

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMERICAN AIRLINES, INC. AND SOUTHWEST AIRLINES CO.,

Petitioners

v.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
(INTELLECTUAL VENTURES I LLC),

Patent Owner.

Inter Partes Review No. IPR2025-01511

U.S. Patent No. 7,712,080 B2

Issue Date: May 4, 2010

Title: SYSTEM AND METHODS FOR PARALLEL DISTRIBUTED PROGRAMMING

**PETITIONERS' BRIEF IN OPPOSITION TO PATENT OWNER'S
REQUEST FOR DISCRETIONARY DENIAL**

Mail Stop Patent Board
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

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<i>Tesla, Inc. v. Intellectual Ventures II LLC</i> IPR2025-00217, Paper 9 (Director Jun. 13, 2025)	7

PETITIONERS' LIST OF EXHIBITS

Exhibit No.	Description of Document
1001	U.S. Patent No. 7,712,080 B2 (the '080 Patent) to Lei Pan, Lubomir R. Bic, and Michael B. Dillencourt (filed May 21, 2004; issued May 10, 2010).
1002	File history for the '080 Patent.
1003	Declaration of Dr. Michael Shamos regarding the invalidity of U.S. Patent No. 7,712,080 B2.
1004	CV for Dr. Michael Shamos.
1005	Lei Pan, Lubomir F. Bic, Michael B. Dillencourt, <i>Distributed Sequential Computing Using Mobile Code: Moving Computation to Data</i> , International Conference on Parallel Processing, pp. 77-84, September 3-7, 2001, available at https://ieeexplore.ieee.org/document/952049 ("Pan").
1006	Naoya Suzuki, Munehiro Fukuda, Lubomir F. Bic, <i>Self-Migrating Threads for Multi-Agent Applications</i> , ICWC 99; IEEE Computer Society International Workshop on Cluster Computing, December 2-3, 1999, available at https://ieeexplore.ieee.org/document/810828 ("Suzuki").
1007	Munehiro Fukuda, Lubomir F. Bic, Michael B. Dillencourt, Fehmina Merchant, <i>Message versus Messengers in Distributed Programming</i> , Proceedings of 17th International Conference on Distributed Computing Systems, May 27-30, 1997, available at https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=1c575e92687dbc06acec75ae66a7a2f9174cb31c ("Fukuda '97")
1008	Munehiro Fukuda, Lubomir B. Bic, Michael B. Dillencourt, Fehmina Merchant, <i>Distributed Coordination with Messengers</i> , Science of Computer Programming 31 (July 1998) 291-311, available at https://www.sciencedirect.com/science/article/pii/S0167642397080245 ("Fukuda '98")..

Exhibit No.	Description of Document
1009	Munehiro Fukuda, Lubomir F. Bic, Michael B. Dillencourt, Fehmina Merchant, <i>Messengers: Distributed Programming Using Mobile Agents</i> , Transactions of the Society for Design and Process Science, Vol. 5, No. 4, pp. 95-112, December 2001, available at https://scispace.com/papers/messengers-distributed-programming-using-mobile-agents-50ktvx5clr (“Fukuda ’01”).
1010	Amended Complaint, <i>Intellectual Ventures I LLC v. American Airlines, Inc.</i> , No. 4:24-cv-980-ALM (E.D. Tex. Nov. 2, 2024) (Dkt. No. 84).
1011	Amended Complaint, <i>Intellectual Ventures I LLC v. Southwest Airlines Co.</i> , No. 7:24-cv-277-ALM (W.D. Tex. Nov. 2, 2024) (Dkt. No. 56).
1012	IV’s Infringement Contentions re the ’080 patent in <i>Intellectual Ventures I LLC v. American Airlines, Inc.</i> , No. 4:24-cv-980-ALM (E.D. Tex. Nov. 2, 2024).
1013	IV’s Infringement Contentions re the ’080 patent in <i>Intellectual Ventures I LLC v. Southwest Airlines Co.</i> , No. 7:24-cv-277-ALM (W.D. Tex. Nov. 2, 2024).
1014	Defendant Southwest Airlines Co.’s Opening Claim Construction Brief in <i>Intellectual Ventures I LLC v. Southwest Airlines Co.</i> , No. 7:24-cv-277-ALM (W.D. Tex. Nov. 2, 2024).
1015	Scheduling Order in <i>Intellectual Ventures I LLC v. American Airlines, Inc.</i> , No. 4:24-cv-980-ALM (E.D. Tex. Nov. 2, 2024).

