

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CROWDSTRIKE, INC.,
Petitioner

v.

SKYSONG INNOVATIONS, LLC,
Patent Owner

Inter Partes Review Case No. IPR2025-01400
U.S. Patent No. 10,574,721 B2

PATENT OWNER'S DISCRETIONARY DENIAL BRIEF

TABLE OF CONTENTS

I. INTRODUCTION	1
II. FACTUAL BACKGROUND.....	3
III. ARGUMENT	6
A. <i>Fintiv</i> Factor 1 Favors Denial: Petitioner Has Not Requested a Stay and Even So, A Stay Is Unlikely	6
B. <i>Fintiv</i> Factor 2 Favors Denial: Trial in the Related Litigation Will Occur Before the Deadline for a Final Written Decision in This IPR	9
C. <i>Fintiv</i> Factor 3 Favors Denial: Significant Resources Have Been and Will Continue to Be Invested in the Related Litigation	10
D. <i>Fintiv</i> Factor 4 Favors Denial: Overlapping Issues Raise Significant Concerns of Inefficiency and Petitioner’s Stipulation Does Not Mitigate These Concerns	12
E. <i>Fintiv</i> Factor 5 Favors Denial: The Parties in the Related Litigation Are the Same	13
F. <i>Fintiv</i> Factor 6 Favors Denial: Other Circumstances Should Influence the Director’s Exercise of Discretion	14
1. Settled Expectations Weigh Against Institution.....	14
2. No Changes In The Law Support Reconsideration Of Patentability.	15
3. The Petition Is Weak And Overly Reliant On Expert Testimony.....	15
4. Compelling National Security Interests Weigh Against Institution	18
V. CONCLUSION	20

TABLE OF AUTHORITIES

PTAB Cases

Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH,

IPR2019-01469, Paper 6 (PTAB Feb. 13, 2020).....1, 17

Anthony, Inc. v. ControlTec, LLC,

IPR2025-00559, Paper 12 (PTAB Jul. 16, 2025).....17

Apple Inc. v. Fintiv, Inc.,

IPR2020-00019, Paper 15 (PTAB May 13, 2020) 14

Kahoot! AS v. Interstellar Inc.,

IPR2025-00696, Paper 12 (PTAB July 31, 2025).....14

Microsoft Corporation v. XI Discovery, Inc.,

IPR2025-00255, Paper 13 (Jun. 25, 2025) 12

Motorola Sols., Inc. v. Stellar, LLC,

IPR2024-01205, Paper 19 (Mar. 28, 2025).....11

Samsung Electronics Co., Ltd. v. Headwater Research LLC,

IPR2025-00932, Paper 8 (PTAB Sep. 26, 2025).....9

Sotera Wireless, Inc. v. Masimo Corp.,

IPR2020-01019, Paper 12 (PTAB Dec. 1, 2020) 13

Taiwan Semiconductor Mfg. Co. v. Marlin Semiconductor Ltd.,

IPR2025-00847, Paper 11 (PTAB Sep. 3, 2025).....19

Tesla, Inc. v. Charge Fusion Technologies, LLC,

IPR2025-00152, Paper 11 (PTAB Jun. 12, 2025)	17
--	----

Statutes

35 U.S.C. § 314(a)	1
--------------------------	---

35 U.S.C. § 324(a)	1
--------------------------	---

District Court Cases

Datanet LLC v. Dropbox Inc.,

No. 6:22-CV-01142-OLG-DTG, 2023 U.S. Dist. LEXIS 230030 (W.D. Tex. Dec. 28, 2023).....	7
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Patent Owner Skysong Innovations, LLC (“Skysong”) respectfully requests that the Director exercise deny institution of this *inter partes* review of U.S. Patent No. 10,574,721 (the “’721 Patent”) under 35 U.S.C. §§ 314(a) and 324(a).

