

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.
Petitioner

v.

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

Case No. IPR2025-01569
U.S. Patent No. 7,894,385

PETITIONER'S OPPOSITION TO
PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL

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PETITIONER'S EXHIBIT LIST

Ex.1001	U.S. 7,894,385
Ex.1002	Prosecution History of U.S. 7,894,385
Ex.1003	Declaration of Christopher Hansen, Ph.D. under 37 C.F.R. § 1.68
Ex.1004	<i>Curriculum Vitae</i> of Christopher Hansen, Ph.D.
Ex.1005	U.S. Patent Publication No. 2006/0215583 to Castagnoli
Ex.1006	U.S. Patent No. 5,982,780 to Bohm et al.
Ex.1007	U.S. Patent Publication No. 2006/0198346 to Liu
Ex.1008	U.S. Patent Publication No. 2002/0136170 to Struhsaker
Ex.1009	U.S. Patent Publication No. 2003/0224750 to Sampath
Ex.1010	U.S. Patent Publication No. 2009/0049199 to Kuik et al.
Ex.1011	IEEE Standard 802.11-1999
Ex.1012	Complaint, <i>Dynamic Mesh Networks, Inc. d/b/a MeshDynamics v. Cisco Systems, Inc.</i> , No. 2:25-cv-00472, Dkt. no. 1 (E.D. Tex. May 5, 2025).
Ex.1013	U.S. Patent No. 5,535,338 to Krause et al.
Ex.1014	A. S. Tanenbaum, <i>Computer Networks</i> , 4 th ed. (Prentice Hall PTR) (selected pages)
Ex.1015	J. Henry, 802.11s Mesh Networking (White paper) (The Certified Wireless Network Professional (CWNP) Program)
Ex.1016	A. S. Tanenbaum, <i>Modern Operating Systems</i> , 2 nd ed. (Prentice Hall PTR) (selected pages)
Ex.1017	Intentionally Omitted
Ex.1018	H. Newton, <i>Newton's Telecom Dictionary</i> , 17 th ed. (CMP Books)
Ex.1019	U.S. Patent No. 5,027,431 to Tanaka et al.
Ex.1020	U.S. Patent No. 6,912,215 to Lin et al.
Ex.1021	U.S. Patent No. 7,333,800 to Gopinath
Ex.1022	U.S. Patent No. 7,630,332 to Elliott

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Ex.1023	U.S. Patent Publication No. 2004/0100929 to Garcia-Luna-Aceves
Ex.1024	U.S. Patent Publication No. 2006/0003764 to Saglam et al.
Ex.1025	U.S. Patent Publication No. 2006/0117174 to Lee
Ex.1026	U.S. Patent Publication No. 2007/0100396 to Freeberg
Ex.1027	U.S. Patent No. 6,807,163 to Shi
Ex.1028	U.S. Patent Publication No. 2006/0114851 to Gupta et al.
Ex.1029	U.S. Patent Publication No. 2005/0058149 to Howe
Ex.1030	U.S. Patent No. 7,058,027 to Alessi
Ex.1031	U.S. Patent Publication No. 2006/0009244 to Schacht
Ex.1032	U.S. Patent Publication No. 2004/0218562 to Orava et al.
Ex.1033	U.S. Patent No. 5,081,623 to Ainscow
Ex.1034	U.S. Patent No. 4,747,100 to Roach et al.
Ex.1035	U.S. Patent No. 4,803,485 to Rypinski
Ex.1036	Infringement Contentions for U.S. Patent No. 7,894,385, <i>Dynamic Mesh Networks, Inc. d/b/a MeshDynamics v. Cisco Systems, Inc.</i> , No. 2:25-cv-00472 (E.D. Tex.).
Ex.1037 (NEW)	<i>Sotera</i> Stipulation
Ex.1038 (NEW)	FCMS N.D. Cal. Case Management Statistics
Ex.1039 (NEW)	FCMS E.D. Tex. Case Management Statistics
Ex.1040 (NEW)	Prosecution History of U.S. 7,420,952
Ex.1041 (NEW)	Transaction History for U.S. Application No. 10/434,948 (issued as '952 Patent)
Ex.1042 (NEW)	InfoWorld, Issue 47, pp. 13-16 "Cisco Gets Hip to Mesh, Large WLANs" (Nov. 21, 2005)

