UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MERCEDES-BENZ GROUP AG,
Petitioner,
v.

THE PHELAN GROUP, LLC
Patent Owner.

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Case IPR2025-00919
U.S. Patent No. 10,259,465

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# PETITIONER'S OPPOSITION TO PATENT OWNER'S DISCRETIONARY DENIAL BRIEF

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## I. INTRODUCTION

Petitioner Mercedes-Benz Group AG ("MBGAG") opposes Patent Owner's Discretionary Denial Brief requesting discretionary denial ("Motion" or "Mot.").

In a paper almost identical to that which it filed in both IPR2025-00413, *see* Paper 10, and IPR2025-00758, *see* Paper 6, Patent Owner again argues that the *Fintiv* factors support denying institution under § 314(a) because the district court would likely resolve the dispute over this and six other patents in the same patent family before the Board. *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 2 (P.T.A.B. Mar. 20, 2020). The Director has already rejected the bulk of these arguments. *See* IPR2025-00413 Paper 13 at 2 (Director June 25, 2025) (rejecting discretionary denial because in the district court, there is no trial date, the parties have invested relatively little resources in the district court proceeding, there is evidence that the likelihood of a stay is high, and claims of a related patent were recently found unpatentable). And now the Board has instituted an IPR trial in this patent family. *See* IPR2025-00413, Paper 14. Therefore, "it is an efficient use of Board resources to address the related patent[s]" and reject Patent Owner's request for discretionary denial in this IPR. *See Embody, Inc. v. LifeNet Health*, IPR2025-00248, Paper 12 at 3 (Director June 26, 2025); *Padagis US, LLC v. Neurelis, Inc.*, IPR2025-00464, Paper 12 at 3-4 (Director July 16, 2025).

Even if trial had not yet been instituted on a patent in the same family, good reason remains to again reject Patent Owner's request for discretionary denial. Patent Owner's brief obscures how little Patent Owner has done to prosecute its case in district court. Instead of expediently pursuing a resolution, Patent Owner has itself slowed the district court case to a standstill. The result is a case that has not even reached exchanging terms for claim construction 19 months after the first Complaint was filed. And counting.

While Patent Owner again attempts to blame Petitioner (while acknowledging its own failure to effectuate service), its disinterest in resolving the district court case is clear—other than initial venue discovery for transfer, Patent Owner has failed to serve a single discovery request in that 19 month period. In fact, after the case was transferred from the Eastern District of Texas ("EDTX") to the Northern District of Georgia ("NDGA"), it took Petitioner filing a Motion to Stay Pending Resolution of Inter Partes Review on May 28, 2025, and the Court entering a Show Cause Order on June 4, 2025 to get Patent Owner to even enter an appearance. *See The Phelan Group, LLC v. Mercedes-Benz Group AG*, No. 1:25-cv-01399-SEG, Doc. Nos. 108, 110 (N.D. Ga.). And finally, with Petitioner's stay motion pending, instead of showing the NDGA that it would expedite the prosecution of its case, Patent Owner asked the Court to give it a two week extension to respond to Petitioner's stay motion, delaying the case further.

The result of Patent Owner's delays and its failure to appear in its own case is that the case is *de facto* stayed already, with ***no case schedule issued much less a trial date or claim construction hearing set***. In other words, there is far more work for the court ahead of it than is behind it, indicating that a stay is highly likely pursuant to NDGA precedent. Patent Owner suggests that resolution of the district court case is imminent, while nothing could be further from the truth. Under a corrected factual record, the *Fintiv* factors weigh against discretionary denial and instead strongly favor institution.

## II. DISCRETIONARY DENIAL UNDER *FINTIV* IS NOT WARRANTED

The *Fintiv* factors do not warrant denial of the Petition. *See Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (Mar. 20, 2020) (precedential). Each factor favors institution or is at most neutral.

### A. Factor 1 weighs against discretionary denial: The case is *de facto* stayed, and a motion to stay is both pending and likely to be granted.

*Fintiv* factor 1—"whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted"—weighs strongly against discretionary denial and favors institution.

While a parallel litigation involving this and six other patents in the same patent family has been pending in District Court since December 2023, little substantive activity has taken place. *See infra* Section II.B. Further, upon transfer of

the litigation to NDGA, the court ordered the parties to enter appearances by March 28, 2025. Exh. 1012. ***Patent Owner, however, failed to appear until June 10, 2025***. As a result, the district court action has no case schedule and has effectively been stayed, as it could not proceed without a plaintiff.