I. INTRODUCTION

The Petition challenges claims 1-18 of the ’721 Patent, asserted in the advanced parallel district court litigation *Skysong Innovations, LLC v. CrowdStrike, Inc.*, No. 7:25-cv-00040-DC-DTG (W.D. Tex.) (“Parallel Litigation”), filed January 31, 2025, and amended May 16, 2025. The ’721 Patent is also asserted against Fortinet, Inc. in co-pending litigation in the Eastern District of Texas, in *Skysong Innovations, Inc. v. Fortinet, Inc.*, No. 2:25-cv-00098-JRG (E.D. Tex. filed Jan. 31, 2025, amended June 9, 2025).

This matter presents a strong cause for discretionary denial. **First**, the Petition relies on prior art cumulative to that considered during prosecution, including one reference already reviewed by the Examiner. Petitioner asserts no anticipation grounds under 35 U.S.C. § 102 and fails to show any material error by the Office. Instead, it seeks to have the Director second-guess the USPTO’s examination through extensive expert testimony. This would inefficiently use resources, particularly as discretionary factors strongly favor denial. *See Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 (PTAB Feb. 13, 2020) (precedential) (denying institution where prior art was

substantially the same as art evaluated during prosecution).

Second, compelling public interest in cybersecurity, including national security, weighs against institution. The challenged technology is of great national security interest and was developed with support from the National Science Foundation under award 0849980, which supports advancements in computer systems security critical to protecting digital infrastructure. President Biden’s May 12, 2021 *Executive Order on Improving the Nation’s Cybersecurity* underscores the urgency of protecting research and development efforts in this technology.

Third, institution would inefficiently duplicate the parallel district Court litigations, where the Fortinet trial is set for November 2, 2026, and the CrowdStrike trial is set for February 1, 2027—both before the projected Final Written Decision date of March 23, 2027—contrary to *NHK Spring Co. v. Intri-Plex Techs., Inc.*, IPR2018-00752, Paper 8 (PTAB Sept. 12, 2018) (precedential); *see also Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential) (“*Fintiv P*”) (outlining factors for discretionary denial based on parallel litigation).

Accordingly, discretionary denial is warranted, as a holistic analysis of the *Fintiv* factors and other considerations confirms institution would be inefficient and contrary to AIA intent. Consistent with the Director’s memorandum reclaiming institution authority under 35 U.S.C. § 314 to eliminate perceived bias and align with congressional intent, Patent Owner respectfully requests that the Director deny

institution. *See* USPTO Director John A. Squires, Open Letter, *Bringing the USPTO Back to the Future: Return of Institution Authority Under 35 U.S.C. §§ 314 and 324 to the Director* (Oct. 17, 2025) (“Open Letter”) (noting that the delegated model produced “extraordinarily high institution rates (at one point exceeding 95 percent) for referred cases” and emphasizing the Director’s statutory role to ensure impartiality and adherence to AIA intent).

II. FACTUAL BACKGROUND

Patent Owner Skysong is a private nonprofit and the exclusive intellectual property management and technology transfer organization for Arizona State University (“ASU”). Skysong works with ASU faculty, researchers, and technology industry partners to translate ASU innovations into commercial applications, fostering economic development and public benefit. *See* EX2001, Skysong’s First Amended Complaint against CrowdStrike, ¶¶3-4.

The ’721 Patent, titled “Systems and Methods for Automatic Fresh Browser Instance,” stems from ASU research. It discloses systems and methods that automatically launch a fresh browser instance to handle access to sensitive web content, ensuring separation of different categories of content for security by restricting communication to authorized IP addresses and using mechanisms like system-call interception, DNS-query rewriting, and browser extensions. *See* EX1001, Abstract, 1:59-2:3, 2:29-66. The ’721 Patent issued on February 25, 2020,

after rigorous examination by the USPTO, and claims priority to December 6, 2013. *Id.* at 1:8-10. As of November 19, 2025, it has been in force for five and half years.

