

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Canadian Solar (USA) Inc.,
Petitioner

v.

First Solar, Inc.,
Patent Owner

Case No. IPR2025-01432

U.S. Patent No. 9,130,074

**PATENT OWNER'S REQUEST FOR
DISCRETIONARY DENIAL OF INSTITUTION**

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PATENT OWNER'S EXHIBITS

Exhibit	Description
2001	Keith R. Hummel Biography
2002	Declaration of Keith R. Hummel in Support of PHV Motion
2003	Canadian Solar White Paper, “CSI High Efficiency TOPCon Module”, canadiansolar.com (Jan. 2023)
2004	Chunduri, S.K., et al., “PERC Solar Cell Technology 2016: Background, Status and Outlook”, <i>TaiyangNews</i> (2016)
2005	Fuhs, M., “TOPCon: The next big thing after PERC”, <i>PV Magazine</i> (Oct. 8, 2018)
2006	Canadian Solar Press Release, “Canadian Solar to Start Mass Production of TOPCon Modules with Power Output up to 690W” (Dec. 15, 2022)
2007	Canadian Solar Press Release, “Canadian Solar Enters into Significant Supply Contracts During the 2023 U.S. RE+ Trade Show” (Sept. 20, 2023)
2008	Canadian Solar Press Release, “Canadian Solar Releases New TOPCon 2.0 / 660 Wp N-Type Module with up to 24.4% Efficiency for Utility and C&I PV Systems” (May 6, 2025)
2009	Post-Conference Brief of China Chamber of Commerce for Import and Export of Machinery and Electronic Products, Volume I of II, ITC Inv. Nos. 701-TA-511 & 731-TA-1246-47 (Jan. 29, 2014)
2010	Zacks Equity Research, “FirstSolar to Buy TetraSun, Gives View”, <i>Yahoo! Finance</i> (Apr. 10, 2013)
2011	“First Solar to Acquire TetraSun to Expand Addressable Market Opportunity”, <i>Business Wire</i> (Apr. 9, 2013)
2012	Shepard, J., “First Solar to Acquire TetraSun to Expand Addressable Market Opportunity”, <i>EEPower</i> (Apr. 11, 2013)
2013	Glunz, S.W., et al., “Silicon-based passivating contacts: The TOPCon route”, <i>Progress in Photovoltaics</i> (Dec. 20, 2021)
2014	Espacenet listing for CN114613865A
2015	Espacenet cited documents list for CN114613865A
2016	USPTO Global Dossier for CN114613865A, First Search (Sept. 8, 2023)
2017	Office of the United States Trade Representative, 2025 Special 301 Report (Apr. 2025)
2018	Gupta, K., et al., “Protecting Intellectual Property for National Security”, <i>Center for Strategic and International Studies</i> (Mar. 2025)
2019	Turner, J., et al., “Solar supplier switched over ‘ethical concerns’”, <i>BBC</i> (Sept. 27, 2024)

Exhibit	Description
2020	Dept. of Commerce Press Release, “Department of Commerce Issues Final Determination of Circumvention Inquiries of Solar Cells and Modules from China” (Aug. 18, 2023)
2021	Canadian Solar Inc. Form 20-F (Dec. 31, 2024)
2022	Scheduling Order, <i>First Solar, Inc. v. Canadian Solar Inc.</i> , C.A. No. 1:25-cv-582 (JLH) (D. Del. Oct. 2, 2025), ECF No. 27.

Pursuant to 35 U.S.C. § 314(a) and the Office's Interim Processes for PTAB Workload Management, dated March 26, 2025 (the "March 2025 Guidance"), Patent Owner First Solar, Inc. ("First Solar") respectfully requests that the Petition be discretionarily denied.

I. Introduction.

The Petition is meritless. But the Office should not even consider it. Contrary to the March 2025 Guidance, the Petition asks the Office to second-guess a decade-old, foundational patent held by First Solar, a U.S. technology innovator. And this is not a routine challenge: the Petition was brought by a company with deep ties to a foreign adversary (China) that has a documented history of predatory and anticompetitive conduct against U.S. companies. This is precisely the sort of petition that should be discretionarily denied.

Born in the Midwest and headquartered in the Southwest, First Solar is one of the largest and most successful solar technology companies in the world. Though its reach is global, it has consistently invested in American manufacturing and American jobs, and its solar products have set industry benchmarks for quality, durability, reliability, design and sustainability. First Solar is the only one of the world's top solar companies that is based in the United States.

