

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GEOTAB INC. AND GEOTAB USA, INC.,
Petitioner,

v.

FRACTUS, S.A.,
Patent Owner.

Case No. IPR2025-00929
Patent No. 8,810,458

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

TABLE OF CONTENTS

EXHIBIT LIST	4
TABLE OF AUTHORITIES.....	5
I. INTRODUCTION AND SUMMARY OF ARGUMENT	7
II. FACTUAL BACKGROUND.....	8
III.LEGAL STANDARD	10
IV.DISCRETIONARY DENIAL IS APPROPRIATE	11
A. A Final Written Decision in this Proceeding is Unlikely Before the District Court Trial	11
B. Stay of the District Court Proceedings is Unlikely and, Nevertheless, Will Not Avoid Duplicative Proceedings.....	15
C. Discretionary Denial Protects Patent Owner’s Settled Expectations	17
D. The Patentability Challenges are Weak and Will Not Invalidate Asserted Claims	17
E. The <i>Fintiv</i> Factors Favor Discretionary Denial.....	18
1. <i>Fintiv</i> Factor 1: The district court has not granted a stay, likely will not and, even if it did, Verizon’s continued pursuant of the same arguments eliminate any efficiency benefits	18
2. <i>Fintiv</i> Factor 2: The District Court Litigation’s trial date is earlier.	19
3. <i>Fintiv</i> Factor 3: The parties have invested resources in the District Court Litigation	19
4. <i>Fintiv</i> Factor 4: The same invalidity contentions are at issue in the Petition and the District Court Litigation	19

5.	<i>Fintiv</i> Factor 5: Petitioner is a defendant in the District Court Litigation.	20
6.	<i>Fintiv</i> Factor 6: The Petition is meritless.	20
V. CONCLUSION		20
CERTIFICATE OF SERVICE		21

EXHIBIT LIST

Exhibit No.	Title
Ex. 2001	PACER Docket Reports from July 28, 2025 in <i>Fractus, S.A. v. Verizon Connect Inc. et al</i> , 2:24-cv-01009-JRG-RSP (E.D.Tex.) and <i>Fractus, S.A. v. Geotab Inc.</i> 2:24-cv-01008-JRG-RSP (E.D.Tex.)
Ex. 2002	Defendants' Preliminary Invalidity Contentions dated June 18, 2025 in 2:24-cv-01009-JRG-RSP (E.D.Tex.)
Ex. 2003	Invalidity Contentions for U.S. Patent No. 8,810,458 in 2:24-cv-01009-JRG-RSP (E.D.Tex.)
Ex. 2004	Amended Docket Control Order dated April 10, 2025 in 2:24-cv-01009-JRG-RSP (E.D.Tex.)
Ex. 2005	Complaint dated December 6, 2024 in 2:24-cv-01008-JRG-RSP (E.D.Tex.)
Ex. 2006	Docket Navigator Time to Trial Statistics for Judge Rodney Gilstrap (last accessed July 23, 2025)
Ex. 2007	Declaration of Mark J. DeBoy

TABLE OF AUTHORITIES

Cases

<i>Acorn Semi, LLC v. Samsung Elecs. Co.</i> , No. 2:19-CV-00347-JRG, 2020 WL 10284981(E.D. Tex. Sept. 14, 2020).....	15
<i>Advanced Bionics, LLC v. MED-EL Elektromedizinische Gertite GmbH</i> , IPR201901469, Paper 6 (Feb. 13, 2020) (precedential).....	11
<i>Apple Inc. v. Fintiv, Inc.</i> , IPR2020-00019, Paper 11 (Mar. 20, 2020) (precedential)	11
<i>Arm Ltd. v. Daedalus Prime LLC</i> , IPR2025-00207, Paper 10 (May 16, 2025).....	12
<i>Charter Communications, Inc. v. Iarnach Technologies LTD.</i> , IPR2025-00473, Paper 14 (July 16, 2025).....	14
<i>Cisco Sys., Inc. v. WSOU Investments LLC</i> , IPR2025-00429, Paper 15 (June 25, 2025).....	12
<i>Coretronic Corp. and Optoma Corp. v. Maxell, Ltd.</i> , IPR2025-474, 476-77, Paper 11 (July 10, 2025).....	13
<i>Dabico Airport Sols. Inc. v. Axa Power Aps</i> , IPR2025-00408, Paper 21 (June 18, 2025).....	17
<i>Ericsson Inc. v. Procomm Int’l PTE LTD.</i> , IPR2024-01455, Paper 15 (May 16, 2025).....	13
<i>Full-Metal-Power B.V. v. Infocus Downhole Solutions USA LLC</i> , IPR-2025-00391, Paper 14 (June 25, 2025).....	12
<i>Gen. Plastic Indus. Co. v. Canon Kabushiki Kaisha</i> , IPR2016-01357, Paper 19 (Sept. 6, 2017) (precedential as to § II.B.4.i)	11
<i>Google LLC v. Truesight Communications LLC</i> , IPR2025-00024-25, Paper 13 (June 25, 2025)	13
<i>IBM Corp. v. Virtamove</i> , IPR2025-00591, 00599, Paper 8 (July 17, 2025).....	14
<i>Intel Corp. v. Proxense LLC</i> , IPR2025-00327, Paper 12 (June 26, 2025)	17
<i>Motorola Sols. v. Stellar, LLC</i> , IPR2024-01205, Paper 19 (PTAB Mar. 28, 2025).....	17
<i>Neogenomics Labs, Inc. v. Natera, Inc.</i> , IPR2025-00455, Paper 13 (June 12, 2025)	13
<i>Samsung Electronics Co. Ltd, and Samsung Electronics America, Inc. v. Vasu Holdings LLC</i> , IPR2025-446-450, Paper 12 (July 10, 2025).....	13

