

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PINTEREST, INC.
Petitioner

v.

OPENTV, INC.,
Patent Owner.

Case No. IPR2025-01184
U.S. Patent No. 7,055,169

**PETITIONER'S OPPOSITION TO PATENT OWNER'S
REQUEST FOR DISCRETIONARY DENIAL**

TABLE OF CONTENTS

I.	Introduction.....	1
II.	Institution is Appropriate Because the Examiner Failed to Consider ActiveX Controls and PO Failed to Disclose Material Prior Art <i>Harrington</i> and <i>Del Sesto</i> at Issue in the Petition	2
III.	PO's § 325(d) Arguments Lack Merit and Full Analysis Favors Institution	4
IV.	Institution is Appropriate Because the Board Can Efficiently Resolve the '169 Patent Earlier than the District Court, Consistent with the <i>Fintiv</i> Factors	9
V.	Institution Is Appropriate Because Pinterest Reasonably Expected the '169 Patent Would Not Be Enforced	14
VI.	Institution is Appropriate Because the Petition Presents a Focused, Well-Supported Record Including Proper Expert Testimony	17
VII.	Conclusion	20

TABLE OF AUTHORITIES**Page(s)****Cases**

<i>Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH,</i> IPR2019-01469, Paper 6 (P.T.A.B. February 13, 2020)	4, 5
<i>Apple Inc. v. Fintiv, Inc.,</i> IPR2020-00019, Paper 11 (P.T.A.B. Mar. 20, 2020)	<i>passim</i>
<i>Applications in Internet Time, LLC v. Salesforce, Inc.,</i> No. 2024-1133, 2024 WL 4456271 (Fed. Cir. Oct. 10, 2024)	19
<i>AT&T Services Inc. v. ASUS Technology Licensing Inc.,</i> No. IPR2024-00992, Paper 14 (P.T.A.B. Dec. 16, 2024)	16, 17
<i>Becton, Dickinson & Co. v. B. Braun Melsungen AG,</i> IPR2017-01586, Paper 8 (P.T.A.B. December 15, 2017)	5, 8
<i>Dabico Airport Sols. Inc. v. Axa Power Aps,</i> IPR2025-00408, Paper 21 (P.T.A.B. June 18, 2025)	14
<i>Ecto World LLC v. Rai Strategic Holdings Inc.,</i> IPR2024-01280, Paper 13 (Director May 19, 2025)	6, 7, 8
<i>Globus Medical, Inc. v. Spinelogik, Inc.,</i> IPR2025-00225, Paper 8 (Director June 12, 2025)	16
<i>Hulu, LLC v. Piranha Media Distribution, LLC,</i> IPR2024-01252, Paper 27 (Director April 17, 2025)	10
<i>Intel Corp. v. Proxense LLC,</i> IPR2025-00327, Paper 12 (Director June 26, 2025)	14, 16
<i>iRhythm Techs., Inc. v. Welch Allyn, Inc.,</i> No. IPR2025-00363, Paper 10 (Director. June 6, 2025)	16, 17
<i>Mercedes-Benz Group AG. v. The Phelan Group, LLC,</i> IPR2025-00758, Paper 8 (Director Aug. 14, 2025)	3

<i>NeuMoDx Molecular, Inc. HandyLab, Inc.,</i> IPR2020-01133, Paper 23 (P.T.A.B. Aug. 6, 2021).....	13
<i>OpenTV, Inc. v. Pinterest, Inc.,</i> No. 1-24-cv-01301 (D. Del. Nov. 27, 2024)	9
<i>POSCO Co. Ltd. v. ArcelorMittal,</i> IPR2025-00370, Paper 10 (Director June 25, 2025)	3
<i>SAS Inst., Inc. v. Iancu,</i> 584 U.S. 357 (2018).....	6
<i>Shenzen Tuozhu Technology Co., Ltd. v. Stratasy, Inc.,</i> IPR2025-00438, Paper 10 (Director July 17, 2025).....	12
<i>Tesla, Inc. v. Intellectual Ventures II LLC,</i> IPR2025-00217, Paper 9 (Director June 13, 2025)	3, 12
<i>Toyota Motor Corporation v. AutoConnect Holdings LLC,</i> PGR2025-00041, Paper 9 (Director September 8, 2025).....	12