Moreover, Petitioner moved to stay the district court action on May 28, 2025, *see* Exhs. 1013 and 1014, and there is significant "evidence" the court will grant this motion now that IPRs have been filed for all seven asserted patents and the first filed IPR has been instituted.[1] In NDGA, courts "have reasoned that a stay pending a related PTO administrative proceeding should be ***liberally granted***," including where, as here, the IPRs may significantly simplify the issues or even dispose of the litigation altogether. *Doubleday Acquisitions, LLC v. Envirotainer AB*, No. 1:21-cv-03749-SCJ, 2022 WL 18778991, at *3 (N.D. Ga. June 3, 2022) (emphasis added). To that end, NDGA courts "consider three factors in deciding whether to stay litigation pending completion of an IPR: '(1) whether discovery is complete and a trial date has been set; (2) whether a stay will simplify the issues in the case; and (3)

[1] MBGAG filed its stay motion about two weeks after it filed its IPR against the seventh and final patent. After Patent Owner sought and received a two week extension to respond, briefing from all parties closed on July 10, 2025. *See* Exh. 1014.

whether a stay would unduly prejudice or present a tactical disadvantage to the nonmovant.'" *Aegis 11 S.A. v. Hisense Co., Ltd.*, No. 1:20-cv-3891-MHC, 2021 WL 12300139, at *2 (N.D. Ga. June 23, 2021) (quoting *Interface, Inc. v. Tandus Flooring, Inc.*, No. 4:13-CV-46-WSD, 2013 WL 5945177, at *4 (N.D. Ga. Nov. 5, 2013)).

The "liberally granted" standard deployed by NDGA lies in stark contrast to Patent Owner's belief that "the litigation involving the '465 patent is unlikely to be stayed." Mot. at 7. To the contrary, a stay is highly likely, as the factors NDGA considers warrant a stay for similar reasons as presented here: plaintiff has only recently appeared and the case remains in the early stages, with no non-venue discovery requests having been served; claim construction has not commenced; and no trial date has been set. Exhs. 1013, 1014. NDGA also stays cases without waiting for IPR institution. *Aegis*, 2021 WL 12300139, at *3.[2] However, that is no longer the case here, as trial has now been instituted for IPR2025-00413 and the NDGA is even more likely to stay as a result. *See VirtualAgility, Inc. v. Salesforce.com, Inc.*,

[2] Further, NDGA is statistically likely to grant a stay. Between 2013 and 2023, NDGA courts adjudicated 25 motions to stay pending IPR and denied only 4. *See* Exh. 1015. More than half of the motions (14) were granted in full, and the remaining (7) were granted in part. *Id.*

759 F.3d 1307, 1316 (Fed. Cir. 2014) ("[N]o doubt the case for a stay is stronger after post-grant review has been instituted.").

Because the district court case has effectively been stayed already through Patent Owner's own inaction, Petitioner has filed a motion to stay, and evidence suggests this motion will be granted, *Fintiv* factor 1 weighs against discretionary denial.

### B. Factor 2 weighs against discretionary denial: There is no trial date, and the entire case is ahead of the parties, not behind them.

*Fintiv* factor 2 asks the Board to consider the proximity of the court's trial date to the Board's projected statutory deadline for a final written decision.

Here, ***there is no trial date in the district court case***—in significant part due to the failure of Patent Owner to appear. Because there is no trial date against which to compare the Board's projected statutory deadline of November 2026, this factor weighs against discretionary denial.

Even if the district court case were to re-commence today, and the stay was denied (not likely), it is clear trial would not occur until after November 2026. The parties and the court have far more work ahead of them than behind them. Before the transfer to NDGA, no depositions or other discovery had taken place (apart from initial disclosures mandated by EDTX's Local Patent Rules and venue-related discovery taken in connection with MBGAG's transfer motion), and claim construction had not commenced. Since the transfer, no discovery has occurred

because Patent Owner had not appeared in the case.

Patent Owner points to time-to-disposition statistics to speculate that NDGA could dispose of the case in as little as six months. Mot. at 7. But this ignores the posture of this case (*e.g.*, Patent Owner has not appeared and little substantive activity has been taken place), and in any event, disposition by early settlement or dismissal is of no moment in the *Fintiv* analysis. A settlement between parties would conclude both the district court case and IPRs, regardless of trial date. When one looks at the actual time-to-***trial*** statistics that Patent Owner cites to of 30.8 months, it is clear trial will extend into late 2026, if not far later given the strong likelihood of a stay.

