UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMERICAN AIRLINES, INC. AND SOUTHWEST AIRLINES CO.,

Petitioners,

v.

INTELLECTUAL VENTURES II LLC,

Patent Owner.

Case No. IPR2025-00782
U.S. Patent No. 7,324,469

BRIEF IN SUPPORT OF PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL

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PATENT OWNER'S EXHIBIT LIST

Ex. 2001	Southwest Airlines Press Release dated October 27, 2010, entitled "Southwest Airlines Announces Onboard WiFi Pricing"
Ex. 2002	PC Mag, July 2, 2013
Ex. 2003	Southwest Airlines Press Release dated May 11, 2022, entitled "Southwest Airlines Chooses Viasat's High-Speed In-Flight Connectivity for New Aircraft Deliveries"
Ex. 2004	Southwest Airlines - Optional Travel Charges for travel on or after May 28, 2025
Ex. 2005	American Airlines Press Release Dated December 11, 2014
Ex. 2006	Fortune, The Crazy Economics of Inflight Wifi, 2015
Ex. 2007	American Airlines WiFi Connectivity Pricing, 2025
Ex. 2008	Docket from *Intellectual Ventures I LLC et al. v. Southwest Airlines*, Co., 7:24-cv-277 (WDTX)
Ex. 2009	Agreed Scheduling Order in Southwest Airlines Litigation
Ex. 2010	Docket from *Intellectual Ventures I LLC et al. v. American Airlines*, Inc., 4:24-cv-980 (EDTX)
Ex. 2011	Defendant American Airlines, Inc.'s P.R. 3-3 Invalidity Contentions in *Intellectual Ventures I LLC et al. v. American Airlines*, Inc., 4:24-cv-980 (EDTX)
Ex. 2012	Defendant Southwest Airlines Co.'s Preliminary Invalidity Contentions in *Intellectual Ventures I LLC et al. v. Southwest Airlines*, Co., 7:24-cv-277 (WDTX)
Ex. 2013	Abstract of Title of '469 Patent

I. INTRODUCTION

U.S. Patent No. 7,324,469 (the '469 Patent) claims priority back to 2003, and is directed to certain satellite-based Internet access systems. Ex. 1001, 3:43-47. After the patent issued, Petitioners Southwest Airlines ("Southwest") and American Airlines ("American") began selling satellite-based internet access to passengers during flights and have continued to do so for *over a decade*, making millions of dollars in ancillary fees. Petitioners' belated challenge to the '469 Patent is motivated by their desire to secure yet a further "bite at the apple" to invalidate the '469 Patent, over and above the opportunities that will exist for them in the district courts. Permitting the Petition to move forward will not conserve resources, but will waste them. As a result, and for at least the four reasons set forth below, a holistic assessment of the facts favors discretionary denial.

First, the settled expectations of the parties favor discretionary denial. The '469 Patent issued in 2008 with claims directed to satellite-based internet access systems. Thereafter, starting in 2010 and 2014, respectively, Southwest and American began generating significant revenue by selling satellite-based internet access to passengers. During all of that time, the '469 Patent was publicly available and provided notice to Southwest and American, both of whom had strong commercial interests in the satellite-based internet access technology claimed in the '469 Patent. Nonetheless, despite being on notice for over a decade and having a

strong commercial interest in the subject matter of the '469 Patent, Southwest and American took *no steps* to challenge the '469 Patent during the more than *17 years that the patent has been in force*. Rather, Southwest and American waited until now, with the Patent poised to expire in a few months, to launch their challenge. The significant length of time that the '469 Patent has been in force evidences *strong,* well-settled expectations of the parties, which favors discretionary denial. *SAP America, Inc. v. Valtrus Innovations, Ltd*., IPR2025-00414 (PTAB July 10, 2025), Paper #12, 2 ("the challenged patents have been in force for over 17 years, creating strong settled expectations. Under these circumstances, discretionary denial is appropriate.")

Second, the *Fintiv* factors also favor the discretionary denial of institution. Petitioner Southwest is the defendant in parallel litigation overseen by Judge Albright, and Petitioner American is the defendant in a parallel litigation overseen by Judge Mazzant. While Judge Albright has scheduled the trial for January 11, 2027, the Petition acknowledges that the trial date "often changes." Petition, 55. Thus, it is unclear whether the due date for a final written decision (11/29/2026) in this IPR (if it were instituted) would occur before or after the trial. Regardless of whether the trial in the district court occurs a month or two before or after the due date for a final written decision, there will be significant duplicative efforts in both

PTAB and the district courts by the due date for a final written decision if this IPR proceeds.

The policies behind *Fintiv*, including reducing the potential for duplicative efforts and inconsistent results, thus favor discretionary denial. As explained below, the Petition's assertion (at 57) that "[e]fficiency and fairness would counsel resolving questions of invalidity in *this single* proceeding" rings hollow because, as explained in detail below, in *every* scenario where this IPR is instituted there will be *multiple* proceedings to adjudicate validity. Indeed, Petitioners are counting on there being multiple proceedings so they can advance inconsistent positions in different forums (explained below) on the hope that one such position will prevail. Moreover, it will already be necessary for there to be two claim constructions involving the '469 Patent -- one by Judge Albright in the Southwest litigation, and another by Judge Mazzant in the American litigation. If this IPR goes forward, three Administrative Patent Judges at the PTAB will also need to conduct their own claim construction analysis of the '469 Patent. Clearly, the addition of a further claim construction analysis by three PTAB Judges (on top of two analyses by Federal District Court Judges) only increases the potential for duplicative efforts and inconsistent results.