Other Authorities

35 U.S.C. § 101	10, 11, 14
35 U.S.C. § 102	13
35 U.S.C. § 103	13
37 C.F.R. § 1.56	4

TABLE OF EXHIBITS

Exhibit No.	Description
1001	U.S. Patent No. 7,055,169 (the “’169 Patent”)
1002	File History of U.S. Patent No. 7,055,169
1003	U.S. Provisional Application No. 60/373,883
1004	Declaration of Expert Immanuel Freedman, Ph.D.
1005	Curriculum Vitae of Immanuel Freedman, Ph.D.
1006	U.S. Patent No. 6,141,018 (“Beri”)
1007	U.S. Patent No. 7,120,871 (“Harrington”)
1008	Tom Armstrong, <i>Designing and Using ActiveX Controls</i> (pt. 1)
1009	Tom Armstrong, <i>Designing and Using ActiveX Controls</i> (pt. 2)
1010	J. Kunze, Encoding Dublin Core Metadata in HTML (“Kunze”)
1011	U.S. Patent No. 7,069,571 (“Del Sesto”)
1012	Declaration of Sylvia Hall-Ellis, Ph.D.
1013	<i>NFL v. OpenTV</i> PTAB Institution Decision
1014	Library of Congress Entry for Armstrong
1015	SEC Press Release
1016	DDE Median Time to Trial

Exhibit No.	Description
1017	Assertion Timeline of the '169 Patent
1018	Assertion Listing of the '169 Patent
1019	Docket of OpenTV, Inc. v. Pinterest, Inc. DDE-1-24-cv-01301
1020	<i>Patent Trial and Appeal Board (PTAB) USPTO Hour: Interim processes relating to institution in AIA proceedings (August 13, 2025)</i>
1021	<i>Enforcement and Non-Waiver of 37 C.F.R. § 42.104(B)(4) and Permissible Uses of General Knowledge in Inter Partes Reviews (July 31, 2025)</i>

I. Introduction

The Director should institute this Petition because it raises the same issues as a previously instituted petition—terminated only due to settlement—that revealed both error by the Office and a duty to disclose violation by the PO. During prosecution, the cited references mentioned decades-old Microsoft ActiveX controls that render the claims obvious, but the Office allowed the claims without a reasoned explanation. Following issuance, PO pursued an aggressive litigation campaign from 2012 to 2017, suing six companies: Netflix, Apple, Verizon, Yahoo, Time Warner, and the NFL. None of these cases reached a decision on the merits, and all settled before claim construction. In the final case of that series, the NFL filed an IPR petition relying on Microsoft ActiveX controls and PO's own publication (*Harrington* (EX1007)), which was not cited to the Office during prosecution. The Board instituted trial after finding a reasonable likelihood of unpatentability of the same claims challenged here, for the same grounds asserted here, and the parties quickly settled.

For the seven years following the NFL litigation filing, despite its aggressive litigation campaign, PO did not assert the '169 patent until more than a year after it expired in 2023. In light of that history and the prior institution decision, Pinterest reasonably expected the '169 Patent would not be enforced. Yet in November 2024, PO initiated litigation accusing Pinterest of infringing the '169 Patent. Pinterest's

Petition raises the same grounds as the NFL petition and additionally relies on another one of PO's own publications (*Del Sesto* (EX1011)) that was not cited to the Office during prosecution. A final written decision on this Petition (expected by January 2027) would resolve the Office's earlier error well before the District Court's scheduled July 2027 trial, which based on statistics will be delayed until March 2028.

PO's request for discretionary denial rests on a series of unfounded arguments. It seeks to recast its own seven years-long delay in asserting the '169 Patent as purported delay by Pinterest. It devotes extensive discussion to attacking the credibility of Petitioner's expert, notwithstanding the record's clear demonstration of deliberate, well-reasoned testimony. PO further contends that the '169 Patent has been extensively analyzed in other fora, but that assertion is inaccurate because no prior litigation ever reached the merits of the '169 Patent. To date, only the Board has assessed the patent's merits and found a reasonable likelihood of unpatentability. For these and the additional reasons below, the Director should institute this Petition.

II. Institution is Appropriate Because the Examiner Failed to Consider ActiveX Controls and PO Failed to Disclose Material Prior Art *Harrington* and *Del Sesto* at Issue in the Petition

Prior institution of an IPR on the same grounds based on concepts before the Examiner and PO's undisclosed own publication compels institution. The Director

has declined to exercise discretion when the Board has previously instituted review of similar claims on similar grounds, as doing so ensures consistency and predictability in the Office's application of the law. *See e.g., Mercedes-Benz Group AG. v. The Phelan Group, LLC*, IPR2025-00758, Paper 8 (Director Aug. 14, 2025) (declining to exercise discretion after institution of similar claims on similar grounds); *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00217, Paper 9 (Director June 13, 2025) (same). *POSCO Co. Ltd. v. ArcelorMittal*, IPR2025-00370, Paper 10 (Director June 25, 2025) (declining to exercise discretion to ensure consistent application of Office regulations and correction of examiner error).

