

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RED HAT, INC.
Petitioner

v.

COMPETITIVE ACCESS SYSTEMS, INC.
Patent Owner

Case No. IPR2025-01382
U.S. Patent No. 11,418,641

**PATENT OWNER'S CORRECTED PETITION FOR DISCRETIONARY
DENIAL**

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iv
EXHIBIT LIST	vii
I. INTRODUCTION.....	1
II. BACKGROUND.....	1
a. Background of the '641 Patent	1
b. Related Proceedings.....	1
i. Red Hat petitions for inter partes review	1
ii. Competitive Access Systems v. Oracle proceedings	2
iii. Red Hat v. Competitive Access Systems	3
iv. Concurrent related district court litigation	5
III. LEGAL STANDARD.....	6
IV. THE PETITION SHOULD BE DISCRETIONARILY DENIED IN VIEW OF THE PARALLEL DISTRICT COURT PROCEEDINGS.....	7
a. Factor 1: there is little chance a stay would be granted in the parallel litigation	7
b. Factor 2: The trial dates—or lack of trial dates—in the parallel litigation is not dispositive in the discretionary denial inquiry	8
c. Factor 3: The parties will have invested heavily in the parallel litigation by the time institution is decided	10
d. Factor 4: The issues presented in the IPR petition and in the federal district court litigation are likely to substantially overlap	11
e. Factor 5: Petitioner is plaintiff in the parallel litigation	12
f. Factor 6: The petition lacks merit.....	12
V. THE PETITION DOES NOT PRESENT AN EFFICIENT USE OF THE BOARD'S RESOURCES	14
a. The fact that the '641 Patent expired nearly two years ago and Petitioner waited to file its Petition demonstrates strong settled expectations	14
b. That Red Hat is challenging six additional patents in the patent family, four of which have been in force for over nine years.....	16

c. The District Court is the better forum for litigating validity issues including antedating of prior art	18
VI. CONCLUSION	20

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Advanced Micro Devices, Inc. v. Concurrent Ventures, LLC</i> , IPR2025-00223, Paper 9 (PTAB June 12, 2025)	9
<i>Apple Inc. v. Fintiv, Inc.</i> , No. IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020)	6, 7, 8, 9, 10, 12
<i>Apple, Inc. v. Fintiv, Inc.</i> , IPR2020-00019, Paper 15 (PTAB May 13, 2020)	6, 8
<i>Cambridge Indus. USA, Inc. v. Applied Optoelects., Inc.</i> , IPR2025-00434, Paper 11 (PTAB June 26, 2025)	17
<i>Cambridge, Indus. USA, Inc. v. Applied Optoelects., Inc.</i> , IPR2025-00433, Paper 12 (PTAB June 27, 2025)	16-17
<i>Commscope Techs. v. Dali Wireless, Inc.</i> , IPR2022-01242, Paper 23 (PTAB Feb. 27, 2023)	13
<i>Cuozzo Speed Techs., LLC v. Lee</i> , 579 U.S. 261 (2016)	6
<i>Dabico Airport Sols., Inc. v. Axa Power APS</i> , IPR2025-00408, Paper 21 (PTAB June 18, 2025)	17
<i>Garmin Int’l, Inc. v. Cuozzo Speed Techs. LLC</i> , IPR2012-00001, Paper 26 (PTAB Mar. 5, 2013)	20
<i>Google LLC v. Sandpiper CDN, LLC</i> , IPR2025-00826, Paper 14 (PTAB Sept. 12, 2025)	14
<i>Google LLC v. Uniloc LLC</i> , IPR2020-00115, Paper No. 8 (PTAB Mar. 27, 2020)	8
<i>Google LLC v. Virtamove, Corp.</i> , IPR2025-00487, Paper 11 (PTAB July 11, 2025)	9
<i>Ingenico Inc. v. IOENGINE, LLC</i> , 136 F.4th 1354 (Fed. Cir. 2025)	12

