Filed: October 6, 2025

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
Patent No. 10,057,322

PETITIONER'S SUR-REPLY TO PATENT OWNER'S REPLY BRIEF ON DISCRETIONARY DENIAL

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The Director referred two related proceedings after correctly finding it "likely that a final written decision will issue before the district court trial occurs" because the litigation "has been stayed." IPR2025-00806 (Paper 13, Sept. 12, 2025); IPR2025-00826 (Paper 14, Sept. 12, 2025). Despite Patent Owner reshuffling its same contrary arguments, those facts remain unchanged. The Director should refer.

I. *Fintiv* Factor 1 – The District Court's Stay Favors Referral

Patent Owner doubles down on its incorrect assertion that the district court will only impose a full stay if *all* petitions are instituted. *See* Reply (Paper 9), 1. To the contrary, the district court stated it would *lift* the stay only if "the PTAB issues discretionary denials in *all* IPRs." EX-2006, 6 (emphasis added). Although only some deadlines were shifted as a "short-term" solution, the court will reassess this schedule should only some petitions be referred. *Id.*, 5-6 Notably, the court acknowledged that any institution "could simplify the issues in this case," indicating openness to a further stay even absent universal institution. *Id.*, 3.

II. *Fintiv* Factor 2 – Trial is Likely to be Delayed

The current trial date is likely to be delayed. Patent Owner argues that trial will occur months before the FWD. Reply, 3. But the court has already extended key deadlines, and it intends to reassess the schedule following the discretionary denial decisions. EX-2006, 6 (requesting party input as to whether to maintain the pause if "the PTAB does not issue discretionary denials"). And the Director's referrals in

both petitions considered to date support an extended pause. *See* IPR2025-00806 (Paper 13, Sept. 12, 2025) and IPR2025-00826 (Paper 14, Sept. 12, 2025).

Patent Owner's reliance on *Amazon.com, Inc. v. Kaifi LLC*, IPR2025-00624, Paper 16 (P.T.A.B. July 29, 2025), a case that predates its August 7 discretionary denial brief but was uncited, is misplaced.[1] There, the 45-day stay was based on a joint settlement notice. *See* EX-1035. The stay was expressly limited to 45 days. IPR2025-00624, Paper 16 at 2. Here, in contrast, the court has imposed a stay to await further information from the Board, and, as discussed above, it has indicated it will consider a lengthier stay. EX-2006 at 5-6. *Kaifi* is thus inapposite.

III. *Fintiv* Factor 3 – Diligence and Investment in the Parallel Proceeding

Contrary to Patent Owner's contention, *see* Reply, 4, Petitioner moved diligently to file the Petition after it received Patent Owner's disclosures. The district court agreed. EX-2006, 4. The court likewise ruled, despite Patent Owner's assertion of significant investment, that the case remains in the "relatively early stages," with "more work ahead of the parties and the Court than behind." EX-2006 at 3.

Dated: October 6, 2025

Respectfully submitted,

/Erika H. Arner/
Erika H. Arner, Lead Counsel (57,540)

[1] Patent Owner continues to misrepresent that *Kaifi* issued after its brief, Ex. 3001 at 1, despite Petitioner correcting Patent Owner's error in the related proceedings.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing PETITIONER'S SUR-REPLY TO PATENT OWNER'S REPLY BRIEF ON DISCRETIONARY DENIAL was served electronically via email on October 6, 2025, in its entirety on the following:

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Dated: October 6, 2025

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