The lack of a trial date is one of the central reasons cited by the Acting Director in rejecting Patent Owner's discretionary denial motion in IPR2025-00413. *See* IPR 2025-00413, Paper 13 at 2. Because no trial date has been set and there is little concrete reason to believe that the district court trial will occur proximate to the Board's statutory deadline, this factor weighs against discretionary denial.

### C. Factor 3 weighs against discretionary denial: There has been minimal investment in the parallel proceeding, particularly by Patent Owner.

*Fintiv* factor 3 considers the investment in the parallel proceeding by the court and the parties. Because the court and parties, particularly Patent Owner, have invested so little in the parallel proceeding, this factor weighs against discretionary

denial.

The Board has held that "[i]f, at the time of the institution decision, the district court has not issued orders ***related to the patent at issue in the petition***, this fact weighs against exercising discretion to deny institution." *Fintiv*, Paper 11 at 4 (emphasis added). Such is the case here. In contrast to Patent Owner's suggestion that "the Northern District of Georgia will issue a scheduling order in relatively short order," Mot. at 10, NDGA has awaited Patent Owner's appearance for almost three months since transfer to NDGA, before it could have done any work in this case at all, let alone issued orders related to the '465 Patent. Exh. 1014 (NDGA Docket Statement). For its part, although the transferor court (EDTX) had conducted activity during the case's tenure therein, this was limited to orders on consolidation (Dkt. No. 30), mooting a motion to dismiss upon Patent Owner's filing an amended complaint (Dkt. No. 36), venue discovery (Dkt. No. 40), transfer (Dkt. No. 81), and deconsolidation (Dkt. No. 83). Exh. 1014.

Patent Owner cites these early procedural orders on consolidation and venue and their related motions as reasons this factor supports a discretionary denial. Mot. at 8. But none of these orders were investments by NDGA, the applicable forum—let alone investments "related to the patents at issue"—and are therefore irrelevant to this factor. In fact, neither EDTX nor NDGA has progressed towards or issued a claim construction order, or any other order directed at the '465 Patent. *See* Exh.

1014.

The early steps conducted by EDTX do not weigh against institution when "much work remains" on issues of patent validity—indeed all of it. *See Sand Revolution II, LLC v. Cont'l Intermodal Grp.—Trucking LLC*, IPR2019-01393, Paper 24 at 11 (P.T.A.B. June 16, 2020) (informative); *Google LLC v. Wildseed Mobile, LLC*, IPR2023-00247, Paper 10 at 23-25 (P.T.A.B. June 6, 2023) (citations omitted) (finding infringement and invalidity contentions were exchanged, written discovery was in progress, and claim construction discovery would occur before institution decision, but "much work remain[ed]" and factor 3 favored institution).

Moreover, Petitioner worked diligently to file the instant Petition and six additional IPR petitions challenging the over 120 claims asserted in the district court case. This Board has found it reasonable to take additional time, still within the statutorily allowed period,[3] when there are a "large number of patents and claims challenged in this and Petitioner's [six] other related petitions for *inter partes* review." *Sotera Wireless v. Masimo Corp.*, IPR2020-01019, Paper 12 at 17 (P.T.A.B. Dec. 1, 2020); *see also Samsung Elecs. Co., Ltd. v. Headwater Research LLC*, IPR2024-01396, Paper 13 at 7 (P.T.A.B. Apr. 1, 2025).

The lack of investment of resources in the district court was also a reason cited

[3] Patent Owner does not contest that the Petition was filed within the statutory period.

by this Board in rejecting Patent Owner's discretionary denial motion in IPR2025-00413. *See* IPR 2025-00413, Paper 13 at 2. Therefore, the third *Fintiv* factor weighs against discretionary denial.

