

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.,
Petitioner

v.

DYNAMIC MESH NETWORKS, INC.
D/B/A MESHDYNAMICS,
Patent Owner

U.S. Patent No. 11,368,537
Issue Date: June 21, 2022

Title: HIGH PERFORMANCE WIRELESS NETWORK

Inter Partes Review No. IPR2025-01303

**PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL OF
INSTITUTION OF PETITION FOR *INTER PARTES* REVIEW OF
UNITED STATES PATENT NO. 11,368,537**

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	PARALLEL AND OTHER PROCEEDINGS	2
III.	LEGAL STANDARDS.....	3
IV.	ARGUMENT	5
A.	Settled Expectations Support Discretionary Denial.....	5
B.	The <i>Fintiv</i> Factors Support Discretionary Denial.	10
1.	Factor 1 weighs in favor of denial because a motion to stay has not been filed and is unlikely to be granted.....	10
2.	Factor 2 weighs in favor of denial as the case is likely to go to trial before the Final Written Decision.	11
3.	Factor 3 also weighs in favor of discretionary denial.....	12
4.	Factor 4 weighs in favor of discretionary denial due to significant overlap of issues.....	13
5.	Factor 5 weighs in favor of denial as the district court litigation and the petition involve the same parties.....	15
6.	Factor 6 weighs in favor of discretionary denial.	15
C.	The Weakness of the Petition’s Invalidity Grounds and Petitioner’s Overreliance on Expert Testimony Further Supports Discretionary Denial.	17
D.	No New Authority Has Issued Since 2022 That Would Affect the Patentability of the Claims.	18
V.	CONCLUSION.....	19

TABLE OF AUTHORITIES

<i>AGIS Software Dev. LLC v. Google LLC</i> , 2021 U.S. Dist. LEXIS 24195 (E.D. Tex. Feb. 9, 2021).....	10
<i>Apotex Inc. v. Alkermes Pharma Ireland Ltd.</i> , IPR2025-00514, Paper 10, 2 (PTAB July 2, 2025).....	14
<i>Apple Inc. v. Fintiv, Inc.</i> , IPR2020-00019, Paper 11, 5-6 (PTAB Mar. 20, 2020).....	4
<i>Arthrex, Inc. v. Medshape, Inc.</i> , IPR2025-00053, Paper 11, 9 (PTAB Apr. 25, 2025)	11, 13
<i>Cambridge Indus. USA, Inc. v. Applied Optoelecs., Inc.</i> , IPR2025-00433, Paper 12 (PTAB June 27, 2025)	9
<i>Capella Photonics, Inc. v. Cisco Sys., Inc.</i> , 2014 U.S. Dist. LEXIS 147258 (N.D. Cal. Oct. 14, 2014)	10
<i>Cisco Sys., Inc. v. Estech Sys., Inc.</i> , IPR2021-00333, Paper 12, 12-13 (PTAB July 7, 2021).....	14
<i>Comcast Cable Commn’cs, LLC v. Entropic Commn’cs, LLC</i> , IPR2025-00183, Paper 11, 2-3 (PTAB June 25, 2025).....	15
<i>Dabico Airport Sols. Inc. v. AXA Power ApS</i> , IPR2025-00408, Paper 21, 3 (PTAB June 18, 2025)	9
<i>Force Mos Tech., Co. v. Asustek Comput., Inc.</i> , 2024 U.S. Dist. LEXIS 66423 (E.D. Tex. Apr. 10, 2024).....	10
<i>HP Inc. v. Universal Connectivity Techs. Inc.</i> , IPR2024-01428, Paper 12, 9-10	15
<i>Int’l Business Machines Corp. v. Digital Doors, Inc.</i> , IPR2023-00968, Paper 7, 10–11 (PTAB Dec. 1, 2023)	13
<i>iRhythm Techs., Inc. v. Welch Allyn, Inc.</i> , IPR2025-00363, Paper 10, 3 (PTAB June 6, 2025) (finding settled expectations when the petitioner knew of application in 2013).....	9, 12

