

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ASTERA MANUFACTURING LTD. AND CHAUVET & SONS, LLC

Petitioner

v.

ELECTRALED INC.

Patent Owner

Case IPR2025-01022

U.S. Patent No. 7,651,245

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

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LIST OF EXHIBITS

Exhibit No.	Description
2001	Astera Case Docket Control Order
2002	Chauvet Case Docket Control Order
2003	Astera Preliminary Infringement Contentions
2004	Chauvet Preliminary Infringement Contentions
2005	Astera Preliminary Invalidity Contentions
2006	Chauvet Preliminary Invalidity Contentions

I. INTRODUCTION

Pursuant to the Memorandum by the Acting Director dated March 26, 2025, setting forth “Interim Processes for PTAB Workload Management” (the “March 26 Memorandum”), Patent Owner hereby sets forth the applicable bases for discretionary denial of institution. This filing is being timely made within two months of the date on which the PTAB entered the Notice of Filing Date Accorded Petition (Paper No. 4). As explained more fully below, all of the *Fintiv* factors¹, as well as additional factors set forth in the March 26 Memorandum, favor the discretionary denial of institution in this case.

With respect to the *Fintiv* factors, Petitioner Astera Manufacturing Ltd. (“Astera”) has served Preliminary Invalidity Contentions challenging the validity of U.S. Patent No. 7,651,245 (“the ’245 Patent”) and Patent Owner ElectraLED has served Preliminary Infringement Contentions in *ElectraLED, Inc. v. Astera LED Technology GMBH et al.*, No. 2:24-cv-00512 (E.D. Tex.) (the “Astera Case”). Likewise, Petitioner Chauvet & Sons, LLC (“Chauvet”) has served Preliminary Invalidity Contentions challenging the validity of the ’245 Patent and Patent Owner has served Preliminary Infringement Contentions in *ElectraLED Inc.*

¹ See *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 5-6 (PTAB Mar. 20, 2020) (precedential, designated May 5, 2020) (“*Fintiv I*”); *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 15 at 7-8 (PTAB May 13, 2020) (“*Fintiv IP*”).

v. Chauvet & Sons, LLC, No. 2:24-cv-00511 (E.D. Tex.) (the “Chauvet Case”).

Thus, the Astera and Chauvet Cases have already progressed significantly. By the anticipated date of the institution decision in this matter (December 20, 2025), the Court will in all likelihood have issued its claim construction ruling and expert discovery will have ended in both the Astera Case and Chauvet Case. Ex. 2001 [Astera Docket Control Order]’ Ex. 2002 [Chauvet Docket Control Order]. The trial in the Astera Case is scheduled for April 6, 2026 and the trial in the Chauvet Case is scheduled for April 20, 2026, each 8 months before the statutory deadline of December 20, 2026 for issuing a Final Written Decision in this matter. Ex. 2001, at 1; Ex. 2002, at 1.

For at least these reasons, and as explained more fully below, the Board should exercise its discretion and deny institution under *Fintiv*.

II. THE FINTIV FACTORS FAVOR DISCRETIONARY DENIAL

Application of the present facts to the *Fintiv* factors demonstrates that there are strong reasons for exercising discretion to deny institution here.

- A. Factor 1 weighs against institution because a stay has not been granted in either the Astera Case or the Chauvet Case in connection with the present IPR and there is no evidence that a stay would be granted if this IPR is instituted**

Both the Astera Case and the Chauvet Case are pending in the Eastern District of Texas (“EDTX”). In the Astera Case, the Court denied a Motion to Stay pending resolution of the present IPR, stating that “[t]he ‘universal practice’ in this District, as well as the practice in most district courts, is to deny a motion to stay when the Patent Trial and Appeal Board has not yet acted on the petition for *inter partes* review” and that “[t]he reasoning behind this is that unless the Board indicates there is a serious chance it will invalidate all the asserted claims, the Court will not needlessly wait to rule on the remaining asserted claims.” Astera Case, Dkt. No. 47 (citations omitted). Although there is a similar Motion to Stay pending in the Chauvet Case, the Court will undoubtedly deny that Motion to Stay as well for the same reasons it denied the Motion to Stay in the Astera Case.