I. INTRODUCTION

The '080 Patent's validity should be resolved by the PTAB ("the Board"), not in court. The '080 Patent has clear validity issues that are explained by the Petition—the merits of which Patent Owner does not contend with. Moreover, Patent Owner asserts the '080 Patent as part of a multi-district litigation campaign involving twelve patents from ten different families (collectively the "Parallel Litigations"). This proceeding, if instituted, will save significant resources and resolve validity without the need for multiple trials by multiple district courts (the Northern and Eastern Districts of Texas, collectively the "District Courts").

The three arguments in Patent Owner's brief fail to justify discretionary denial. Patent Owner first attempts to argue that due to previous institution decisions concerning six other patents asserted in the District Court litigations, the District Courts "are better suited to review the validity of the remaining patents." Patent Owner's Request at 3. This argument is not persuasive. There are still six patents in the Parallel Litigations whose validity has not been considered by the Board, with four pending petitions and two yet to be filed. The solution for the already-overburdened courts in the Parallel Litigations is not to heap another six patents on top of the six for which institution has been denied—that outcome would only exacerbate the challenge of resolving both invalidity and infringement in the District Courts on twelve patents.

Patent Owner also argues that Petitioner Southwest pursues inconsistent claim construction positions before the District Court and this proceeding. But this argument is unavailing, as Patent Owner relies on Petitioner Southwest’s ***Preliminary*** Invalidity Contentions while ignoring Southwest’s subsequent Opening Claim Construction Brief which does not assert indefiniteness. Accordingly, there is no risk of inconsistent claim construction positions between the Parallel Litigations and this proceeding, and Patent Owner identifies no basis for discretionary denial.

Patent Owner further argues that the fact that the ’080 patent issued over 15 years ago gives rise to “settled expectations” which favors discretionary denial. Here, while Patent Owner may have included the ’080 patent in its portfolio-wide licenses, there is no evidence that Patent Owner ever licensed the ’080 patent, either directly or through a portfolio-wide license, to an airline. Thus, the fact that the ’080 patent may have been in force for years but has not been commercialized, asserted, marked, licensed, or otherwise applied in petitioner’s particular technology space—airlines—is a “persuasive reason” why the Board should reviewed challenged claims several years after their issuance. *Intel Corp. v. Proxsense, LLC*, IPR2025-00327, Paper 12.

Finally, though Patent Owner’s request for discretionary denial is silent with respect to *Fintiv*, that analysis counsels in favor of institution. Trial is not yet set in

either of the Parallel Litigations, and an institution decision will predate any significant expenditure in adjudicating the validity and infringement of the '080 Patent.

Thus, the number and range of the patents asserted in the Parallel Litigations, the lack of inconsistent arguments between the Parallel Litigations and this proceeding, and *Fintiv* all counsel that discretionary denial is inappropriate here. The Petition should be instituted because its arguments against the '080 Patent are strong, and the Board is best positioned to efficiently resolve validity given the existing strain on the District Courts. Petitioners respectfully request that the Board review the merits of the Petition and institute trial.

II. THE DIRECTOR SHOULD ALLOW THE PETITION TO PROCEED ON THE MERITS

A. The Board is best suited to review this patent because of the breadth of the twelve patents asserted in the Parallel Litigations.

“The large number and vast scope of the patents asserted” in the Parallel Litigations weighs against discretionary denial. *Senzen Tuozhu Tech. Co., Ltd. v. Stratasys, Inc.*, IPR2025-00438, Paper 10 at 3 (Director July 17, 2025) (“*Stratasys*”). Contrary to Patent Owner’s arguments, the Board’s declining to institute the earlier petitions does not alter this rationale, it strengthens it—there are still twelve patents at issue in the Parallel Litigations, and this proceeding, if instituted, *will* lighten the District Courts’ loads in the Parallel Litigations.