Ex.1043 (NEW)	Disclaimer of U.S. Patent No. 11,368,537 Under 37 CFR 1.321(a), filed on behalf of Dynamic Mesh Networks, Inc. on December 12, 2025
Ex.1044 (NEW)	U.S. Patent No. 8,514,852
Ex.1045 (NEW)	U.S. Patent No. 7,420,952
Ex.1046 (NEW)	U.S. Patent No. 8,477,762
Ex.1047 (NEW)	U.S. Patent No. 8,520,691

I. INTRODUCTION

Petitioner Cisco respectfully requests institution of this IPR. The balance of discretionary considerations weighs strongly in Petitioner's favor: (1) Dynamic Mesh's ("DM") failure to show any efforts to commercialize the challenged patent—U.S. Patent No. 7,894,385 ("’385 patent")—for over a decade after issuance; (2) the Examiner's material error during prosecution; (3) DM's exceedingly broad accusations in the parallel district court litigation; (4) the lack of effort expended in the district court litigation, which is still in early stages; and (5) the strength of the Petition all overwhelmingly favor institution. Conversely, none of the factors DM relies on—primarily settled expectations—counsel in favor of discretionary denial.

First, Cisco—not DM—has stronger settled expectations with respect to the ’385 patent. Besides the ’385 patent's predecessor application being listed in a presentation in 2009, DM has provided no evidence that the ’385 patent was licensed, commercialized, or used in any way until 2022. DM has shown a similar indifference to the other patents asserted against Cisco, including U.S. Patent No. 11,368,537 ("’537 patent"). DM recently filed a statutory disclaimer for the ’537 patent, which will terminate that copending IPR proceeding (IPR2025-01303). The decision to immediately capitulate—rather than even attempt to defend its ’537 patent—demonstrates DM's lack of confidence in its patents and belies any “strong

settled expectations” of validity. *See infra* Section II.

Second, the '385 patent would not have issued but for material examiner error. The Examiner failed to search the prior art for one of the claim limitations that resulted in allowance of the case. The Examiner also erroneously limited the search queries to the claims' specific terminology rather than the underlying concepts. This was a material error in examination, and correcting that error is an efficient and appropriate use of the Office's resources. *See infra* Section III.

Third, the Patent Office is uniquely suited to address the diverse range of subject matter of eight patents asserted across three litigations by DM. The asserted patents span a total of four families, with subject matter ranging from wireless network structure to forward error correction. The Director has repeatedly determined that the PTAB is the most efficient adjudicator of patent validity in such cases. *See infra* Section IV.

Lastly, the *Fintiv* factors overwhelmingly favor institution. The district court proceedings remain at an early stage—so early, in fact, that which district court will ultimately hear the parties' dispute has not been decided. There are parallel proceedings in both the Northern District of California and in the Eastern District of Texas. Because venue remains uncertain, the timing of any district court trial is likewise uncertain. Cisco filed the instant Petition less than five months after receiving an original (now-dismissed) complaint, and six weeks after receiving

DM's refiled complaint. Cisco has provided a *Sotera* stipulation to reduce risk of issue overlap. The Petition's merits are strong, and DM's counterarguments do not identify any specific failure or gap in the Petition's obviousness grounds. *See infra* Section V.

II. SETTLED EXPECTATIONS WEIGH *IN FAVOR* OF INSTITUTION.

Contrary to DM's assertions, Cisco—not DM—possesses the stronger settled expectations relevant to the Director's discretionary analysis. The '385 patent issued more than fourteen years ago, and for over a decade, sat idle with DM's other patents. DM recently disclaimed one of the other patents it asserted against Cisco, despite its claim—just weeks earlier—that it had “strong settled expectations.”

