious over Chow and Reiffin separately or in combination. Ex.1022 ¶¶ 195-196." Petition at 25; emphasis added.
7	"Thus the combination of Chow and Reiffin discloses or suggests claim 7 and therefore claim 7 was obvious over Chow and Reiffin separately or in combination. Ex.1022 ¶¶ 195-196." Petition at 26; emphasis added.
8	"Thus, Chow and Reiffin both disclose or suggest claim 8 and therefore claim 8 was obvious over Chow and Reiffin separately or in combination. Ex.1022 ¶¶ 207-208." Petition at 27; emphasis added.
9	"Thus, Chow and Reiffin both disclose or suggest claim 9 and therefore claim 9 was obvious over Chow and Reiffin separately

<u>Claim of the '582 Patent</u>	<u>Petitioner's Contention</u>
	or in combination. Ex.1022 ¶¶ 213-214.” Petition at 28; emphasis added.
10	“Thus, Chow and Reiffin together disclose or suggest claim 10 and therefore claim 10 was obvious over Chow and Reiffin separately or in combination. Ex.1022 ¶¶ 219-220.” Petition at 29; emphasis added.
11	“Thus, Chow and Reiffin both disclose or suggest claim 11 and therefore claim 11 was obvious over Chow and Reiffin separately or in combination. Ex.1022 ¶¶ 226-227.” Petition at 30; emphasis added.
12	“Thus, Chow and Reiffin together disclose or suggest claim 12 and therefore claim 12 was obvious over Chow and Reiffin separately or in combination. Ex.1022 ¶¶ 233-234.” Petition at 32; emphasis added.
13	“Thus, Chow and/or Chow in combination with Reiffin disclose or suggest claim 13 and therefore claim 13 was obvious over Chow and Reiffin separately or in combination. Ex.1022 ¶¶ 239-240.” Petition at 33; emphasis added.
14	“Thus, Chow and Reiffin together disclose or suggest claim 14 and therefore claim 14 was obvious over Chow and Reiffin separately or in combination. Ex.1022 ¶¶ 245-246.” Petition at 34; emphasis added.
3-14	“Chow, Reiffin, and Kurowski disclose or suggest the method defined in claim 1 and the method defined in claim 2. Ex.1022 ¶ 283. Further, as previously noted in Ground 1, Chow and Reiffin disclose or suggest claims 3-14. Ex.1022 ¶ 284. Therefore, Chow, Reiffen, and Kurowski disclose or suggest claims 3-14. Id. ¶ 285.” Petition at 44.

Regardless, Patent Owner’s arguments regarding the Petition’s discussion of the “motivation to combine” do not demonstrate that the Petition is “facially deficient.” Patent Owner improperly focuses its arguments in its Request on three paragraphs from the 48-page Petition. Request at 11. In doing so, however, Patent Owner ignores Petitioner’s reliance on specific aspects of Chow and Reiffin with respect to each element and each claim of the ’528 patent throughout the rest of the Petition. When Petitioners’ contentions in its Petition are considered in full (as they would be when the Board considers the merits of the Petition), Patent Owner’s “motivation to combine” arguments are not “facially deficient,” as Patent Owner contends.

C. The Expert Testimony Provides Supporting Evidence and Technical Reasoning and Therefore is Not a Reason to Discretionarily Deny the Petition

Patent Owner further contends that the Director should exercise her discretion to deny the Petition, because “the Petition extensively relies on a 96-page expert declaration that largely parrots *verbatim* the wording of the Petition.” Request at 18.

The Director’s March 26, 2025 Memorandum regarding “Interim Processes for PTAB Workload Management” identifies “[t]he extent of the petition’s reliance on expert testimony” as one of the considerations that a party may address when seeking discretionary denial of an IPR petition. Memorandum at 2. The

Memorandum, however, does not state how the extent of the reliance on expert testimony affects discretionary denial, *e.g.*, whether extensive reliance on expert testimony weighs in favor of, or against, discretionary denial. Moreover, the Memorandum does not state, as Patent Owner contends, that a “further factor that favors discretionary denial” is “extensive reliance on expert testimony that is mostly a verbatim restatement of the Petition.” Request at 20.