The challenged patent, U.S. Patent No. 9,130,074 (the "'074 Patent"), is a prime example of First Solar's leadership and innovation. Over 15 years ago,

TetraSun, Inc. (“TetraSun”), one of First Solar’s current subsidiaries, filed patent applications that proved to be foundational for a solar technology called TOPCon, which stands for “tunnel oxide passivated contact”. For years, solar researchers had been experimenting with TOPCon, but it had been unable to compete with conventional solar technology. Thanks to TetraSun’s pioneering work, TOPCon solar cells could be manufactured more cost effectively, with high operational efficiency and with a superior bifacial design—that is, they could generate more power from the back of the solar cell and generate more power overall. TOPCon is a growing solar technology that is being adopted by many foreign solar companies.

Petitioner Canadian Solar (USA) Inc. is part of a web of corporate subsidiaries that use Canadian branding but are not Canadian companies. Instead, many of the constituent companies of the Canadian Solar conglomerate are Chinese, and those Chinese companies are the primary manufacturers of Canadian Solar’s products. Specifically, Canadian Solar manufactures its TOPCon solar cells that practice the ’074 Patent in China, and imports those cells into the United States without a license from First Solar. Canadian Solar has a history of competing unfairly with American companies like First Solar, including by dumping solar modules on the American market, and has been accused of using forced labor.

Canadian Solar now seeks to challenge the ’074 Patent, which issued in

2015. The Petition should be discretionarily denied for several reasons.

First, the expectations of the parties are settled. The '074 Patent has been in force in Canadian Solar's technology space for over 10 years, and Canadian Solar has been aware of First Solar's ownership of TOPCon technology for even longer.

Second, compelling economic and national security interests warrant denial. Canadian Solar and the Chinese government have long sought to harm U.S. interests, and the Office should not expend its limited resources considering a challenge (like the Petition) that threatens further harm to American companies.

Third, the *Fintiv* factors all are either neutral or favor denial, which also demonstrates that discretionary denial is appropriate.

Each of these reasons independently warrants discretionary denial. Taken together, they practically compel it.

II. Settled Expectations Warrant Discretionary Denial.

The '074 Patent issued in September 2015—almost *ten years* before the Petition was filed. That fact alone weighs strongly in favor of discretionary denial. *Dabico Airport Sols. v. AXA Powers APS*, No. IPR2025-00408, Paper 21 at 2–3 (Director Jun. 18, 2025) (discretionarily denying institution where “the challenged patent has been in force almost eight years, creating settled expectations”); Mar. 2025 Guidance at 2 (relevant considerations for discretionary denial include “[s]ettled expectations of the parties, such as the length of time the claims have

been in force”). Discretionary denial further is warranted because (a) the ’074 Patent is directed to the technology space in which Canadian Solar has operated for years; (b) Canadian Solar has been aware of First Solar’s ownership of the patented technology since at least 2014; and (c) Canadian Solar knew of the ’074 Patent years before it filed the Petition.

A. The ’074 Patent has been in force in Canadian Solar’s technology space for 10 years.

Under the March 2025 Guidance, and consistent with the statutory framework for patent infringement, institution is rarely appropriate when a challenged patent issued six or more years before the petition was filed. *See Dabico*, No. IPR2025-00408, Paper 21 at 3. This is because, by that point, the parties’ expectations regarding the validity of the patent have become settled. *See id.*; *see, e.g., Jinkosolar Co., Ltd., v. Longi Green Energy Technology Co. Ltd.*, IPR2025-00859, Paper 10 at 2 (Director Sept. 3, 2025) (“[T]he challenged patent has been in force for approximately ten years, creating strong settled expectations for Patent Owner”). “[T]he longer the patent has been in force, the more settled expectations should be.” *Dabico*, No. IPR2025-00408, Paper 21 at 3. And, where a petitioner ***entered*** the technology space to which the patent is directed but failed to timely challenge the patent, expectations are all the more settled. *Sig Sauer Inc. v. Lone Star Future Weapons, Inc.*, IPR2025-00410, Paper 13 at 2 (Director Jun. 26, 2025) (denying institution where patent “issued over 10 years ago, and

Petitioner subsequently developed a competing product without challenging th[e] patent”).

All of these factors are present here. The ’074 Patent issued in September 2015, and the Petition was filed on July 18, 2025, well over the six-year threshold. Indeed, the patent has been in force for almost **10 years** before the Petition was filed. And, as discussed below, Canadian Solar entered the TOPCon solar cell market **after** the ’074 Patent issued and practices TOPCon technology, the technology area to which the patent is directed.