The '721 Patent is part of a collection of Skysong patents within the same cybersecurity field, including U.S. Patent No. 10,313,385 (issued June 4, 2019, over six years in force), U.S. Patent No. 11,275,900 (issued March 15, 2022, three and half years in force), U.S. Patent No. 11,775,831 (issued October 3, 2023, over two years in force), and U.S. Patent No. 11,892,897 (issued February 6, 2024, one and half year in force) (collectively, the “Asserted Patents”).

Skysong filed the Parallel Litigation against CrowdStrike, Inc. and CrowdStrike Holdings, Inc. (collectively, “CrowdStrike” or “Petitioner”) on January 31, 2025, in the Western District of Texas, alleging infringement of the Asserted Patents. *See* EX2002, Civil Docket For Case No. 7:25-cv-00040 at 1. The complaint was amended on May 16, 2025, to refine the allegations. *Id.* at 2. The case is assigned to Judge David Counts, with referral to Magistrate Judge Derek T. Gilliland. *Id.* at 3. Significant progress includes exchanged initial disclosures; an August 27, 2025 a pretrial conference addressing case status and scheduling; a September 3, 2025 joint motion to amend the scheduling order; and a September 4, 2025 scheduling order. *See* EX2003, *Skysong v. CrowdStrike*, Dkt. No. 55, Scheduling Order. Skysong has served its preliminary infringement contentions, and CrowdStrike served its preliminary invalidity contentions on November 5, 2025. On October 2, 2025,

CrowdStrike filed a motion to transfer venue, with venue discovery concluding on December 11, 2025. The parties are negotiating an appropriate protective order to govern discovery. Skysong served its First Set of Interrogatories to CrowdStrike on October 27, 2025. Fact discovery opens on February 19, 2026, following the *Markman* hearing.

Under the current scheduling order, the court has established a detailed path to trial. Claim construction will proceed first, with the parties exchanging proposed terms and constructions and submitting opening and responsive briefs in advance of the *Markman* hearing set for February 18, 2026. *See* EX2003. Fact and expert discovery will then proceed on a schedule that closes August 26, 2026, with joinder of additional parties due by March 18, 2026, amended pleadings due by May 27, 2026, dispositive and *Daubert* motions due by November 4, 2026, a final pretrial conference on January 14, 2027, and a jury trial commencing February 1, 2027. *Id.* By the projected institution decision date of March 23, 2026, the parties and the court will already have completed the full claim construction process, including the February 18, 2026 *Markman* hearing, and fact discovery will have opened on February 19, 2026, underscoring the advanced stage of the litigation and the court's substantial involvement. *Id.*

CrowdStrike filed this Petition on September 12, 2025, seeking inter partes review of claims 1-18 of the '721 Patent. *See* Petition for *Inter Partes* Review of

U.S. Patent No. 10,574,721 (“Pet.”). The USPTO accorded a filing date of September 23, 2025. The Petition asserts five grounds of unpatentability, all under 35 U.S.C. § 103 for obviousness. *See* Pet. at 4-5.

CrowdStrike has also filed related IPR petitions challenging the other Asserted Patents: IPR2025-01170 (’897 Patent, filed July 25, 2025); IPR2025-01397 (’385 Patent, filed August 15, 2025); IPR2025-01400 (’721 Patent, filed September 12, 2025); and IPR2025-01399 (’831 Patent, filed September 26, 2025). *See* EX2004, Table of CrowdStrike IPRs and Parallel Litigation Schedules.

III. ARGUMENT

An analysis of the *Fintiv* factors, evaluated holistically under the Interim Processes, confirms that institution would inefficiently duplicate the Parallel Litigation, warranting discretionary denial under 35 U.S.C. §§ 314(a) and 324(a). This is particularly compelling under the Director’s recent reclamation of institution authority, which aims to address high institution rates and procedural biases that undermine efficiency. *See* Open Letter. Specifically, the Fortinet trial is set for November 2, 2026, and the CrowdStrike trial for February 1, 2027—both before the projected Final Written Decision date of March 23, 2027.