<i>L’Oreal USA, Inc. v. Brightex Bio-Photonics, LLC</i> , IPR2025-00971, Paper 13, 2 (PTAB Sept. 26, 2025) (denying institution where evidence demonstrated that the patent owner sent a letter in 2022 identifying the patent).....	6, 12
<i>Motorola Sols. v. Stellar, LLC</i> , IPR2024-01205, Paper 19, 3-4 (PTAB Mar. 28, 2025).....	14
<i>Murata Mfg. Co., v. Ga. Tech Rsc. Corp.</i> , IPR2025-00383, Paper 14, 2 (PTAB July 29, 2025).....	8
<i>Nvidia Corp. v. Neural AI, LLC</i> , IPR2025-00606, Paper 18, 2-3 (PTAB Jul. 31, 2025).....	6, 8
<i>Samsung Elecs. Co. Ltd. et al. v. GenghisComm Holdings LLC</i> , IPR2025-00788, Paper 11, 2 (PTAB Aug. 22, 2025).....	9
<i>Samsung Elecs. Co. Ltd. v. GenghisComm Holdings LLC</i> , IPR2025-00780, Paper 11, 2 (PTAB Aug. 14, 2025).....	8
<i>Samsung Elecs. Co. Ltd. v. Vasu Holdings, LLC</i> , IPR2025-00446, Paper 12, 2 (PTAB July 10, 2025)	11

PATENT OWNER’S EXHIBIT LIST

Exhibit No.	Description
2001	Cisco’s Opposition to Dynamic Mesh Networks, Inc. and Francis daCosta’s Rule 12 Motion to Dismiss, <i>Cisco Systems, Inc. v. Dynamic Mesh Networks, Inc. d/b/a MeshDynamics et al.</i> , No. 5-25-cv-06441 (NDCA), Dkt. 47 (September 5, 2025)
2002	Cisco’s Answer to Dynamic Mesh Networks, Inc.’s Complaint for Patent Infringement, <i>Dynamic Mesh Networks, Inc. et al. v. Cisco Systems, Inc.</i> , No. 2:25-cv-00781 (EDTX), Dkt. 29 (September 18, 2025)
2003	Declaration of Mr. Francis daCosta in Support of Patent Owner’s Request for Discretionary Denial
2004	June 22, 2022 Letter to Chief Executive Officer of Cisco Systems, Inc., Charles H. Robbins, from Mr. Francis daCosta, founder of MeshDynamics
2005	August 2009 Presentation entitled “High Level Overview” provided to Cisco Systems, Inc.
2006	Cisco’s Amended Complaint, <i>Cisco Systems, Inc. v. Dynamic Mesh Networks, Inc. d/b/a MeshDynamics et al.</i> , No. 5-25-cv-06441 (NDCA), Dkt. 5 (July 31, 2025)
2007	MeshDynamics’ Notice of Readiness, <i>Dynamic Mesh Networks, Inc. et al. v. Cisco Systems, Inc.</i> , No. 2:25-cv-00781 (EDTX), Dkt. 32 (September 19, 2025)
2008	Judge Wise’s Civil Standing Order in Northern District of California, available at https://cand.uscourts.gov/sites/default/files/standing-orders/NW-CivilStandingOrder_05-06-25.pdf
2009	Docket, <i>Cisco Systems, Inc. v. Dynamic Mesh Networks, Inc. d/b/a MeshDynamics et al.</i> , No. 5-25-cv-06441 (NDCA) (September 5, 2025)
2010	MeshDynamics’ Local Rule 3-1 and 3-2 Initial Disclosures, <i>Dynamic</i>

	<i>Mesh Networks, Inc. et al. v. Cisco Systems, Inc.</i> , No. 2:25-cv-00472 (EDTX) (July 18, 2025)
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Patent Owner Dynamic Mesh Networks, Inc. d/b/a MeshDynamics (“MeshDynamics”) respectfully requests that the Director deny institution of the Petition for *Inter Partes* Review (“Petition”) filed by Cisco Systems, Inc. (“Cisco”) challenging claims 1-19 of U.S. Patent No. 11,368,537 (“’537 patent,” Ex. 1001).

I. INTRODUCTION

The considerations outlined in the Director’s March 26, 2025 Memorandum entitled “Interim Processes for PTAB Workload Management” strongly weigh against institution of the Petition, and the facts here considerably exceed those presented in several recent discretionary denials.

The ’537 patent issued more than three years ago, and Cisco had actual notice of the patent and its infringement *one day* after it issued. The ’537 patent issued on June 21, 2022, and on June 22, inventor Francis daCosta, on behalf of MeshDynamics, sent Cisco a letter providing actual notice of the ’537 patent and other MeshDynamics’ patents. Mr. daCosta also informed Cisco of other challenged patents in 2009. Cisco thus had notice of the ’537 patent and other challenged patents for a significant period of time. Cisco had every opportunity to seek early validity challenges and *inter partes* review (“IPR”) but chose *not* to do so until MeshDynamics brought a district court challenge.