As Canadian Solar explains on its website, “TOPCon is an advanced passivation technology” that uses “an ultra-thin oxide layer and a doped polysilicon layer on the back of the cell to create a good interfacial passivation”. (Ex. 2003 at 3.) The ’074 Patent is directed to a method of manufacturing an improved TOPCon solar cell, with “a surface passivating interface layer”, such as “silicon oxide”, “and a highly doped polycrystalline passivation layer”. (Ex. 1001 at 2:1–2, 5:56–59.) Around the time the ’074 Patent issued, industry publications recognized that First Solar’s technology is directed to TOPCon. (*See* Ex. 2004 at 44 (“TOPCon[] cell is other technology that has recently gained some attention. . . . The cell features selective passivated contacts made of tunnel oxide on the rear side. . . . US start-ups Tetrasun (now owned by First Solar) and Silevo (now owned by SolarCity) have developed cell technologies based on the tunneling

oxide approach.”).)

Canadian Solar entered the TOPCon market no later than 2022—seven years after the ’074 Patent issued and after TOPCon had reportedly become the “[t]he next big thing”. (Ex. 2006 (announcing that Canadian Solar “will start mass production of high efficiency N-type TOPCon (Tunnel Oxide Passivated Contact) solar modules”); Ex. 2005.) Since then, Canadian Solar has repeatedly touted its TOPCon products. For example, on September 20, 2023, the Chairman and CEO of Canadian Solar reported in a press release that “[o]ur cost competitive TOPBiHiKu7 bifacial TOPCon module has received overwhelmingly positive market response”. (Ex. 2007.) And a 2025 press release stated that a Canadian Solar module “[b]ased on the latest TOPCon cell technology . . . delivers a maximum power output up to 660 Wp and a conversion efficiency of up to 24.4%.” (Ex. 2008.)

Canadian Solar thus admittedly operates in the ’074 Patent’s technology space, and has done so for at least three years—and likely much longer, given the preparation time Canadian Solar must have spent to develop its TOPCon products before announcing its entry into the market for those products. Further, Canadian Solar entered the space after the ’074 Patent had already issued. The Office should not waste its limited resources reviewing a challenge by a long-time market participant against a decade-old patent.

B. Canadian Solar has been aware of First Solar's ownership in TOPCon technology since at least 2014.

Although the existence of the '074 Patent was sufficient to put Canadian Solar on notice of First Solar's ownership in TOPCon technology, Canadian Solar was aware of such facts no later than 2014. *See Murata Mfg. Co. v. Ga. Tech Rsch. Corp.*, No. IPR2025-00383, Paper 14 at 2–3 (Director July 29, 2025) (denying institution where “Petitioner was aware that Patent Owner was involved in the same technology space for a significant amount of time before filing its Petition”).

Canadian Solar likely first became aware of First Solar's ownership in TOPCon technology in April 2013, when First Solar announced that it would acquire TetraSun. As reported by *Yahoo! Finance*, this was a significant event in the industry. (Ex. 2010.) The *Yahoo! Finance* article recognized that TetraSun had “significant expertise in silicon photovoltaic (PV) technology” and had “developed a break-through cell architecture”— improved TOPCon technology— “that has the potential to convert 21% sunlight into electricity at lower manufacturing costs in comparison to conventional multi crystalline silicon solar cells”. (*Id.*) The article further recognized that “Chinese producers” were focused on the silicon-based PV technology, and predicted that “[t]his [the TetraSun acquisition] will open up fresh opportunity for First Solar in the PV market that is forever keen on high-efficiency technology”. (*Id.*) Other prominent industry

publications, such as *Business Wire* and *EEPower* issued similar reports.

(Ex. 2011; Ex. 2012.) This is precisely the type of information—a significant acquisition by a competitor—that a company like Canadian Solar would have become aware of in the ordinary course.

Indeed, by 2014, Canadian Solar indisputably was aware. That year, Canadian Solar was investigated by the Department of Commerce and the International Trade Commission (“ITC”) on the basis that it and other Chinese producers had unfairly dumped (non-TOPCon) silicon-based solar products on the U.S. market. 79 Fed. Reg. 76970, 76973 (Dec. 23, 2014). In response, Canadian Solar coordinated with the China Chamber of Commerce for Import and Export of Machinery and Electronic Products. (Ex. 2009 at 1, 6.) The China Chamber of Commerce argued to the ITC, on behalf of Canadian Solar and other Chinese solar producers, that First Solar would soon be producing crystalline silicon-based products that would compete with the products of the Chinese producers.¹ Specifically, the China Chamber of Commerce stated that First Solar had acquired “TetraSun, Inc., a company ‘developing a novel, high-efficiency, low-cost

¹ In making this argument, the China Chamber of Commerce presumably was attempting to minimize the injury to American domestic industry caused by Canadian Solar and other Chinese producers’ misconduct in the United States.

crystalline silicon cell technology” and that First Solar would “begin[.]” “production [of such technology] by early 2015”. (*Id.* at 31 (citing “First Solar 10-Q, November 1, 2013, at 49”).) Canadian Solar’s Director of Legal Affairs, Allen Wang, certified that these facts were “complete and accurate”. (*Id.* at 6.) Thus, by 2014, Canadian Solar not only was aware of TetraSun’s technology, it had coordinated with an organization with ties to the Chinese government to use the existence of TetraSun’s technology as a basis for defending its misconduct.