Further, even if the present IPR is instituted, it is highly unlikely that the Court would issue a stay. *See Samsung Elecs. Co. Ltd. v. Evolved Wireless LLC*, IPR2021-00950, Paper 10 at 10-11 (PTAB Nov. 29, 2021) (finding this factor weighed in favor of denial and denying institution where patent owner showed a stay was unlikely based on the advanced stage of the case and the court’s past decisions denying stays); *Samsung Elecs. Co. Ltd. v. Clear Imaging Research, LLC*, IPR2020-0152, Paper 12 at 12-13 (PTAB Mar. 3, 2021) (denying institution

because, in part, Judge Gilstrap deemed unlikely to stay a case in similar circumstances).

The Eastern District of Texas is likely to find that a stay in this situation would unduly prejudice Patent Owner, disfavoring a stay. *See, e.g., MyPort, Inc. v. Samsung Electronics Co., Ltd., et al.*, No. 2:22-cv-00114- JRG, Dkt. No. 73 (E.D. Tex. June 12, 2023) at 4 (Noting that patent owner has an interest in the timely enforcement of its patent rights and that granting a stay could delay the case by nearly two years where the PTAB decision is not due until over two months after jury trial is set to begin.). The district court is also likely to find that the stage of litigation disfavors a stay. As noted above, by the anticipated date of the institution decision in this matter (December 20, 2025), the Court will in all likelihood have issued its claim construction ruling and expert discovery will have ended in both the Astera Case and Chauvet Case. As evidenced by the docket control orders (Exhibits 2001 and 2002), a substantial amount of work and financial resources will have been invested in both the Astera Case and the Chauvet Case by the anticipated date of the institution decision in this IPR. Under similar circumstances, the district court has found that the stage of litigation disfavors a stay. *Id.* at 5.

Thus, this factor weighs against institution.

B. Factor 2 weighs against institution because the Astera Case and the Chauvet Case have trial dates scheduled before the projected statutory deadline for the Board’s final written decision

The trial in the Astera Case is scheduled for April 6, 2026 and the trial in the Chauvet Case is scheduled for April 20, 2026, which is 8 months before the statutory deadline of December 20, 2026 for issuing a Final Written Decision in this matter.

Astera filed a Motion to Transfer the Astera case to the Southern District of Florida (“SDFL”), which has been fully briefed. However, it is highly unlikely that the Astera Case will be transferred for several reasons. Specifically, Patent Owner has: (1) identified sources of proof, as well as the convenience of its witnesses in the EDTX; (2) identified witnesses with relevant information who may be subpoenaed in the EDTX, and not the SDFL; (3) identified individuals, whether willing or unwilling, who reside in Texas and thus are not likely available for compulsory process outside of their home state; and (4) pointed out to the Court that there are three other related cases pending in the EDTX for which no motions to transfer venue have been filed. Astera Case, Dkt. 40.

Although Chauvet has filed a Motion to Dismiss for Improper Venue, it is highly unlikely that the Chauvet Case will be dismissed based on information that came to light during venue discovery. Specifically, certain information regarding the location and activities of an employee of Chauvet came to light that establishes that Chauvet maintains a regular and established place of business in EDTX. Chauvet Case, Dkts. 29 and 41.

Thus, this factor weighs against institution.

C. Factor 3 weighs against institution because the Parties have already invested significant effort in the EDTX Case

Factor 3 relates to investment in the Astera Case and the Chauvet Case by the District Court 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 December 20, 2026. *Id.*

As Judge Fink explains in *Fintiv*:

The Board also considered the amount and type of work already completed in the EDTX Case by the court and the parties at the time of the institution decision. ... *[D]istrict court claim construction orders may indicate that the court and the parties have invested sufficient time in the parallel proceeding to favor denial....* This investment factor is related to the trial date factor, in that more work completed by the parties and court in the parallel proceeding tends to support the arguments that

the parallel proceeding is more advanced, a stay may be less likely, and instituting would lead to duplicative costs.

Fintiv II, 9-10 (emphasis added).