Further, the *Fintiv* factors weigh in favor of discretionary denial, especially because no stay has issued in the *multiple* parallel proceedings and is highly unlikely.

And Cisco is challenging the ownership of the '537 patent—a central issue that this tribunal cannot resolve and which must be litigated in another forum. Consistent with the Memorandum's articulated goal of efficiency and workload management, this threshold issue of ownership should be resolved (and the correct patent owner confirmed) before any decision here.

MeshDynamics respectfully submits that under the totality of circumstances, discretionary denial is strongly favored.

II. PARALLEL AND OTHER PROCEEDINGS

On May 5, 2025, MeshDynamics filed a complaint in the Eastern District of Texas against Cisco asserting infringement of the '537 patent and other challenged patents in *Dynamic Mesh Networks, Inc. et al. v. Cisco Systems, Inc.*, No. 2:25-cv-00472 (EDTX). On July 31, 2025, the parties stipulated to dismissal of the case without prejudice because MeshDynamics did not own the patents and lacked standing. On the same day, Cisco filed a complaint for declaratory judgment against MeshDynamics in California with respect to the same patents. *Cisco Systems, Inc. v. Dynamic Mesh Networks, Inc. d/b/a MeshDynamics et al.*, No. 5:25-cv-06441 (NDCA). MeshDynamics fixed the standing issue and re-filed its case in Texas on August 12, 2025, asserting the same patents as the earlier dismissed case. *Dynamic Mesh Networks, Inc. et al. v. Cisco Systems, Inc.*, No. 2:25-cv-00781 (EDTX).

Cisco is challenging MeshDynamics' ownership of the '537 patent in the

California litigation (Ex. 2001, 8-10) and expressly declined to admit MeshDynamics' ownership of the '537 patent in the refiled Texas litigation (Ex. 2002, ¶ 24).

Cisco also filed the following Petitions challenging patents from the same district court proceedings:

- IPR2025-01304 challenging the 7,885,243 patent (“’243 patent”).
- IPR2025-01523 challenging the 7,420,952 patent (“’952 patent”).
- IPR2025-01569 challenging the 7,894,385 patent (“’385 patent”).
- IPR2026-00008 challenging the 8,520,691 patent (“’691 patent”).

III. LEGAL STANDARDS

“The Director may not authorize an *inter partes* review to be instituted unless the Director determines that the information presented in the petition ... shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a).

The new discretionary denial framework goes beyond prior rules and guidance. *See* Interim Director Discretionary Process, October 3, 2025 (<https://www.uspto.gov/patents/ptab/interim-director-discretionary-process>); Interim Processes for PTAB Workload Management, March 26, 2025 (<https://www.uspto.gov/sites/default/files/documents/InterimProcesses-PTABWorkloadMgmt-20250326.pdf>) (“Memorandum”).

The Memorandum advises parties to address all relevant considerations in seeking discretionary denial of institution, which may include:

- Whether there have been changes in the law or new judicial precedent issued since issuance of the claims that may affect patentability;
- The strength of the unpatentability challenge;
- The extent of the petition's reliance on expert testimony;
- Settled expectations of the parties, such as the length of time the claims have been in force; and
- Any other considerations bearing on the Director's discretion.

Memorandum, 2-3.

When the patent owner raises an argument for discretionary denial due to a co-pending litigation, the Director also weighs the following six factors:

1. Whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted;
2. Proximity of the court's trial date to the Board's projected statutory deadline for a final written decision;
3. Investment in the parallel proceeding by the court and the parties;
4. Overlap between issues raised in the petition and in the parallel proceeding;
5. Whether the petitioner and the defendant in the parallel proceeding are the same party; and
6. Other circumstances that impact the Board's exercise of discretion, including the merits.

Apple Inc. v. Fintiv, Inc., IPR2020-00019, Paper 11, 5-6 (PTAB Mar. 20, 2020)

(precedential) (“*Fintiv*”).

IV. ARGUMENT

A. Settled Expectations Support Discretionary Denial.

MeshDynamics’ strong settled expectations weigh heavily in favor of discretionary denial because Cisco has long been aware of MeshDynamics’ technology, patent portfolio, and the ’537 patent but failed to seek early review of the patents.