Here, the Board previously instituted trial on the same challenged claims (the NFL petition), finding a reasonable likelihood that they were unpatentable over Microsoft ActiveX controls and PO's own publication (*Harrington*).¹ EX1013 at 7-9. Yet PO never cited *Harrington* during prosecution of the '169 Patent (EX1001 at 1-2). In addition, PO concedes that "ActiveX controls were substantively discussed in two of the prior art references before the Office during the original prosecution of the '169 patent" (DD Req. 15).

The Board's prior institution decision necessarily reflects an error by the

¹ In 2002, OpenTV acquired ACTV, which originally filed *Harrington*. *See* EX1015 at 1 (OpenTV announcing acquisition); *see also*, EX1007 (cover).

Office in allowing the same claims without issuing rejections based on Microsoft ActiveX controls or *Harrington*, both of which are material to patentability under 37 C.F.R. § 1.56. Pinterest's Petition now raises the same grounds as the NFL petition and further relies on another uncited publication by PO (*Del Sesto*²) that PO never cited to the Office during prosecution of the '169 Patent. EX1001 at 1-2.

Institution is warranted to address the intertwined error during examination and PO's failure to cite material information during prosecution, as evidenced by the Board's previously instituted trial on the same challenged claims in the NFL petition.

III. PO's § 325(d) Arguments Lack Merit and Full Analysis Favors Institution

PO's application of *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 (P.T.A.B. February 13, 2020) (precedential) is flawed, and when correctly applied, favors institution. DD Req 14-16. Under the first prong of *Advanced Bionics*, PO merely asserts that Pinterest's arguments "center around Beri and Armstrong allegedly teaching ActiveX controls" and that "ActiveX controls were substantively discussed in two of the prior art references before the Office during the original prosecution of the '169 patent." DD

² In 2002, OpenTV acquired Wink Communications, which originally filed *Del Sesto*. See EX1015 at 1 (OpenTV announcing acquisition); see also, EX1011 (cover).

Req. 15. PO does not show that *Becton Dickinson* factors (a), (b), or (d) are satisfied, they're not. Two conclusory statements fall far short of establishing the first prong of *Advanced Bionics*—that the same or substantially the same art or arguments were previously presented. Unlike the second prong of *Advanced Bionics*, which places the burden on a petitioner, the first prong creates an expectation that PO would provide more than two conclusory sentences. Such cursory assertions are insufficient to trigger a full § 325(d) inquiry, and institution is therefore appropriate.

Nevertheless, Pinterest addresses the second prong to show why the Office erred in allowing the challenged claims, thus favoring institution.

First, the prior institution and prompt settlement of the NFL petition underscores the strong merits of the Pinterest Petition and weigh in favor of institution. *See also Becton, Dickinson & Co. v. B. Braun Melsungen AG*, IPR2017-01586, Paper 8 at 17 (P.T.A.B. December 15, 2017) (precedential) (factor (f)). In the NFL petition, the petitioner demonstrated that the '169 Patent's claims were obvious in view of PO's own publication (*Harrington*) and Microsoft ActiveX controls. EX1013 at 7. The NFL petition relied on (1) *Beri*, a Microsoft publication describing ActiveX controls (EX1006 at 1); (2) *Armstrong*, a textbook entitled *Designing and Using ActiveX Controls* (EX1008 at 1); and (3) *Harrington*. The Board instituted on all grounds and the parties settled a month later. *See* EX1013; *NFL Enterprises LLC v. OpenTV, Inc.*, Paper 14 (P.T.A.B. July 13, 2018).

Pinterest's Petition relies on the same core references—*Beri*, *Harrington*, and *Armstrong*—and adds *Del Sesto*. The Petition further relies on *Kunze*, a memorandum about basic HTML metadata encoding. *See generally* EX1010.

PO's attempts to discount the instituted NFL petition and the relevant references should be rejected. First, PO contends that the NFL petition was instituted only two months after the decision in *SAS Inst., Inc. v. Iancu*, 584 U.S. 357 (2018). DD Req. 16-17. This argument is misplaced because the Board's institution decision analyzed all the challenged claims and found a reasonable likelihood for each. EX1013 at 9, 12, 15. Second, PO argues that the NFL petition was instituted under the Broadest Reasonable Interpretation ("BRI") standard. DD Req. 17. This, too, is unpersuasive because the Pinterest Petition does not construe any claims and likewise, the Board's institution of the NFL petition did not require any claim construction. *See* Pet. 12; EX1013 at 9. Moreover, the fact that institution occurred under the same BRI standard applied by Examiners further confirms that the Examiner erred in allowing the challenged claims.