The following have already been completed in the Astera and Chauvet Cases:

- PO's Preliminary Infringement Contentions served (served October 31, 2024 in the Astera Case and September 4, 2024 in the Chauvet Case);
- Exchanged proposed claim terms for construction (June 6, 2025 in the Astera Case and June 27, 2025 in the Chauvet Case);
- Exchanged preliminary claim constructions in the Astera Case (June 27, 2025);
- Notice of 30(b)(6) Deposition served on Astera (June 26, 2025);
- Notice of 30(b)(6) Deposition served on Chauvet (June 26, 2025);
- Chauvet's Preliminary Invalidity Contentions (served November 13, 2024); and
- Astera's Preliminary Invalidity Contentions (served December 26, 2024).

The following will have been completed in the Astera Case and the Chauvet Case by the time an institution decision is issued in the present IPR:

- Parties file Joint Claim Construction Statement (July 18, 2025 in the Astera Case and August 8, 2025 in the Chauvet Case);
- Source Code inspection in the Astera Case (no later than August 2025);
- Source Code inspection in the Chauvet Case (no later than August 2025);
- PO's Opening Claim Construction Brief (August 29, 2025 in the Astera Case and September 19, 2025 in the Chauvet Case);
- Astera's Responsive Claim Construction Brief (September 12, 2025);
- Chauvet's Responsive Claim Construction Brief (October 3, 2025); and
- Claim Construction Hearing (October 10, 2025 in the Astera Case and October 31, 2025 in the Chauvet Case); and
- Completion of Fact Discovery (November 17, 2025 in the Astera Case and December 1, 2025 in the Chauvet Case).

Clearly, the parties and the Court have *already* made substantial investments *and will make substantial additional investments* in the Astera and Chauvet Cases by the time an institution decision is made.

Thus, the third factor weighs against institution.

D. Factor 4 weighs against institution because there is substantial overlap between the Astera Case, the Chauvet Case and this IPR, and Petitioner's *Sotera* stipulation does not eliminate the possibility of conflicting decisions

There is substantial overlap between the invalidity arguments raised in the Petition and the invalidity arguments raised in the Astera and Chauvet Cases. Claim 21 of the '245 Patent has been asserted in both the Astera Case and the Chauvet Case. Ex. 2003 [Astera Preliminary Infringement Contentions]; Ex. 2004 [Chauvet Preliminary Infringement Contentions].

Set forth below is an excerpt from the Petition summarizing the grounds raised in the Petition with respect to the '245 Patent, and the prior art asserted in each ground:

Ground	References	Claims ¹	Basis
1	Lin	21-23, 25-26	102/103
2	Lin, Zeng, Lodhie	24	103
3	Lin, Moriyama	27	103
4	Lin, Nishimoto, Cunningham	28	103

Ground	References	Claims ¹	Basis
5	Chen	21-23, 26	102/103
6	Chen, Lodhie	24	103
7	Chen, Lin	25	103
8	Chen, Moriyama	27	103
9	Chen, Nishimoto, Cunningham	28	103

Petition, at 4-5. The only independent claim challenged is claim 21. The other challenged claims are dependent claims that depend from claim 21. With the exception of the secondary references applied in connection with the dependent claims in Grounds 2-4 and 6-9, there is complete overlap between the references advanced by the Petitioners in this IPR challenging independent claim 21 and those advanced by the Petitioners in the Astera and Chauvet Cases challenging the same independent claim 21. Set forth below are excerpts from Astera's Preliminary Invalidity Contentions in the Astera Case showing some of the prior art relied on there by Astera for anticipation grounds and obviousness grounds:

Country of Origin	Patent No./Publication No.	Filing/Publication/Issue Date	Prior Art Status (pre-AIA)
Taiwan	TWM277876U ("Lin")	Filed March 24, 2005; Published October 11, 2005	102(a), (b)
United States	US7,465,066 ("Chen '066")	Filed February 21, 2006; Issued December 16, 2008	102(e)

Astera Case Anticipatory References

Ex. 2005 [Astera Preliminary Invalidity Contentions], at 7.

Base Reference	Secondary Source(s) / Reference(s)
Lin	Lin alone, or in combination with the knowledge of a person of ordinary skill in the art and/or one or more of: Chen '066, Chen '402, Gloisten, Maitland, Mingozi, Roberge, Reisenauer, and/or LED-PAR83.
Chen '066	Chen '066 alone, or in combination with the knowledge of a person of ordinary skill in the art and/or one or more of: Lin, Chen '402, Gloisten, Maitland, Mingozi, Roberge, Reisenauer, and/or LED-PAR83.