The '080 Patent is one of twelve different patents (from ten different families) with a diverse range of subject matter asserted in the Parallel Litigations. This fact led the Director to decline Patent Owner's earlier requests for discretionary denial. *E.g.*, Exs. 2001, 2002, and 2003. It should do so here as well. Patent Owner is wrong that the Board's denial of institution in the earlier proceedings now strengthens its case for discretionary denial. If anything, those earlier denials only reinforce the need for the Board to review the '080 Patent's validity, as it is now clear that the District Courts will adjudicate the validity and infringement of a large number of unrelated patents, *i.e.*, the six patents for which discretionary denial was denied but for which the Board denied institution. The Board can prevent that burden from growing even larger by instituting the Petition and resolving the '080 Patent's validity outside of the Parallel Litigations.

Patent Owner's argument that "no results by the Board in the four remaining IPRs will avoid the need for the District Courts to address the validity of patents spanning a 'diverse range of subject matter'" defies common sense. Request at 7. It would only exacerbate the judicial-economy problem faced by the District Courts if additional patents in the Parallel Litigations were left for their adjudication. Further waste and inefficiency can be avoided by having a specialized tribunal—the Board—review the '080 patent's validity. Doing so would undeniably lessen the load on the already-overburdened District Courts in the Parallel Litigations.

This point is especially salient given the '080 Patent's unique subject matter when compared to the other 11 patents at issue in the Parallel Litigations. The '080 Patent is only one of two patents in the Parallel Litigations to concern parallel processing, the other being U.S. Patent No. 7,257,582. However, the aspects of parallel processing addressed by each of these two patents are significantly different from each other, as demonstrated by their respective claims and by the classifications assigned to each by the Patent Office:

<u>Patent</u>	<u>Classification</u>	<u>Exemplary Claim</u>
7,712,080	(51) Int. Cl. (2006.01) <i>G06F 9/44</i> <i>G06F 9/45</i> (2006.01) <i>G06F 15/00</i> (2006.01) (52) U.S. Cl. 717/119; 717/107; 717/108; 717/149; 712/10; 712/23; 712/32	1. A method of developing a distributed parallel computing program, comprising steps of: establishing at least one distributed shared variable, wherein the at least one distributed shared variable is a single variable that includes several variables that may be physically distributed across multiple memories; . . .
7,257,582	(51) Int. Cl. (2006.01) <i>G06F 17/30</i> (52) U.S. Cl. 707/10; 707/104.1 (58) Field of Classification Search 707/1–10, 707/100–104.1, 200–206; 718/105; 719/316; 703/23; 705/35; 711/147.3, 133	1. A method of effecting on a preexisting input file a computer-executable process comprised of a plurality of subtasks, the method comprising the steps of: (a) automatically determining file allocation and logically subdividing records of said input file into a plurality of partitions; (b) distributing descriptions of all of said partitions to each of a plurality

<u>Patent</u>	<u>Classification</u>	<u>Exemplary Claim</u>
		of subtask processors; . . .

The '080 Patent's unique stature in the Parallel Litigations is obscured in Patent Owner's discretionary denial brief, which contains an inaccurate table that omits two of the patents in the Parallel Litigations and describes the subject matter of the remaining patents at such a high level of generality that the comparison between patents is meaningless. Request at 6. For example, Patent Owner incorrectly characterizes four of the patents at issue of being in the "technology area" of "distributed networking"—the '080 patent, the '582 patent and two other patents (U.S. Patent Nos. 8,332,844 and 7,712,282). Request at 6-7. Unlike the '080 patent (and the '582 patent), these two other (related) patents are not directed to parallel processing; instead, as demonstrated by their titles, these patents are directed to distributed application management, not to parallel processing. Indeed, Patent Owner asserts these two patents against a different software application (Kubernetes) than it asserts for the '080 patent (Spark). Exs. 1012, 1013. Thus, Patent Owner's argument that the subject matter areas of other patents in the Parallel Litigations encompass that of the '080 Patent is just not true.