<i>Samsung Electronics Co. Ltd. and Samsung Electronics America, Inc. v. Mobile Data Technologies, LLC</i> , IPR2025-535-36, Paper 16 (July 10, 2025)	13
<i>Samsung Electronics Co. Ltd. and Samsung Electronics America, Inc., v. Four Batons Wireless, LLC</i> , IPR2025-00493-496, Paper 13 (July 17, 2025).....	14
<i>Samsung Electronics Co., Ltd. v. Headwater Research</i> , IPR2025-00482, Paper 15 (July 24, 2025).....	14
<i>Samsung Electronics Co., Ltd. v. Sinotechnix LLC</i> , IPR2025-00331, 00333, 00335-36, Paper 13 (July 2, 2025).....	13, 17
<i>Samsung Electronics, v. Cerence Operating Co.</i> , IPR2025-00458-00460, Paper 14 (June 25, 2025)	12
<i>SAP America Inc. v. Valtrus Innovations LTD.</i> , IPR2025-414-418, 420, Paper 12 (July 10, 2025).....	13
<i>Shenzen Tuozhu Tech. Co. v. Stratsys, Inc.</i> , IPR2025-00354 (June 12, 2025).....	17
<i>Sportradar AG v. Sportcastr Inc.</i> , IPR2025-00265, 00266, 00268, 00269, 00273, 00275, Paper 19 (June 25, 2025).....	12
<i>Sportradar AG v. Sportcastr, Inc. (d/b/a Panda Interactive)</i> , IPR2025-00313-16, Paper 18 (July 16, 2025).....	13
<i>Trover Grp., Inc. v. Dedicated Micros USA</i> , No. 2:13-CV-1047-WCB, 2015 WL 1069179 (E.D. Tex. Mar. 11, 2015)	15

Statutes

35 U.S.C. § 314.....	7
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Rules

37 C.F.R. §42.6	17
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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Pursuant to the March 26, 2025 Memorandum by the Director that addresses “Interim Processes for PTAB Workload Management” (Director Memo), Patent Owner respectfully requests the Director exercise discretionary denial of institution. Several considerations favor discretionary denial of institution in this IPR.

First, the Director should exercise discretion to deny institution under 35 U.S.C. § 314(a), the Director Memo and the *Fintiv* factors because the parallel district court litigation will reach a final resolution in a jury trial before any final written decision by the Board. Indeed, the parallel litigation is well underway with the parties having exchanged invalidity and infringement contentions. Discretionary denial would likewise be wholly consistent with the Director’s decisions to date in similar circumstances.

Second, proceeding with this IPR will not avoid duplicative proceedings even in the unlikely event that Petitioner’s pending Motion to Stay the parallel litigation is granted. This is because the parallel litigation includes additional defendants Verizon Connect, Inc. and Cellco Partnership d/b/a Verizon Wireless (“Verizon”), which have not been identified as a real parties in interest in this proceeding. Accordingly, Verizon has raised and remains free to make the identical arguments raised in this IPR in the parallel litigation which is scheduled to go to trial before

this IPR concludes. Thus, Petitioner is seeking two co-pending bites at the apple, which is precisely what discretionary denial is intended to avoid.

