

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 No. IPR2025-01285
U.S. Patent No. 9,560,177

**PATENT OWNER'S RESPONSE TO
PETITIONERS' SUPPLEMENTAL BRIEF**

Pursuant to the Director’s email of November 10, 2025, Patent Owner provides this response to Petitioners’ supplemental brief (Paper 12, “Supp. Br.”) in support of Petitioners’ opposition to discretionary denial (Paper 10, “DD Opp.”).

Having dragged its feet by waiting over eleven months to file its IPR Petition, Petitioners attempt to sway the Director with a late-filed revision to its stipulation, contending that none of the *Fintiv* factors favor denial. Supp. Br. at 1-2. Yet the dismissal of the ’177 patent from the parallel litigation does not make the Board any more an appropriate venue. As the Director has stated, where there are “strong settled expectations” of validity, “it is an inefficient use of Board resources to review these challenged patents that have been dismissed from the litigation.” *SAP America, Inc. v. Valtrus Innovations Ltd.*, IPR2025-00415, Paper 10 (July 10, 2025). This case presents the exact same scenario, since the ’177 patent has been in force for nearly nine years, it is alleged by Petitioners to have been licensed and commercialized, and it has been cited by numerous companies within the industry. Paper 8 (“DD Req.”), 4-5.

Yet even though the ’177 patent has been dismissed, the concerns animating the *Fintiv* factors are still pertinent. In particular, the Board in the precedential *Fintiv* decision was not merely concerned with efficiency and overlap of issues, but also “fairness”—including the imposition of “unfair costs to a patent owner if the petitioner ... waits until the district court trial has progressed significantly before

filing a petition at the Office.” *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 6, 10-11 (March 20, 2020) (precedential). Here, for no justifiable reason, Petitioners waited over eleven months from the service of the complaint to file its petition. There are only 20 challenged claims, none of which are lengthy or complex—indeed, there are four independent claims of similar scope for which the Petition largely relies on its analysis for Claim 1. And Petitioner’s sole primary reference, Rijhsinghani, is a U.S. Patent that would not have taken long to find.

Fairness concerns also undergird *Fintiv* Factor 5, which asks whether there is an overlap in parties between the IPR and the parallel proceeding. That has not changed with the dismissal of the ’177 patent. Furthermore, *Fintiv* Factor 6, which considers the merits of the Petition, is still relevant—and as explained in Patent Owner’s preliminary response, the Petition lacks merit on numerous limitations. Paper 9.¹

¹ Petitioners claim in their Opposition to discretionary denial that Patent Owner’s request for discretionary denial “inappropriate[ly] incorporate[s] by reference” its then-forthcoming preliminary response, for which “Dell had no opportunity to respond.” *First*, the Director requires that “[p]arties must make all their arguments ... on the merits ... in the petition, POPR, and any authorized reply or sur-reply.” Interim Director Discretionary Process at I.C. *Second*, the Director specifically

Moreover, Petitioners' late-filed stipulation merely stipulates to foregoing validity challenges "in the Related Lawsuit"—a meaningless gesture given that the '177 patent is no longer part of the lawsuit. Such a stipulation fails to capture the full breadth of the AIA's estoppel provision and allows Petitioners to challenge the '177 patent in other fora. If Petitioners truly sought to limit itself to this proceeding, it should have adopted a stipulation that encompasses the full scope of the estoppel provision.

For these reasons, the Director should exercise his discretion to deny the petition.

Date: November 12, 2025

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states that "[n]otwithstanding the prohibition on incorporation by reference in 37 C.F.R. § 42.6(a)(3), when filing a brief for discretionary denial, a patent owner may direct attention to an anticipated POPR and evidence for a discussion of the merits." *Id.* at II.C.i. *Finally*, Patent Owner's POPR was filed at 6:08 ET, giving Petitioners about six hours to at least raise some response.

CERTIFICATE OF SERVICE (37 C.F.R. §§ 42.6(E), 42.105(A))

The undersigned hereby certifies that the foregoing document was served in its entirety on November 12, 2025 upon the following parties via Electronic Mail:

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