A. *FINTIV* FACTOR 1 FAVORS DENIAL: PETITIONER HAS NOT REQUESTED A STAY AND EVEN SO, A STAY IS UNLIKELY

Fintiv Factor 1 asks whether the district court is likely to grant a stay of the Parallel Litigation. *Fintiv I* at 5-6. Here, no stay motion is pending, and Petitioner

has represented that it will seek a stay only if the Board first institutes this IPR. *See* IPR2025-01170, Paper 9 at 9 (“CrowdStrike *intends to move* for a stay *if* its IPR proceedings are instituted.”) (emphasis added). A stay request deferred until institution ensures that any motion would be resolved only after the parties have invested substantial resources, as any motion would follow the projected institution decision on March 23, 2026, which itself comes after the *Markman* hearing on February 18, 2026, and the opening of fact discovery on February 19, 2026. EX2003.

In this posture, a stay is unlikely. Western District of Texas courts, including Judge Gilliland, disfavor post-*Markman* stays where the court and parties have already expended significant effort. *See Datanet LLC v. Dropbox Inc.*, No. 6:22-CV-01142-OLG-DTG, 2023 U.S. Dist. LEXIS 230030 (W.D. Tex. Dec. 28, 2023) (Gilliland, M.J.) (denying stay post-*Markman*, with no IPRs instituted and Final Written Decision post-trial, reasoning that the case was “anything but at its ‘infancy,’” simplification benefits were “speculative,” and “postponing resolution of this case would come at a substantial cost” given “the patent property is a wasting asset, and justice is ill served by delay in final resolution.”). The parallels to the *Dropbox* case are strong here: any motion to stay would reach the Court only after the claim construction has concluded and a *Markman* hearing has been held, with a firm trial date already set and the PTAB’s final written decision projected to issue more than 50 days after that trial.

Petitioner’s suggestion in the related IPR that general timing statistics could justify discounting this concrete schedule only underscores the speculative nature of its position. The court has entered a specific scheduling order that sets out a detailed path to a February 1, 2027 jury trial, and there is no evidence in this record that the court intends to move or substantially delay that date. *Fintiv* looks to the trial date actually set by the court, not to hypotheticals about how the schedule might change in the abstract. On the current record, the operative trial date is February 1, 2027, and the Director should credit that concrete arrangement rather than speculative averages.

A stay argument here would therefore require serial speculation: the Director would have to assume institution, assume that Petitioner then files a stay motion, and assume that the district court grants that motion despite having already held a *Markman* hearing, opened fact discovery, and set a firm trial date, and despite Judge Gilliland’s reasoning in *Dropbox* that staying a case at that stage would impose “substantial cost” and rest on “speculative” simplification. That stack of contingencies is the opposite of the straightforward, schedule-based assessment *Fintiv* Factor 1 calls for. With no pending motion, a post-*Markman* posture that increases the costs of delay, and a projected final written decision after trial (March 23, 2027) that offers no pre-trial simplification, a stay is not likely. Accordingly, *Fintiv* Factor 1 favors discretionary denial.

B. FINTIV FACTOR 2 FAVORS DENIAL: TRIAL IN THE RELATED LITIGATION WILL OCCUR BEFORE THE DEADLINE FOR A FINAL WRITTEN DECISION IN THIS IPR

Fintiv Factor 2 looks to “proximity of the court’s trial date to the Board’s projected statutory deadline for a final written decision.” *Fintiv I* at 5-6. “If the court’s trial date is earlier than the projected statutory deadline, the Board generally has weighed this fact in favor of exercising authority to deny institution under *NHK*.” *Id.* at 9.