<i>Kahoot! AS v. Interstellar, Inc.</i> , IPR2025-00696, Paper 12 (PTAB July 31, 2025).....	17
<i>Samsung v. iCashe, Inc.</i> , IPR2025-00639, Paper 11 (PTAB Aug. 14, 2025).....	18
<i>Sand Revolution II, LLC, v. Continental Intermodal Group – Trucking LLC</i> , IPR2019-01393, Paper 24 (PTAB June 16, 2020)	11
<i>SAS Inst., Inc. v. Iancu</i> , 584 U.S. 357 (2018).....	19
<i>TankLogix, LLC v. SitePro, Inc.</i> , IPR2025-00647, Paper 10 (PTAB July 31, 2025).....	16
<i>Tesla, Inc. v. Intellectual Ventures II LLC</i> , IPR2025-00217, Paper 9 (PTAB June 13, 2025)	19

Statutes

35 U.S.C. § 101	4, 5, 8, 11, 17
35 U.S.C. § 10.....	4, 13
35 U.S.C. § 103	4
35 U.S.C. § 112.....	4
35 U.S.C. § 286.....	17
35 U.S.C. § 314(a)	6
35 U.S.C. § 315(e)	11
North Carolina’s Abusive Patent Assertion Act (N.C. Gen. Stat. §§ 75-140, <i>et seq.</i>).....	3, 7, 8

Other Authorities

37 C.F.R. § 1.131	13
Fed. R. Civ. P. 45	20

EXHIBIT LIST

Exhibit No.	Description
2001	Complaint from <i>Competitive Access Systems, Inc. v. Oracle Corporation et al.</i> , No. 2:22-cv-00287 (E.D. Tex.)
2002	Red Hat Partnership webpage, https://www.oracle.com/cloud/red-hat/ (last accessed Sept. 30, 2025)
2003	Order transferring Oracle case to the Western District of Texas
2004	Unified Patents member listing, https://www.unifiedpatents.com/members
2005	Red Hat's Complaint from <i>Red Hat, Inc. v. Competitive Access Systems, Inc.</i> , No. 5:24-CV-505-D (D.N.C.)
2006	Red Hat Joint Planning Report including Proposed Schedule
2007	Red Hat's Motion to Dismiss
2008	Red Hat Litigation Scheduling Order
2009	Complaint from <i>Competitive Access Systems, Inc. v. Apple Inc.</i> , No. 3:25-cv-04595 (N.D. Cal.)
2010	Complaint from <i>Competitive Access Systems, Inc. v. Samsung Elects. Co., Ltd., et al.</i> , No. 4:25-cv-00886 (E.D. Tex.)
2011	Complaint from <i>Competitive Access Systems, Inc. v. Motorola Mobility LLC</i> , No. 4:25-cv-00948 (N.D. Tex.)
2012	Apple, Inc.'s Motion to Dismiss
2013	Case Management Order in Apple, Inc. Litigation
2014	Oct. 2, 2023 Demand Letter

Emphasis Added Throughout Unless Indicated Otherwise

I. INTRODUCTION

Competitive Access Systems, Inc. (“CAS”) respectfully submits this brief requesting the Director deny institution of Red Hat’s Petition for *inter partes* review (the “Petition”) pursuant to the Interim Process for PTAB Workload Management Memorandum issued March 26, 2025, for the reasons stated below.

II. BACKGROUND

a. Background of the ’641 Patent

The U.S. Patent No. 11,418,641 (the “’641 Patent”) (EX1005) was filed on December 14, 2020, and issued August 16, 2022. It claims priority as a continuation of a series of prior applications and issued patents to Application No. 10/686,375 filed on October 14, 2003 and Provisional Application No. 60/418,521 filed on October 15, 2002. (EX1005).

b. Related Proceedings

i. Red Hat petitions for *inter partes* review

In addition to the present petition challenging the validity of the ’641 Patent, Red Hat has petitioned for *inter partes* review of six additional family members of the ’641 Patent as listed in the following chart:

IPR Number	U.S. Patent Number	Prior Art Asserted
IPR2025-01370	11,582,343 (the “’343 Patent”)	Challener, Peirce, Held, Kotzin
IPR2025-01371	10,868,908 (the “’908 Patent”)	Kotzin, Held, Peirce, Decasper, Phatak
IPR2025-01372	8,861,349 (the “’349 Patent”)	Kotzin, Challener