Second, the Petition's "asserted prior art...is not substantially the same as prior art the Examiner applied." *Ecto World LLC v. Rai Strategic Holdings Inc.*, IPR2024-01280, Paper 13 at 5 (Director May 19, 2025) (precedential). In the first and only Office Action, the Examiner rejected claims 1-7, 11-16, and 20-23 as anticipated by U.S. Patent Pub. No. 2002/0010798 A1 ("*Ben*") and claims 8-10 and

17-19 as obvious over *Ben*. See EX1002, 278-294.

PO's Office Action response included amendments directed to rephrasing how the claimed directives included prerequisite directives, along with arguments directed solely to *Ben*. *Id.* at 298-302. The Examiner withdrew the rejections and issued a Notice of Allowability, stating only that *Ben* failed to teach limitations 1[B], 1[C], and 1[D]. *Id.* at 317.

Thus, the only prior art actually applied by the Examiner was *Ben*, and *Ben* contains no discussion of "ActiveX." PO contends that *Beri* and *Armstrong* are similar to *Bradley* and *Peyer* merely because they describe ActiveX controls. DD Req. 14-16. But the Office Action only noted that U.S. Patent Pub. No. 2002/0194219 A1 ("*Bradley*") was "pertinent" and the Examiner only initialed a cite to U.S. Patent No. 6,188,401 ("*Peyer*") on the IDS. EX1002 at 285, 289. The Examiner calling *Bradley* "pertinent" and applying his initials next to *Peyer* on an IDS falls well short of applying those references. See *Ecto World*, Paper 10 at 5. Indeed, PO does not dispute that the Board correctly found that the ActiveX-based grounds met the reasonable likelihood standard under BRI. See DD Req. 14-16. The Board's institution under the BRI standard and the reasonable likelihood standard underscores that the Examiner's failure to raise a rejection under the same BRI standard and even lower *prima facie* standard is something "that no reasonable examiner could have found otherwise." *Ecto World* at 6.

Third, the Petition's prior art "includes specific teachings that impact patentability of the challenged claims." *Ecto World* at 5. As the Petition explains, the Microsoft ActiveX controls render these limitations obvious. *See* Pet. 13-34, 50-62. The Petition further demonstrates that the claims of the '169 Patent are obvious in view of (1) Microsoft ActiveX controls (*Beri* and *Armstrong*), (2) PO's own prior publications (*Harrington* and *Del Sesto*), and (3) basic HTML metadata encoding (*Kunze*). *See* Pet. 34-49, 62-72.

Unlike the Examiner's cursory examination, the Petition presents detailed, element-by-element analysis—supported by expert testimony—showing how the references collectively render obvious the limitations. These specific teachings and corroborating expert explanations stand in sharp contrast to the Examiner's analysis of *Ben* as a single reference, omitting any discussion of ActiveX controls or metadata encoding. *Compare* Pet. 15-29, 50-60 *with* EX1002 at 280-281, 317. In light of these teachings, the Notice of Allowance's conclusion that "the closest prior art issued to *Ben* fails to teach or suggest" the claimed subject matter was erroneous. *See also Becton, Dickinson* at 17 (factor (e)).

Fourth, the Petition's "asserted prior art was not a basis for rejection during examination" because the Office Action only included rejections based on *Ben*. *See Ecto World* at 5; *see also Becton, Dickinson* at 17 (factor (c)).

In sum, the Petition should be instituted because its strong merits are

underscored by the prior institution and prompt settlement of the NFL petition, indicating that the Examiner erred in failing to raise rejections based on Microsoft ActiveX controls and PO's own publications.

IV. Institution is Appropriate Because the Board Can Efficiently Resolve the '169 Patent Earlier than the District Court, Consistent with the *Fintiv* Factors

The Petition should be instituted for the Board to be the first to adjudicate the '169 Patent. The '169 Patent has been involved in many proceedings, and PO asserts that “none of these cases reached the merits” (DD Req. 5), but PO overlooks that the Board previously instituted the NFL petition, finding a reasonable likelihood of unpatentability. EX1013. PO is now asserting the '169 Patent in *OpenTV, Inc. v. Pinterest, Inc.*, No. 1-24-cv-01301 (D. Del. Nov. 27, 2024) (“parallel proceeding”) (*see also* Paper 4), which is still in its early stages. The District Court currently has a scheduled trial date of July 2027 that may be delayed until March 2028. EX1016. The Petition should be instituted because the Board's final written decision would be expected by January 2027, well before the District Court trial.