Third, the merits of the Petition are objectively weak. The Petition purports to disparage the '469 Patent as being limited to "well-known" or "commonplace

features of any subscription-based wireless network." Petition, 1-2. On this point, the Petition is all bluster and no bite. For example, the Petition fails to offer any explanation of how multiple features recited in the claims of the '469 Patent are met by the relied on references. If all of the features of the '469 Patent were indeed so "well-known" and "commonplace," the Petition should have been able to map *all* of them to the prior art. The Petition's failure to do so underscores the weakness of Petitioners' position, and renders the Petition deficient on its face. It would be a waste of the Office's resources to refer this Petition to a panel of three PTAB judges to evaluate on the merits only for them to reach the same conclusion, namely, that the Petition is deficient on its face.

Fourth, in the district courts, Petitioners have already shown they plan to take inconsistent positions. There, they assert that key claim terms of the '469 Patent are "indefinite" because, for example, such terms are "vague and ambiguous" or "have no meaning at all as used in the Patent, while, in this IPR, the Petitioners have abandoned those positions in favor of interpretations intended to support invalidity arguments in this IPR—***without even acknowledging***, let alone justifying, the inconsistency. Rather than advancing "[e]fficiency and fairness" (see, Petition, at 57), it is clear that Petitioners' strategy is to advance inconsistent positions in multiple proceedings, hoping one will prevail. This approach is a waste of the resources of the PTAB.

For all of these reasons, and as explained more fully below, the Director should exercise her discretion to deny institution.

II. THE WELL-SETTLED EXPECTATIONS OF THE PARTIES FAVOR DISCRETIONARY DENIAL

Discretionary denial under 35 U.S.C. § 314(a) is warranted because the circumstances surrounding Petitioners' delayed challenge to the '469 Patent, combined with the exceptional length of time that the patent has been in force, strongly support discretionary denial. As detailed below, despite engaging in commercial activity directly related to the subject matter of the '469 Patent for more than a decade, Petitioners waited until the patent was on the verge of expiration to initiate this IPR. This delay, particularly in light of the widespread and long-standing public availability of the Patent, weighs heavily against institution. Moreover, the '469 Patent has been in force for over 17 years, a duration that, under the Board's precedent and the Director's recent guidance, gives rise to *strong* settled expectations.

A. Petitioners' Delay in Challenging the '469 Patent Despite Longstanding Commercial Use of Satellite-Based Inflight Internet Weighs Against Institution

The '469 Patent issued in *2008* and, as set forth in the first sentence of the Summary of the Patent, was directed to providing "*Hotspots*" for "satellite distributed Internet access for anyone with a PC or other web-ready device (wireless ready or cabled) and a valid credit card." Ex. 1001, 1:36-38. In 2010, two years after

the '469 Patent issued, Southwest announced the "Southwest Airlines WiFi Hotspot" which provided satellite-based internet access to passengers for a fee:

> DALLAS, Oct. 28 /PRNewswire-FirstCall/ -- Today, at Southwest Airlines' Media Day 2010, pricing for *Southwest Airlines WiFi HOTSPOT* was announced. Southwest will offer *WiFi onboard* its fleet at a special introductory flat rate of $5 per flight for any device or flight length. Southwest is able to offer this price point and tailor the customer experience with the *satellite-based* technology provided by Row 44. ... Southwest partnered with Row 44 and began testing WiFi on four aircraft in 2009. Today, Southwest has 32 WiFi-enabled planes. ...
>
> ... "We are excited to have WiFi on our flights. This technology will make our Customers' experience even better." Ex. 2001 (emphasis added).

By 2013, Southwest was providing in-flight satellite-based internet access "on more than 400 Southwest aircraft." Ex. 2002, 1. In 2022, Southwest announced that all new aircraft deliveries will be "factory-installed" with high-speed, satellite-based inflight connectivity to "provide customers enhanced internet capabilities while on board." Ex. 2003, 1. As of today, Southwest charges passengers a fee of $8 for inflight internet access. Ex. 2004, 3.

Like Southwest, Petitioner American announced that it would be deploying satellite-based internet access a few years after the '469 Patent issued. More specifically, in 2014, American announced that it would be adding satellite-based internet access to its entire fleet:

> ... American marked the one-year anniversary of its merger earlier this week by announcing more than $2 billion in investments to give its

> customers a world-class travel experience. These investments include expanding inflight entertainment and connectivity. *The airline is adding satellite-based Internet access to its international fleet including all Boeing 777s and 787s, Airbus A330s, and retrofitted Boeing 767-300s and 757s*. New 737s, nearly all new A321s, as well as retrofitted A319s also will have power ports in every row. All new widebody deliveries, including 777-300ERs and 787s, come with power at every seat, allowing customers to charge their laptops and personal electronic devices from gate to gate. Ex. 2005, 1.

By 2015, American was charging passengers $10-20 for internet access during a flight. Ex. 2006, 1. Currently, for passengers who fly often, American sells monthly subscription plans for inflight internet access starting at $49.95 per month. Ex. 2007, 2.

Clearly, both Southwest and American have been generating significant revenue by selling satellite-based internet access to passengers for many years. During all of that time, the '469 Patent was publicly available and provided notice to Southwest and American, both of whom had strong commercial interests in the satellite-based internet access technology claimed in the Patent. Nonetheless, neither Southwest nor American took *any* steps to challenge the '469 Patent during the *17 years that the patent has been in force*. Rather, Southwest and American waited until now, with the Patent poised to expire[1] in a few months, to launch their challenge.

[1] The '469 Patent will expire on or about April 13, 2026.

In the present case, both Southwest and American have had a strong, developed commercial interest in satellite-based inflight internet access for many years, as both have been selling this service to passengers for over a decade. It would have been prudent for both airlines to have taken steps to understand the patent landscape pertinent to their businesses, including patents directed to satellite-based internet access. Had they done even the most basic keyword search for patents pertinent to satellite-based internet access, they most certainly would have discovered the '469 Patent, which refers to "satellite distributed Internet access" in the first sentence of the Abstract. To the extent that Southwest or American failed to learn of the '469 Patent, it could only have been because, for their own business reasons, they chose not to investigate the patent landscape relating to satellite-based internet access.