The district court has set trial for February 1, 2027, which is more than a month before the projected March 23, 2027 deadline for a Final Written Decision, so on the current record the district court will adjudicate validity first and any Board decision would come afterward, adding duplication and a risk of inconsistent outcomes. *NHK Spring*, Paper 8, at 20 (denying where trial precedes Final Written Decision). Moreover, in the co-pending litigation in the Eastern District of Texas against Fortinet, the trial is scheduled for November 2, 2026—even earlier, further emphasizing the inefficiency of instituting this IPR when validity issues will be adjudicated in district court well before any Final Written Decision. EX2005, Civil Docket For Case No. 2:25-cv-00098 at 2. Recent PTAB decisions emphasize such timing in denying institution. *See, e.g., Samsung Electronics Co., Ltd. v. Headwater Research LLC*, IPR2025-00932, Paper 8 (PTAB Sep. 26, 2025) (denying institution where trial was approximately two months *before* Final Written Decision).

Petitioner’s potential arguments about schedule changes are speculative; the order has held firm.

When IPR proceedings cover the same ground as district court litigation, they cease to be an “alternative” and can substantially increase litigation costs. EX2006, Revision to Rules of Practice Before the Patent Trial and Appeal Board, 90 Fed. Reg. 48335, 48336 (proposed Oct. 17, 2025) (to be codified at 37 C.F.R. pt. 42). That is the opposite of what Congress intended. *Id.* Serial or parallel IPR proceedings can also be wasteful, because they consume Office and party resources re-litigating issues that the Office is considering, has already considered, or that are being litigated elsewhere, such as in district court. *Id.*

Thus, this factor also weighs in favor of discretionary denial.

C. *FINTIV* FACTOR 3 FAVORS DENIAL: SIGNIFICANT RESOURCES HAVE BEEN AND WILL CONTINUE TO BE INVESTED IN THE RELATED LITIGATION

Fintiv Factor 3 looks to the “amount and type of work already completed in the parallel litigation by the court and the parties *at the time of the institution decision.*” *Fintiv I* at 9 (emphasis added). For example, “if, at the time of the institution decision, the district court has issued substantive orders related to the patent at issue in the petition,” this factor favors denial. *Id.* at 9-10. “Likewise, district court claim construction orders may indicate that the court and parties have invested sufficient time in the parallel proceeding to favor denial.” *Id.* at 10.

As of November 16, 2025, the litigation has advanced with initial disclosures

exchanged, preliminary infringement contentions served, preliminary invalidity contentions served on November 5, 2025, and venue discovery ongoing (concluding December 11, 2025) on the October 2, 2025 transfer motion. By the projected institution date of March 23, 2026, the parties and court will have invested substantially in the full claim construction process—from initial term exchanges and proposed constructions in late November and early December 2025, through disclosures of extrinsic evidence and meet-and-confers in mid-December, to the exchange of multiple briefs from December 19, 2025, to February 6, 2026, culminating in the *Markman* hearing on February 18, 2026. This comprehensive phase requires extensive preparation, including expert identifications, evidence production, and narrowing of disputes, reflecting significant time and resources from both parties and the court. Fact discovery opens on February 19, 2026, and will have been actively underway for over a month by institution, with the deadline to add parties (March 18, 2026) further advancing the case. This post-contentions, post-*Markman* stage with discovery in progress demonstrates far more investment than early-stage cases warranting institution, favoring denial to prevent inefficient duplication and resource waste. *See Motorola Sols., Inc. v. Stellar, LLC*, IPR2024-01205, Paper 19 (Mar. 28, 2025) (vacating institution where parties served expert reports, filed claim construction briefs, and conducted depositions before institution decision); *cf. Microsoft Corporation v. XI Discovery, Inc.*, IPR2025-00255, Paper

13 (Jun. 25, 2025) (instituting with no trial date and likely stay).

Accordingly, *Fintiv* Factor 3 also weighs in favor of discretionary denial.

D. *FINTIV* FACTOR 4 FAVORS DENIAL: OVERLAPPING ISSUES RAISE SIGNIFICANT CONCERNS OF INEFFICIENCY AND PETITIONER’S STIPULATION DOES NOT MITIGATE THESE CONCERNS

Fintiv Factor 4 looks to “whether all or some of the claims challenged in the petition are also at issue in district court” and whether the “petition includes the same or substantially the same claims, grounds, arguments, and evidence” as the parallel district court case. *Fintiv I* at 12-13. In short, this factor evaluates “concerns of inefficiency and the possibility of conflicting decisions” when substantially identical prior art is submitted in both the district court and the IPR proceeding. *Id.* at 12.