On June 22, 2022, *one day* after the ’537 patent issued, MeshDynamics’ founder, Mr. daCosta, sent Cisco a letter specifically informing it of MeshDynamics’ mesh Wi-Fi network technology and its patent portfolio. Ex. 2003, ¶ 3; Ex. 2004.¹ MeshDynamics provided notice of Cisco’s infringement of MeshDynamics’ patents, including the ’537 patent:

Many of MeshDynamics’ implementation details are disclosed and claimed in its 19 patents and a pending application, which are listed in Exhibit A. Cisco is infringing at least U.S. Pat. No. 11,368,537 by, for example and without limitation, providing Cisco’s mesh Wi-Fi equipment and solutions to customers, including deploying, managing and enabling mesh Wi-Fi networks for its customers (as described in Cisco Wireless Mesh Access Points, Design and Deployment Guide). Therefore, I hereby put Cisco on notice of its infringement of MeshDynamics’ patents and request that Cisco take a license.

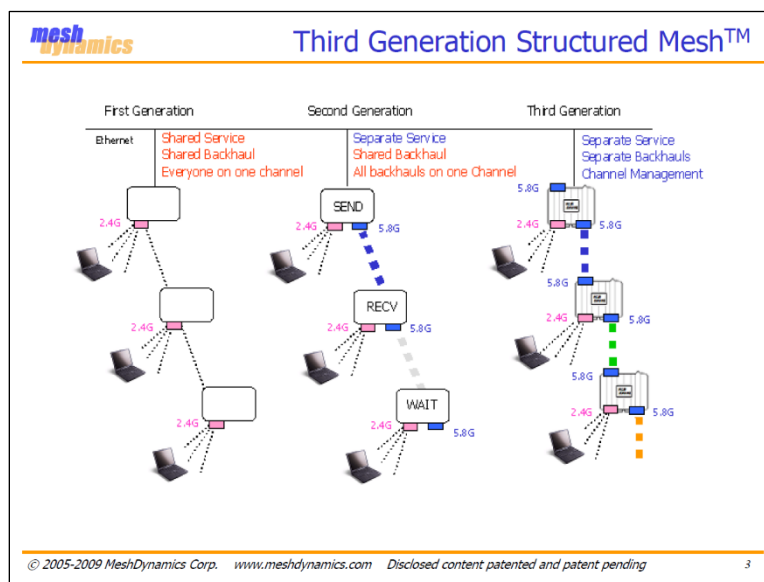
Ex. 2004, 1 (annotated).

MeshDynamics provided Cisco with actual notice of the ’537 patent as soon as the patent issued more than three years ago, creating strong settled expectations

¹ Cisco admits receiving this letter. *See* Ex. 2002, ¶ 55.

in favor of discretionary denial. *See Nvidia Corp. v. Neural AI, LLC*, IPR2025-00606, Paper 18, 2-3 (PTAB Jul. 31, 2025) (finding settled expectations when petitioner has actual notice of the challenged patents); *see also L'Oreal USA, Inc. v. Brightex Bio-Photonics, LLC*, IPR2025-00971, Paper 13, 2 (PTAB Sept. 26, 2025) (denying institution where evidence demonstrated that the patent owner sent a letter in 2022 identifying the patent).

Not only did MeshDynamics provide Cisco actual notice of the '537 patent ***the day after it issued*** more than three years ago, MeshDynamics provided Cisco with actual notice of its commercial mesh technology and the other challenged patents in 2009. In August 2009, Mesh Dynamics, Inc. (predecessor to MeshDynamics) gave a presentation to Cisco about the company, its Third Generation Structured Mesh technology, and the patent portfolio to discuss potential collaborations:



Ex. 2003, ¶¶ 4-5; Ex. 2005, 3.

MeshDynamics specifically informed Cisco of the '952 patent and then-pending applications for the '243 patent (Application No. 12/154,155), the '385 patent (Application No. 11/818,889), and the '691 patent (Application No. 61/148,803) during the presentation:



Key Intellectual Property

- **US Patent 7,420,952**
"High Performance Wireless Networks Using Distributed Control"
 - Awarded September 2008
 - Essential mesh capabilities, including
 - Throughput and latency management
 - Dynamic backhaul load management
 - Dynamic network topology management
 - Dynamic channel management
 - Local interference management
 - Self-configuration
 - Fault tolerance
 - Traffic forwarding
 - Not limited to Wi-Fi
 - UWB, WPANs, WiMAX, ...