IPR Number	U.S. Patent Number	Prior Art Asserted
IPR2025-01373	7,606,156 (the “’156 Patent”)	Challener, Xin, Ades, Kotzin
IPR2025-01380	9,350,649 (the “’649 Patent”)	Kotzin, Held, Peirce, Phatak
IPR2025-01381	8,228,801 (the “’801 Patent”)	Challener, Held, Kotzin

ii. *Competitive Access Systems v. Oracle proceedings*

In July 2022, CAS asserted three patents related to the ’641 Patent (specifically, the ’801 Patent, ’649 Patent, and ’908 Patent) against Red Hat’s close business partner Oracle in the Eastern District of Texas as *Competitive Access Systems, Inc. v. Oracle Corporation et al.*, No. 2:22-cv-00287 (E.D. Tex.). See **EX2001**; **EX2002**. That case was transferred to the Western District of Texas as *Competitive Access Systems, Inc. v. Oracle Corporation et al.*, No. 1:23-cv-00286 (W.D. Tex.). **EX2003**.

Acting on behalf of Oracle, member-based patent assertion defense aggregator—Unified Patents, LLC (“Unified Patents”)—challenged the validity of the ’908 Patent in March 2023 by filing a petition for *inter partes* review in *Unified Patents, LLC v. Competitive Access Systems, Inc.*, IPR2023-00584 (PTAB). Notably, Red Hat is also a member of Unified Patents. **EX2004**.

Additionally, Unified Patents also challenged Claims 1–3, 5, 6, and 13–15 of the ’908 Patent during *Ex Parte* Reexamination 90/019,265 in October 2023,

resulting in the claims being rejected. The Ex Parte Reexamination is being appealed.

Oracle also filed its own petition for *inter partes* review against the related '649 Patent in *Oracle Corporation v. Competitive Access Systems, Inc.*, IPR2023-00880 (PTAB).

After the Western District of Texas denied a motion to dismiss CAS's Complaint and following CAS's submission of Patent Owner's Preliminary Responses in the two IPR proceedings, CAS and Oracle reached a settlement and dismissed/terminated the Western District of Texas case and the then pending IPRs in the fall of 2023.

iii. Red Hat v. Competitive Access Systems

On September 3, 2024—over 11 months before filing its petition for *inter partes* review—Red Hat filed suit in Federal District Court in North Carolina seeking a declaration of no infringement of the '641 Patent¹ and for relief under North Carolina's Abusive Patent Assertion Act ("APAA") (N.C. Gen. Stat. §§ 75-

¹ In the federal court litigation, Red Hat also seeks declaration of no infringement of six other related patents which also claim priority to Application No. 10/686,375 and Provisional Application No. 60/418,521. These six patents are the subject of the six other IPR petitions Red Hat filed with the PTAB. *See* **EX2005**.

140, *et seq.*). Although Red Hat did not initially assert any grounds for invalidity or unenforceability of the '641 Patent, Red Hat did assert that it “does not infringe any valid or enforceable claim of any of the Asserted Patents.” **EX2005**. The parties have also submitted a Report of the Parties’ Planning Meeting that included a discovery plan. Notably, this discovery plan includes discovery into “Whether any asserted claim of the Asserted Patents is invalid or ineligible under 35 U.S.C. §§ 101, 102, 103, 112, and/or 116.” **EX2006**.

After the North Carolina District Court denied a motion to dismiss Red Hat’s complaint based on personal jurisdiction grounds, on July 8, 2025, CAS answered the complaint and counterclaimed for infringement of the '641 Patent and related patents. On August 12, 2025 (less than a week after filing its petition for *inter partes* review) and in lieu of answering, Red Hat moved to dismiss CAS’s counterclaims on Section 101 unpatentability grounds. **EX2007**.

The North Carolina District Court has approved the parties’ proposed scheduling order that includes the following deadlines:

- Disclosure of Infringement Contentions – October 24, 2025
- Disclosure of Invalidity Contentions – December 8, 2025
- Preliminary Claim Construction and Extrinsic Evidence – January 26, 2026
- Joint Claim Construction Statement and Expert Reports – February 13, 2026

EX2008; EX2006. The Parties have also already commenced discovery, including

serving interrogatories and requests for production. While the proposed scheduling order that was adopted did not set a specific trial date, it did set:

- claim construction briefing to conclude in April 2026,
- the close of fact discovery keyed 120 days after the claim construction order,
- the close of expert discovery 111 days after the close of discovery, and
- dispositive motions fully briefed 65 days after the expert discovery deadline.