Here, there is substantial overlap between the issues raised in the Petition and those that will be raised in the Parallel Litigation, raising significant concerns of inefficiency. The Petition asserts five grounds of unpatentability under 35 U.S.C. § 103, relying on eight prior art references, including *Fages*, *Korycki*, *Jai*, *Hayden*, *O’Niell*, *Cardona*, *Russello*, and *Tazuma*. See Pet. at 4-5. CrowdStrike has served its preliminary invalidity contentions, which include all eight of the IPR references plus seven additional references. The timing of the district court proceedings provides that these contentions are due well before the projected institution decision on March 23, 2026. EX2003. Given that the district court contentions fully encompass the IPR references and assert even more prior art, the overlap is complete and duplicative.

This would force the parties, the district court, and the PTAB to address the same validity issues concurrently, risking inconsistent outcomes and wasting resources. *See Fintiv I* at 12-13.

CrowdStrike’s conditional *Sotera* stipulation does not avoid overlap because invalidity contentions and claim-construction briefs will already be complete before institution. *See* EX1053, EX2003. The Director has rejected similar conditional or narrow stipulations that fail to eliminate inefficiencies, particularly when the other *Fintiv* factors favor denial. *See Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12, at 18-19 (PTAB Dec. 1, 2020) (precedential); *Motorola*, Paper 19 at 4. The subsequent March 24, 2025, guidance from Chief Administrative Patent Judge Boalick further confirmed a *Sotera* stipulation is not “dispositive by itself.”

As the USPTO has emphasized, such parallel challenges “can add significant expense and delay compared with standalone district court litigation” and undermine the AIA’s intent for IPRs to serve as an “alternative” rather than a duplicate. EX2006 at 2.

E. *FINTIV* FACTOR 5 FAVORS DENIAL: THE PARTIES IN THE RELATED LITIGATION ARE THE SAME

Fintiv Factor 5 looks to “whether the petitioner and the defendant in the parallel proceeding are the same party.” *Fintiv I* at 5-6. Specifically, when “the petitioner and the defendant in the parallel proceeding are the same party, this factor weighs in favor of discretionary denial.” *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019,

Paper 15 at 15 (PTAB May 13, 2020) (informative). Petitioner is a defendant in the Parallel litigation; therefore, Factor 5 favors denial.

F. *FINTIV* FACTOR 6 FAVORS DENIAL: OTHER CIRCUMSTANCES SHOULD INFLUENCE THE DIRECTOR’S EXERCISE OF DISCRETION

Other circumstances, including the Petition’s merits and Interim Process considerations, also support denial. The Director’s memorandum, reclaiming institution authority to eliminate “the appearance of self-interest” and “perceived referral-signal bias,” underscores efficiency concerns in parallel cases. *See* Open Letter.

1. Settled Expectations Weigh Against Institution.

Patent Owner has settled expectations in the validity of the challenged claims, weighing in favor of discretionary denial. Interim Processes at 2.

The ’721 Patent, issued February 25, 2020, has been in force for over five years and is part of a mature cybersecurity portfolio originating from ASU research dating back to 2014. *See* EX2001, ¶¶1-4, 22-44. The Asserted Patents share a common technical field in government-sponsored cybersecurity innovations, with related members issued as early as June 4, 2019 (U.S. Patent No. 10,313,385, over six years in force), reinforcing Patent Owner’s reliance on their validity. *Id.*; *see Kahoot! AS v. Interstellar Inc.*, IPR2025-00696, Paper 12 at 2-3 (PTAB July 31, 2025) (denying institution due to settled expectations despite stay). These patents have long been public and unchallenged, encouraging Skysong and ASU to continue investing

in commercialization without the specter of invalidity threats. *See Kahoot!*, Paper 12 at 2-3 (denying institution due to patent in force for over six years, despite a stay).