Patent Owner relies on two cases as support. Neither case, however, supports Petitioner’s contentions. As described below, in both cases, unlike the present case, the problem with the expert testimony was not that it repeated statements in the Petition, but instead that the expert’s testimony was conclusory and lacked supporting evidence or technical reasoning. Further, neither case involved a request that the Director discretionarily deny an IPR petition; instead both cases involved IPR petitions that the Board addressed on their merits. In other words, despite the deficiencies with the expert declarations in those cases, the Director did not discretionarily deny either Petition.

In *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9, the Board, when addressing the merits of the Petition, gave little weight to the expert’s (Dr. Jones’) statement that “[a] POSITA would understand that such a blocking would require recording the blocking in a data record associated with that user’s account,” because “Dr. Jones does not cite to any additional supporting evidence or provide

any technical reasoning to support his statement.” *Id.* at 15 (citing 37 C.F.R. § 42.65(a) (“Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight.”))

Similarly, in *Facebook, Inc. v. Windy City Innovations, LLC*, 973 F.3d 1321, 1341 (Fed. Cir. 2020), the court, when reviewing the Board’s decision on the merits of the IPR, agreed with the Board’s determination that Facebook’s expert’s testimony did not “add materially to Petitioner’s unpersuasive attorney argument” because it “merely repeat[ed] Petitioner’s argument, nearly verbatim, ***without citation to the basis for his testimony.***” *Id.* at 1340-41 (emphasis added).

Here, Patent Owner does not contend that the expert’s testimony is conclusory and without supporting evidence or technical reasoning. Request at 18-20. Instead, Patent Owner’s table (Request at 18-20) merely shows which arguments in the Petition are supported by which paragraphs in the expert declaration. Patent Owner’s table does not even attempt to demonstrate that the expert declaration (or the Petition) lacks supporting evidence or technical reasoning. Further, Patent Owner’s table does not identify or describe any paragraphs in the 92-page expert declaration that are not contained in the shorter, 48-page Petition.

For example, the second entry in Patent Owner’s table relates to “Ground 1 – Discussion of [1pre] (Pet., 12)” and Ex. 1022 (expert declaration) at ¶¶ 140-142.

Although the expert declaration addresses claim [1pre] in Paragraphs 138-139, Patent Owner does not include these paragraphs in its table. This is because Paragraphs 138-139 of the expert declaration (reproduced below) are *not* contained in the Petition:

138. Breaking down a computer process into subtasks is part and parcel of parallel processing, the whole point of which is to divide work among multiple processors. This preamble is entirely conventional.

139. Whether or not the preamble is limiting, it is disclosed by Chow (EX1003). Chow discloses a method of effecting on a preexisting input file a computer-executable process comprised of a plurality of subtasks.

Ex. 1022 at ¶¶ 138-139.

Further, Paragraphs 140-142, which are included in Patent Owner's table, are supported by evidence. As shown in Ex. 1022 at ¶¶ 140-142, the expert declaration quotes from multiple parts of the prior art references as support: Ex. 1003 at 10:10-13 and 5:1-5; Ex. 1004 at 1:7-12. This distinguishes the expert declaration in this case from the declarations in the *Xerox* and *Facebook* cases.

Thus, there is no basis for giving “little weight” to the expert declaration (Ex. 1022) that supports the Petition. Therefore the “extent of the petition’s

reliance on expert testimony” factor does *not* support discretionary denial of the Petition.

D. A “Persuasive Reason” for the Board to Review is that the ’582 Patent Has Not Previously Been Asserted In Petitioners’ “Technology Space”—Airlines

Patent Owner further contends that the fact that the ’582 patent has been in force for nearly 18 years demonstrates that the parties’ “settled expectations” weigh in favor of discretionary denial. Request at 20-22.