A. Cisco Had Reasonable Expectations of Non-Enforcement: DM Has Shown no Effort to Commercialize, License, or Use the '385 Patent for More Than a Decade After Issuance.

Aside from being listed in a slide deck for an alleged 2009 presentation to Cisco, DM has provided no evidence that it commercialized, licensed, or otherwise used the '385 patent until 2022. DM nevertheless claims that it “continued to commercialize its mesh networks for years.” Paper 6 (“DD Br.”), 7. DM's carefully chosen language notably avoids any reference to commercializing the subject matter *claimed in the '385 patent*, or in any of DM's other asserted patents. Even if DM had alleged commercialization of the '385 patent, that attorney argument would deserve no weight because DM provided no supporting evidence. The only evidence

submitted by DM contains a similarly vague statement: “MeshDynamics remained active in the market for several years after the meeting with Cisco in 2009 and continued commercialize its mesh networking technology.” Ex.2003, ¶5.

From the public’s perspective, the ’385 patent sat dormant in a filing cabinet from its issuance until listing it in a letter to Cisco in 2022. DM’s inaction with respect to the ’385 patent for over a decade created strong settled expectations that the ’385 patent would never be enforced. *See Ford Motor Co. v. Autoconnect Holdings LLC*, IPR2025-01342, Paper 11, 3 (Dir. Dec. 5, 2025) (“**Patent Owner’s own actions, or lack thereof, cut against any settled expectations** that Patent Owner had developed as to at least one of the challenged patents.”)

Meanwhile, for the entire life of the ’385 patent, Cisco was marketing, developing, and improving the products DM now accuses of infringing the ’385 patent. With each year that passed, DM’s lack of demonstrable commercial activity with respect to the ’385 patent strengthened Cisco’s settled expectations of non-enforcement.

DM has shown a similar indifference to preserving the other patents asserted against Cisco. DM let U.S. Patent No. 7,420,952 lapse for two years for failing to pay a maintenance fee, even after receiving multiple reminders and notices from the USPTO. Ex.1040, 1-5; Ex.1041, 1-2. That neglect contradicts DM’s assertions of a continued interest in its patents’ viability—let alone “settled expectations”

concerning them. And mere weeks after alleging that it had “strong settled expectations” for U.S. Patent No. 11,368,537 (“’537 patent”), DM disclaimed the entire term of that patent. IPR2025-01303, Paper 9 at 5; Ex.1043 (Statutory Disclaimer for the ’537 patent). DM’s disclaimer shows that to DM, “strong settled expectations” are empty words to be casually tossed about, and if convenient, cast aside. If DM shows no convictions in its supposed beliefs about patent validity, the Office should not give them weight either. The Petition in this proceeding deserves consideration on its full merits.

Neither of DM’s alleged “notices” weakens Cisco’s settled expectation of non-enforcement. With respect to the 2009 meeting, DM does not allege that it informed Cisco that the ’385 patent potentially covered any of Cisco’s products at that time. *See* DD Br., 5-7. But DM’s infringement contentions list Cisco products that were commercially available well before that meeting occurred. Ex.1036, 1; Ex.1042 (Aironet 1500 series launch in 2005). The only mention of the ’385 patent in DM’s 2022 letter to Cisco was to list it as one of 19 patents assigned to DM. *See* DD Br., 7-8; Ex.2004, 1, Exhibit A. Even if the letter had alleged infringement of the ’385 patent—which it did not—notice would have accrued only three years ago, which does not create settled expectations. *See Padagis US LLC v. Neurelis, Inc.*, IPR2025-00464, Papers 9 & 12 (Dir. July 16, 2025) (finding concerns of material error weighed in favor of institution, despite Patent Owner’s allegation that

Petitioner “almost certainly has known of the patent for years.”).