Moreover, the '080 Patent is one of *six* patents asserted in the Parallel Litigations that has not yet reached an institution decision before the Board. This scenario reflects others in which the Board has declined to exercise its discretion to

deny institution. *Tesla, Inc. v. Intellectual Ventures II LLC* IPR2025-00217, Paper 9 at 2-3 (Director Jun. 13, 2025) (declining to discretionarily deny institution where *six* patents from a single litigation were before the Board). Thus, even setting aside the six previously decided institution decisions and the unique subject matter of the '080 Patent, the breadth and complexity that would be added to the Parallel Litigations from the patents where institution has not been denied would be reason enough for the Board not to discretionarily deny this Petition.

Last, it should be borne in mind that there are two Parallel Litigations: any resolution of the validity of the '080 Patent's validity by the Board will save effort and expense in *two* district court proceedings. The cost-savings and efficiency of the Board's reviewing this patent further confirms that discretionary denial is inappropriate here. *Harbor Freight Tools USA Inc. v. Champion Power Equipment, Inc.*, IPR2025-00805, Paper 20 at 2 (Director September 19, 2025) (declining to discretionarily deny review of a patent asserted in a thirteen-patent multi-district parallel litigation).

In sum, the fact that IPR petitions concerning previous patents asserted in the Parallel Litigations were not instituted changes nothing with respect to Petitioners' arguments of efficiency and judicial economy. There is still an unworkably high number of patents for the District Courts to adjudicate, there are still six patents asserted in the Parallel Litigations that have not reached institution

decisions by the Board, and any review of the '080 Patent's validity will save resources in two different venues. On these facts, discretionary denial is not an appropriate outcome for the '080 Petition.

B. There is no risk of inconsistent arguments before the district court proceedings and this proceeding that would disfavor institution.

Patent Owner claims discretionary denial is appropriate based on Petitioner Southwest's statements before the district court in its Preliminary Invalidity Contentions regarding indefiniteness which allegedly creates a failure "to present a consistent and legally sound claim construction" across the Parallel Litigations and this proceeding. Request at 9. There is no danger of inconsistent claim constructions between this proceeding and the Parallel Litigations, so this is not a valid basis for discretionary denial.

Southwest Airlines made the statements relied on by Patent Owner in its *Preliminary* Invalidity Contentions. Ex. 2004. Highlighting the fact that its invalidity contentions were preliminary, and therefore not its final contentions, Southwest Airlines stated that it "reserve[s] the right to revise, amend, and/or supplement these indefiniteness contentions as part of the claim construction briefing process as provided for in the Court's scheduling order." *Id.* at 279. Consistent with the fact that its invalidity contentions are preliminary and consistent with Southwest's reservation of rights, Southwest did *not* include any indefiniteness contentions in its Opening Claim Construction Brief in its district

court case. *See* Ex. 1014 at 9-12. Although Southwest filed its Opening Claim Construction Brief on October 14, 2025, well-before Patent Owner filed its present Request, Patent Owner failed, in its Request, to disclose the fact that Southwest did not include any indefiniteness arguments in its Opening Claim Construction Brief.

There is thus no risk of inconsistent claim construction positions between the Parallel Litigations and this proceeding.

C. A “Persuasive Reason” for the Board to Review is that the ’080 Patent Has Not Previously Been Asserted In Petitioners’ “Technology Space”—Airlines

Patent Owner further contends that the fact that the ’080 patent has been in force for over 15 years demonstrates that the parties’ “settled expectations” weigh in favor of discretionary denial. Request at 12-15.