The factors enumerated in *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 6 (P.T.A.B. Mar. 20, 2020) (precedential) further confirm that the Petition should be instituted.

***Fintiv* Factor 1 (stay)** is neutral because the parallel proceeding may be ultimately stayed. PO argues that Pinterest has not sought a stay of the parallel

proceeding and that Pinterest only challenged the '169 Patent in IPR, not the remaining 3 patents. DD Req. 18-19. PO mentions that Pinterest has filed motions to dismiss (DD Req. 19), but PO omitted the reason: Pinterest has moved to dismiss the remaining 3 patents in the parallel proceeding for being ineligible under 35 U.S.C. § 101. EX1019 at D.I. 39 (August 13, 2025). With Pinterest's motion still pending, it would be inefficient and premature for Pinterest to seek a stay or concurrently pursue IPRs on the other patents. *Cf. Hulu, LLC v. Piranha Media Distribution, LLC*, IPR2024-01252, Paper 27 (Director April 17, 2025) (informative) (denying institution when a district court has already found the challenged claims invalid under § 101).

If the parallel proceeding grants Pinterest's § 101 motion and finds the remaining 3 patents ineligible, a stay of the litigation pending the IPR of the '169 Patent is likely. Even if some of the patents are not found invalid under 35 U.S.C. § 101, Pinterest may subsequently seek post-grant review of those patents. Because the Board is the more efficient forum to resolve issues of unpatentability, Pinterest's potential post-grant review would again weigh in favor of stay. Accordingly, because the parallel proceeding's disposition of the § 101 motion will likely determine whether a stay is granted, *Fintiv* Factor 1 is neutral.

***Fintiv* Factor 2 (trial)** weighs in favor of institution because the Board's final written decision is expected to occur anywhere from 6 months to over a year before

the trial in the parallel proceeding. The Board accorded a filing date on July 18, 2025, which means the Board is expected to issue a final written decision by January 2027. *See* Paper 3. The parallel proceeding has scheduled the trial to begin six months later on July 12, 2027. EX1019 at D.I. 52 (Sep. 25, 2025). Median time to trial statistics push the trial to March 2028: PO filed its case in November 2024 (EX1019 at D.I. 1) and the median time to trial for Delaware over the past year has been 40 months (EX1016). Accordingly, *Fintiv* Factor 2 weighs in favor of institution.

***Fintiv* Factor 3 (investment)** weighs in favor of institution because there has been little party and judicial investment into the parallel proceeding. Pinterest diligently filed the Petition about 7 months after being sued and before even filing an Answer. EX1019 at D.I. 37 (Aug. 6, 2025). PO's allegation of significant investment into the parallel proceeding (DD Req. 19) is unpersuasive because these efforts were directed to patent eligibility issues of the other asserted patents. The parties have not worked on any other invalidity issues, depositions, or claim construction, and have only just begun initial discovery in the last few weeks. Additionally, the likely stay of the parallel proceeding would cease investment into the parallel proceeding after the other asserted patents are found invalid under 35 U.S.C. § 101 or Pinterest challenges the surviving patents in post-grant proceedings. Accordingly, *Fintiv* Factor 3 weighs in favor of institution.

***Fintiv* Factor 4 (overlap)** weighs in favor of institution because Pinterest's *Hybrid-Sotera* stipulation eliminates any meaningful overlap between this proceeding and the parallel litigation. PO asserts that "Pinterest has raised §102 and §103 defenses" and "anticipates that Pinterest will raise prior art ActiveX systems" in the parallel litigation, citing Pinterest's Answer. DD Req. 19; EX2003 at 103. These statements mischaracterize the record and are misleading.

First, Pinterest has merely filed an Answer containing a reservation of rights (EX1019 at D.I. 37 (Aug. 6, 2025)). Pinterest has not served invalidity contentions or identified any prior art in the litigation. ***Second***, PO's argument about the potential for system art (DD Req. 19) fails to address the second section of Pinterest's stipulation. Pinterest executed a broad stipulation in the form of a *Hybrid-Sotera* stipulation that additionally excludes system art in combination with the prior art asserted in this Petition. EX2024 (Under section (ii), precluding the combination of any prior art that could not have been raised in the IPR (e.g., system art) and IPR-cited prior art). The broad stipulation weighs in favor of institution. *See Tesla* at 2; *Shenzhen Tuozhu Technology Co., Ltd. v. Stratasys, Inc.*, IPR2025-00438, Paper 10 (Director July 17, 2025); *Toyota Motor Corporation v. AutoConnect Holdings LLC*, PGR2025-00041, Paper 9 (Director September 8, 2025).