### D. Factor 4 weighs against discretionary denial: Petitioner's "*Sotera*" stipulation and non-overlapping claims.

Factor 4 favors institution. Petitioner stipulates that if the Board institutes, it will not pursue with respect to the '465 Patent "any ground that [Petitioner] raised or reasonably could have raised" during this IPR proceeding in the related district court case, which removes any overlap. *Sotera Wireless*, IPR2020-01019, Paper 12 at 18-19; 35 U.S.C. § 315(d).[4] Moreover, while Patent Owner broadly claims that "[t]he issues raised in the Petition will be resolved by the district court litigation," Mot. at 10, this is not true. In district court, Claims 7 or 12 of the '465 Patent are not

[4] Patent Owner hypothesizes that a new challenge at the District Court based on the combination of system art with prior art from this IPR would be a new ground not subject to the stipulation. Mot. at 11. However, such speculation is immaterial. "[W]here [as here] there is no evidence that the asserted prior art here is also asserted in the district court in combination with [system art]," such an allegation does not support exercising the Board's discretion to deny institution. *Green Revolution Cooling, Inc. v. Midas Green Techs., LLC*, No. IPR2025-00196, 2025 WL 1484313, at *6 (P.T.A.B. May 23, 2025).

asserted and thus not at issue. In this IPR, however, Petitioner has challenged the validity of these specific claims.

### E. Factor 5 is neutral: The petitioner is the defendant in the parallel litigation.

As Patent Owner notes, Petitioner and the Defendant in the parallel district court case are the same party. Petitioner notes, however, that there are additional real parties-in-interest in this IPR which are not parties in the parallel district court case.

### F. Factor 6 favors institution: The merits of the Petition are strong, and Patent Owner presents no argument against them.

*Fintiv* factor 6 requires the Board to consider other circumstances that impact the Board's exercise of discretion, including the merits. When introducing its factors, *Fintiv* notes that "an early trial date should be weighed as part of a 'balanced assessment of all relevant circumstances of the case, including the merits.'" *Fintiv* at 2 (quoting PTAB Consolidated Trial Practice Guide (Nov. 2019) at 58). Even when the other *Fintiv* factors would warrant denial, the PTAB can consider compelling merits and institute IPR on that basis. *See Commscope Techs. LLC v. Dali Wireless Inc.*, IPR2022-01242, Paper 23 at 3-6 (P.T.A.B. Feb. 27, 2023 precedential) ("The Board should first address *Fintiv* factors 1-5; if that analysis *supports discretionary denial*, the Board should engage the compelling merits question.") (emphasis added); *see also* March 26, 2025, USPTO Memorandum titled "Interim Processes for PTAB Workload Management" (noting that the "strength of

the unpatentability challenge" should be considered); *Illumina, Inc. v. Natera, Inc.*, IPR2019-01201, Paper 19 at 8 (P.T.A.B. Dec. 18, 2019) (finding strong merits can "outweigh[] relatively weaker countervailing considerations of efficiency").

Patent Owner does not argue that there are any "circumstances" under *Fintiv* factor 6 that favor denial, other than to claim that "the Petition does not present a compelling case on the merits." Mot. at 12. But Patent Owner provides no argument or explanation as to how the Petition does not present a compelling case on the merits. *Id.* Nor could it. The Petition presents detailed and compelling grounds for unpatentability based on prior art which was not previously before the PTO, including U.S. Patent No. 6,225,890 to Murphy and U.S. Patent Publication No. 2007/0168125 to Petrik. Moreover, that its patents are susceptible to invalidity is evident in the fact that the PTAB recently adjudicated certain claims of U.S. Patent No. 10,259,470, a continuation-in-part of the instant '465 Patent, and found its challenged claims to be unpatentable. *See* Appeal No. 2025-001876, Reexamination Control No. 90/015,287, Decision on Appeal mailed May 2, 2025. This invalidation of claims in the '470 Patent was also cited by this Board in rejecting Patent Owner's discretionary denial motion in IPR2025-00413. *See* IPR 2025-00413, Paper 13 at 2. And, as further evidence that Patent Owner's patents are susceptible to invalidity, the PTAB recently instituted trial for IPR2025-00413, which is directed to a patent in the same patent family as the '465 Patent. *See* IPR2025-00413, Paper 14.

Finally, comparing the instant matter to the Board's recent decision in *Dabico Airport Solutions, Inc. v. AXA Power ApS*, IPR2025-00408, Patent Owner suggests that the Petition should be denied under the doctrine of settled expectations, because the '465 Patent "issued more than six years ago and claims priority to patents and/or patent applications dating back as far as 17 years ago…." Mot. at 13-14. But analyzing *Dabico* beyond its surface exposes that it is distinguishable. The *Dabico* patent owner is the "world's leading supplier of aircraft ground power units and pre-conditioned air units," and the product embodying the challenged patent "has been extremely successful since its release in November 2022." *Id.* at 4-6. Indeed, Dabico and AXA Power are competitors in the space the patent covers.