In other words, it is possible that the dispositive motions may be heard in early 2027 and that the case could be set for trial around the same time or shortly after the statutory deadline for the Final Written Decision in this proceeding.

iv. Concurrent related district court litigation

In addition to the district court litigation initiated by Red Hat, CAS has asserted the '641 Patent and the related patents in *Competitive Access Systems v. Apple Inc.*, No. 3:25-cv-04595 (N.D. Cal.); *Competitive Access Systems, Inc. v. Samsung Electronics Co., Ltd. et al*, No. 4:25-cv-00886 (E.D. Tex.); and *Competitive Access Systems, Inc. v. Motorola Mobility LLC*, No. 4:25-cv-00948 (N.D. Tex.). **EX2009, EX2010, EX2011.**

Of these related cases, the Apple litigation is furthest along. Following Red Hat's lead, Apple moved to dismiss CAS's complaint on Section 101 unpatentability grounds. **EX2012.** The court in the Apple case issued a case management order which includes the following deadlines:

- Disclosure of Infringement Contentions – September 25, 2025
- Disclosure of Invalidity Contentions – November 7, 2025
- Joint Claim Construction and Prehearing Statement and Expert Reports – January 13, 2026
- Completion of Claim Construction Discovery – February 12, 2026

EX2013. The Case Management Order sets the close of fact discovery for September 2026, exchanging expert reports by the end of 2026, and trial for July 27, 2027.

III. LEGAL STANDARD

The Director has discretion to deny institution on an IPR petition. *See* 35 U.S.C. § 314(a); *see also Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 273 (2016). In determining whether to deny institution, the PTAB considers “system efficiency, fairness, and patent quality.” *Apple Inc. v. Fintiv, Inc.*, No. IPR2020-00019, Paper 11, at 5 (PTAB Mar. 20, 2020) (“*Fintiv I*”).

Six *Fintiv* factors (recited in section IV) have been commonly recognized for deciding whether to institute an IPR petition where the patent is also the subject of parallel proceedings. *Apple, Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 15, at 7–8 (PTAB May 13, 2020) (“*Fintiv II*”). “In evaluating the factors, the Board takes a holistic view of whether efficiency and integrity of the system are best served by denying or instituting review.” *Id.* at 8.

Additionally, the USPTO’s Interim Processes for PTAB Workload Management Memorandum also offers the following additional considerations for

deciding discretionary denial:

- Whether the PTAB or another forum has already adjudicated the validity or patentability of the challenged patent claims;
- 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;
- Compelling economic, public health, or national security interests; and
- Any other considerations bearing on the Director's discretion.

The *Fintiv* factors and the considerations enumerated in the Interim Processes for PTAB Workload Management Memorandum favor denying institution here.

IV. THE PETITION SHOULD BE DISCRETIONARILY DENIED IN VIEW OF THE PARALLEL DISTRICT COURT PROCEEDINGS

a. Factor 1: there is little chance a stay would be granted in the parallel litigation

There is little to no likelihood the North Carolina district court will stay the parallel proceeding. No party has moved to stay that case, and Red Hat has little incentive to do so. Red Hat is the plaintiff in the federal district court case. In addition to its various declaratory judgment counts, Red Hat pursues claims under North Carolina's APAA asserting bad faith assertion of a patent and seeking injunctive relief, exemplary damages "equal to \$50,000 or three (3) times the total damages, costs, and fees, whichever is greater," including attorneys' fees. **EX2005**, at ¶¶ 8,

143–145; *Id.* at pg. 27, paras. I–J. Considering the extraordinary remedy afforded by the APAA, Red Hat has every incentive to proceed as quickly to judgment on that state law claim, militating against a stay. Additionally, Red Hat has a pending motion requesting the North Carolina District Court to find the claims of the ’641 Patent unpatentable under 35 U.S.C. § 101. In any event, and should Red Hat unexpectedly seek a stay of the federal district case pending IPR, CAS plans to oppose that motion.