Although Patent Owner cites *Intel Corp. v. Proxense, LLC*, IPR2025-00327, Paper 12, Patent Owner ignores the portion of that opinion that provides “persuasive reasons” why the Board should review challenged claims several years after their issuance, one reason occurring when the patent has not been asserted in the petitioner’s particular technology space:

There may be persuasive reasons why the Board should review challenged claims several years after their issuance date As another example, a patent may have been in force for years but may not have been commercialized, asserted, marked, licensed, or otherwise applied in a petitioner’s particular technology space, if at all. These non-exclusive examples provide considerations that weigh against a patent owner’s claim of settled expectations and bears on the Director’s discretion.

Id. at 2-3.

Here, the Petitioners are American Airlines, Inc. and Southwest Airlines Co. Both Petitioners are airlines. As airlines, Petitioners are not in the business of parallel processing systems and therefore Petitioners are not in the technology space of the '582 patent.

As best understood by Petitioners, the '582 patent, despite having been issued nearly 18 years ago, has *never* been “commercialized, asserted, marked, licensed, or otherwise applied” in the “airline” technology space until Patent Owner sued Petitioners in November 2024 in district courts in Texas. Petition at 3. Indeed, Patent Owner offers no facts that would show that the '582 patent has been “commercialized, asserted, marked, licensed, or otherwise applied” in the “airline” technology space prior to Patent Owner’s district court actions against Petitioners on the '582 patent. This evidence weighs against Patent Owner’s claim of settled expectations. *See Shenzhen Tuozhu Technology Co., Ltd.*, IPR2-25-00438; IPR2025-00531; IPR2025-00532; IPR2025-00585; and IPR2025-00611, Paper 10 at 3 (Director July 17, 2025) (Petitioner’s evidence that the challenged patents have never been “commercialized, asserted, marked, licensed, or otherwise applied” in Petitioner’s ‘particular technology space’ is evidence that ‘weighs against Patent Owner’s claim of strong settled expectations.’)

Setting aside the fact that Petitioners are airlines, the '582 patent was purchased by Patent Owner for assertion. If there were any settled expectations regarding the '582 patent, those expectations were that this patent did not read on open-source software as the current Patent Owner, but not the original patent owner, asserts.

Further, at present, the parallel American and Southwest District Court Litigations involve the same 6 different patents spanning 6 families that involve a diverse range of subject matter, *i.e.*, in addition to the parallel processing of the '582 patent, other asserted patents, each of which is currently the subject of IPRs brought by Petitioners, involve different subject matter: (1) U.S. Patent No. 7,949,785 (IPR2025-00786) is directed to maintaining virtual communication networks and routing messages in such networks; (2) U.S. Patent No. 8,332,844 (IPR2025-00931) is directed to technology for caching and indexing for block-level distributed application management; (3) U.S. Patent No. 8,407,722 (IPR2025-00987) is directed to routing/transferring information for remotely updating content through a digital network; (4) U.S. Patent No. 7,324,469 (IPR2025-00782) is directed to providing rural hotspots, such as for Wi-fi access; and (5) 8,027,326 (IPR2025-01055). Exs. 1006 and 1036¹.

¹ Patent Owner has asserted 5 additional patents against Southwest and is seeking to assert the same 5 patents and one additional patent against American.

The large number and vast scope of the patents asserted in the district court litigation weighs against discretionary denial, as the Board is better suited to review a large number of patents involving diverse subject matter. *Shenzen*, Paper 10 at 3 (citing *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00217, Paper 9 at 2-3 (Director June 13, 2025)).

The fact that the '582 patent has not been “commercialized, asserted, marked, licensed, or otherwise applied” in the “airline” technology space coupled with the large number and vast scope of the patents asserted in the district court litigation bears on the Director’s discretion, weighing decidedly against discretionary denial.