Astera Obviousness References

Ex. 2005, at 10.

Similarly, set forth below are excerpts from Chauvet's Preliminary Invalidity Contentions in the Chauvet Case showing some of the prior art relied on there by Chauvet for anticipation grounds and obviousness grounds:

Country of Origin	Patent No./Publication No.	Filing/Publication/Issue Date	Prior Art Status (pre-AIA)
Taiwan	TWM277876U ("Lin")	Filed March 24, 2005; Published October 11, 2005	102(a), (b)
United States	US7,465,066 ("Chen '066")	Filed February 21, 2006; Issued December 16, 2008	102(e)

Chauvet Case Anticipatory References

Ex. 2006 [Chauvet Preliminary Invalidity Contentions], at 7.

Base Reference	Secondary Source(s) / Reference(s)
Lin	Lin alone, or in combination with the knowledge of a person of ordinary skill in the art and/or one or more of: Chen '066, Chen '402, Gloisten, Maitland, Mingozi, Roberge, Reisenauer, and/or LED-PAR83.
Chen '066	Chen '066 alone, or in combination with the knowledge of a person of ordinary skill in the art and/or one or more of: Lin, Chen '402, Gloisten, Maitland, Mingozi, Roberge, Reisenauer, and/or LED-PAR83.

Chauvet Obviousness References

Ex. 2006, at 10.

In this IPR, and in the Astera and Chauvet Cases, Petitioners' invalidity challenges of independent claim 21 are based on Lin (Ex. 1005) and Chen (Ex. 1007). The only difference between the art relied on in the three proceedings involve secondary references that are used to challenge dependent claims 24, 25, 27 and 28 in this IPR. Thus, there is complete overlap with respect to the arguments and evidence presented here and in the Astera and Chauvet Cases for Grounds 1 and 5, and substantial overlap for Grounds 2-4 and 6-9 as they relate to Lin and Chen (used as the primary reference in all of those Grounds). That the Astera and Chauvet Cases involve additional prior art references not asserted in this IPR is "not relevant to the question of the degree of overlap for this factor."

Fintiv II, at 15. Further, the fact that the Petition challenges additional dependent claims does not warrant institution. *See, e.g., Next Caller Inc. v. TRUSTID, Inc.*, IPR2019- 00961, Paper 10 at 14 (PTAB Oct. 16, 2019) (denying institution where the district court case involved only a subset of the challenged claims).

Petitioner provided a *Sotera* stipulation, stipulating “that if the Board institutes this IPR proceeding, Petitioners will not pursue an invalidity defense in their respective district court cases that the claims subject to the instituted IPR are invalid on any grounds that were raised or that reasonably could have been raised in the IPR.” Petition, at 96.

On March 24, 2025, the Chief Administrative Patent Judge issued a Memorandum titled “Guidance on USPTO’s rescission of ‘Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation’” (“March 24 Memorandum). With regards to *Sotera* stipulations, the March 24 Memorandum states that “a timely-filed *Sotera* stipulation . . . *will not be dispositive by itself*. Instead, the Board will consider such a stipulation as part of its holistic analysis under *Fintiv*.” March 24 Memorandum, 2-3 (citations omitted)(emphasis added).

Indeed, *Sotera* stipulations are intended to address “concerns of duplicative efforts and potentially conflicting decisions” between the Board and the district court and “ensure[] that an inter partes review is a ‘true alternative’ to the district court proceeding.” *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2019-01019, Paper 12, at 19 (PTAB Dec. 1, 2020). Simply stipulating not to raise grounds of invalidity that were raised or reasonably could have been raised in an IPR petition does not per se accomplish those goals. Such is the case here.

In both the *Astera* Case and the *Chauvet* Case, Petitioners identify the “Chauvet LED-PAR83” prior art product in their Preliminary Invalidity Contentions. Ex. 2005, at 8; Ex. 2006, at 8-9. In the *Astera* Preliminary Invalidity Contentions, *Astera* also states that “[i]nvestigation into the foregoing and other actual and potential prior *products* . . . is still ongoing, and *Astera* Defendants reserve the right to provide more detailed contentions related to these products upon further discovery.” Ex. 2005, at 8 (emphasis added). Similarly, in the *Chauvet* Preliminary Invalidity Contentions, *Chauvet* also states that “[i]nvestigation into the foregoing and other actual and potential prior *products* . . . is still ongoing, and Defendant reserves the right to provide more detailed

contentions related to these products upon further discovery.” Ex. 2006, at 9 (emphasis added).