There is no reason to believe the North Carolina District Court—nor any other court in which related actions are pending—has or will grant a stay pending *inter partes* review, and so the first *Fintiv* factor supports denying institution. *Google LLC v. Uniloc LLC*, IPR2020-00115, Paper No. 8, at 7 (PTAB Mar. 27, 2020) (finding that *Fintiv* factor 1 “weigh[s] in favor of denying institution” where “[t]here is no evidence that the district court has granted (or would grant) a stay pending inter partes review”).

b. Factor 2: The trial dates—or lack of trial dates—in the parallel litigation is not dispositive in the discretionary denial inquiry

The second *Fintiv* factor is the “proximity of the court’s trial date to the Board’s projected statutory deadline for a final written decision.” Even though none of the related district court cases are set for trial prior to the projected final decision, this factor is not dispositive. *Fintiv II*, at 8 (noting the “Board takes a holistic view of whether efficiency and integrity of the system are best served by denying or instituting review.”). Absent a stay, each of the district court cases will likely be

nearing trial by the February 2027 projected final decision. According to the Scheduling Order, many of the significant case deadlines are keyed off of the Court’s claim construction order such that the dispositive motions may be heard in early 2027 and the case could be set for trial around the same time as or shortly after the statutory deadline for the Final Written Decision in this proceeding. **EX2008; EX2006.**

Likewise, pursuant to the Case Management Order in the Apple litigation, claim construction, fact discovery, and expert discovery will likely be completed or nearing conclusion. **EX2013.**

Indeed, the Board has frequently denied institution even where trial was set to occur after the projected final decision. *See Advanced Micro Devices, Inc. v. Concurrent Ventures, LLC*, IPR2025-00223, Paper 9, at 2 (PTAB June 12, 2025) (exercising discretion to deny institution and reasoning that “[e]ven though a district court trial date that occurs after a projected final written decision date reduces the possibility of conflicting decisions, that benefit does not outweigh the efficiencies gained by avoiding parallel proceedings . . . because of the parties’ meaningful investment in the district court proceedings”); *see also Google LLC v. Virtamove, Corp.*, IPR2025-00487, Paper 11, at 2 (PTAB July 11, 2025) (denying institution even though no trial date was set in parallel district court proceeding). As *Fintiv* indicates, “[i]f the court’s trial date is at or around the same time as the projected

statutory deadline *or even significantly after* . . . , the decision whether to institute will likely implicate other factors . . . , such as the resources that have been invested in the parallel proceeding.” *Fintiv I*, at 9 (citing factors 3 and 4) (emphasis added).

c. Factor 3: The parties will have invested heavily in the parallel litigation by the time institution is decided

The third *Fintiv* factor concerns the “investment in the parallel proceeding by the court and the parties” at the time of the institution decision. *Fintiv I*, at 5–6, 9. At this time, an institution decision is required by February 11, 2026. By then, the parties in the Red Hat litigation are expected to have fully briefed Red Hat’s motion to dismiss, participated in the Rule 26(f) conference, submitted their joint scheduling plan to the district court, proceeded to discovery in earnest, exchanged infringement and invalidity contentions, and commenced claim construction. **EX2008, EX2006.**

In the Apple litigation, CAS has already disclosed its infringement contentions. CAS and Apple have already begun written discovery. Apple is set to disclose its invalidity contentions on November 7, 2025. Both CAS and Apple will have exchanged damages contentions (due December 23, 2025, and January 22, 2026). Claim construction will also have commenced, including exchanges of preliminary claim constructions and extrinsic evidence, submission to the joint claim construction and prehearing statement, and exchanges of both parties’ expert reports.

Red Hat unnecessarily delayed filing its Petition until over 11 months after filing its declaratory judgement lawsuit on September 3, 2024. By the time the

Board has resolved the institution decision, the parties to the Red Hat, Apple, Samsung, and Motorola lawsuits will have invested considerable time and resources in the parallel litigations. *See Sand Revolution II, LLC, v. Continental Intermodal Group – Trucking LLC*, IPR2019-01393, Paper 24, at 10 (PTAB June 16, 2020) (noting that investment in invalidity contentions and claim construction is relevant to this factor) (designated informative).

d. Factor 4: The issues presented in the IPR petition and in the federal district court litigation are likely to substantially overlap

Both here and before the federal district court, Red Hat appears to challenge the validity of the '641 Patent. *See EX2005*, at ¶ 6 (“Red Hat does not infringe any valid or enforceable claim of any of the Asserted Patents.”). Because it filed a pre-answer motion to dismiss, Red Hat has not yet answered CAS’s infringement counterclaims or raised any affirmative defenses thereto. Even without not having to raise its affirmative defenses in the district court yet, Red Hat has already challenged the validity of '641 Patent as being unpatentable under 35 U.S.C. § 101 via its motion to dismiss the CAS’s counterclaims.