E. The *Fintiv* Factors Do Not Favor Discretionary Denial

Patent Owner’s arguments regarding the *Fintiv* factors are based primarily on Patent Owner’s representation that, in the Southwest District Court Litigation, “Judge Albright has set the Markman Hearing for 7/29/2025 and has scheduled Trial for 7/27/2026. Ex. 2006, 7 (Dkt. #24).” Request at 22. Patent Owner’s representation regarding the Markman Hearing and Trial Dates in the Southwest District Court Litigation is false. Three weeks after filing its Discretionary Denial request, Patent Owner, in an email to the Director (Doc. No. 3101), acknowledged providing false information, but provided no explanation for how Patent Owner

failed to fulfill its duties to the Patent Office on such facts. Moreover, there are several problems with Patent Owner's email.

First, Patent Owner's representation that "*a few days before the Discretionary Denial Briefs were filed* (and unknown to me at the time), *the parties had agreed to a revised schedule* changing the Markman Hearing and Trial Date" is incorrect. Doc. No. 3101 (emphasis added). Patent Owner filed its Discretionary Denial Briefs on July 9, 2025. Patent Owner agreed to the revised schedule at least *46 days before* Patent Owner filed the Discretionary Denial Brief (not a "few days before," as Patent Owner states in his email), when, on May 24, 2025, the parties filed a Joint Motion to Amend Scheduling Order setting forth their agreed upon amended schedule. Ex. 1035. As stated in the Joint Motion, the reason for the agreed-upon revision to the schedule was that "[o]n May 20, 2025, counsel for Plaintiffs informed counsel for Southwest of Intellectual Ventures' intention to seek leave to amend their complaint to assert five (5) additional patents against Southwest." *Id.* at 1. The court in the Southwest District Court Litigation entered the parties' agreed-upon schedule as an Agreed Scheduling Order on July 2, 2025, one week before Patent Owner filed its Discretionary Denial Brief. Ex. 2011.

Second, Patent Owner's counsel's representation in the email that "the parties had agreed to a revised schedule changing the Markman Hearing and Trial

Date to December 8, 2025 and **July 11, 2027**' is also incorrect. Doc. No. 3101 (emphasis added). The correct Trial Date, as stated in both the Joint Motion and the Agreed Scheduling Order is January 11, 2027. Ex. 2011 at 9; Ex. 1035 at 9.

Third, Patent Owner's counsel provides no statement as to when he discovered his error regarding the erroneous Markman Hearing and Trial Dates. *Id.* But on July 29, 2025, Patent Owner filed a Brief in Support of Patent Owner's Request for Discretionary Denial in IPR2025-00782 (signed by the same counsel who signed the Request in this case), which involves the validity of another patent asserted by Patent Owner in both the American and the Southwest District Court Litigations. Ex. 1034. In that Brief, Patent Owner included the Agreed Scheduling Order (Ex. 2011 in this case; Ex. 2009 in IPR2025-00782) and referred to the correct trial date in the Southwest District Court Litigation. Ex. 1034 at 11.

Thus, although Patent Owner's counsel was plainly aware of the correct Markman Hearing and Trial Dates in the Southwest District Court Litigation before July 29, 2025, the evidence shows that he waited at least a few days (likely more given that a Discretionary Denial brief is not written overnight) to even notify the Director of this error. Patent Owner's counsel further fails to explain how he could have lacked the correct information when Patent Owner and Patent Owner's litigation counsel plainly knew the correct dates at least 46 days earlier,

on May 24, 2025, when Patent Owner filed the Joint Motion setting forth the revised dates agreed to by Patent Owner. Ex. 1035.