There is also no overlap with the other three asserted patents, which are from

different patent families directed to different technologies: the '169 Patent concerns streaming content, while US 10,419,817 and US 9,699,503 concern smart playlists and US 7,669,212 relates to targeted advertising. Accordingly, *Fintiv* Factor 4 weighs in favor of institution.

***Fintiv* Factor 5 (parties)** weighs in favor of institution because the parties are the same and the Board's final written decision will issue before trial in the parallel proceeding. Because the parties are the same and the IPR will be resolved before trial, Pinterest will be subject to early estoppel in the parallel proceeding. *See NeuMoDx Molecular, Inc. HandyLab, Inc.*, IPR2020-01133, Paper 23 at 13-14 (P.T.A.B. Aug. 6, 2021) ("The parties in this proceeding are identical to the parties in the parallel litigation. Because the final written decision in this case will issue before trial in the parallel litigation, this factor weighs against exercising discretion to deny institution.").

***Fintiv* Factor 6 (merits)** weighs in favor of institution because, as explained above, the merits are strong and demonstrate that the Examiner erred in allowing the '169 Patent to issue. PO's argument that the parallel proceeding may still need to consider invalidity under 35 U.S.C. § 102 and 35 U.S.C. § 103 for the other three asserted patents (DD Req. 20) is misplaced. Indeed, invalidity of the other 3 patents has no relevance to the merits of this IPR concerning the unrelated '169 Patent. Moreover, Pinterest has not yet served invalidity contentions, and the other asserted

patents are concurrently being challenged under 35 U.S.C. § 101.

Institution here promotes overall efficiency and preserves the integrity of the patent system by allowing the Board—the expert agency on questions of patentability—to address the '169 Patent while the district court focuses on eligibility issues for the other patents. This parallel and non-overlapping division of labor ensures that both forums can proceed efficiently without duplication or inconsistency. Accordingly, *Fintiv* Factor 6 weighs in favor of institution.

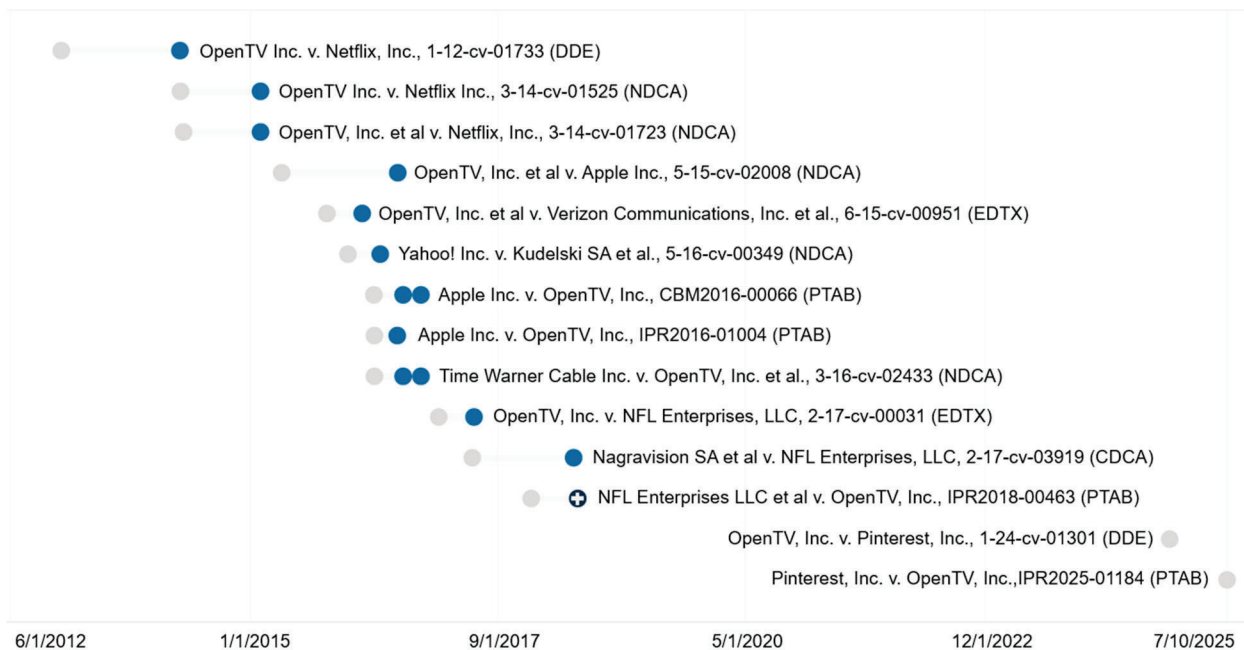
V. Institution Is Appropriate Because Pinterest Reasonably Expected the '169 Patent Would Not Be Enforced

The Petition should be instituted because PO's cessation of assertions following institution of the NFL petition demonstrates that the only reasonable "settled expectation" is that the expired '169 Patent is unenforceable due to unpatentability. PO appears to suggest that the '169 Patent can escape review merely because it survived its patent term after being involved in many settlements. DD Req. 3-5 (citing EX2011-2016). That reasoning misapprehends the purpose of the settled-expectations inquiry.