Red Hat has stipulated that it will not pursue in “any grounds raised or any grounds that reasonably could have been raised before the PTAB” should the Board institute this IPR proceeding. Even though this *Sotera* stipulation is co-extensive with the IPR estoppel provisions of 35 U.S.C. § 315(e), it will likely fail to prevent overlap if the proceeding is instituted. As the Federal Circuit recently explained,

“IPR estoppel does not preclude a petitioner from asserting the same prior art raised in an IPR in district court, but rather precludes a petitioner from asserting grounds that were raised or reasonably could have been raised during an IPR.” *Ingenico Inc. v. IOENGINE, LLC*, 136 F.4th 1354, 1365–66 (Fed. Cir. 2025). Grounds based on system prior art do not fall within the scope of an IPR. Accordingly, while Red Hat would be prevented from asserting anticipation or obviousness based strictly on patents and printed publication prior art, it will still be free to package “the same patents and printed publications as evidence” with any prior art systems that was allegedly “known or used by others, on sale, or in public use.” *Id.* at 1366.

Further, Red Hat’s stipulation does not prevent the defendants in the Apple, Samsung, and Motorola lawsuits from asserting the same art and same arguments. Because the IPR here would not be a “true alternative” to the parallel litigation, Factor 4 weighs strongly in favor of the Board exercising its discretion to deny institution.

e. Factor 5: Petitioner is plaintiff in the parallel litigation

Fintiv Factor 5 also favors discretionary denial, as the Petitioner Red Hat is the plaintiff in the one of the federal district court proceeding. *See Fintiv I*, at 13–14.

f. Factor 6: The petition lacks merit

The Petition presents obviousness grounds under two different lead references: U.S. Patent Application Publication No. 2004/0001512 A1 (“Challener”)

(EX1017) and U.S. Patent Application Publication No. 2003/0026221 (“Kotzin”) (EX1018).

Notably, Red Hat declines to offer claim constructions for any of the claim terms, although construction of certain of the claim terms is appropriate. Specifically, “multilink connection” should be construed to mean “a connection for a data transfer session using at least two links between two devices, where each link is associated with the same session identification for assisting in the data transfer, and at least one of the links connects the two devices through a remote communications device having available bandwidth to assist with the data transfer.” Applying this construction, neither Kotzin nor Challenger disclose forming links between two devices, where each link is associated with the same session identification for assisting in the data transfer. The establishment and use of session identifications sets the claimed apparatus in the ’641 Patent apart from the prior art and was not obvious.

Notably, the ’641 Patent is a pre-AIA patent. While Red Hat alleges that Challenger² and Kotzin³ qualify as prior art under (pre-AIA) 35 U.S.C. § 102(e), neither reference was published more than a year prior to the October 15, 2002 filing

² Challenger (EX1017) was filed on June 28, 2002, and published on January 1, 2004.

³ Kotzin (EX1018) was filed on August 2, 2001 and published on February 6, 2003.

date of Provisional Application No. 60/418,521 to which the '641 Patent claims priority. Accordingly, CAS is entitled to the opportunity to submit evidence antedating both references. *See* 37 C.F.R. § 1.131. Although CAS is still in the process of collecting evidence, it believes it will be able to do so.

The Petition fails to show a “reasonable likelihood” that Petitioner would prevail on any challenged claim, thus it has not passed the even higher threshold of a “compelling” unpatentability challenge, which requires a determination that Red Hat is “highly likely” to succeed on the merits. *Commscope Techs. v. Dali Wireless, Inc.*, IPR2022-01242, Paper 23, at 3–4 (PTAB Feb. 27, 2023). Further, even if the unpatentability challenge were compelling, the March 24, 2025 Board Guidance on the Rescission of “Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation” states that “compelling merits alone [are] not dispositive in making the assessment [for discretionary denial].”