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Additional Patents Filed and in Process

- **AN 12/154,155 High Performance Wireless Networks Using Distributed Control**
 - Continuation of AN 10/434,948
 - Switch Stack Equivalence with Logical Radios (single and multiple)
- **AN 11/084,330 Multiple-radio Mission Critical Wireless Mesh Networks**
 - Scanning Radio for higher speed mobility, faster reconvergence
 - Enables mobility handoffs with no performance loss
 - Full duplex, multi-radio mesh
 - Hybrid Mesh
- **AN 12/352,457 Self-forming VoIP Network**
 - Enables persistent VoIP communication on isolated networks and transparent return to primary network
- **AN 61/148803 Persistent Mesh for Isolated Mobile And Temporal Networking**
 - Enables structured mesh operation in isolated and reforming network clusters
- **AN 11/818,889 Mobility Extensions for Wireless Multiple Radio Mesh**
 - Additional scanning methodologies for mobile mesh applications
- **AN 61/117,502 Real-time Video Packet Transforms to Avoid Retransmissions**

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Ex. 2003, ¶¶ 4-5; Ex. 2005, 4, 6 (annotated).²

Since Cisco had actual notice of the '537 patent since 2022, and MeshDynamics' mesh technology since 2009, MeshDynamics has very strong settled expectations. *See Nvidia Corp.*, IPR2025-00606, Paper 18, 3 (finding settled expectations when patent owner sent petitioner a presentation that included a discussion of the patent portfolio); *see also Murata Mfg. Co., v. Ga. Tech Rsc. Corp.*, IPR2025-00383, Paper 14, 2 (PTAB July 29, 2025) (denying institution where the “Petitioner was aware that Patent Owner was involved in the same technology space for a significant amount of time before filing its Petition challenging Patent Owner’s patent.”).

Moreover, Cisco has filed at least four other petitions for patents asserted in the district court proceedings. *See supra* §II. Each of these patents issued more than six years ago—the '952 patent issued in 2008, the '243 and '385 patents issued in 2011, and the '691 patent issued in 2013—and Cisco had actual knowledge of these patents for more than **16 years**. *See* Ex. 2005, 4, 6. Overall efficiency supports discretionary denial because of the strong settled expectations of the other challenged patents. *See Samsung Elecs. Co. Ltd. v. GenghisComm Holdings LLC*, IPR2025-00780, Paper 11, 2 (PTAB Aug. 14, 2025) (finding patents in force for

² Cisco has not denied that this presentation occurred. *See* Ex. 2002, ¶¶ 50-52.

eight and six years created strong settled expectations); *see also iRhythm Techs., Inc. v. Welch Allyn, Inc.*, IPR2025-00363, Paper 10, 3 (PTAB June 6, 2025) (finding settled expectations when the petitioner knew of application in 2013); *Dabico Airport Sols. Inc. v. AXA Power ApS*, IPR2025-00408, Paper 21, 3 (PTAB June 18, 2025) (“[T]he longer the patent has been in force, the more settled expectations should be.”).³

Discretionary denial is appropriate where a patent is asserted in a district court case with another patent having strong settled expectations. *See Samsung Elecs. Co. Ltd. et al. v. GenghisComm Holdings LLC*, IPR2025-00788, Paper 11, 2 (PTAB Aug. 22, 2025) (denying institution of patent in force for three years where other patents supported strong settled expectations); *see also Cambridge Indus. USA, Inc. v. Applied Optoelects., Inc.*, IPR2025-00433, Paper 12 (PTAB June 27, 2025) (denying institution based on strong settled expectations as to other proceedings).

Cisco had every opportunity to seek an early review of the ’537 patent and MeshDynamics’ long-issued patents but chose not to until MeshDynamics brought a challenge in the district court. A holistic assessment shows that MeshDynamics has

³ The issues and prior art raised in the Petition, including the priority date issues (*see* Pet., 7-12), do not extend to the other IPR proceedings or the other asserted and much-earlier filed and issued patents.

strong settled expectations with regard to *all* of the challenged patents, including the '537 patent, and overall efficiency supports discretionary denial. MeshDynamics requests the Director discretionarily deny institution of the Petition.

B. The *Fintiv* Factors Support Discretionary Denial.

1. Factor 1 weighs in favor of denial because a motion to stay has not been filed and is unlikely to be granted.

The district court proceedings have not been stayed, and a stay is unlikely in the Eastern District of Texas or the Northern District of California. A motion to stay pending IPR proceedings has not been filed by Cisco in either case. For that reason alone, a stay cannot be considered “likely.”