B. The '469 Patent Has Been in Force For Over 17 Years, Which Supports a Finding of Strong Settled Expectations

The long period of time that the '469 Patent has been in force evidences *strong* settled expectations. "Although there is no bright-line rule when expectations become settled, in general, the longer the patent has been in force, the more settled expectations should be." *Dabico Airport Solutions v. AXA Power ApS*, IPR2025-00408 (PTAB June 18, 2025), Paper #21. Moreover, to the extent Southwest or American were to assert that they had no actual notice of the patent, the Board has

explained that actual notice of the patent or of possible infringement is *not* required to create settled expectations. For example, in *Dabico*, the Board explained:

> ... patent applications (after 18 months) and issued patents are almost always publicly available to *provide notice* to the public, other inventors, competitors, and *commercial interests*. 35 U.S.C. § 122. Interested parties may find published patents and patent applications using the Office's automated search systems as well as publicly available resources on the Internet. See 35 U.S.C. § 41(i). As such, *actual notice of a patent or of possible infringement is not necessary to create settled expectations*. (emphasis added).

Consistent with the guidance provided by Director Stewart, the Board has found *settled expectations* sufficient to deny institution where a patent has been in force for as little as *seven years*. *Dabico,* IPR2025-00408, Paper #21 (finding that settled expectations favored discretionary denial where the challenged patent had been in force for over *seven years*); *see also*, *Intel Corp. v. Proxense LLC*, IPR2025-00327 (PTAB June 26, 2025), Paper #12, 2 (denying institution based on settled expectations where the "challenged patents have been in force over *nine years*"); *Cambridge Industries v. Applied Optoelectronics*, IPR2025-00434 (PTAB June 26, 2025), Paper #11, 3 (denying institution where the challenged patents had been in force for *nine and seven years*).

Moreover, guidance from Director Stewart goes a step further in cases where the patent has been in force for still longer periods of time such as *12 years*, characterizing such as "creating *strong* settled expectations." *Samsung v. OS-New*

Horizon Personal Computing, IPR2025-00613 (PTAB July 17, 2025), Paper #10 ("the challenged patent has been in force for more than *12 years*, creating *strong* settled expectations"); *International Business Machines Corp. v. Virtamove Corp.*, IPR2025-00591 (PTAB July 17, 2025), Paper #8 ("the challenged patents have been in force for over *fifteen years*, creating *strong* settled expectations"); *Carvana, LLC v. International Business Machines Corporation*, IPR2025-00564 (PTAB July 10, 2025), Paper #11 ("the challenged patent has been in force for approximately *15 years*, creating *strong* settled expectations"); and *SAP America, Inc. v. Valtrus Innovations, Ltd.*, IPR2025-00414 (PTAB July 10, 2025), Paper #12, 2 ("the challenged patents have been in force for over *17 years*, creating *strong* settled expectations. Under these circumstances, discretionary denial is appropriate").

These precedents demonstrate that where, as here, the patent has been in force for *17 years*, there are *strong* settled expectations that weigh in favor of denying institution. Simply put, the exceptional length of time during which the '469 Patent has been in force strongly favors discretionary denial.[2]

[2] For the last nearly 17 years, the '469 Patent has been owned by companies owned and controlled by Intellectual Ventures' Invention Investment Fund II, LLC (IIF II). As set forth in the Abstract of Title, on October 7, 2008, the '469 Patent was assigned to Distalma Management, LLC (a company owned/controlled by IIF II). Ex. 2013, Assignment #2. On August 27, 2015, Distalma Management, LLC was merged into Callaham Cellular, LLC, which was also owned and controlled by IIF II. Ex. 2013, Assignment #3. On September 26, 2024, Callaham Cellular, LLC assigned the patent

III. THE FINTIV FACTORS FAVOR DISCRETIONARY DENIAL

The precedential order in *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB March 20, 2020) ("*Fintiv*") identifies six factors for the Board to consider in deciding whether to exercise discretion to deny institution based on parallel proceedings involving the same patent. Application of the present facts to these factors demonstrates that there are strong reasons for exercising discretion to deny institution here.

Each of the Petitioners in this IPR is a defendant in a different parallel district court litigation involving the '469 Patent. Petitioner Southwest is the defendant in *Intellectual Ventures I LLC et al. v. Southwest Airlines*, Co., 7:24-cv-277 (WDTX) (the Southwest District Court Litigation), which is overseen by Judge Albright. In that case, Judge Albright has set the trial for January 11, 2027. Ex. 2009, 4. However, as the Petition acknowledges, the trial date "often changes." Petition, 55. Thus, it is unclear whether the due date for a final written decision (11/29/2026) in this IPR (if it were instituted) would occur before or after the trial in the Southwest District Court Litigation. Regardless of whether the trial in the Southwest District Court Litigation occurs a month or two before or after the due date for a final written

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to Intellectual Ventures II LLC, another company owned/controlled by IIF II. Ex. 2013, Assignment #4.

decision, there will be significant duplicative efforts in the PTAB and the district courts by the due date for a final written decision if this IPR proceeds, as explained more fully below.

Petitioner American is the defendant in *Intellectual Ventures I LLC et al. v. American Airlines*, Inc., 4:24-cv-980 (EDTX) (the American District Court Litigation), which is overseen by Judge Mazzant. In that case, Judge Mazzant has set the Markman Hearing for *10/14/2025* and has scheduled the Final Pretrial Conference for 10/19/2026. Ex. 2010, 7-8 (Dkt. #44).