Third, the patent at issue, U.S. Patent No. 8,810,458 (“the ‘458 Patent”), issued over 10 years ago and Petitioner has been aware of the ‘458 Patent since at least 2021, when Patent Owner brought it to Petitioner’s attention. Petitioner’s awareness of the ‘458 Patent and failure to seek early review demonstrate the parties’ settled expectations and, accordingly, support discretionary denial of the Petition.

Fourth, the Petition’s patentability challenge is weak and, accordingly, is unlikely to resolve the dispute between the parties. Specifically, the invalidity grounds propose combinations of the references that are contrary to the references’ explicit teachings and that have no likelihood of success.

II. FACTUAL BACKGROUND

The ‘458 Patent issued on August 19, 2014. Ex. 1001 at 1. Patent Owner gave notice to Petitioner of the ‘458 Patent in October of 2021, which Petitioner confirmed via a letter dated November 15, 2021. Ex. 2007 at ¶ 6; Ex. 2005 at ¶¶ 17-18. On December 6, 2024, Patent Owner filed suit against Petitioner in the U.S. District Court for the Eastern District of Texas alleging infringement of the ‘458

Patent and four other patents.¹ On that same date, Patent Owner filed suit against Verizon, alleging infringement of the ‘458 Patent and four other patents, three of which overlap with the patents asserted against Petitioner.² Ex. 2007 at ¶ 2. The cases were consolidated by order of the Court on February 18, 2025 (“District Court Litigation”). Ex. 2001 at 7 (entry 17). The District Court Litigation is continuing to proceed in accordance with the Court’s Docket Control Order with trial scheduled for September 14, 2026. Order. Ex. 2004 at 1. On June 18, 2025, Defendants served their joint invalidity contentions, which include, *inter alia*, the same invalidity contentions as those raised in this proceeding. Ex. 2007 at ¶ 4; Ex. 2002 at pp. 34-

¹ U.S. Patent Nos. 8,456,365, 11,031,677, 11,349,200 and 12,095,149. An IPR Petition as to U.S. Patent 8,456,365 filed by Petitioner (IPR 2025-00928) has been accorded the same filing date as the present proceeding and Patent Owner is filing a Brief in Support of Discretionary Denial in that proceeding contemporaneously with the filing of this Brief. IPR Petitions have been filed by Petitioner as to U.S. Patent Nos. 11,031,677 (IPR2025-01026) and 11,349,200 (IPR2025-01027), which have both been accorded a filing date of June 6, 2025. Petitioner has also filed a PGR Petition as to U.S. Patent No. 12,095,149 (PGR2025-00056), which has been accorded a filing date of June 17, 2025.

² U.S. Patent 11,349,200 has not been asserted against Verizon.

41; Ex. 2003 at pp. 280-361. On June 30, 2025, Petitioner moved to stay the District Court Litigation and to deconsolidate the case from the claims against Verizon. Ex. 2001 at 9 (entry 50). On July 14, 2025, Petitioner opposed the motion to stay. Ex. 2001 at 9 (entry 51). The motion to stay is currently pending. Ex. 2001.

III. LEGAL STANDARD

As indicated in the Director Memo:

[C]onsistent with the discretionary considerations enumerated in existing Board precedent (including *Fintiv*, *General Plastic*, and *Advanced Bionics**) and the Consolidated Trial Practice Guide (Nov. 2019), the parties are permitted to address all relevant considerations, which may include:

- Whether the PTAB or another forum has already adjudicated the validity or patentability of the challenged patent claims;
- Whether there have been changes in the law or new judicial precedent issued since issuance of the claims that may affect patentability;
- The strength of the unpatentability challenge;
- The extent of the petition's reliance on expert testimony;
- Settled expectations of the parties, such as the length of time the claims have been in force;
- Compelling economic, public health, or national security interests; and
- Any other considerations bearing on the Director's discretion.

Director Memo at 2-3 (*citing, Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (Mar. 20, 2020) (precedential); *Gen. Plastic Indus. Co. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 (Sept. 6, 2017) (precedential as to § II.B.4.i); *Advanced Bionics, LLC v. MED-EL Elektromedizinische Gertite GmbH*, IPR201901469, Paper 6 (Feb. 13, 2020) (precedential)).