As PO's own citation makes clear, "there is no bright-line rule on when expectations become settled." *Dabico Airport Sols. Inc. v. Axa Power Aps*, IPR2025-00408, Paper 21 at 3 (P.T.A.B. June 18, 2025). Other recent decisions confirm that the analysis is highly fact-dependent and turns on the patent's real-world use and relevance—not simply its age. *See e.g., Intel Corp. v. Proxense LLC*,

IPR2025-00327, Paper 12 (Director June 26, 2025) (considering not only the patent's age but also its commercialization, assertion, and relevance to the petitioner's field).

Here, PO's voluntary cessation of assertions after institution of the NFL petition, combined with the Board's prior finding that the same claims were likely unpatentable, confirms that any expectation of continued enforceability is unreasonable. Institution is therefore appropriate to ensure consistent treatment of unpatentable claims and to prevent PO from leveraging prior settlements to shield an invalid patent from review. A closer examination of the timeline of proceedings involving the '169 Patent confirms that PO's settled expectations of patentability were extinguished by the Board's institution of the NFL petition.



See EX1017. Between 2012 and 2017, OpenTV litigated nine separate suits

asserting the '169 Patent against 6 companies—Netflix, Apple, Verizon, Yahoo, Time Warner, and the NFL. *Id.*; EX1018. As PO concedes, “none of these cases reached the merits.” DD Req. 5. The only forum that did reach any merits on the '169 Patent was the Board, which found a reasonable likelihood of unpatentability and instituted the NFL petition in 2018. When the NFL petition was instituted and the parties settled shortly thereafter, PO stopped asserting the '169 Patent, resuming only with its recent assertion against Pinterest.

Given this history and the Board's prior finding of a reasonable likelihood of unpatentability, Pinterest reasonably expected the '169 Patent would not be enforced. PO could not have held any legitimate settled expectations of patentability once institution of the NFL petition exposed the '169 Patent's claims to be obvious in view of Microsoft ActiveX controls and PO's own publications. When PO purportedly contacted Pinterest in 2021 to allege infringement (DD Req. 5-6), Pinterest reasonably maintained its expectations that the patent was unpatentable. By the time PO asserted the '169 Patent in late 2024, the '169 Patent had already expired in September 2023, further cementing Pinterest's settled expectations of nonenforcement. *See Globus Medical, Inc. v. Spinelogik, Inc.*, IPR2025-00225, Paper 8 (Director June 12, 2025).

PO's reliance on *iRhythm Techs., Inc. v. Welch Allyn, Inc.*, No. IPR2025-00363, Paper 10 at 2-3 (Director. June 6, 2025) and *AT&T Services Inc. v. ASUS*

Technology Licensing Inc., No. IPR2024-00992, Paper 14 at 12 (P.T.A.B. Dec. 16, 2024), is misplaced. DD Req. 5-6. Those decisions denied institution where petitioner's delay was unexplained. In *iRhythm*, the petitioner learned of the patent application for the challenged patent over a decade before challenging the issued patent. *iRhythm* at 3. Here, PO only contacted Pinterest in 2021 but it was reasonable for Pinterest to rely on PO's years-long cessation of asserting the '169 Patent following the NFL litigation, as well as the reasonable likelihood of unpatentability of the '169 Patent. Indeed, the fact that the Board had already instituted the NFL petition meant that PO's assertion of the '169 Patent would be objectively baseless. In *AT&T*, the petitioner filed its petition 5 months after receiving infringement contentions and 6 weeks after filing its invalidity contentions. Here, Pinterest filed its Petition at such an early stage of the parallel proceeding that PO, and Pinterest have still not filed their respective contentions. Accordingly, institution is warranted because of Pinterest's well-founded and reasoned settled expectations of nonenforcement.

VI. Institution is Appropriate Because the Petition Presents a Focused, Well-Supported Record Including Proper Expert Testimony

The Petition should be instituted because the Petition is focused and well-supported, including with complete and substantive testimony from Pinterest's expert, Dr. Freedman. Pinterest focused and narrowly tailored its Petition by only

challenging 7 claims, and presented clear, claim-by-claim analysis demonstrating how the prior art discloses each limitation. Contrary to PO's assertions, the Petition does not rely on any expert testimony to fill any evidentiary gaps.