A. Factor 1 Weighs Against Institution Because A Stay Has Not Been Granted In Either The Southwest Or American District Court Litigation And There Is No Evidence That A Stay Would Be Granted If This IPR Was Instituted

No stay has granted, ***nor even been requested***, in either the Southwest District Court Litigation or the American District Court Litigation. Pet., 55. In addition, even if this IPR was instituted (which would not occur until on or around October 29, 2025), it is unlikely that the Court (Judge Albright) would grant a stay. *See, generally*, *Continental Intermodal Grp. v. Sand Revolution LLC*, No. 7:18-cv-00147 (W.D. Tex. July 22, 2020) (Judge Albright) *Multimedia Content Mgmt. LLC v. Dish Network*, No. 6:18-CV-00207-ADA, 2019 U.S. Dist. LEXIS (W.D. Tex. May 30, 2018) (Judge Albright) (denying stay).

Thus, the first factor weighs against institution.

B. Factor 2 Is Neutral Because It Is Unclear If Trial In The Parallel Litigation Will Occur Before Or After The Projected Statutory Deadline For The Board's Final Written Decision

As explained above, the Trial in the Southwest District Court Litigation is currently scheduled for January 11, 2027, but the trial date "often changes." Petition, 55. Thus, it is unclear whether the due date for a final written decision (11/29/2026) in this IPR (if it were instituted) would occur before or after the trial in the Southwest District Court Litigation.

The Petition focuses on the fact that the American District Court Litigation may go to trial after the Final Written Decision is due. Petition, 55. However, the Petition has failed to explain why, in a case such as this, where there are multiple petitioners, the second *Fintiv* factor must be satisfied for <u>*both*</u> Petitioners in order to support a discretionary denial. On the contrary, the policies behind *Fintiv*, including reducing the potential for duplicative efforts and inconsistent results, favor discretionary denial even if the second *Fintiv* factor is met for one Petitioner. For example, there will already be two claim construction hearings in the District Courts (one in the Southwest District Court Litigation and one in the American District Court Litigation), both involving the '469 Patent. If this IPR goes forward, the PTAB will also need to conduct its own claim construction analysis of the '469 Patent. Thus, if this IPR were to go forward, the resources of 5 judges will be needed to construe the claims -- i.e., Judge Albright, Judge Mazzant, and the three

Administrative Patent Judges assigned to this IPR. Certainly, the addition of a further claim construction analysis by the PTAB (on top of two District Courts) only increases the potential for duplicative efforts and inconsistent results in connection with claim construction.

Thus, the second factor is neutral.

C. Factor 3 Weighs Against Institution Because The Parties Will Have Invested Significant Effort In The Southwest And American District Court Litigations By The Time The Board's Institution Decision Is Due

Factor 3 relates to investment in the Southwest and American Litigations by the District Courts and the parties. *Fintiv*, Paper 11 at 9. This factor is judged from the date of the institution decision, which is expected to be no later than November 29, 2025. *Id.* By the time the Board's institution decision is due (on 11/29/25), the Markman process in both the American and Southwest District Court Litigations (scheduled for 10/14/25 and 12/8/25, respectively) will have been either completed (in the case of the American District Court Litigation) or substantially briefed (in the case of the Southwest District Court Litigation), and in all likelihood one or both of Judges Albright and Mazzant will have issued their claim construction rulings. Clearly, the parties and the Courts will have made a substantial investment by the expected date of the institution decision on November 29, 2025.

The Petition was filed on April 30, 2025. At that time, Petitioners asserted that the Petition was filed "well before claim construction." Petition, at 56. Patent Owner disagrees that the Petition was filed before the start of the claim construction process. However, even if Petitioners' assertion about the state of affairs on April 30, 2025 was accurate, it is irrelevant. As explained in *Fintiv*, the investment by the District Courts and the parties is judged from *the date of the anticipated institution decision*, which is expected to be about *November 29, 2025* -- rather than *April 30, 2025*. *Fintiv*, Paper 11 at 9. There can be no argument that by November 29, 2025 the claim construction process in both the Southwest and American District Court Litigations will be complete (or nearly complete). Thus, by that time, the District Courts and the parties will have made a substantial investment in the parallel litigations.

Thus, the third factor weighs against institution.

D. Factor 4 Weighs Against Institution Because There Is Substantial Overlap Between The Southwest And American District Court Litigations And This IPR, And Even If Petitioners Submit A *Sotera* Stipulation, It Will Not Mitigate Such Overlap

The fourth *Fintiv* factor—whether the issues raised in the petition overlap with those in the parallel district court proceedings—weighs against institution because there is substantial overlap between this IPR and the Southwest and American District Court Litigations. As explained below, Petitioners are asserting the same core invalidity theories in both forums, albeit with inconsistent arguments, and any

lack of complete claim overlap is the result of Petitioners' own strategic choices. Moreover, Petitioners have not submitted a *Sotera* stipulation, and even if they were to do so belatedly, such a stipulation would be ineffective at reducing duplication under the circumstances of this case because, in the district courts, Petitioners rely not only on the references advanced in this IPR, but also on system art that is cumulative of the references asserted in this IPR. Thus, even if Petitioners were precluded from advancing patents and printed publications alone as a basis for invalidity in the district court, the cumulative system art relied on by Petitioners in the district courts will allow Petitioners to repackage the same invalidity theories advanced here in district courts. As a result, a *Sotera* stipulation would do little to eliminate the inefficiencies and risks of conflicting decisions that this IPR would introduce. Each of these issues is addressed in detail below.

1. There is substantial overlap in the claims challenged in the Southwest and American District Court Litigations and this IPR, and the lack of complete overlap was of Petitioners' own making

The Petitioners have filed Invalidity Contentions in the Southwest and American District Court Litigations that include *all of the grounds asserted in this IPR*. Ex. 2011, 19-20 (identifying Bruner, Clark, Wu and Rothblatt as references relied on for invalidity of the '469 Patent) and note 11 on page 19 (incorporating "by reference, in full, the Petition and the Exhibits in IPR2025-00782); Ex. 2012, 158-

160 (identifying Bruner, Clark and Wu as references relied on for invalidity of the '469 Patent).