Industry and media reports in the years that followed reiterated First Solar’s ownership of TOPCon technology. For example, in April 2016, *TaiyangNews* reported that “Tetrasun (now owned by First Solar) . . . ha[s] developed cell technologies based on the tunneling oxide approach”, *i.e.*, TOPCon. (Ex. 2004 at 44.) And even after First Solar chose to focus its business on its technologically distinct cadmium telluride solar cells, industry publication *Progress in Photovoltaics* reported in 2021 on “TetraSun’s patent portfolio”, observing that the portfolio “suggests that [TetraSun’s] passivating contact technology is based on poly-Si/SiO₂ structures”—a type of TOPCon technology. (Ex. 2013 at 3.)

There can be no reasonable dispute that Canadian Solar has long been aware of First Solar’s development and ownership in TOPCon technology.

C. Canadian Solar has specifically known about the ’074 Patent.

As of no later than 2023, Canadian Solar had specific knowledge of the

patent application that issued as the '074 Patent. In November 2020, Canadian Solar entities filed a patent application in China, under application number CN114613865A. (Ex. 2014.) During prosecution of that application, in September 2023, the Chinese examiner cited TetraSun U.S. Patent Application Publication No. 2012/0055547 A1. (Ex. 2015; Ex. 2016). That application issued as the '074 Patent.

* * *

Each of the foregoing points independently supports discretionary denial. Taken together, they leave no room for doubt that the parties' expectations were settled at the time the Petition was filed and that the Petition should be denied.

III. Compelling National Economic and Security Interests Warrant Discretionary Denial.

The Petition should be denied because facilitating Canadian Solar's attack on the intellectual property of a leading U.S. innovator would threaten "compelling economic . . . or national security interests". (Mar. 2025 Guidance at 2.)

There is a compelling economic and national security interest in protecting the intellectual property rights of American technology companies from the misconduct of companies backed by foreign adversaries. As the Office of the United States Trade Representative recently reported, "a key objective of the Administration's trade policy is ensuring that U.S. owners of IP have a full and fair opportunity to use and profit from their IP around the globe" and "the denial of

equitable market access, [would] seriously impede the ability of the United States persons that rely on protection of intellectual property rights to export and operate overseas, thereby harming the economic interests of the United States.’” (Ex. 2017 at 5 (quoting Omnibus Trade and Competitiveness Act of 1988, § 1303(a)(1)(B)).) And the Center for Strategic and International Studies (a bipartisan, nonprofit policy research organization) has observed that, “secure, stable, and predictable IP rights” are of “critical importance” for “innovation and U.S. economic and national security”, and “duplicative” review before the PTAB—especially when initiated by “Chinese companies” who are “leading users of the PTAB”—undermines those rights. (Ex. 2018 at 8, 40.)

These risks of national harm are present here. Although Canadian Solar uses North American branding,² its operations are based in China and East Asia. Indeed, nearly 70% of Canadian Solar’s workforce (over 11,000 employees) is located in Canadian Solar facilities in China. (*See* Ex. 2021 at 120, 189.) Those Chinese facilities, which have been accused of engaging in forced labor

² In 2024, Canadian Solar opened a manufacturing facility in Texas. But that facility merely engages in relatively low-value assembly of solar modules (*i.e.*, solar panels), using infringing TOPCon solar cells that Canadian Solar manufactures in and exports from **China**. (Ex. 2021 at 4, 43–46, 85–86, 120–23.)

(Ex. 2019), illegally produce and export the groundbreaking TOPCon technology that TetraSun patented and First Solar owns.

But that is not Canadian Solar's only misconduct. As explained in Part II, Canadian Solar was found to have unlawfully dumped solar modules on the U.S. market. *See* 80 Fed. Reg. 8592, 8594–95 (Feb. 18, 2015) (determining that Canadian Solar entities in China dumped solar modules with “dumping margin” of over 52%). To combat this unlawful dumping, the Department of Commerce imposed antidumping and countervailing duties (tariffs) on solar cells that Canadian Solar exports from China. *Id.* at 8593–94. Then, in 2023, the Department of Commerce found that Canadian Solar had illegally circumvented those tariffs by routing its exports of Chinese-manufactured solar cells through Thailand. (Ex. 2020; Ex. 2021 at 45.) The Court of International Trade sustained, agreeing that “in the case of Canadian Solar, the majority of processing is still done in China”. *Canadian Solar Int’l Ltd. v. United States*, No. 23-00222, 2025 WL 1420317, at *3 (Ct. Int’l Trade May 16, 2025).