As the USPTO has recognized, such repeated challenges undermine “quiet title” to patents and deter investment, frustrating the AIA’s purpose. EX2006 at 2 (citing H.R. Rep. No. 112-98, at 48). Even strong patents become unreliable under serial scrutiny; for example, a patent with a 70% survival chance in one *de novo* review has less than 50% odds against two or more. *Id.*

2. No Changes In The Law Support Reconsideration Of Patentability.

No changes in the law support reconsideration of the validity of the ’721 Patent claims.

3. The Petition Is Weak And Overly Reliant On Expert Testimony.

The Petition’s unpatentability challenge is weak, supporting denial. The Petition asserts seven grounds across eight prior art references, but each ground is flawed because the references are cumulative to art already considered and overcome during prosecution. These deficiencies are compounded by the Petition’s excessive dependence on expert testimony, which also favors denial.

During prosecution, the Examiner rejected the claims over *Loesch* (US 8,095,967) in view of *Bauer* (US 9,418,243), finding *Loesch* taught intercepting requests and launching a private browser for sensitive sites, but requiring *Bauer* to confirm whether a private browsing mode was already active. EX1002, 339-345.

Applicants overcame this rejection by amending to clarify the daemon's role in tracking instances, receiving via extension, forwarding via native application, and confirming availability before launching, features the Examiner found distinguished over *Loesch* and *Bauer*. See EX1002, 369-372; 377-379. Additionally, *Korycki* was considered during prosecution, as it is listed on the Notice of References Cited form. See EX1002, Page 380.

The Petition's primary references, *Fages*, *Korycki*, *Jai*, and *Hayden*, are cumulative to *Loesch* and *Bauer*. *Fages* teaches parallel browser execution environments and launching a second environment for sensitive URLs, similar to *Loesch*'s private browser for trusted sites, but does not overcome the distinguishing daemon implementation. Pet., 49-50. *Korycki* uses a daemon and browser extension for Active Control List (ACL) enforcement, akin to *Loesch*'s agent program, but lacks the specific confirmation and launching logic that distinguished the claims, compare EX1002, 370 with *Korycki*, 10:22-11:5 and Pet., 36-37; moreover, *Korycki* was already before the Office, EX1002, 380. *Jai* checks for duplicate open applications to avoid redundancy, cumulative to *Bauer*'s check for active private mode. EX1002, 371. *Hayden* determines whether a browser instance is launched and starts one if not, similar to *Loesch/Bauer*'s instance management without the claimed daemon-extension-native application chain. EX1002, 370-71.

CrowdStrike's district court preliminary invalidity contentions further

underscore this cumulativeness by including *Loesch* itself, along with the IPR references and additional art like *Ghosh*, *Heller*, *Bishop*, *Nanda*, *Levy*, and *Buddhiraja*, none of which introduce non-cumulative teachings that would alter the prosecution outcome.

Under the precedential two-part framework in *Advanced Bionics*, when the same or substantially the same prior art was previously presented to the Office, the petitioner must demonstrate that the Office erred in a manner material to patentability. IPR2019-01469, Paper 6 at 7-10. Here, the Petition does not acknowledge this standard, argue material examiner error, or explain why the allowance over *Loesch/Bauer* was mistaken. Instead, it rehashes cumulative concepts, for example, parallel browsers, daemon/extension use, duplicate checking, and instance launching, without addressing the distinguishing daemon implementation confirmed during prosecution. This omission invites inefficient re-adjudication of resolved issues. These substantive weaknesses distinguish this case from those where discretionary denial was rejected due to strong merits or overlooked art. See *Advanced Bionics*, Paper 6, at 13-20; *Anthony, Inc. v. ControlTec, LLC*, IPR2025-00559, Paper 12 (PTAB Jul. 16, 2025); *Tesla, Inc. v. Charge Fusion Technologies, LLC*, IPR2025-00152, Paper 11 (PTAB Jun. 12, 2025).

