UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC
Petitioner

v.

SANDPIPER CDN, LLC,
Patent Owner

Case IPR2025-01010
U.S. Patent No. 10,057,322

PATENT OWNER'S REPLY BRIEF ON DISCRETIONARY DENIAL

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The Director should exercise discretion to deny institution. The *Fintiv* analysis strongly favors discretionary denial. There is no stay in place and the district court has indicated a strong intention to maintain its trial date—which will occur *months* before the projected final written decision deadline here. The district court is a faster and more efficient forum to resolve the parties' dispute in this proceeding.

I. THE *FINTIV* FACTORS STRONGLY FAVOR DENIAL.

A. Factor One favors denial because there is no stay.

The district court has *not* granted a stay of this proceeding; rather, it merely issued a short "pause" to allow the PTAB to conduct its discretionary analysis "while at the same time preserve the trial date in [the district court] case." EX2006, 4-5. The Court specifically stated it "does not want to put a thumb on the scale" and concluded "*moving* certain interim dates provides a short-term workable solution." *Id.* (emphasis added). Petitioner alleges "[a]ll aspects of the case have been paused, with the exception of the scheduled date of trial." Opp. (Paper 7), 3. Not so. As shown in the table below, all deadlines occurring within three months of trial remain unchanged and the close of expert discovery is only delayed by a month. EX2006, 5.

Event	Current Date	New Date
Completion of Claim Construction Discovery	7/18/25	No change
Opening claim construction briefs	8/8/25	11/21/25
Responsive claim construction briefs	8/22/25	12/19/25
Technology Tutorial	8/29/25	1/9/26 at 10:00 a.m.
Claim construction hearing	9/12/25	1/23/26 at 10:00 a.m.
Fact discovery cutoff	1/30/26	3/27/26
Opening expert reports	2/20/26	4/10/26
Rebuttal expert reports	3/27/26	5/8/26
Close of expert discovery	4/17/26	5/22/26
Last day to hear motions	6/26/26	No change
Settlement conference deadline	7/10/26	No change
Trial filings (first round)	7/31/26	No change
Trial filings (second round)	8/14/26	No change
Final Pretrial conference	9/11/26 at 11:00 a.m.	No change
Jury trial	9/28/26	No change

EX2006, 5 (highlighting added).

Simply put, there is no stay in place. The Court merely noted *if* the PTAB were to institute on *all* of the petitions, Sandpiper would stipulate to a stay. Despite Google's spin, the Court also gave no indication it would move the trial date when it ordered the parties to file a status report (after the last discretion decision if denials were not issued) reflecting the parties' position on **whether** the case **pause** should be continued. EX2006, 4, 6. Given the strong reasons for denial—based, at least, on the *Fintiv* analysis and the serious flaws in the merits of the petition—the likelihood that all proceedings will be instituted is remote. Thus, factor one favors denial.

B. Factor Two strongly favors denial because the district court trial will occur months before the projected FWD.

Petitioner improperly conflates the analysis of factors one and two and mischaracterizes the effect of the pause on the trial date. *Contra* Opp., 5-6. There is

zero indication that the trial date will be delayed because of the pause; in fact, the district court indicated just the opposite. Specifically, the court noted that the "parties agreed to a lengthier case schedule than the Court would have typically entered" and that "a short-term workable solution" is to *move* certain interim dates, *while preserving the trial date*. EX2006, 4-5. Thus, there is **no change** to the trial date.

When a limited stay (or here, a pause) is in place, the proper analysis is to consider the effect the pause has on whether the FWD will occur before the trial date. *See Amazon.com, Inc. v. Kaifi LLC*, IPR2025-00624 et seq., Paper 16 (P.T.A.B. July 29, 2025). Here the district court has strongly indicted there will be *no effect* on the trial date—which is highly likely given the former schedule was "lengthier" than usual. EX2006, 5. Therefore, the trial will occur well over *two months* before the projected FWD date of December 16, 2026. Even in the unlikely event there is a slight delay (e.g., to adjust for the one month delay for the close of expert discovery), this still puts the trial date *at least* six weeks before the projected final written decision. Further, Petitioner misrepresents that its median time to trial stats put the trial within a few weeks of the expected FWD. *Contra* Opp., 6. Those stats put the trial date at approximately October 10, 2026 (29 months after the May 10, 2024 filing date of the complaint)—which is *two months* before the projected FWD date. Morevover, Petitioner does not provide any reasoning why its median

time to trial stats apply given the strong indication that the trial date will be maintained. Thus, factor two *strongly* favors denial.

C. Factor Three strongly favors denial—Petitioner was not diligent.

Factor three strongly favors denial. At the time of the institution decision date, claim construction discovery will be complete, opening claim construction briefs will be exchanged, and Markman will occur shortly thereafter. *See* EX2006, 5. And the district court has also invested substantial effort in deciding multiple substantive motions. DD. Br., 17-18. Further, Petitioner was not diligent here—it waited more than eleven months after the complaint to file this IPR.

D. Factors Four through Six contine to strongly favor denial.

Factors 4-6 strongly favor denial for the reasons discussed in Sandpiper's initial brief. *See* DD. Br., 18-19. For example, the parallel litigation involves the same claims and defenses, and Petitioner's *Sotera* stipulation does not mitigate concerns of duplicate effort—indeed it preserves the right to raise invalidity grounds based on the *same* art in this IPR combined with system art. Additionally, the merits are weak. *See* DD. Br., 19-30.

II. CONCLUSION

All six *Fintiv* factors strongly favor, or favor, denial. Institution would result in duplicative effort, cause additional cost, and would be an inefficient use of the Board's resources. Thus, the Director should exercise discretion to deny institution for at least this reason, as well as for the reasons set forth in Sandpiper's DD Req.

Respectfully submitted,

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))

I certify that the above-captioned **PATENT OWNER'S REPLY BRIEF ON DISCRETIONARY DENIAL** was served in its entirety on September 30, 2025, upon the following parties via electronic mail:

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