III. THE '385 PATENT WOULD NOT HAVE ISSUED BUT FOR MATERIAL ERROR COMMITTED DURING EXAMINATION.

The Examiner failed to ever conduct a proper, concept-driven search for the claimed features that resulted in allowance of the '385 patent. The Examiner indicated that the claimed features reciting that “the common current parent node sends **tokens** to each of its children in a **round-robin manner**” were not found in the prior art. Ex.1002, 15, 73. However, the Examiner’s search queries show no attempt to search the prior art for sending “tokens,” or any other terms that embody the same concept. *See* Paper 2, 43 (explaining that a “token” is a well-known “information element” that “confer[s] transmit privileges to a computer on a local area network.”); Ex.1001, 4:25-33. The only search queries directed to the “tokens” element were part of a narrow “Interference” search limited to *claim language* for potential subject matter priority conflicts. Ex.1002, 21.

The Examiner’s search did include queries for the “round-robin manner” element, but those queries were erroneously limited to the specific terminology in the claims, rather than the idea embodied by the term. As explained in the Petition, “round-robin” simply refers to a well-known algorithm in which a radio “scans multiple channels by tuning to each channel, one at a time.” Paper 2, 16. This technique is described in many ways other than “round-robin.” *See* Pet., 16-18

(Material Facts 1-3). However, the Examiner's search queries for this algorithm required not only the terms "round" and "robin," but that those terms were near other specific terms like "buffer," "scanning," and "wireless." Ex.1002, 20-21, 79. Castagnoli, which is the primary prior art reference used in the Petition, would have been excluded from the results of those queries, despite explicitly disclosing use of the "round-robin" technique for scheduling wireless communications, and even using the precise phrase "round-robin." Paper 2, 45; Ex.1005, [0111], [0142].

The Examiner's failure to search for the "token" feature, and the excessively narrow search parameters used for the other claim features resulting in allowance, amount to error that resulted in allowance of the '385 patent's claims. Petitioner requests the Office to institute this IPR to correct the Office's error and assess the patent's validity on the merits of the Petition.

IV. THE PTAB IS THE PREFERRED AND MOST EFFICIENT FORUM TO REVIEW THE INVALIDITY OF THE '385 PATENT.

The PTAB—not a district court—is the best and most efficient forum to adjudicate the validity of the large and complex group of patents asserted by DM. The dispute spans numerous patents from multiple families that cover a diverse range of technologies and is now being litigated across *two* different district courts and *three* unique pending cases, summarized below. Only the PTAB can efficiently ensure uniform, technically informed resolution of these invalidity disputes.

Case No.	Patents At Issue	Status
<i>Dynamic Mesh Networks, Inc. d/b/a MeshDynamics v. Cisco Systems, Inc. et al.</i> , 2-25-cv-00472, (E.D. Tex. May 5, 2025) (“ <i>Dynamic Mesh I</i> ”)	11,368,537 ¹ ; 7,420,952; 7,885,243; 7,894,385; 8,520,691;	DM voluntarily dismissed the case
<i>Dynamic Mesh Networks, Inc. d/b/a MeshDynamics v. Cisco Systems, Inc. et al.</i> , 2-25-cv-00606, (E.D. Tex. June 6, 2025) (“ <i>Dynamic Mesh II</i> ”)	8,477,762; 9,049,000; 8,514,852	DM voluntarily dismissed the case
<i>Cisco Systems Inc. v. Dynamic Mesh Networks, Inc. d/b/a MeshDynamics et al.</i> , 5-25-cv-06441, (N.D. Cal. July 31, 2025) (“ <i>Dynamic Mesh III</i> ”)	11,368,537; 7,420,952; 7,885,243; 7,894,385; 8,477,762; 8,514,852; 8,520,691; 9,049,000	Case Management Conference set for January 13, 2026. Hearing on Motion to Dismiss set for January 14, 2026.
<i>Dynamic Mesh Networks, Inc. d/b/a MeshDynamics v. Cisco Systems, Inc. et al.</i> , 2-25-cv-00781, (E.D. Tex. Aug. 12, 2025) (“ <i>Dynamic Mesh IV</i> ”)	11,368,537; 7,420,952; 7,885,243; 7,894,385; 8,520,691;	Jury Selection scheduled for March 15, 2027. Awaiting decision on Motion to Transfer, or in the Alternative, Stay Pursuant to the First-to-File Rule.
<i>Dynamic Mesh Networks, Inc. d/b/a MeshDynamics v. Cisco Systems, Inc. et al.</i> , 2-25-cv-00783, (E.D. Tex. Aug. 12, 2025) (“ <i>Dynamic Mesh V</i> ”)	8,477,762; 9,049,000; 8,514,852	Consolidated with <i>Dynamic Mesh IV</i> for pretrial issues.