Moreover, there was *nothing* prohibiting Petitioners from challenging the validity of *all* of the claims of the '469 Patent in either or both of the Southwest and American District Court Litigations. To the extent that there is a lack of complete overlap between the claims challenged in this IPR and in the District Courts, it is a situation of Petitioners' own making, as Petitioners chose which claims to challenge in each of the forums. It would only invite gamesmanship to reward Petitioners' strategy of engineering a lack of complete overlap in challenged claims by finding that such a situation weighs against discretionary denial.

2. Even if Petitioners submitted a *Sotera* stipulation, it would not mitigate the overlap between the Southwest and American District Court Litigations and this IPR.

Petitioners have chosen not to submit a *Sotera* stipulation. In the "FAQs for Interim Processes for PTAB Workload Management," the Office explained that "[a] petitioner should file a *Sotera* or *Sand* stipulation as soon as practicable, so that a patent owner may address the impact of the stipulation in its discretionary denial brief."[3] To the extent that Petitioners belatedly submit a *Sotera* stipulation after

[3] FAQ #15, at http://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management.

Patent Owner files the present discretionary denial brief, the *Sotera* stipulation should be disregarded, as it was not filed "as soon as practicable."

In any event, even if Petitioners provide a belated *Sotera* stipulation, the guidance set forth by the Office provides that where, as here, "the petitioner is relying on corresponding system art in a co-pending proceeding and/or several other invalidity theories, a stipulation may not be particularly meaningful because the efficiency gained by any AIA proceeding will be limited." *See,* note 3, *supra*. More specifically, in addition to citing to Bruner, Clark, Wu and Rothblatt, Petitioners' Invalidity Contentions in the Southwest and American District Court Litigations allege that the "469 Patent claims are invalid over Bruner, Clark, Wu and Rothblatt in combination with either the so-called "Airpath Wireless" system or the "Connexion By Boeing" system -- which are not patents or printed publications. Ex. 2011, 78-150 and 308-406, and Ex. 2012, 259-311 and 423-492. Significantly, these claim charts demonstrate that, in the District Courts, Petitioners are relying on the so-called "Airpath Wireless" system or the "Connexion By Boeing" system *solely for information cumulative* of what is already shown in Ex. 2009, 76-130 (mapping multiple claim elements to both the "Airpath Wireless" system or the "Connexion By Boeing" system and one or more of Bruner, Clark, Wu and Rothblatt) and Ex. 2012, 259-311 and 423-492 (same).

Petitioners' strategy is crystal clear. If this IPR is instituted, Petitioners will argue invalidity in the District Courts based on Bruner, Clark, Wu and Rothblatt in combination with the so-called "Airpath Wireless" system or the "Connexion By Boeing" system. Petitioners will argue that this combination is not covered by the *Sotera* stipulation because one of the four references in the combination -- either the "Airpath Wireless" system or the "Connexion By Boeing" system -- is not a patent or printed publication. Nonetheless, because the "Airpath Wireless" system or the "Connexion By Boeing" system is cumulative of Bruner, Clark, Wu and Rothblatt, Petitioners will be advancing in the District Court arguments identical to the ones raised here, just with different "window dressing." Thus, under the present facts, Petitioners' *Sotera* stipulation will do nothing to mitigate the overlap in invalidity arguments raised by Petitioners in this IPR and in the Southwest and American District Court Litigations. As explained in the guidance set forth by the Office, where, as here, "the petitioner is relying on corresponding system art in a co-pending proceeding and/or several other invalidity theories, a stipulation may not be particularly meaningful because the efficiency gained by any AIA proceeding will be limited." *See,* note 3, *supra*.

Because there will be significant overlap between this IPR and the Southwest and American District Court Litigations, there are particularly strong "concerns of

inefficiency and the possibility of conflicting decision" if this IPR is instituted. *Fintiv*, Paper 11 at 12.

Thus, the fourth factor weighs against institution.

E. Factor 5 Weighs Against Institution Because The Patent Owner Is The Same And The Petitioner Are The Same Parties As In The Parallel Litigation

Patent Owner and Petitioners are the same parties as in the Southwest and American District Court Litigations. Thus, the fifth factor weighs against institution.

In connection with this factor, the Petition makes the conclusory assertion that "*[e]fficiency and fairness* would counsel resolving questions of invalidity in this single proceeding rather than in two separate district court proceedings." Petition, 56-57 (emphasis added). This argument does not bear scrutiny. Below is an analysis of the potential scenarios in the district courts and/or the PTAB. The first three scenarios (labelled Scenarios 1-3 below) correspond to the ones where this IPR is instituted. As demonstrated below, *all* of these scenarios result in inefficiency, unfairness, or both. The last two scenarios (labelled Scenarios 4-5 below) correspond to ones where institution of this IPR is denied. As explained below, both of these scenarios are more efficient and/or fair as compared to the scenario where this IPR moves forward.

> Scenario #1: This IPR is *instituted* on 11/29/25 and the '469 Patent is found *invalid* by a jury in the Southwest Litigation on or about the same time as the Final Written Decision (FWD) based on system art. Since the jury verdict

will occur around the same time the FWD is due in this IPR, all of the work invested by one of either (i) the PTAB and the parties in the trial of this IPR, or (ii) the District Court and the parties in the Southwest District Court Litigation will have been *wasted*, because the decision by the first forum to render a decision will moot the outcome of the other forum.. This scenario is clearly *inefficient*.