IV. DISCRETIONARY DENIAL IS APPROPRIATE

A. A Final Written Decision in this Proceeding is Unlikely Before the District Court Trial

Trial in the District Court Litigation is set for September 14, 2026, whereas, final written decisions in this proceeding and IPR2025-00928 are unlikely prior to November 28, 2026.³ The decisions in the two IPRs and the PGR for other patents

³ The Notice of Filing Date Accorded issued May 28, 2025 (Paper 6), the institution decision would be expected to issue no later than November 28, 2025. *See* 35 U.S.C. § 314(b) (setting the deadline for institution decision at three months after the patent owner's preliminary response); 37 C.F.R. § 42.107(b) (setting the deadline for patent owner's preliminary response at three months after the notice of filing date accorded). Thus, the projected deadline for a final written decision would be November 28, 2026—over a month after the trial in the District Court Litigation. *See* 37 C.F.R. § 42.100(c) (setting the deadline for a final written decision at one year after institution).

asserted against Petitioner will be completed even further after the conclusion of the trial in the District Court Litigation. *See supra*, n. 1. In spite of awareness of the trial date in the District Court Litigation and having the benefit of the Director Memo, Petitioner delayed the filing of these three additional proceedings for more than a month, pushing their completion dates well past the litigation trial date.

As reflected in the chart below, decisions on discretionary denial requests with respect to cases pending in the U.S. District Court for the Eastern District of Texas made since the issuance of the Director Memo have consistently determined that discretionary denial should be exercised in such circumstances.

Decision	Scheduled Trial Date	Projected Final Decision by Board
<i>Full-Metal-Power B.V. v. Infocus Downhole Solutions USA LLC</i> , IPR-2025-00391, Paper 14 (June 25, 2025)	June 22, 2026	July 30, 2026
<i>Cisco Sys., Inc. v. WSOU Investments LLC</i> , IPR2025-00429, Paper 15 (June 25, 2025)	April 20, 2026	July 30, 2026
<i>Samsung Electronics, v. Cerence Operating Co.</i> , IPR2025-00458-00460, Paper 14 (June 25, 2025)	April 20, 2026	August 27, 2026
<i>Arm Ltd. v. Daedalus Prime LLC</i> , IPR2025-00207, Paper 10 (May 16, 2025)	January 26, 2026	June 2026
<i>Sportradar AG v. Sportcastr Inc.</i> , IPR2025-00265, 00266, 00268, 00269, 00273, 00275, Paper 19 (June 25, 2025)	January 23, 2026	July 8, 2026

<i>Google LLC. v. Truesight Communications LLC</i> , IPR2025-00024-25, Paper 13 (June 25, 2025)	October 6, 2025	July 2026
<i>Ericsson Inc. v. Procomm Int'l PTE LTD.</i> , IPR2024-01455, Paper 15 (May 16, 2025)	October 20, 2025	July 29, 2026
<i>Neogenomics Labs, Inc. v. Natera, Inc.</i> , IPR2025-00455, Paper 13 (June 12, 2025)	October 10, 2025	August 14, 2026
<i>Samsung Electronics Co., Ltd. v. Sinotechnix LLC</i> , IPR2025-00331, 00333, 00335-36, Paper 13 (July 2, 2025)	May 4, 2026	September 6, 2026
<i>SAP America Inc. v. Valtrus Innovations LTD.</i> , IPR2025-414-418, 420, Paper 12 (July 10, 2025)	September 22, 2025	August 2026
<i>Samsung Electronics Co. Ltd, and Samsung Electronics America, Inc. v. Vasu Holdings LLC</i> , IPR2025-446-450, Paper 12 (July 10, 2025)	November 3, 2025	August/September 2026
<i>Coretronic Corp. and Optoma Corp. v. Maxell, Ltd.</i> , IPR2025-474, 476-77, Paper 11 (July 10, 2025)	March 23, 2026	September 10, 2026
<i>Samsung Electronics Co. Ltd. and Samsung Electronics America, Inc. v. Mobile Data Technologies, LLC</i> , IPR2025-535-36, Paper 16 (July 10, 2025)	April 20, 2026	September 2026
<i>Sportradar AG v. Sportcastr, Inc. (d/b/a Panda Interactive)</i> ,	January 23, 2026	August 20, 2026