Because unpublished “system” or “product” prior art is not eligible for inclusion in an IPR, it is not prior art that Petitioners reasonably could have raised in the present Petition. Thus, Petitioners’ *Sotera* stipulation does not cover potential invalidity theories based on system or product prior art that Petitioner could bring in the *Astera* and *Chauvet* Cases.

Accordingly, Petitioner’s *Sotera* stipulation does not offer the benefits sought by *Sotera Wireless*. Specifically, duplicative efforts are not avoided and Petitioner is not approaching the IPR proceeding as a “true alternative” to the district court. Further, the district court in the *Astera* and *Chauvet* Cases could be burdened with wading through “system” or “product” prior art evidence and deciding whether the same claims challenged here are invalid — potentially reaching a decision that conflicts with the Board’s ultimate decision in this proceeding, were it to continue.

Because the *Astera* and *Chauvet* Cases will address substantially the same invalidity arguments presented by Petitioners in the present Petition and may also

address other § 102 and/or § 103 invalidity theories that Petitioners could not have raised in the present Petition, the fourth factor weighs against institution.

E. Factor 5 weighs against institution because the Patent Owner is the same and the Petitioners are the same parties as in the Astera and Chauvet Cases

Patent Owner and Petitioners are the same parties as in the Astera and Chauvet Cases.

Thus, the fifth factor weighs against institution.

F. Factor 6: Settled expectations strongly weigh against institution

A relevant consideration identified in the March 26 Memorandum is “[s]ettled expectations of the parties, such as the length of time the claims have been in force.” March 26 Memorandum, at 2. In *Dabico Airport Solutions Inc. v. Axa Power APS*, Director Stewart issued a discretionary denial based on “settled expectations” because the patent had been in force for almost 8 years. *Dabico Airport Solutions Inc. v. Axa Power APS*, IPR2025-00408, Paper 21 at 2 (PTAB June 18, 2025). The Director stated that “[a]lthough there is no bright-line rule on when expectations becomes settled, in general, the longer the patent has been in force, the more settled expectations should be” and that “actual notice of a patent or of possible infringement is not necessary to create settled expectations.” *Id.* at 3.

In this case, the claims of the ‘245 Patent have been in force *for over 15 years*, which is almost *twice* as long as the patent in *Dabico Airport Solutions*. This length of time strongly favors discretionary denial based on settled expectations.

III. CONCLUSION

All of the *Fintiv* factors favor a discretionary denial of the Petition. The Astera and Chauvet Cases between Petitioners and Patent Owner have already progressed significantly. In addition, Petitioners are relying on essentially the same prior art in the district court cases and this IPR, the trials in the Astera and Chauvet Case are scheduled to occur well before the due date for the Final Written Decision, and Petitioners’ *Sotera* stipulation does not cover potential invalidity theories based on system or product prior art that Petitioners could bring in the Astera and Chauvet Cases. Further, discretionary denial is appropriate based on settled expectations arising from the ‘245 Patent having been in force for over 15 years.

For at least these reasons, the Board should exercise its discretion to deny institution under 35 U.S.C. § 314(a).

Brief in Support of Discretionary Denial

Case IPR2025-01022
U.S. Patent 7,651,245

Date: July 3, 2025

Respectfully submitted,

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CERTIFICATION UNDER 37 C.F.R. § 42.24(d)

This **Brief in Support of Patent Owner's Request for Discretionary Denial** complies with the requirements of 37 C.F.R. § 42.24. As calculated by the word count feature of Microsoft Word, it contains 3,067 words, excluding the parts of the Brief that are exempted by 37 C.F.R. § 42.24(a).

Dated: July 3, 2025

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CERTIFICATION OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e) and 42.105(b), the undersigned certifies that on July 3, 2025, a copy of the foregoing **Brief in Support of Patent Owner's Request for Discretionary Denial** was served by electronic mail on the following:

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