Scenario #2: This IPR is *instituted* on 11/29/25 and the '469 Patent is *not found invalid* by a jury in the Southwest Litigation based on system art. At about the same time (on or about 11/29/26), the PTAB issues a FWD in this IPR finding that the claims are *not invalid*. In this scenario, validity would still subsequently need to be adjudicated a *third* time in the American Litigation based on system-based prior art, resulting in *three forums needing to adjudicate validity*, which is clearly *inefficient*.

Scenario #3: This IPR is *instituted* on 11/29/25 and the '469 Patent is *not found invalid* by a jury in the Southwest Litigation based on system art at about the same time that the PTAB issues a FWD in this IPR finding that the claims are *invalid*. This scenario was *unfair* to Patent Owner because Southwest got two bites at the apple. Moreover, the process is *inefficient* because it yielded conflicting outcomes which would need to get straightened out on appeal.

Scenario #4: This IPR is *not instituted* and the '469 Patent is found *invalid* by a jury in the Southwest Litigation based on prior patents or publications and/or system art. In this scenario, absent a reversal on appeal, there will be no need to try the American Litigation as the patent was previously found invalid. In this scenario, *only a single tribunal needed to try validity*, which is *highly efficient*.

Scenario #5: This IPR is *not instituted* and the '469 Patent is *not found invalid* by a jury in the Southwest Litigation based on prior patents or publications and/or system art. In this scenario, validity will need to be tried for only a *second* time in the American case. This scenario is significantly more efficient than Scenario #2 where validity was tried *three* times, and much *more fair* to Patent Owner as compared to Scenario #3 because Southwest and American only each got one bite at the apple.

As the above analysis demonstrates, Scenarios 1-3 (where this IPR is instituted) are all *less efficient* and *less fair* than Scenarios 4-5 (where this IPR is not instituted). The Petition's assertion (at 57) that "[e]fficiency and fairness would counsel *resolving* questions of invalidity in *this single* proceeding" rings hollow because *every* scenario where this IPR is instituted (i.e., Scenarios #1-3 above) requires *multiple* proceedings to adjudicate validity.

Thus, the fifth factor weighs against institution.

F. Factor 6 Weighs Against Institution Because The Merits Of Petitioner's Challenge Is Weak

As explained below, the merits of the Petition are weak because, *inter alia*, the Petition fails to explain how the relied on references disclose one of the limitations required to gain allowance, namely the requirement that certain components be located at a location experiencing "a relatively high volume of *transient* traffic," as required by all of the challenged claims. The Petition completely disregards this limitation, failing to even mention it in any of its mappings to the prior art. Thus, the sixth *Fintiv* factor weighs against institution. *See*, Section IV, *infra*.

G. The Director Should Deny Institution Under § 314(a) Because All Six *Fintiv* Factors Strongly Favor Discretionary Denial in View of Parallel District Court Litigations.

Based on the totality of the *Fintiv* factors, the Director should exercise her discretion under 35 U.S.C. § 314(a) and deny institution of this inter partes review.

The *Fintiv* framework is specifically designed to prevent duplicative proceedings, avoid inconsistent outcomes, and conserve the resources of both the Board and the parties where parallel district court litigation is already well underway. Here, five of the *Fintiv* factors strongly support discretionary denial and one factor is neutral.

While it is unclear whether the due date for a final written decision (11/29/2026) in this IPR (if it were instituted) would occur before or after the trial in the Southwest District Court Litigation, regardless of whether the trial occurs a month or two before or after the due date for a final written decision, it is undisputable that there will be significant duplicative efforts by the PTAB and the district courts if this IPR proceeds. In fact, the district courts and parties will have invested significant resources in resolving issues—including claim construction and invalidity—before the PTAB even decides whether to institute this IPR.

The overlap in issues is undeniable. Petitioners have asserted the same invalidity theories and the same core references in the district courts and this IPR, in one case ***even incorporating this Petition by reference*** into the district court invalidity contentions. See, e.g., Ex. 2011, page 19, note 11. Any lack of complete overlap in challenged claims is purely a result of Petitioners' own litigation tactics and cannot justify institution. Even if Petitioners were to now submit a *Sotera* stipulation, it would be both untimely and ineffective, because, in the district courts, Petitioners would merely rely on system art that is cumulative of the references

asserted herein, which will allow Petitioners to repackage the same invalidity theories in different forums. As the Office's own guidance warns, such circumstances render a stipulation meaningless and do little to mitigate the inefficiencies and duplicative burdens that institution would impose.

Additionally, the identity of the parties across both forums weighs against institution. The Petitioners are the defendants in the related district court cases, and Patent Owner is the same in all proceedings. Petitioners' argument that resolving validity in "a single proceeding" promotes efficiency is belied by every realistic outcome. If the IPR proceeds in parallel with the district court actions, the result will be duplicative efforts across three forums, a heightened risk of inconsistent outcomes, and wasteful expenditure of judicial and party resources. On the other hand, denying institution would consolidate the validity disputes in the district courts, where the record is already more developed, and where a trial will occur before the scheduled deadline for the PTAB to issue a Final Written Decision in this IPR.

Finally, the merits of the Petition are weak. Petitioners entirely ignore a critical limitation recited in every challenged claim—namely, that the claimed equipment must be positioned in a location experiencing "a relatively high volume of transient traffic." This omission alone renders the Petition facially deficient and

underscores the inefficiency of proceeding to institution when the Petition fails to present a prima facie case of unpatentability.

For all of these reasons—procedural, practical, and substantive—the Director should decline institution under *Fintiv* and allow the more advanced, already ongoing district court proceedings to resolve the validity of the '469 Patent.