IPR2025-00313-16, Paper 18 (July 16, 2025)		
<i>IBM Corp. v. Virtamove</i> , IPR2025-00591, 00599, Paper 8 (July 17, 2025)	January 2026	October 10, 2026
<i>Charter Communications, Inc. v. Iarnach Technologies LTD.</i> , IPR2025-00473, Paper 14 (July 16, 2025)	February 9, 2026	September 27, 2026
<i>Samsung Electronics Co. Ltd. and Samsung Electronics America, Inc., v. Four Batons Wireless, LLC</i> , IPR2025-00493- 496, Paper 13 (July 17, 2025)	March 2026	September 23, 2026
<i>Samsung Electronics Co. Ltd. and Samsung Electronics America, Inc., v. Keyless Licensing LLC</i> , IPR2025-00526- 529, Paper 13 (July 17, 2025)	April 20, 2026	October 9, 2026
<i>Samsung Electronics Co., Ltd. v. Headwater Research</i> , IPR2025- 00482, Paper 15 (July 24, 2025)	January 2026	July 29, 2026

Judge Gilstrap’s historical practice confirms that trial will conclude before a final written decision in this proceeding. Over the past two years, Judge Gilstrap has an average time-to-trial of 22 months from filing of the complaint, whether one looks to the mean or median average. Ex. 2006. This average time to trial predicts a trial date of around October 6, 2026, consistent with the scheduled trial date of September

14, 2026, and well in advance of the expected November 28, 2026 final written decision date in this proceeding.

As the remainder of this brief demonstrates, there is no reason for the Board to deviate from its practice of granting discretionary denial when the same invalidity issues will be addressed more promptly in the District Court Litigation.

B. Stay of the District Court Proceedings is Unlikely and, Nevertheless, Will Not Avoid Duplicative Proceedings

Several years ago, Judge Bryson (sitting by designation) surveyed “cases from the Eastern District of Texas” and concluded that “the universal practice” in this District is to “postpone[] ruling on stay requests or [] den[y] stay requests when the PTAB has not yet acted on the petition for review.” *Trover Grp., Inc. v. Dedicated Micros USA*, No. 2:13-CV-1047-WCB, 2015 WL 1069179, at *5-6 (E.D. Tex. Mar. 11, 2015) (“when the PTAB has not yet acted on a petition for inter partes review, the courts have uniformly denied motions for a stay”). This practice continues to this day. Indeed, Judge Gilstrap, before whom this case is pending in the Eastern District of Texas, has held that, as is the case here, motions to stay will be denied if filed before the “last of the patents-in-suit to be acted upon by the PTAB.” *Acorn Semi, LLC v. Samsung Elecs. Co.*, No. 2:19-CV-00347-JRG, 2020 WL 10284981 at *2 (E.D. Tex. Sept. 14, 2020).

As noted above, the District Court Litigation involves multiple patents which are challenged by IPRs and a PGR with different filing dates. Given past practice it is unrealistic to believe that Judge Gilstrap will depart from his prior practice by granting a stay in this case.

Moreover, even in the unlikely event a stay is granted, it will do nothing to avoid duplicative proceedings as Verizon, which has raised the identical invalidity issues to those in this proceeding (Ex. 2002 at pp. 34-41; Ex. 2003 at pp. 280-361), is not a real party in interest here and has not moved for a stay, is free to continue to proceed with the same invalidity arguments in parallel. This also renders Petitioner's *Sotera* stipulation unavailing as Petitioner will receive the full benefit of any validity result Verizon may be able to obtain. Thus, Petitioner here is asking the Board to assist it in seeking two bites at the apple. This is precisely the type of stratagem discretionary denial is designed to prevent. *See* 88 FR 24503, 24513 (April 21, 2203) ("The Office, however, retains discretion under 35 U.S.C. 314(a) and 324(a) to deny institution of an IPR or PGR in circumstances in which parallel proceedings would result in significant inefficiency or in which there is gamesmanship or harassment.").

In addition, the Petitioner's and Verizon's invalidity arguments in the district court are much more expansive than those raised in this proceeding. Ex. 2002, *passim*; Ex. 2003, *passim*. Thus, even if the *Sotera* stipulation were effective, its impact on efficiency would be minimal. *Shenzen Tuozhu Tech. Co. v. Stratsys, Inc.*,

IPR2025-00354, Paper 11 at 2-3 (June 12, 2025), *citing*, *Motorola Sols. v. Stellar, LLC*, IPR2024-01205, Paper 19 at 3–4 (PTAB Mar. 28, 2025)).