¹ The '537 Patent was disclaimed by DM on December 12. Ex.1043.

More specifically, DM's assertions span *eight* patents from *four* patent families encompassing a wide range of technologies—for example, from distributed control of wireless networks (U.S. 7,420,952, Ex.1045), real time network packet transforms (U.S. 8,514,852, Ex.1044), mobility extensions for wireless multiple radio mesh (U.S. 7,894,385, Ex.1001), self-forming VOIP networks (U.S. 8,477,762, Ex.1046), to persistent mesh for isolated networking (U.S. 8,520,691, Ex.1047). “The large number and wide scope of the patents asserted in the district court litigation weighs against discretionary denial, as the Board is better suited to review a large number of patents involving diverse subject matter.” *Samsung v. Wilus Inst.*, IPR2025-00933, Paper 11, 3 (Dir. Oct. 10, 2025); *see also Shenzhen Tuozhu Tech. Co. v. Stratasys, Inc.*, IPR2025-00438, Paper 10, 3 (Dir. July 17, 2025) (referring petition to the Board where the “parallel district court proceeding involve[d] nine different patents spanning six families that involve[d] a diverse range of subject matter.”). And the Office's unique ability to effectively address broad, diverse assertions overcomes any of DM's alleged expectations. *See Am. Airlines Inc. v. Intellectual Ventures I LLC*, IPR2025-00785, Paper 11, 3 (Dir. Aug. 29, 2025) (finding “large number and wide scope of the patents asserted in the district court litigation weighs against discretionary denial” even though challenged patents were in effect for 14 and 18 years).

Moreover, as shown above, each of the asserted patents is at issue in two

separate district court cases. *See supra Dynamic Mesh III, IV, and V*. Accordingly, there is a real risk of conflicting validity results should those cases move forward independently; institution here, by triggering Cisco's *Sotera* stipulation, would rectify that problem. *See Harbor Freight Tools USA Inc. v. Champion Power Equip., Inc.*, IPR2025-00805, Paper 20, 2 (Dir. Sept. 19, 2025) ("Because the litigation between the parties would proceed to several district court trials in different jurisdictions, resolving the dispute between the parties at the Office would be more efficient."); *see also CMHK Ltd.*, 2 (referring decision to the Board when challenged patents were involved in multiple co-pending litigations).

Thus, contrary to DM's allegations (DD Br., 11-12), the PTAB is the more efficient and appropriate forum to resolve invalidity issues arising from the sprawling and overlapping district court actions.

V. THE FINTIV FACTORS FAVOR INSTITUTION.

As explained further below, all six *Fintiv* factors weigh in favor of institution, because the Final Written Decision in this IPR will likely issue before any trials in the district court proceedings.

A. Fintiv Factor 1 Slightly Favors Institution: Stays in the District Court Cases Are Likely Once Institution Is Granted.

Factor 1 slightly favors institution because, contrary to DM's allegations, stays in the district court cases are likely once institution is granted.

Contrary to DM’s assertions (DD Br., 11–12), the absence of a stay motion to date reflects only that the district court cases are still in nascent stages, not that a stay would be denied on the merits. In fact, courts in both districts routinely grant stays in analogous circumstances, particularly when multiple asserted patents are challenged before the PTAB.