IV. THE PETITION IS FACIALLY DEFICIENT AND IT WOULD BE A WASTE OF THE OFFICE'S RESOURCES TO HAVE MULTIPLE PTAB JUDGES EVALUATE THE PETITION ON THE MERITS SIMPLY TO REACH THE SAME CONCLUSION

Petitioners bear the burden of demonstrating how each and every limitation of the challenged claims is disclosed or rendered obvious by the cited prior art. That burden is not met here. Every challenged claim requires that the recited equipment be located at a site experiencing "a relatively high volume of transient traffic." Yet the Petition fails to address this requirement entirely. Indeed, for both independent claims 1 and 24, the Petition either ignores the "transient traffic" limitation or merely refers back to a deficient analysis that ignored the same limitation, and thus fails on its face to establish that the limitation is taught or suggested in the prior art.

Specifically, all of the challenged claims require the location of equipment at a location experiencing "a relatively high volume of *transient* traffic."[4] In purporting

[4] The only independent claims of the '469 Patent challenged in the Petition are independent claims 1 and 24 of the '469 Patent. Claim 1 recites in part: "installing the satellite dish, router and subscriber access unit in a ... location experiencing a relatively high volume of *transient* traffic"; and claim 24 recites in part: "wherein

to map the challenged claims to the relied on references, the Petition completely *ignores* the requirement that the traffic be *transient*. Set forth below is the *totality* of the Petition's mapping to the prior art of the portion of claim 24 (referred to as element [24f][5] in the Petition) that requires that the traffic be *transient*. As demonstrated below, the Petition's mapping does not *even mention* the word *transient*, let alone explain how the requirement that the traffic be *transient* is met by the relied on reference (Bruner):

> Bruner discloses claim 24f. Ex.1002 ¶200-01. For example, Bruner discloses that the "remote internet system of the present invention [] allow[s] remote users, such as airline passengers, to conduct electronic commerce . . . from a remote location, such as during the course of an airline flight." Ex.1005, ¶21. Thus, Bruner discloses each limitation of claim 24f, including the **satellite dish, router, and subscriber access unit** (discussed under claims 24b, 24c, and 24d, respectively) and their location in a **remote location experiencing a relatively high volume of traffic** (the remote internet system . . . allow[ing] remote users, such as airline passengers, to conduct electronic commerce."). Ex.1002 ¶201. Petition, 20.

Significantly, the Petition's allegation in bold that Bruner discloses equipment "in a **remote location experiencing a relatively high volume of traffic**" (emphasis in original) fails to track the *actual* claim language which requires equipment in a

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the satellite dish, at least one router and the subscriber access unit are located in a remote location a experiencing a relatively high volume of *transient* traffic."

[5] As labelled in the Petition, the portion of claim 24 that recites "wherein the satellite dish, at least one router and the subscriber access unit are located in a remote location a experiencing a relatively high volume of *transient* traffic" corresponds to element [24f]. Petition, 19.

remote location "experiencing a relatively high volume of *transient* traffic." The requirement that the traffic be transient is simply skipped, and not mentioned at all in Petitioner's analysis of the claim element. Thus, the Petition fails to *even allege* that the prior art (Bruner) positions equipment in a location experiencing a relatively high volume of *transient* traffic, as recited in claim element [24f].

The Petition's mapping to the prior art of the portion of independent claim 1 (referred to as element [1e][6] in the Petition) that requires that the traffic be *transient* fares no better, as it simply refers back to the deficient mapping for claim element [24f]. Set forth below is the *totality* of the Petition's mapping to the prior art of the portion of claim 1 (element [1e]) that requires that the traffic be *transient*:

> Bruner and/or Bruner in view of Clark discloses claim 1e for substantially similar reasons as those already discussed for claim 24f. Ex.1002 ¶¶81-86. Petition, 26.

Strangely, the Petition's mapping for element [1e] refers back to a non-existent analysis of "Bruner *in view of Clark*" in connection with element [24f], as the Petition's analysis of element [24f] makes *no mention of Clark*. Again, the Petition fails to *even allege* that the prior art positions equipment in a location experiencing a relatively high volume of *transient* traffic, as recited in claim element [1e].

[6] As labelled in the Petition, the portion of claim 1 that recites "installing the satellite dish, router and subscriber access unit in a rural location, the rural location experiencing a relatively high volume of *transient* traffic" corresponds to element [1e]. Petition, 26.

Petitioners had the burden of explaining how the challenged claims were to be interpreted, as well as how the prior art mapped to *each and every* limitation in the challenged claims. Clearly, Petitioners failed to meet this burden, because the Petition is deficient *on its face* with respect to the recitation of *transient* traffic required by each of the challenged claims. It would be a waste of the Office's resources to refer this Petition to a panel of three PTAB judges to evaluate on the merits only for them to reach the same conclusion, namely, that the Petition is deficient on its face.

V. PETITIONERS' INCONSISTENT CLAIM CONSTRUCTIONS WARRANT DISCRETIONARY DENIAL

Finally, the Petition should be denied under the Director's discretionary authority because the Petition is predicated on claim construction positions that cannot be reconciled with those advanced by Petitioners in the Southwest and American District Court Litigations. In the district courts, Petitioners have taken the position that key claim terms of the '469 Patent are "indefinite under 35 U.S.C. § 112, ¶ 2" because they "fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention." Ex. 2011, 36, 38 and Ex. 2012, 196-199. Yet, in this IPR, the Petitioners have abandoned those positions in favor of interpretations intended to support invalidity arguments in this IPR—all without acknowledging,

let alone justifying, the inconsistency.[7] Clearly, Petitioners' strategy is to advance inconsistent positions in multiple proceedings, hoping one will prevail -- an approach that wastes the resources of the PTAB.

