

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTEL CORP., DELL INC., and DELL TECHNOLOGIES INC.,
Petitioner

IPR2025-01038
IPR2025-01039
U.S. Patent No. 7,359,437

**PETITIONER'S NOTICE RANKING PETITIONS AND
EXPLAINING MATERIAL DIFFERENCES BETWEEN PETITIONS
FOR U.S. PATENT NO. 7,359,437**

I. INTRODUCTION

Petitioner files two petitions challenging claims of U.S. Patent 7,359,437 (the “’768 patent”). Pursuant to the Consolidated Trial Practice Guide November 2019 (“TPG”), Petitioner submits this paper to “identify: (1) a ranking of the petitions in the order in which it wishes the Board to consider the merits..., and (2) a succinct explanation of the differences between the petitions, why the issues addressed by the differences are material, and why the Board should exercise its discretion to institute additional petitions.” TPG, 60.

II. RANKING OF PETITIONS

The ’437 Patent has 14 independent claims and a total of 53 claims. Petitioner challenges most of the claims over two petitions. Petition 1 (IPR2025-01038) challenges independent claims 41, 52, and 53, as well as dependent claims 42-45, 47, and 49-50. Petition 2 (IPR2025-01039) challenges independent claims 1, 14, 19, 20, 21, 26, 39, and 40, as well as dependent claims 2-6, 8, 10-17, 22-23, 27-31, 33, and 37. As such, each petition challenges different and non-overlapping claims of the ’437 patent. As demonstrated by each petition, the grounds are meritorious and justified.

Per the Board’s TPG guidance, Petitioner ranks as follows:

RANK	PETITION	CLAIMS	GROUND
1	IPR2025-01038	Claims 41-45, 47, and 49-50, 52-53	35 U.S.C. §103 over Kim, Shin, and Myers
2	IPR2025-01039	Claims 1-6, 8, 10-17, 19-23, 26-31, 33, and 37, and 39-40	35 U.S.C. §103 over Kim, Shin, and Myers

III. EXPLANATION OF MATERIAL DIFFERENCES AND REASONS FOR INSTITUTION OF MULTIPLE PETITIONS

The Board recognized that “there may be circumstances in which more than one petition may be necessary.” TPG at 59-60. Those circumstances are present here:

A. The ’437 Patent Contains Numerous Lengthy Claims

The textual language of all challenged claims in the ’437 patent is 4,089 words, representing almost 30% of the 14,000 allowable words for a single petition. The considerable number and length of the challenged claims makes presenting the asserted grounds in a single petition impractical. Thus, institution of two petitions is warranted and consistent with the Board’s decisions in other cases. *See, e.g., Flex Logix Techs., Inc. v. Venkat Konda*, IPR2020-00261, Paper 22 at 24 (PTAB Aug. 3, 2020) (independent claim more than one column long did not weigh in favor of discretionary denial); *Peloton Interactive, Inc. v. Ifit, Inc.*, IPR2022-00030, Paper 12 at 33-34 (PTAB Apr. 22, 2022) (finding “Petitioner’s

filing of three petitions to challenge different claims of the '062 patent...promotes efficiency” where the patent “include[s] five independent claims” that “differ[...in various, potentially significant ways.”); *Novartis Gene Therapies v. Genzyme Corporation*, IPR2023-01045, Paper 10 at 3 (PTAB Jan. 17, 2024) (instituting multiple petitions where patent included seven independent claims with differing features and scope).

Petitioner is filing the two petitions concurrently and has not sought “a timing advantage that might otherwise occur were the petitions filed serially,” which further supports institution. *Samsung Electronics Col., Ltd. v. Ryan Hardin*, IPR2022-01335, Paper 13, 22-23 (PTAB Feb. 8, 2023) (Institution Decision).

B. Parallel Petitions Have No Overlap.

As shown in the table above, each petition challenges a distinct set of claims. Accordingly, the petitions are materially different.

Further, Patent Owner has served a complaint that declines to constrain the claims that it asserts. Ex.1013, 55-56 (“at least claim 41 of the 437 Patent”). Also, Patent Owner’s Infringement Contentions asserts independent claim 41 and “reserves the right to modify and/or supplement” its contentions. Ex.1014, 1. Moreover, Patent Owner’s final infringement contentions are not due for nearly a year—on April 8, 2026. Ex.1015, 6. Given the uncertainty of which claims Patent

Owner intends to assert at trial and the eventual one year time bar, Petitioner is placed in the position of challenging more than just the currently asserted claim 41.

Nevertheless, as shown in the table above, Petitioner has structured the petitions so that there is no overlap of claims. Thus, Petitioner is not seeking duplicative or repetitive grounds, and the petitions are materially different.

C. Parallel Petitions Would Not Materially Increase Burden on the Board

Because the petitions challenge each claim only once, while relying on the same combinations of prior art and the same expert declaration, institution of the two petitions would not raise concerns of duplicative time and resources.

Moreover, because the grounds, prior art and expert declaration are the same, consolidation of the two proceedings under 35 U.S.C. § 315(d) would be appropriate and would serve to increase efficiency.

IV. CONCLUSION

Petitioner respectfully submits that the Board should institute trial on the two parallel petitions.

Respectfully submitted,

Dated: May 27, 2025

/Gregory P. Huh/
Gregory P. Huh
Lead Counsel for Petitioner
Registration No. 70,480

CERTIFICATE OF SERVICE

The undersigned certifies that, in accordance with 37 C.F.R. § 42.6(e) and 37 C.F.R. § 42.105, service was made on Patent Owner as detailed below.

Date of service May 27, 2025

Manner of service FEDERAL EXPRESS

Documents served Petitioner's Notice Ranking Petitions and Explaining Material Differences Between Petitions for U.S. Patent No. 7,359,437

Persons served Philips Intellectual Property & Standards
1055 Washington Blvd, 9th Floor
Stamford, CT 06901

/Gregory P. Huh/
Gregory P. Huh
Lead Counsel for Petitioner
Registration No. 70,480