The Petition's weakness is further evident in its heavy reliance on expert testimony, exceeding 440 paragraphs and approximately 42,000 words, to prop up

claim constructions, motivations to combine, and obviousness conclusions. *See* EX1003. With eight references across five grounds, this complexity and expert dependence signal that the grounds do not stand on the art alone, favoring denial to preserve PTAB resources. Extensive reliance on expert testimony or reasonable disputes between experts on dispositive issues may suggest that the questions are better resolved in an Article III court, weighing against institution as a matter of efficiency. *See* FAQs for Interim Processes for PTAB Workload Management, #22.

4. Compelling National Security Interests Weigh Against Institution

Compelling national security interests weigh against institution. Interim Processes at 2. The '721 Patent advances U.S. cybersecurity by providing an automated framework for launching fresh browser instances to access sensitive content; this approach helps prevent information leakage, cross-site request forgery, and clickjacking attacks, which are common threats to digital infrastructure. *See* EX1001, 1:59-2:3, 2:29-67. This technology was developed with government support under 0849980 awarded by the National Science Foundation, which funds research in computer systems security critical to protecting networks in government, finance, and healthcare sectors. EX1001, 1:18-20. These capabilities directly support national defense objectives by safeguarding against browser-based cyber threats that can compromise critical systems, such as those in government, finance, and healthcare sectors. *See* EX2007, Exec. Order No. 14,028 §1 (emphasizing defense

against “persistent and increasingly sophisticated malicious cyber campaigns” threatening public and private sectors); *id.* §4 (requiring enhancements to software supply chain security, including proactive measures for IT systems).

President Biden’s 2021 Executive Order on Improving the Nation’s Cybersecurity underscores the urgency of enhancing threat intelligence and predictive capabilities to safeguard U.S. interests. The Order mandates federal agencies to prioritize proactive cybersecurity measures, aligning with the ’721 Patent’s focus on secure access and mitigation of web-based vulnerabilities. *See* Exec. Order No. 14,028 §4. Institution risks undermining these goals by potentially invalidating patents that foster such advancements, deterring investment in ASU-derived technologies that benefit the public and the national defense sector. As the USPTO has noted, repeated patentability challenges weaken IP rights, posing “a threat to America’s continued technological leadership” in national security-critical areas like cybersecurity. EX2006 at 3.

PTAB precedent requires more than speculative assertions to justify discretionary denial on national security grounds. *Taiwan Semiconductor Mfg. Co. v. Marlin Semiconductor Ltd.*, IPR2025-00847, Paper 11 (PTAB Sep. 3, 2025). Here, the ’721 Patent’s concrete contributions to secure browsing, supported by federal funding and tied directly to the Executive Order’s emphasis on cybersecurity protections, provide that specificity. The patent’s demonstrated innovation in

mitigating cyber threats weighs in favor of denial, and when considered with factors such as settled expectations and weak merits, further supports non-institution.

V. CONCLUSION

Most if not all *Fintiv* factors and related considerations favor discretionary denial. Denial here accords with the Director's reclaimed institution authority and the AIA's intent to prevent duplicative proceedings. Patent Owner respectfully requests denial of institution.

CERTIFICATE OF COMPLIANCE

Under the provisions of 37 CFR § 42.24(d), the undersigned hereby certifies that the word count for the foregoing Patent Owner's Discretionary Denial Brief totals 4,346 which is less than the 14,000 words allowed under 37 CFR § 42.24(b)(1).

Respectfully submitted,

Dated: November 20, 2025

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Counsel for Patent Owner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on the date indicated below, a complete and entire copy of this submission was served by email to Petitioner's counsel via the email addresses of record as provided in Petitioner's Service Information in the September 12, 2025 Petition submission.

Respectfully submitted,

Dated: November 20, 2025

By: /Jay P. Kesan/
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