Thus, Canadian Solar not only infringes the intellectual property rights of U.S. companies, such as First Solar, it actively impairs the ability of those U.S. companies to compete with the infringing products that Canadian Solar sells by selling those products at below cost and evading tariffs enacted by the United States to make Canadian Solar compete fairly. The national economic and security

interests in protecting companies like First Solar from such misconduct is both well-established and compelling. As the Center for Strategic and International Studies has explained, “Economic security is national security”, and that “includes a nation’s ability to safeguard its economic interests [and] protect its industries from foreign threats”. (Ex. 2018 at 14 (quoting The White House, *National Security Strategy* (Washington, DC: The White House, 2017).)

First Solar is exactly the sort of company the U.S. patent system is intended to protect. Not only is First Solar a global provider of responsibly produced, eco-efficient solar modules, it is also the only U.S.-headquartered company among the world’s largest producers of solar products. And First Solar’s subsidiary, TetraSun, was instrumental in developing TOPCon technology that has improved energy efficiency worldwide. The Office should not expend its limited resources considering a challenge that runs contrary to the national interests of the United States and its domestic industry. The Petition should be discretionarily denied.

IV. The *Fintiv* Factors Warrant Discretionary Denial.

In a request for discretionary denial, “the parties are permitted to address all relevant considerations” (Mar. 2025 Guidance at 2), including considerations under *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential). All factors under *Fintiv*, either favor denial or are neutral.

Factor 1 (“whether the court granted a stay or evidence exists that one may

be granted if a proceeding is instituted”) is **neutral**. No stay has been sought in the underlying Delaware District Court litigation, and there is no evidence that one is likely to be entered unless and until an IPR is instituted. In addition, the parties have begun discovery in the District Court proceeding, and they will have made document productions and exchanged infringement and validity contentions by the time a decision on the merits of institution is due. (Ex. 2022 at 16.)

Factor 2 (“proximity of the court’s trial date to the Board’s projected statutory deadline for a final written decision”) is **neutral**. A final decision in an IPR (if instituted) would be projected for March 2027, and trial in the Delaware action is set for March 2028. (Ex. 2022 at 17.) Though trial is not scheduled to occur until after the projected deadline for final written decision, the parties nonetheless will have expended significant resources litigating the validity of the ‘074 Patent by the time the final decision is entered, including completing fact discovery and claim construction and exchanging final contentions about the validity of the ‘074 Patent. (*Id.*) Any efficiencies of an IPR are, at best, uncertain.

Factor 3 (“investment in the parallel proceeding by the court and the parties”) is **neutral**. The parties have already begun to expend resources litigating the case, including by exchanging discovery and will exchange documents before the Board is expected to render its institution decision.

Factor 4 (“overlap between issues raised in the petition and in the parallel

proceeding”) **favors denial**. Petitioner has not entered a stipulation under *Sotera* or otherwise indicating whether it intends to pursue invalidity grounds in the litigation that it could have raised in the Petition.

Factor 5 (“whether the petitioner and the defendant in the parallel proceeding are the same party”) **favors denial**. The parties in both proceedings are the same: Petitioner is the defendant and First Solar is the plaintiff in the litigation.

Factor 6 (“other circumstances that impact the Board’s exercise of discretion, including the merits”) **favors denial**, for the reasons stated in the foregoing sections.

The *Fintiv* factors thus also support discretionary denial of institution.

V. Conclusion.

For the foregoing reasons, the Petition should be discretionarily denied.

Dated: October 24, 2025

Respectfully submitted,

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CERTIFICATION UNDER 37 C.F.R. § 42.24

Pursuant to 37 C.F.R. § 42.24(d), the undersigned hereby certifies that the word count for the foregoing Request totals 3,238 words (according to the word count feature of Microsoft Word, and excluding the table of contents, table of exhibits, table of authorities, this certification, and the certificate of service), which is fewer than the 14,000 words allowed under 37 C.F.R. § 42.24 and the Director's Memorandum regarding Interim Processes for PTAB Workload Management, dated March 26, 2025.

Dated October 24, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the attached Request and supporting materials was served on October 24, 2025, by electronic mail, as authorized by

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