As detailed below, Petitioners' indefiniteness allegations in the district courts cannot be reconciled with Petitioners' position here that, under *Phillips v. AWH Corp.,* 415 F.3d 1303 (Fed. Cir. 2005), "*Petitioners do not believe* explicit construction is needed to resolve this petition." Petition, 7 (emphasis added). Under *Phillips*, claim terms are typically given their "ordinary and customary meaning" which "is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention." *Id*., at 1313. Petitioners' indefiniteness positions in the district courts are irreconcilable with those taken by Petitioners in this IPR because a claim term cannot be both "indefinite under 35 U.S.C. § 112, ¶2" because it fails "to inform, with reasonable certainty, those skilled in the art about the scope of the invention" and, at the same time, have an "ordinary and customary meaning" as understood by "a person of ordinary skill in the art in question at the time of the invention." Petitioner's failure to present a consistent and legally sound claim construction, and their stated "belief" in these proceedings in claim

[7] *See*, e.g., *Cambridge Mobile Telematics, Inc. v. Sfara, Inc.,* IPR2024-00952, Paper #12, 8 (PTAB December 13, 2024) (informative) ("At a minimum, the Petition should have explained "why the inconsistent positions are warranted.")

interpretations they have elsewhere disparaged, undermines the integrity of this proceeding and provides ample basis for discretionary denial.

By way of example, in the district court, Petitioner Southwest alleges that the terms "operatively coupled to" and "operatively coupled between" in claim 24 of the '469 Patent are indefinite because "[a] person of ordinary skill in the art would be unable to determine the scope of the invention." Ex. 2012, 197. Petitioner American Airlines asserts that the same phrase is indefinite in the district court. Ex. 2011, 38. Similarly, in the district court, Petitioner Southwest asserts that "authentication" (in claim 24) is indefinite because "[t]he specification contains contradictory descriptions: of the term. Ex. 2012, 196-197. Again, Petitioner American asserts that the same phrase is indefinite in the district court. Ex. 2011, 38. By contrast, in this IPR, Petitioners say that they are applying *Phillips* and purport to convey their "*belief*" that, under *Phillips*, no explicit construction is necessary. These positions are diametrically opposed. A claim term that is indefinite cannot be interpreted under *Phillips* nor can a term that has an "ordinary and customary meaning" under *Phillips* be indefinite. Petitioner's indefiniteness positions in the district court are not limited to the terms described above but extend to at least a half dozen terms.[8] Ex. 2011, 38 and Ex. 2012, 196-199.

[8] The rules of practice before the PTAB impose upon the parties "a duty of *candor* and good faith to the Office during the course of a proceeding." 37 CFR §42.11(a)

Under 37 C.F.R. § 42.104(b)(3), a petitioner must provide a clear articulation of "[h]ow the challenged claim is to be construed." Here, the Petitioners failed to meet this burden by basing the Petition on claim constructions that ***Petitioners believe are incorrect***. Moreover, Petitioners' strategy of advancing inconsistent positions in multiple proceedings hoping one will prevail is a waste of the resources of the PTAB. These aspects of the Petition favor discretionary denial.

VI. CONCLUSION

As set forth above, the settled expectations of the parties strongly favor discretionary denial. Despite having a strong commercial interest in the subject matter of the '469 Patent, Petitioners took no steps to challenge the '469 Patent during the *17 years that the patent has been in force*. The significant length of time

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(emphasis added); *see also*, *Patent Quality Assurance, LLC v. VLSI Tech. LLC*, IPR2021-01229, Paper 102, 23 (PTAB Dec. 22, 2022) (precedential); and *OpenSky Indus., LLC v. VLSI Tech. LLC*, IPR2021-01064, Paper 102, 17 (PTAB Oct. 4, 2022) (precedential). The duty of candor requires parties to be *forthright* in their dealings with the PTAB. A Petitioner who *fails to be forthright* when taking a position before the PTAB that is inconsistent with that party's position in another forum *fails to satisfy their duty of candor*. Such appears to be the case here. There can be little dispute that Petitioners failed to *candidly* inform the PTAB that they were taking claim construction positions in the Petition that were inconsistent with (and, in some cases, irreconcilable with) the claim construction positions being taken by Petitioners in two federal district courts. These circumstances further support discretionary denial of the Petition. Given the limited resources of the PTAB, it would be appropriate for the Director to refrain from referring a Petition to a merits panel where, as here, the Petitioners violated their duty of candor by failing to be forthright.

that the '469 Patent has been in force evidences *strong* well-settled expectations of the parties, which favors discretionary denial.

The *Fintiv* factors also favor the discretionary denial. Among other things, the policies behind *Fintiv*, including reducing the potential for duplicative efforts and inconsistent results, favor discretionary denial. Petitioners did not file this IPR to promote "[e]fficiency and fairness" but rather for there to be multiple proceedings where Petitioners can advance inconsistent positions hoping that one will prevail.

Finally, the Petition is deficient *on its face* with respect to the recitation of *transient* traffic required by each of the challenged claims. It would be a waste of the Office's resources to refer this Petition to a panel of three PTAB judges to evaluate on the merits only for them to reach the same conclusion, namely, that the Petition is deficient on its face.

For all of these reasons, the Director should deny institution.

Respectfully submitted,

Dated: July 29, 2025

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CERTIFICATE OF COMPLIANCE WITH WORD COUNT

Pursuant to 37 C.F.R. § 42.24(d), I certify that this **BRIEF IN SUPPORT OF PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL** complies with the type-volume limits set forth in the Memorandum and 37 C.F.R. § 42.24 because it contains 7,932 words, excluding the parts of the Brief that are exempted by 37 C.F.R. § 42.24(a), according to the word processing system used to prepare this Brief.

Respectfully submitted,

Dated: July 29, 2025

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CERTIFICATE OF SERVICE

The undersigned certifies that pursuant to 37 C.F.R. § 42.6(e), a copy of the foregoing **BRIEF IN SUPPORT OF PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL** was served via email (as consented to by counsel) on July 29, 2025 to lead and backup counsel of record for Petitioner as follows:

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