By contrast, in this Petition, Patent Owner was not known in the industry until it began litigating in 2023, and has already been held as a non-competitor to Petitioner by the Eastern District of Texas. *See* Exh. 1016, Memorandum and Order, at 11 (noting Patent Owner "is not engaged in product competition in the marketplace…"). As a non-competitor hidden from industry view, there was no reason or legitimate opportunity for Petitioner to be an "interested part[y]" to learn that this Patent Owner or this Patent existed until Patent Owner filed its Complaint in district court. Further, to date, no one in Petitioner's industry (other than Petitioner itself) has tested the validity of the Challenged Patent beyond filing an answer to a complaint. Because there is nothing to suggest the industry knew of the Patent

Owner or the Patent, there are no settled expectations as to the validity of the Challenged Patent. In fact, the expectations are reversed – that this patent and its related continuations are expected to be invalidated, as a non-industry actor has successfully challenged the related ’470 Patent in reexamination proceedings, and the Board has instituted trial challenging the parent ’101 Patent. *See* IPR2025-00413, Paper 14; *see also Embody*, IPR2025-00248, Paper 12 at 3; *Padagis US*, IPR2025-00464, Paper 12 at 3-4.

Because the merits of the Petition are strong with no other considerations weighing against institution, the sixth *Fintiv* factor weighs against discretionary denial.

## III. CONCLUSION

The Board should institute Trial based on the above arguments and the merits of the Petition. Further, Patent Owner has already asserted the ’465 Patent in five litigations. Instituting IPR and invalidating the ’465 Patent will promote judicial economy, addressing the string of assertions of the patent.

Date: July 23, 2025

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## TABLE OF EXHIBITS

| Exhibit | Description |
|---|---|
| 1001 | U.S. Patent No. 10,259,465 ("'**465 Patent**") |
| 1002 | File History for the '465 Patent |
| 1003 | Reserved |
| 1004 | Declaration of Dr. Mark Ehsani |
| 1005 | Curriculum Vitae of Dr. Mark Ehsani |
| 1006 | U.S. Patent No. 6,225,890 ("**Murphy**") |
| 1007 | U.S. Patent Application Publication No. 2003/0189482 ("**Arshad**") |
| 1008 | U.S. Patent Application Publication No. 2007/0168125 ("**Petrik**") |
| 1009 | U.S. Patent Application Publication No. 2008/0046739 ("**Adams**") |
| 1010 | U.S. Patent Application Publication No. 2008/0114501 ("**Wu**") |
| 1011 | Reserved |
| 1012 | *The Phelan Group, LLC v. Mercedes-Benz Group AG*, No. 1:25-cv-1399-SEG (N.D. Ga.) at Dkt. 86 (letter from court to parties 15 ordering parties to appear by March 28, 2025) |

| | |
|---|---|
| 1013 | *The Phelan Group, LLC v. Mercedes-Benz Group AG*, No. 1:25-cv-1399-SEG (N.D. Ga.) at Dkt. 108 (Mercedes-Benz Group AG's Motion to Stay Pending Inter Partes Review Proceedings). |
| 1014 | Case No. 1:25-cv-1399-SEG (N.D. Ga.) Docket Report |
| 1015 | Docket Navigator statistics for the Northern District of Georgia, available at https://search.docketnavigator.com/patent/court/17/4 |
| 1016 | Case No. 2:23-cv-607-JRG, Dkt. No. 84-1 (E.D. Tex.) Redacted Order Granting Motion to Transfer |

## CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the foregoing **PETITIONER'S RESPONSE TO PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL** contains **3,308** words, excluding those portions identified in 37 C.F.R. § 42.24(a), as measured by the word-processing system used to prepare this paper.

/s/ *Celine J. Crowson*
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## CERTIFICATE OF SERVICE

The undersigned certifies that, in accordance with 37 C.F.R. § 42.6(e) and 37 C.F.R. § 42.105, the foregoing **PETITIONER'S RESPONSE TO PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL** and exhibits thereto were served on counsel of record via electronic mail on July 23, 2025, as follows:

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