

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DELL TECHNOLOGIES INC. AND DELL INC.,
Petitioners,

v.

CLOUD BYTE LLC,
Patent Owner.

Case IPR2025-01285
Patent No. 9,560,177

**PETITIONERS' SUPPLEMENTAL BRIEF IN OPPOSITION TO PATENT
OWNER'S REQUEST FOR DISCRETIONARY DENIAL**

Petitioners Dell Technologies Inc. and Dell Inc. (collectively, “Dell”) provide this supplemental brief in opposition to Patent Owner’s request for discretionary denial (Paper 8) per email authorization of November 7, 2025 (EX3101).

After Dell filed its opposition to discretionary denial (Paper 10), Patent Owner withdrew its infringement claims based on the ’177 Patent from the related litigation. In response, Dell waived any invalidity challenge to the ’177 Patent on ***any grounds*** in the related lawsuit if review is instituted. Specifically, on November 6, 2025, Dell filed a stipulation stating that if review is instituted, “Petitioners will ***not challenge the validity of any claims of the challenged U.S. Patent 9,560,177 under any grounds*** in the Related Lawsuit.” Paper 11 (emphasis added). This stipulation is broader than the one contemplated in the USPTO’s current Notice of Proposed Rulemaking (October 16) and means that there can be absolutely no overlap in issues between this requested *inter partes* review and the related district court lawsuit. These recent developments further confirm that the Director should institute the requested review.

Patent Owner’s arguments under *Fintiv* Factor 2 are now moot because there will be no pending trial addressing the ’177 Patent if review is instituted. Indeed, Factor 2 weighs decisively against discretionary denial.

Further, because the ’177 Patent will no longer be at issue in any parallel district court action if review is instituted, none of the other *Fintiv* factors favor

discretionary denial either. *See, e.g., Ericsson v. Pegasus Wireless Innovation*, IPR2025-00083, Paper 18 at 11 (PTAB June 5, 2025) (“[T]he ’463 patent is no longer involved in the parallel district court proceeding” so “Patent Owner’s remaining arguments for discretionary denial under *Fintiv* based on the trial in that proceeding...are moot.”). There is no need for a stay in any lawsuit based on the requested review; there will be no further effort invested in the patent in the related litigation (with little invested to date); there can be no overlap in issues; the same parties will no longer be disputing the patent in the district court; and the petition presents compelling merits. There is no reason to deny institution.

Additionally, because instituting review will mean that there is no district court proceeding in which the validity of the ’177 Patent will be addressed, Dell’s petition presents an even more appropriate use of Board resources (as discussed in Dell’s opposition brief). Patent Owner has declined to dismiss its claim for infringement of the ’177 Patent with prejudice, indicating it will continue its efforts to enforce the ’177 patent in the future (albeit outside the related litigation). This proceeding will be the only mechanism to resolve the still-live dispute regarding the validity of the challenged patent. Institution is therefore particularly important and appropriate here.

In light of these new developments, and for the reasons discussed in Dell’s opposition brief, the requested *inter partes* review should be instituted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2025, the document entitled
**PETITIONERS' SUPPLEMENTAL BRIEF IN OPPOSITION TO PATENT
OWNER'S REQUEST FOR DISCRETIONARY DENIAL** was served on
Patent Owner's counsel via email at the following email addresses:

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