Moreover, the facts of this case make it highly unlikely for a stay to be granted in either jurisdiction where the parallel litigation is pending. *Eight* patents are pending in the California action and across two litigations in Texas. *See* Ex. 2006; *see also* Ex. 2003, ¶ 1. Cisco only has *five* pending petitions. District courts have a consistent practice of denying motions to stay when the PTAB has yet to institute post-grant proceedings. *See Force Mos Tech., Co. v. Asustek Comput., Inc.*, 2024 U.S. Dist. LEXIS 66423, at *9 (E.D. Tex. Apr. 10, 2024); *Capella Photonics, Inc. v. Cisco Sys., Inc.*, 2014 U.S. Dist. LEXIS 147258, at *6-7 (N.D. Cal. Oct. 14, 2014).

And district court routinely deny motions to stay pending IPR proceeding when the PTAB instituted review on less than all asserted claims of all asserted patents. *See, e.g., AGIS Software Dev. LLC v. Google LLC*, 2021 U.S. Dist. LEXIS

24195, at *9 (E.D. Tex. Feb. 9, 2021); *see also Arthrex, Inc. v. Medshape, Inc.*, IPR2025-00053, Paper 11, 9 (PTAB Apr. 25, 2025) (agreeing stay less likely when parallel proceedings involve patents not the subject of a petition).

At best, the likelihood of a stay is speculative, and this factor should not weigh against discretionary denial. *See Samsung Elecs. Co. Ltd. v. Vasu Holdings, LLC*, IPR2025-00446, Paper 12, 2 (PTAB July 10, 2025) (granting discretionary denial where *inter alia* “there is insufficient evidence that the district court is likely to stay its proceeding even if the Board were to institute trial”).

Thus, factor one weighs in favor of discretionary denial.

2. Factor 2 weighs in favor of denial as the case is likely to go to trial before the Final Written Decision.

The Board is projected to issue a Final Written Decision by February 2027. At this time, a trial date has not been set for either of the district court proceedings. February 16, 2027 was the scheduled trial date in the originally-filed Eastern District of Texas case and MeshDynamics has requested the district court again schedule trial for this date in Texas. Ex. 2007, 2. Judge Wise in the California litigation schedules trial for 12-20 months from the Initial Case Management Conference, currently scheduled for January 2026. Ex. 2008, 3; Ex. 2009 (Docket Entry No. 60). Therefore, trial is likely to be scheduled before or around the time of the Final Written Decision by the Board.

To the extent Cisco argues otherwise, strong settled expectations outweigh

this factor. *See L'Oreal USA*, IPR2025-00971, Paper 13, 2 (finding settled expectations outweighed the final written decision issuing before the district court trial date); *iRhythm Techs.*, IPR2025-00363, Paper 10, 3 (denying institution when settled expectations outweigh the final written decision issuing before the trial date).

Thus, factor two weighs in favor of discretionary denial or is neutral.

3. Factor 3 also weighs in favor of discretionary denial.

Factor 3 relates to the “investment in the parallel proceeding by the court and the parties” at the time of the institution decision. *Fintiv*, 5-6, 9. This factor weighs in favor of discretionary denial because of the significant investment the parties have already made, as well as the work that will be done before the institution decision. As recognized in *Fintiv*, significant investment by the parties undermines the likelihood of a stay and increases the risk of duplicative costs.

The Board’s deadline for resolving the institution decision in this IPR will be months after the parties have already fully briefed a substantive motion to dismiss. Ex. 2009 (Docket Entry Nos. 39, 47, 49). Further, MeshDynamics already served infringement contentions and significant document production in Texas. Ex. 2010. By the time the institution decision arrives, MeshDynamics will serve additional infringement contentions and the parties would have already invested considerable resources into the district court proceedings. The investment made by the parties in discovery and motions practice supports a finding that Factor 3 favors discretionary

denial. *See Arthrex*, IPR2025-00053, Paper 11, 10-11 (denying institution where parties have invested significant time in the district court proceedings).

MeshDynamics' infringement contentions alone span **550 pages** of detailed claim charts. Ex. 2010. The investment in developing the contentions would, on its own, make Factor 3 at least neutral. *See Int'l Business Machines Corp. v. Digital Doors, Inc.*, IPR2023-00968, Paper 7, 10–11 (PTAB Dec. 1, 2023). But the parties have already invested more much than that and will invest even more before the date of any institution decision in this proceeding.