Fourth, although Patent Owner's counsel's email informs the Director of the errors in the Discretionary Denial Briefs, Patent Owner does not request authorization to file a *corrected brief* with any argument for Discretionary Denial based on the correct dates. Instead, Patent Owner merely requests "authorization to file as exhibits the updated scheduling order in the parallel litigation (reflecting the correct dates) and the order denying the stay request." Doc. No. 3101. Adding two exhibits changes nothing—all of Patent Owner's contentions based on the incorrect dates remain. Even though Patent Owner is aware of the misstatements in the Brief, Petitioner and the Director are still faced with a Brief that argues that the Director should exercise her discretion *based on the incorrect dates*. Request at 22-27.

Further, Patent Owner states that the court in the American District Court Litigation set the Markman Hearing for 10/14/2025 and has scheduled the Final Pretrial Conference for 10/19/2026. Request at 23-24. Importantly, the American District Court Litigation does not have a set trial date. Further, omitted by Patent Owner is the fact that, on May 23, 2025 (over one month before filing its Request), Patent Owner filed a Motion for Leave to File an Amended Complaint, seeking to add claims for infringement of an additional 6 patents against Petitioner American

(which, if granted, would cause the total number of patents asserted against American to increase to 12). Exs. 1027-1028. In its Opposition to Patent Owner's Motion for Leave to Amend, Petitioner American contended that, if granted, the Court should extend all deadlines by 34 weeks:

In the alternative, if this Court determines that IV's amendment should be allowed, American respectfully requests the Court suspend all current deadlines and enter the schedule attached as Ex. B, which extends all pending deadlines by 34 weeks (the approximate amount of time between the filing of the original complaint and expected filing date of the amended complaint).

Ex. 1027 (Dkt. #56) at 12-13 and Exhibit B. Indeed, Patent Owner agreed to a significant extension of the schedule in the Southwest District Court Litigation after amending its complaint to add multiple patents. And in its American District Court Litigation, Patent Owner did not oppose Petitioner American's request for an extension of all dates by 34 weeks should the court permit Patent Owner to add the 6 additional patents to the action. Ex.1028.

Patent Owner's Motion for Leave to Amend is currently pending in the American District Court Litigation. If the court grants the motion, it is expected that the court will extend all dates, as per American's unopposed request and consistent with how a court would likely manage its docket when a party adds

claims for infringement of 6 additional patents to a case that already involves 6 other patents. Like its omission in its Request of the operative dates in the Southwest District Court Litigation, Patent Owner's omission in its Request of its Motion for Leave to Amend and Petitioner American's request to modify the schedule was no mistake.

These issues with erroneous dates, failure to correct the Brief, and omission of a pending Motion to Amend, demonstrate that Patent Owner has failed to comply with the simple maxim that, when asking the Director to grant equitable relief, *i.e.*, exercise her discretion to deny the Petition without addressing its merits, Patent Owner should similarly do equity itself by coming to the Director with clean hands. *Telefonaktiebolaget LM Ericsson v. Lenovo (United States), Inc.*, 120 F.4th 864, 877 n 15 (Fed. Cir. 2024) (quoting *Primerica Life Ins. Co. v. Woodall*, 975 F.3d 697, 699 (8th Cir. 2020) and citing 11A Wright & Miller § 2946, p. 106 (“A principle closely related to the clean-hands maxim is that before plaintiff will be permitted to invoke the aid of a court of equity, plaintiff must do equity.”)).

Accordingly, pursuant to the actual, operative dates set in the Southwest District Court Litigation and likely to be set in the American District Court Litigation, the *Fintiv* factors weigh against discretionary denial.

1. Factor 1 Weighs Against Discretionary Denial Because Judge Mazzant Could Issue a Stay in the American District Court Litigation

Patent Owner contends that, if the Board institutes the Petition, it is unlikely that Judge Albright, in the Southwest District Court Litigation would grant a stay. Request at 24. Patent Owner fails to address whether Judge Mazzant would grant a stay in the American District Court Litigation.

As Judge Mazzant could grant a stay if the Board grants the Petition, the first factor weighs against institution.