As stated in *Intel Corp. v. Proxense, LLC*, IPR2025-00327, Paper 12, a “persuasive reason” why the Board should review challenged claims several years after their issuance, occurs when, in cases like the present one, the patent has not been asserted in the petitioner’s particular technology space:

There may be persuasive reasons why the Board should review challenged claims several years after their issuance date As another example, a patent may have been in force for years but may not have been commercialized, asserted, marked, licensed, or otherwise applied in a petitioner’s particular

technology space, if at all. These non-exclusive examples provide considerations that weigh against a patent owner's claim of settled expectations and bears on the Director's discretion.

Id. at 2-3.

Here, the Petitioners are American Airlines, Inc. and Southwest Airlines Co. Both Petitioners are airlines. As airlines, Petitioners are not in the business of parallel processing systems and therefore Petitioners are not in the technology space of the '080 patent.

As best understood by Petitioners, the '080 patent, despite having been issued over 15 years ago, has *never* been “commercialized, asserted, marked, licensed, or otherwise applied” in the “airline” technology space until Patent Owner sued Petitioners in November 2024 in district courts in Texas. Petition at 3. Indeed, Patent Owner offers no facts that would show that the '080 patent has been “commercialized, asserted, marked, licensed, or otherwise applied” in the “airline” technology space prior to Patent Owner's district court actions against Petitioners on the '080 patent. Instead, Patent Owner argues that it “negotiates primarily portfolio-wide licenses that license all of its patent rights (including rights under the '080 patent) to each licensee” and therefore “the '080 patent has been continuously and purposefully licensed in the very same technology space that is the subject of the infringement claims pending against Petitioners in the district

courts.” Request at 14-15. Patent Owner has not shown that the ’080 patent has ever been licensed to an *airline*.

The fact that there is no evidence of the ’080 patent ever being “commercialized, asserted, marked, licensed, or otherwise applied” in Petitioners’ technology space—airlines—weighs against Patent Owner’s claim of settled expectations. *See Shenzhen Tuozhu Technology Co., Ltd.*, IPR2-25-00438; IPR2025-00531; IPR2025-00532; IPR2025-00585; and IPR2025-00611, Paper 10 at 3 (Director July 17, 2025) (Petitioner’s evidence that the challenged patents have never been “commercialized, asserted, marked, licensed, or otherwise applied” in Petitioner’s ‘particular technology space’ is evidence that ‘weighs against Patent Owner’s claim of strong settled expectations.’)

Setting aside the fact that Petitioners are airlines, the ’080 patent was licensed by Patent Owner from the University of California for assertion. If there were any settled expectations regarding the ’080 patent, those expectations were that this patent did not read on open-source software as the current Patent Owner, but not the original patent owner (the University of California), asserts.

These facts weigh against discretionary denial.

D. *Fintiv* favors institution.

1. Factor 1 (likelihood of a stay) is neutral.

The relevant inquiry into *Fintiv* Factor 1 is “whether the court granted a stay

or evidence exists that one may be granted if a proceeding is instituted.” *Apple, Inc. v. Fintiv, Inc.*, IPR2020-08019, Paper 15 at 12 (P.T.A.B. May 13, 2020) (informative) (“*Fintiv*”). Here, there is no indication from either court in the Parallel Litigations as to how it would rule on such a stay if a proceeding were instituted. Therefore, this factor does not weigh for or against denial. *Fintiv* at 12; *Sand Revolution II, LLC v. Continental Intermodal Grp.-Trucking LLC*, IPR2019-01393, Paper 24 at 7 (P.T.A.B. June 16, 2020) (informative) (“*Sand Revolution*”).

2. Factor 2 (proximity of the trial date) weighs against discretionary denial because a Final Written Decision will likely predate any trial.

The Board is set to issue its Final Written Decision on the '080 Patent by March 29, 2027. Further, trial is not yet set in either of the Parallel Litigations. Factor 2 accordingly weighs against discretionary denial. *Murata Mfg. Co., Ltd. v. Georgia Tech Research Corp.*, IPR2025-00384, Paper 13 at 2 (Director July 29, 2025).

3. Factor 3 (investment in the parallel proceeding) weighs against discretionary denial because institution would predate substantial investment in the Parallel Litigations.