Thus, factor three weighs in favor of discretionary denial or is neutral.

4. Factor 4 weighs in favor of discretionary denial due to significant overlap of issues.

“[I]f the petition includes the same or substantially the same claims, grounds, arguments, and evidence as presented in the parallel proceeding, this fact has favored denial.” *Fintiv*, 12. Cisco has not provided invalidity contentions yet in the parallel proceedings, but MeshDynamics anticipates Cisco will provide the same prior art positions as presented in the Petition and there will be significant overlap.

Cisco has provided a *Sotera* stipulation. Ex. 1028. But even though a “timely-filed *Sotera* stipulation ... is highly relevant, [it] but will not be dispositive by itself.” Memorandum, Guidance on USPTO's rescission of “Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court

Litigation,” 2-3 (Mar. 24, 2025).⁴ Cisco’s stipulation is not dispositive and does not overcome the overwhelming weight of other factors favoring discretionary denial. *See, e.g., Cisco Sys., Inc. v. Estech Sys., Inc.*, IPR2021-00333, Paper 12, 12-13 (PTAB July 7, 2021) (denying institution even with *Sotera* stipulation); *see also Motorola Sols. v. Stellar, LLC*, IPR2024-01205, Paper 19, 3-4 (PTAB Mar. 28, 2025) (“[A]lthough Petitioner’s *Sotera* stipulation may mitigate some concern of duplication between the parallel proceeding and this proceeding, the stipulation does not outweigh the substantial investment in the district court proceeding....”).

Further, because the stipulation limits Cisco from raising any grounds that are raised or could have reasonably been raised in this proceeding in only ***the parallel district court case***, it will not, if institution is granted, prevent Petitioner from subsequently filing requests for *ex parte* reexamination of the ’537 Patent based on such grounds. Thus, the stipulation still allows for repeated challenges to the same patent by the same parties in multiple venues (including two within the Patent Office itself—the PTAB and the Central Reexamination Unit), obviating the very purpose of the IPR process, which is to streamline the patent system and reduce litigation costs. *See Apotex Inc. v. Alkermes Pharma Ireland Ltd.*, IPR2025-00514, Paper 10, 2 (PTAB July 2, 2025) (“It is not an appropriate use of Office resources to review a

⁴ Available at https://www.uspto.gov/sites/default/files/documents/guidance_memo_on_interim_procedure_recission_20250324.pdf.

patent in two separate, concurrent Office proceedings, especially when the issues and evidence in those proceedings has substantial overlap.”).

Thus, factor four weighs in favor of discretionary denial or is neutral.

5. Factor 5 weighs in favor of denial as the district court litigation and the petition involve the same parties.

Fintiv factor five weighs in favor of denying institution because the parties in the parallel litigation are the same. *Fintiv*, 15; *see also HP Inc. v. Universal Connectivity Techs. Inc.*, IPR2024-01428, Paper 12, 9-10 (factor weighs in favor of denial where all parties are involved in the parallel district court litigations).

And there are **multiple** parallel district court litigations regarding the ’537 patent. *See supra* §II. “[T]he presence of multiple parallel proceedings and the avoidance of inconsistent outcomes favors discretionary denial.” *See Comcast Cable Commn’cs, LLC v. Entropic Commn’cs, LLC*, IPR2025-00183, Paper 11, 2-3 (PTAB June 25, 2025) (denying institution in light of multiple district court proceedings). As the Director found in *Comcast*, “[i]t is not an efficient use of Board resources to consider the Petitions ... [b]ecause there are multiple ongoing district court proceedings, [and] discretionary denial of the Petitions reduces the chances of duplicative workloads and inconsistent outcomes.” *Id.*, 3.

Thus, factor five weighs in favor of discretionary denial.

6. Factor 6 weighs in favor of discretionary denial.

Cisco had every opportunity to seek an early review of the ’537 patent and the

other challenged patents, but chose not to until MeshDynamics brought a challenge in the district court. The Petition was not a priority for Cisco, and this factor favors denial in light of MeshDynamics' settled expectations and Cisco's failure to timely file this Petition after receiving actual notice of infringement in 2022.