2. Factor 2 Weighs Against Discretionary Denial When Considering the Correct Pre-Trial and Trial Dates in the District Court Litigations

Patent Owner's representations that the Markman Hearing and Trial Dates in the pending litigations are such that these events will occur before the Final Written Decision is due are erroneous. Request at 24-26.

As discussed, the current schedule in the Southwest District Court Litigation sets the Markman Hearing for December 8, 2025 and the Trial Date for January 11, 2027. Ex. 2006. In the American District Court Litigation, no trial date is set. Moreover, there is a pending Motion for Leave to Amend to add 6 patents and Petitioner American's pending request to re-set the schedule to accommodate the additional 6 patents added to the case. Exs. 1027-1028.

When considering factor 2 using the actual, operative dates in the Southwest District Court Litigation and the pending request for new dates in the American District Court Litigation, as discussed above, the Final Written Decision in this case will occur *before* the Trial Dates in both district court litigations.

Factor 2 thus weighs against discretionary denial.

3. Factor 3 Weighs Against Discretionary Denial, Particularly Given the Multiple Different District Courts Currently Considering these Validity Challenges

This IPR is uniquely situated to efficiently resolve the validity of the '582 patent and save the need for multiple district courts to address these invalidity issues. If the IPR is not instituted, then at least *two* different district courts will need to resolve these invalidity arguments. However, if the IPR is instituted, the same invalidity arguments need only be addressed *once* by the Board, as this IPR is being brought by two Petitioners, American and Southwest. This fact strongly favors institution, not discretionary denial.

Further, Patent Owner's contentions that "[b]y the time the Board's institution decision is due (on 11/9/25), all of the Markman briefing and the Markman Hearings in both the Southwest and American District Court Litigations (scheduled for 7/29/25 and 10/14/25, respectively) will have been completed, and in all likelihood one or both of Judges Albright and Mazzant will have issued their claim construction hearings" (Request at 26-27) are, as discussed, erroneous. The

correct date for the Markman hearing in the Southwest District Court Litigation is December 8, 2025, which is *after* the November 9, 2025 institution date. Ex. 2011.

The current date in the American District Court Litigation for the claim construction hearing is October 14, 2025; however, if the court grants Patent Owner's Motion for Leave to Amend its complaint to add 6 patents, that date will certainly be extended, similar to the extension of dates when Patent Owner asserted additional patents against Southwest in its litigation. Exs. 2011 and 1027. Thus, pursuant to these dates, the district court will not have made a substantial investment in either case by the institution date of November 9, 2025.

Therefore, the third factor weighs strongly against discretionary denial.

4. Factor 4 Weighs Against Discretionary Denial as There is Not Significant Overlap Between the Petition and the District Court Litigations

In this IPR, Petitioners challenge the validity of all claims of the '582 patent, claims 1-14. In the American District Court Litigation and in the Southwest District Court Litigation, Patent Owner asserts only claims 1, 2, 5, and 7 of the '582 patent (Exs. 1029 and 1030), and therefore, in the Litigations, Petitioners only challenge the validity of claims 1, 2, 5, and 7 of the '582 patent.

Patent Owner contends that there is "substantial overlap" in the claims challenged in the District Court Litigations and the IPR Petition, and further contend that the "lack of complete overlap" of the claims was "of Petitioners' own

making,” *i.e.*, according to Patent Owner, Petitioners engaged in “gamesmanship” by “engineering a lack of complete overlap in challenged claims” to create a situation that weighs against discretionary denial. Request at 28. Patent Owner justifies these serious, but false, accusations against Petitioners by contending that “there was nothing prohibiting Petitioners from challenging the validity of all of the claims of the ’582 patent in either or both of the Southwest and American District Court Litigations.” *Id.* (emphasis in original).