Dr. Freedman's declaration complements this focused approach. He addressed the challenged claims in detail and provided additional, technically grounded analysis on the level of ordinary skill, technical background, and motivations to combine. *See, e.g.*, Ex. 1004 at ¶¶ 23–42 (level of skill in the art, technical background, and patent overview), ¶¶ 45–59, 114–122, 141–146, 150–157, 164–175, 207–209, 228–230, 235–237 (demonstrating the motivations to combine and reasonable expectations of success for the asserted prior art combinations). The Petition should be instituted because it is focused and appropriately relies on the independent analysis of Dr. Freedman.

PO's arguments regarding Dr. Freedman's testimony should be rejected.

First, PO relies on the wrong authorities. The interim process FAQ it cites was superseded on August 13, 2025, and the AAPA memo applies only to petitions filed after September 1, 2025. *See* EX1020 at 24; EX1021 at 3. The present Petition, filed on July 11, 2025, predates both the *AAPA Memo*'s effective date and the superseding FAQ. Moreover, PO had notice of the FAQ changes and AAPA memo when it filed its discretionary denial brief on September 18, 2025.

Second, PO mischaracterizes Dr. Freedman's testimony. It lists excerpts in

which Dr. Freedman testifies how a POSITA would understand the prior art and then asserts (albeit incorrectly) that this constitutes impermissible “gap filling” for limitation 1[B]. DD Req. 7-9. That argument is illogical. An expert's explanation of how prior art would be understood by a POSITA is precisely the type of testimony provided in IPR proceedings. If fact, PO's purported gap filling for limitation 1[B] (DD Req. 8-9) on pages 25-26 of the Petition concerns Dr. Freedman's explanation for how a POSITA would have understood the prior art renders limitation 1[B] obvious. *See* Pet. 25-26. PO disregards that Pinterest provides a detailed explanation of how the prior art teaches limitation 1[B] on pages 21 to 28 of the Petition. *See* Pet. 21-28. Using limitation 1[B] as an example, Dr. Freedman breaks up the limitation into three color coded elements followed by several paragraphs explaining the mapping to *Beri*. EX1004 ¶ 71 (element 1[B] claim chart), ¶¶72-83 (describing the claim chart mapping). Indeed, there is no gap filling.

Third, PO's attempts to challenge Dr. Freedman's credibility by drawing comparisons to the expert in the NFL petition is misplaced. *See* DD Req. 9-14. PO cites *Applications in Internet Time, LLC v. Salesforce, Inc.*, No. 2024-1133, 2024 WL 4456271, at *5 (Fed. Cir. Oct. 10, 2024), but that case turned on an expert's inability at deposition to identify portions of his own report—an issue reserved for trial. DD Req. 9-10. Here, there is no such concern. PO's purported similarities are directed to background information such as describing the Internet. *See id.* at 11.

Indeed, one would expect similarities especially where Dr. Freedman analyzed the same claims and the same prior art as did the expert for the NFL petition. If trial is instituted, PO can cross examine Dr. Freedman about various allegations such as how the experts similarly defined the Internet. *See id.* at 11. In any event, Dr. Freedman's testimony demonstrates his independent analysis, including detailed mappings for each limitation and explanatory text following each mapping. *See, e.g.,* EX1004 ¶ 71 (color-coded chart for limitation 1[B]).

Continuing with limitation 1[B] as an example, Dr. Freedman provides a detailed element-by-element analysis unlike the expert declaration in the NFL petition. Dr. Freedman at ¶¶ 82-83 explains the first element—that directives include a prerequisite directive, ¶¶ 72-76 explains the second element—subset of said set of resources, and ¶¶ 77-81 explains the third element—a prerequisite for initiating the presentation. *Compare* EX1004 ¶¶ 71-83 (Dr. Freedman's limitation 1[B]) *with NFL*, EX1004 ¶¶ 63-68 (Dr. Melvin's limitation 1[B]).

In sum, PO's attempt to distract from the central issue—namely, that the NFL petition demonstrated clear Examiner error—should be rejected. Dr. Freedman's testimony is compliant, technically rigorous, and properly supports the Petition's grounds.

VII. Conclusion

Pinterest respectfully requests institution.

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CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2025, a true and correct copy of the foregoing **PETITIONER'S OPPOSITION TO PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL** is being served by electronic mail on Patent Owner's counsel of record listed below, pursuant to its Mandatory Notices:

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