V. THE PETITION DOES NOT PRESENT AN EFFICIENT USE OF THE BOARD’S RESOURCES

a. The fact that the '641 Patent expired nearly two years ago and Petitioner waited to file its Petition demonstrates strong settled expectations

The Workload Management Memo includes the “settled expectations” of the parties as a consideration relevant to the discretionary denial determination. Workload Management Memo, 2. While the majority of the recent cases addressing “settled expectations” focus more on the length of time the claims were in force, the

present IPR petition presents the unique situation in which Red Hat is requesting the Board to use its resources on a patent that has already been expired for over two years. The '641 Patent was in force from August 16, 2022, to December 11, 2023.

Unlike other cases that have denied discretionary denial where the subject patent was expired, Red Hat had no legitimate expectation that the '641 Patent would not be enforced against it. *Cf. Google LLC v. Sandpiper CDN, LLC*, IPR2025-00826, Paper 14, at 2 (PTAB Sept. 12, 2025). CAS already owned the '641 Patent prior to it expiring. Further, the '641 Patent did not remain un-asserted prior to its expiration. In fact, CAS invited Red Hat to discuss and negotiate a potential licensing agreement for the '641 Patent and the related patents which had additional patent term remaining by letter on October 2, 2023—shortly prior to its expiration. *See EX2014.*

Red Hat cannot feign that it promptly challenged the '641 Patent upon learning that it might be asserted against it. Red Hat knew of the '641 Patent at least two years ago upon receipt of the October 2, 2023 letter. Red Hat is close business partners with Oracle, such that it strains credulity that Red Hat was unaware of the '641 Patent and its family. While CAS would have certainly preferred having Red Hat as a business partner as opposed to an adversary, Red Hat took it upon itself to initiate district court litigation by filing a declaratory judgement action September 3, 2024—approximately 11 months prior to filing its petition for *inter partes* review.

Red Hat's declaratory judgement action in the North Carolina District Court and following petition for IPR here reflects a tactical decision to game the system. Red Hat filed suit in federal district court on September 3, 2024, seeking a declaration of non-infringement of the '641 Patent, but stopped short of seeking a declaratory judgement of invalidity so as to avoid being barred from later petitioning for IPR. Red Hat then waited over 11 months to file its IPR Petition. The Board should decline to reward calculated efforts to unnecessarily expand the dispute across multiple forums.

b. That Red Hat is challenging six additional patents in the patent family, four of which have been in force for over nine years

While the '641 Patent was issued more recently, Red Hat also pursues parallel IPRs on much old patents within the same patent family.⁴ “[T]he longer the patent

⁴ While CAS believes that each of Red Hat's petitions for IPR represent an inefficient use of Board's resources, if the Director were inclined to refer more recently issued patents to the merits panel, institution in the proceedings challenging the older patents should still be denied based on CAS's particularly strong settled expectations as to those patents. *See TankLogix, LLC v. SitePro, Inc.*, IPR2025-00647, Paper 10 (PTAB July 31, 2025) (denying institution as to patents issued in 2014, 2016, 2018; referring to the merits panel for patents issued in 2019, 2021, 2022, 2023); *compare Cambridge Indus. USA, Inc. v. Applied Optoelects., Inc.*,

has been in force, the more settled expectations should be,” militating against institution of an IPR. *Dabico Airport Sols., Inc. v. Axa Power APS*, IPR2025-00408, Paper 21, at 3 (PTAB June 18, 2025). The Acting Director recognized that acknowledging settled expectations for long-standing patents “aligns with other approaches to settled expectations and incentives, for example, for filing infringement lawsuits.” *Id.* (citing 35 U.S.C. § 286). No actual notice by a potential infringer is necessary for a patentee to hold settled expectations in their patent. *Id.* (“actual notice of a patent or of possible infringement is not necessary to create settled expectations”).

Based on their age, the settled expectations are even greater for U.S. Patent Nos. 7,606,156 (issued Oct. 20, 2009), 8,228,801 (issued July 24, 2012), 8,861,349 (issued Oct. 14, 2014), and 9,350,649 (issued May 24, 2016). *See Dabico*, IPR2025-00408, Paper 21, at 2 (finding settled expectations where patent was in force “almost eight years”); *Kahoot! AS v. Interstellar, Inc.*, IPR2025-00696, Paper 12, at 2 (PTAB July 31, 2025) (finding settled expectations where the patent was in force six years);

IPR2025-00433, Paper 12 (PTAB June 27, 2025) (denying institution as to patents issued in 2016, 2018), *with Cambridge Indus. USA, Inc. v Applied Optoelects., Inc.*, IPR2025-00434, Paper 11 (PTAB June 26, 2025) (referring to the merits panel for patents issued in 2019, 2020).