C. Discretionary Denial Protects Patent Owner’s Settled Expectations

The ‘458 Patent issued over ten years ago and Petitioner has been aware of it since at least 2021, when Patent Owner brought it to Petitioner’s attention. Ex. 2007 at ¶ 6; Ex. 2005 at ¶¶ 17-18. Thus, Petitioner has had many years in which to raise these invalidity arguments and yet has chosen not to do so. *See Samsung Electronics Co., Ltd. v. Sinotechnix LLC*, IPR2025-00331, 00333, 00335-36, Paper 13 (July 2, 2025) (*citing* *Dabico Airport Sols. Inc. v. Axa Power Aps*, IPR2025-00408, Paper 21 at 2–3 (June 18, 2025); *Intel Corp. v. Proxense LLC*, IPR2025-00327, Paper 12, 2–3 (June 26, 2025)) (“Additionally, the challenged patents have been in force for more than 10 years, creating strong settled expectations, and Petitioner does not provide any persuasive reasoning why an *inter partes* review is an appropriate use of Board resources”).

D. The Patentability Challenges are Weak and Will Not Invalidate Asserted Claims

In accordance with the Interim Processes FAQs, Patent Owner incorporates herein the merit arguments and evidence from its forthcoming Patent Owner Preliminary Response (“POPR”) by reference. See Interim Processes FAQ No. 25 (“Notwithstanding the prohibition on incorporation by reference in 37 C.F.R.

§42.6(a)(3), when filing a brief for discretionary denial, a patent owner may direct attention to an anticipated POPR and evidence for a discussion of the merits.”). As will be shown in the POPR, the invalidity grounds propose combinations of the references that are contrary to the references’ explicit teachings and that have no likelihood of success. An accurate understanding of the references illustrates that the proposed combinations are, in fact, non-obvious, are contrary to the self-evident teachings of the references, and would be understood by the person of ordinary skill in the art as unlikely to be successful.

E. The *Fintiv* Factors Favor Discretionary Denial

Patent Owner provides the following discussion of the *Fintiv* Factors, illustrating that discretionary denial of the Petition is appropriate even absent the discretionary denial guidance provided in the Director Memo.

1. *Fintiv* Factor 1: The district court has not granted a stay, likely will not and, even if it did, Verizon’s continued pursuant of the same arguments eliminate any efficiency benefits

As discussed in Section IV. B, *supra*, a stay in the District Court Litigation is unlikely and, in any event, will have no impact on efficiency as Verizon has raised the same invalidity arguments in the District Court Litigation and is not a real party in interest in this proceeding and, thus, not bound by its outcome. Accordingly, the first *Fintiv* Factor favors discretionary denial.

2. *Fintiv* Factor 2: The District Court Litigation’s trial date is earlier.

As discussed in Section IV.B, *supra*, the trial date in the District Court Litigation is earlier for this and all of the related post-grant proceedings arising out of the District Court Litigation. Accordingly, the second *Fintiv* Factor favors discretionary denial.

3. *Fintiv* Factor 3: The parties have invested resources in the District Court Litigation

The parties have already exchanged detailed infringement and invalidity contentions in in the District Court Litigation. Ex. 2002; Ex. 2003. The parties will likely have exchanged proposed claim terms and preliminary claim constructions prior to an institution decision in this case. Ex. 2004 at 5. Accordingly, the third *Fintiv* Factor favors discretionary denial.

4. *Fintiv* Factor 4: The same invalidity contentions are at issue in the Petition and the District Court Litigation

The invalidity contentions jointly served by Petitioner and Verizon include the same arguments made in the Petition. Ex. 2007 at ¶ 4; Ex. 2002 at pp. 34-41; Ex. 2003 at pp. 280-361. Accordingly, the fourth *Fintiv* Factor favors discretionary denial.

5. *Fintiv* Factor 5: Petitioner is a defendant in the District Court Litigation.

Petitioner is a defendant in the District Court Litigation. Accordingly, the fifth *Fintiv* Factor favors discretionary denial.

6. *Fintiv* Factor 6: The Petition is meritless.

As discussed in detail in Section IV.D, the patentability challenges in the Petition are weak and Petitioner is unlikely to prevail. Accordingly, the sixth *Fintiv* Factor favors discretionary denial.

V. CONCLUSION

Appropriate analysis under the framework described in the Director Memo and *Fintiv* based on the evidence of record favors exercising discretion to deny institution of the Petition.

Dated: July 28, 2025

Respectfully submitted,

/Mark J. DeBoy/
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Fractus S.A.

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** and accompanying **EXHIBITS** were served via email (as previously consented to by counsel) on July 28, 2025 to lead and backup counsel of record for Petitioner as follows:

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