Cisco's ownership challenge also weighs in favor of discretionary denial. Cisco is challenging MeshDynamics' ownership of the '537 patent in the Northern District of California action. Ex. 2001, 8-10. Cisco has also refused to expressly admit MeshDynamics' ownership in the Texas action. *See* Ex. 2002, ¶ 24. Cisco instead claims that the inventors own the patent. *See* Ex. 2001, 8-10. The issue is central to the outcome of the parallel litigations and this proceeding. *See* 35 U.S.C. § 312(a)(5) (requiring the petitioner to provide copies of required documents to the "patent owner"); *see also* 35 U.S.C. § 313 ("[T]he patent owner shall have the right to file a preliminary response to the petition.").

But the Patent Office does not handle ownership disputes, and there is no court order or legal document resolving the issue at this time.⁵ It is not an efficient use of

⁵ Even if the California district court disagrees with Cisco's pending opposition to the motion to dismiss and its argument that the inventors are the owners of the '537 patent, it is clear Cisco intends to continue its ownership challenge in both California

Board resources to consider the Petition given this unresolved dispute that could result in a patent owner that is not a party to this proceeding or has not been provided with the statutorily-required documents and opportunity to respond.

C. The Weakness of the Petition’s Invalidity Grounds and Petitioner’s Overreliance on Expert Testimony Further Supports Discretionary Denial.

Petitioner’s excessive reliance on a voluminous and unfocused expert declaration as its sole evidentiary support for numerous claim limitations further strengthens the case for denial. Memorandum, 2 (identifying “[t]he strength of the unpatentability challenge” and “[t]he extent of the petition’s reliance on expert testimony” as considerations for discretionary denial). As the Office has made clear, “extensive reliance on expert testimony” may indicate that the issues are “better resolved in an Article III court,” as IPR proceedings must be based on patents and printed publication, not expert opinion. *See* FAQs for Interim Processes for PTAB Workload Management, FAQ No. 22.⁶ Here, Petitioner extensively relies on expert testimony to fill the gaps between the asserted prior art references and the patented

and Texas. *See, e.g.*, Ex. 2002 (alleging an “Eleventh Defense: Standing” purporting to challenge MeshDynamics’ ownership of the patents-in-suit).

⁶ Available at <https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management>.

claims. The expert declaration Cisco filed in support of its Petition is **209** pages long. *See* Ex. 1002. Cisco cites to the expert declaration at least **149** times in the Petition.

Cisco's extensive reliance on its expert declaration is unsurprising, given that its expert's testimony is the sole evidentiary basis for the alleged obviousness of numerous claim limitations. *See, e.g.*, Pet., 27 (relying on expert testimony to allege that mesh APs in communication with other mesh APs and a root AP using "wireless backhauls" are "associated" with a root AP), 30-32 (relying on expert testimony to allege that mesh APs in communication with each other using "wireless backhauls" are in parent-child relationships), 33-36 (relying on expert testimony to allege that a local mesh routing protocol automatically connects a parent node to a child node). Per the guidance of the Office, however, the role of an expert is to provide focused support (*e.g.*, explaining terms of art or relevant context), **not** to substitute and/or provide for limitations and the obviousness rationale from the prior art.

D. No New Authority Has Issued Since 2022 That Would Affect the Patentability of the Claims.

The Memorandum encourages the Director to weigh "[w]hether there have been changes in the law or new judicial precedent issued since issuance of the claims that may affect patentability." Memorandum, 2. As discussed *supra*, Petitioner has been aware of the '537 patent since 2022. MeshDynamics is not aware of any change in the law that would suggest the claims are invalid. Instead, the legal standards governing patentability and claim construction have remained largely unchanged.

Nor does the Petition identify any new legal authority—whether statutory, precedential, or otherwise—that would undermine the Office’s original analysis. This further supports discretionary denial under § 314(a).

V. CONCLUSION

For all of the foregoing reasons, MeshDynamics respectfully requests the Director exercise its discretion and deny the Petition.

Dated: October 22, 2025

Respectfully submitted,

By: /s/ Elizabeth Bernard

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CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d) and the Interim Director Discretionary Process § II.C.iii, the undersigned certifies that this Brief in Support of Discretionary Denial complies with the type-volume limitations of those sections because it contains no more than 20 pages.

Dated: October 22, 2025

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL OF INSTITUTION OF PETITION FOR *INTER PARTES* REVIEW OF UNITED STATES PATENT NO. 11,368,537 was served electronically via email on October 22, 2025, on the following counsel of record for Petitioner:

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