Patent Owner is simply **wrong**. The Federal Circuit has held that there is no case or controversy with respect to **unasserted** patent claims and therefore a court has no jurisdiction to adjudicate the validity of unasserted patent claims. *Fox Group, Inc. v. Cree, Inc.*, 700 F.3d 1300, 1308-09 (Fed. Cir. 2012) (“There was no case or controversy with respect to the unasserted claims at the time of the summary judgment motions; therefore the district court did not have jurisdiction over the unasserted claims. *Id.* Accordingly, we vacate the district court’s declaration that the entire ’130 patent is invalid, but uphold the district court’s finding of invalidity of claims 1 and 19 under § 102(g).”)

Here, there is no “gamesmanship” by Petitioners or any attempt to “engineer” a lack of complete overlap in challenged claims. Instead, as Patent Owner asserted only claims 1, 2, 5, and 7 in the American and Southwest District Court Litigations (Exs. 1029 and 1030), neither court has jurisdiction over

unasserted claims 3, 4, 6, and 8-14 of the '582 patent. Thus, because Patent Owner chose to assert only claims 1, 2, 5, and 7, the court has jurisdiction over only claims 1, 2, 5, and 7. Petitioners are therefore prohibited from challenging the validity of unasserted claims 3, 4, 6, and 8-14.

Patent Owner further speculates that, because Petitioners include the “Gamma System” (which Patent Owner speculates Petitioners are relying on “solely for information cumulative of what is already shown in Chow, Kurowski and Reiffin”) in their Preliminary Invalidity Contentions, “Petitioners will argue invalidity in the District Courts based on Chow, Kurowski and Reiffin in combination with the so-called ‘Gamma System’” and therefore “will argue that this combination is not covered by the *Sotera* stipulation because one of the four references in the combination – the ‘Gamma System’ [is] not a patent or printed publication.” Request at 29 (emphasis in original). Patent Owner’s contentions, being based on Petitioners’ **Preliminary** Invalidity Contentions, are both premature and speculative. Patent Owner further ignores that Petitioners assert in their Preliminary Invalidity Contentions that claims 1, 2, 5, and 7 of the '582 patent are invalid over the Gamma System (as the primary reference) in view of Chow, Reiffin, and Kurowski. Exs. 1031 and 1032.

Thus, as there is no “significant overlap” between the Petition and the District Court Litigations, the fourth factor weighs against discretionary denial.

5. Factor 5 Does Not Support Discretionary Denial

When the Petitioners are the same as the named defendants in the district court litigations, the Board has found that this factor adds “little if anything to the discretionary denial analysis.” *Aylo Freesites Ltd. f/k/a MG Freesites Ltd. v. WellcomeMat, LLC*, IPR2024-00710, Paper 13, at *17-18 (P.T.A.B. Sept. 5, 2024) (“We make the unremarkable observation that an IPR petitioner and patent owner are very often named parties in parallel district court litigation regarding the same patent. In our view, this factor adds little if anything to the discretionary denial analysis unless the petitioner is not named as a defendant (or declaratory judgment plaintiff) in parallel district court patent litigation.”). As in *Aylo*, the fact that there is overlap between the Petitioner parties and the defendants in the litigations adds little to the discretionary denial analysis here.

Therefore, the fifth factor is neutral.

5. Factor 6 Weighs Against Discretionary Denial Because the Merits are Strong

Patent Owner contends that the merits of the Petition are “weak” because “inter alia, the Petition fails to articulate a motivation to combine Chow and Reiffin.” Request at 30. As discussed, *supra*, Section II.B., Patent Owner not only “articulated” a motivation to combine Chow and Reiffin in its Petition, but Patent Owner also demonstrates how Chow, Reiffin, and Kurowski meets each element of each claim.

Patent Owner thus fails to demonstrate how the Petition is “weak” and therefore factor six weighs against discretionary denial.