Fintiv Factor 3 weighs strongly against discretionary denial because, on the likely date of the Board’s institution decision, neither court in the Parallel Litigations is likely to have issued substantive orders related to the '080 Patent, and there will undoubtedly be substantial remaining investment in the merits of the

parties' invalidity positions. *Sand Revolution* at 10.

The likely date of the institution decision (March 29, 2026) predates the date set for the opening *Markman* brief in the American Litigation (set for March 30, 2026). Ex. 1015 at 2. The institution decision is also certain to predate any adjudication in the Parallel Litigations of the '080 Patent's validity or infringement, as trial is not yet set in either of the Parallel Litigations. This IPR is by far the most efficient way to resolve the '080 Patent's validity going forward, so Factor 3 weighs strongly against discretionary denial.

4. Factor 4 (overlap between issues in the petition and parallel proceedings) weighs against discretionary denial because overlap between the proceedings is minimal.

Factor 4 weighs against discretionary denial because the Petition includes materially different arguments and evidence than what will be presented in the Parallel Litigations. *Sand Revolution* at 11-12. Specifically, the Petition addresses substantially more claims than are at issue in the Parallel Litigations, and, pursuant to *Sotera*, Petitioners stipulated not to pursue any grounds in the Parallel Litigations that could have been raised in this proceeding. Petition at 2.

This proceeding would address materially different issues than the Parallel Litigations. In the Parallel Litigations, Patent Owner asserts twelve claims of the '080 Patent (1-6 and 13-18), so Petitioners may only seek review of those twelve claims in that forum. Conversely, Petitioners seek review of all 24 claims of the

'080 Patent in this proceeding, including the claims asserted in the Parallel Litigations. Petition at 1. This weighs against discretionary denial because this proceeding can resolve substantial validity issues that the Parallel Litigations cannot.

Moreover, Petitioners have stipulated to “not pursue in the District Court Litigation any ground raised or that could have been reasonably raised in an IPR,” thereby eliminating any potential overlap between this proceeding and the Parallel Litigations. Petition at 13 (citing *Sotera*). Factor 4 weighs against denial. *Stratasys* at 3.

5. Factor 5 (identity of the parties) is neutral.

When the Petitioners are the same as the named defendants in the district court litigations, the Board has found that this factor adds “little if anything to the discretionary denial analysis.” *Aylo Freesites Ltd. f/k/a MG Freesites Ltd. v. WellcomeMat, LLC*, IPR2024-00710, Paper 13, at *17-18 (P.T.A.B. Sept. 5, 2024). As in *Aylo*, the fact that there is overlap between Petitioners and defendants in the Parallel Litigations adds little to the discretionary denial analysis here, so Factor 5 is neutral. *Id.* at 18.

* * *

Of the five *Fintiv* factors to be considered, Factors 2, 3, and 4 weigh against denial, and Factors 1 and 5 are neutral. The *Fintiv* analysis thus favors institution.

III. CONCLUSION

For the reasons above, Petitioners respectfully ask the Director to institute the Petition.

Dated: December 29, 2025

Respectfully submitted,

McKool SMITH, P.C.
ATTN: John B. Campbell
303 Colorado Street
Suite 2100
Austin, TX 78701
Tel: (512) 692-8730
Fax: (512) 692-8744

By: /s/ John B. Campbell
John B. Campbell
Reg. No. 54,665
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 C.F.R. Sections 42.6 and 42.106, that a complete copy of the attached **PETITIONERS RESPONSE TO REQUEST FOR DISCRETIONARY DENIAL**, including all exhibits (**Nos. 1014-1015**) and related documents, are being served, upon Patent Owner by serving the correspondence address of record with the USPTO as follows:

Brandon Theiss
BTheiss@vklaw.com

Daniel Golub
DGolub@vklaw.com

Ryan O'Donnell
RODonnell@vklaw.com

Dawn Kerner
DKerner@vklaw.com

Russell J. Rigby
rrigby@intven.com

Dated: December 29, 2025

/s/ John B. Campbell

John B. Campbell
Reg. No. 54,665