Samsung v. iCashe, Inc., IPR2025-00639, Paper 11, at 2 (PTAB Aug. 14, 2025) (finding settled expectations where patents were in force between eight and twelve years).

c. The District Court is the better forum for litigating validity issues including antedating of prior art

Maintaining seven *inter partes* reviews and the North Carolina District Court litigation to hear Red Hat’s additional invalidity grounds—Red Hat has already raised Section 101 grounds and has forecasted it will raise Section 112 grounds—and the respective parties’ infringement/non-infringement counts present significant inefficiencies compared to keeping all disputes within the same proceeding.

The district court has tools available for managing multi-patent lawsuits in an orderly manner that can simplify and streamline the case. These tools include requiring the parties to narrow the issues in advance of trial. For example, Red Hat is already requesting the Court incorporate claim narrowing deadlines into the case management order.⁵ **EX2006**. The Board, by contrast, lacks the flexibility desirable for multi-patent disputes like this one. For example, should the Board institute a

⁵ Red Hat has already requested that the Court impose claim narrowing deadlines within the scheduling order. While CAS does not oppose the principle of claim narrowing, it opposes Red Hat’s request as seeking premature deadlines and the draconian limits on number of claims.

proceeding, it must institute on all asserted grounds and issue a final written decision on all claims challenged by the petitioner. *See SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 371 (2018).

Moreover, these disputes do not involve complexities better suited for the Board. Each of the patents subject to the seven *inter partes* reviews are within the same patent family and generally relate to the same technological subject matter. *Cf. Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00217, Paper 9, at 3 (PTAB June 13, 2025) (finding complexity in a case involving “eleven patents spanning nine different families that involve a diverse range of subject matter”). Additionally, across the seven petitions for IPR, Red Hat only identifies three lead references—Challener, Kotzin, and Phatak.

Further, both of Red Hat’s lead references here—Challener and Kotzin—are eligible to antedate. Antedating these references will likely require substantial consideration of factual evidence and determinations of credibility. While CAS is still collecting its evidence, it believes that conception of the invention did predate both Challener and Kotzin. CAS anticipates submitting an inventor declaration, submission of research conducted by the inventor, drafts of invention disclosures, correspondence with third parties, drafts of the provisional patent application, and declarations from additional fact witnesses to corroborate the inventor and authenticate documents.

The district court would be better positioned to adjudicate this issue. Although the Board has procedures for parties to produce evidence, “discovery is limited” and “significantly different from the scope of discovery generally available under the Federal Rules of Civil Procedure.” *Garmin Int’l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 26, at 5 (PTAB Mar. 5, 2013) (precedential). To the extent that it may be necessary, the federal district court has broad third-party subpoena powers to require third parties to “attend and testify; produce designated documents, electronically stored information, or tangible things in that person’s possession, custody, or control; or permit the inspection of premises.” Fed. R. Civ. P. 45. Likewise, given that live testimony is discouraged in PTAB proceedings, the district court represents the better forum to address credibility issues.

Given that the district court has tools for managing multi-patent lawsuits in an orderly manner and is better suited to resolve these antedating issues, the Board should use its discretion to deny the petition for *inter partes* review.

VI. CONCLUSION

For the reasons stated above, the Director should exercise discretion to deny institution of the Petition.

Dated: November 6, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

Under 37 C.F.R. § 42.6(e), the undersigned certifies that on November 6, 2025, a copy of the foregoing PATENT OWNER'S CORRECTED PETITION FOR DISCRETIONARY DENIAL, was served via email on the following:

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
REQUIREMENTS UNDER 37 C.F.R. § 42.24**

Under 37 C.F.R. § 42.24(d), the undersigned certifies that this PATENT OWNER'S CORRECTED PETITION FOR DISCRETIONARY DENIAL complies with the page limitation in that it contains 20 pages.

This paper also complies with the typeface requirements of 37 C.F.R. § 42.6(a)(2)(ii) and the type style requirements of 37 C.F.R. § 42.6(a)(2)(iii) and (iv).

Dated: November 6, 2025

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