F. There is no Inconsistency Between Petitioners’ Claim Construction Positions That Would Warrant Discretionary Dismissal

Patent Owner contends that Petitioners are engaging in alleged “gamesmanship” because, on the one hand, Petitioners, in the present Petition, contend that “Petitioners do not believe explicit construction is needed to resolve this petition” Request at 31 (quoting Petition at 6), whereas, on the other hand, Petitioners, in their Preliminary Invalidity Contentions in the District Court Litigations, contend that certain terms of the ’582 patent claims are indefinite. Request at 31 (citing Ex. 2009 at 36-37 and Ex. 2010 at 200-201).

Patent Owner relies on Petitioners’ *Preliminary Invalidity* Contentions, not final invalidity contentions or claim construction contentions. Currently, neither the Board nor either of the district courts has addressed the construction of any of term of the claims of the ’582 patent. Unstated by Patent Owner is the fact that, in the American District Court Litigation, American has served its Preliminary Claim Constructions in which American contended that only the phrase of claim 1 of the ’582 patent—“c) simultaneously executing at least a respective one of the subtasks of the computer-executable process in each of at least some of said processors on a respective one of the partitions with each subtask reading and processing the

respective partition so as to process the respective partition and produce respective subtask output”—is indefinite.² Ex. 1033.

There is no inconsistency between contending that claim 1(c) has an ordinary meaning that can be applied to the prior art, but that claim 1(c) is also indefinite. Claim 1(c) refers to “*simultaneously* executing *at least a respective one of the subtasks* of the computer-executable process in each of at least some of said processors on a respective one of the partitions.” Ex. 1001 at 6:52-55 (emphasis added). A POSITA would have understood that *simultaneously* executing subtasks occurs when there are at least *two* subtasks being executed by at least *two* subtask processors executing at the same time, by the plain and ordinary meaning of “simultaneously,” which is within the scope of claim 1(c). It is this understanding that Petitioners applied in the Petition.

However, because the portion of claim 1(c)—“at least a respective *one* of the subtasks”—can be met when one subtask is executed on a single subtask processor, claim 1 could also read on instances of executing *one* subtask on *one* subtask processor. Given the knowledge of the POSITA regarding parallel processing and the express requirements for a plurality of subtask processors in the claim, a POSITA would have been unable to reasonably determine what it means

² When it is required to serve its Preliminary Claim Constructions in the Southwest District Court Litigation, Petitioner Southwest will similarly limit its claim construction contentions to only address the indefiniteness of claim 1(c) of the ’582 patent.

to *simultaneously* execute one subtask by itself, as is encompassed by claim 1(c). Therefore, in instances where claim 1(c) covers only one subtask, a POSITA could not have ascertained the meaning of this limitation with “reasonable certainty” from the patent’s specification and prosecution history.

Thus, there is no inconsistency in contending that claim 1(c) has an ordinary meaning that can be applied to prior art, *i.e.*, when at least two subtasks are simultaneously executed on at least two subtask processors, but is also indefinite, *i.e.*, when one subtask is “simultaneously” executed on one subtask processor.

Accordingly, Petitioner’s claim construction contentions demonstrate no “gamesmanship” that would favor discretionary denial.

III. CONCLUSION

For the foregoing reasons, the Director should deny Patent Owner’s Request for Discretionary Denial and thus allow the Petition to proceed on the merits.

Dated: August 11, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH WORD COUNT

Pursuant to 37 C.F.R. § 42.24(d), I certify that this petition complies with the type-volume limits of 37 C.F.R. § 42.24(a)(1)(i) because it contains 7,359 words, according to the word-processing system used to prepare this petition, excluding parts of this petition that are exempted by 37 C.F.R. § 42.24(a) (including the table of contents, a table of authorities, a certificate of service or this certificate word count, appendix of exhibits, and claim listings).

Dated: August 11, 2025

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 C.F.R. Sections 42.6 and 42.106, that a complete copy of the attached **RESPONSE TO REQUEST FOR DISCRETIONARY DENIAL**, including all exhibits (**Nos. 1027-1036**) and related documents, are being served, upon Patent Owner by serving the correspondence address of record with the USPTO as follows:

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