For example, the courts in N.D. Cal. have repeatedly stayed entire cases even where only some of the asserted patents were under review. *See Finjan, Inc. v. FireEye, Inc.*, 2014 WL 2465267, *4 (N.D. Cal. June 2, 2014) (“When there are overlapping issues between the reexamined patents and other non-reexamined patents-in-suit, courts have found that staying the entire case is warranted.”); *see also PersonalWeb Techs., LLC v. Apple Inc.*, 69 F. Supp. 3d 1022, 1028 (N.D. Cal. 2014) (granting stay of entire case when only 15 of 34 claims at issue were challenged in IPR).

Similarly, the courts in E.D. Tex. have also stayed cases when all asserted patents are subject to IPR—as in *Dynamic Mesh IV* where substantial portions of discovery remained, and a *Markman* hearing had not yet been held. *See, e.g., Cobblestone Wireless v. Cisco Sys., Inc.*, No. 2:23-cv-00454-JRG-RSP, 2024 WL 5047854, at *2 (E.D. Tex. Dec. 9, 2024) (granting stay motion where “case ha[d] been pending for nearly 10 months, with many documents produced and interrogatories answered,” but “large parts of discovery and many other important

deadlines were still left”); *Vill. Green Techs. v. Samsung*, No. 2:22-cv-00099-JRG, 2023 WL 416419, at *3 (E.D. Tex. Jan. 25, 2023) (granting stay motion where “the close of discovery, the claim construction hearing, and the trial setting” remained). Here, the likelihood of a stay is even greater. In *Dynamic Mesh IV*—in which the ’385 patent is asserted—DM itself has acknowledged that a stay is appropriate in the alternative to a transfer: “The current actions at most *should be stayed* and not transferred.” *Dynamic Mesh IV*, Dkt. 34 at 15 (E.D. Tex. Oct. 28, 2025).

B. Fintiv Factor 2 Favors Institution: Only Texas Has a Trial Date and the Final Written Decision Will Likely Issue First.

Factor 2 favors institution. The Board’s Final Written Decision is expected by April 2, 2027. DD Br., 14. The E.D. Tex. Court has currently set trial in *Dynamic Mesh IV* and *V* to begin on March 15, 2027. Thus, a Texas trial would likely occur (at the earliest) around the same time the Final Written Decision is expected, assuming no extensions are sought. However, the latest judicial statistics show that the median time-to-trial in E.D. Tex. is 25.1 months. Ex.1039. That gives *Dynamic Mesh IV* and *Dynamic Mesh V* an expected trial date of September 12, 2027—more than *five months after* the Final Written Decision.

DM confidently predicts that the March 2027 trial date “will *not* change,” and that the median time-to-trial statistics for E.D. Tex. should be ignored. DD Br., 14 (emphasis in original). This is so, DM argues, because DM asked the district court

to reinstate the original trial date of February 26, 2027, and the district court scheduled the trial for a different, but still “early” trial date of March 15, 2027. DM does not explain why this fact would make scheduling changes unlikely. DD Br., 14. Indeed, the district court always retains control over its docket and schedule; it can and will adjust trial dates as needed to accommodate its other obligations.

DM also predicts that *Dynamic Mesh III* in N.D. Cal. will “likely” go to trial before the FWD will issue. DD Br., 14. But the N.D. Cal. Court has not even held a scheduling conference. In N.D. Cal., the median time to trial is 37.6 months, yielding an expected trial date of August 31, 2028—nearly 17 months after the projected Final Written Decision. Ex.1038. As DM concedes, Judge Wise typically schedules trial 12-20 months after the initial case management conference, which itself has already been postponed. DD Br., 14. Even under DM’s own timeline, any trial would occur up to five months after the Board’s decision.

That two district court cases are currently pending presents additional uncertainty with respect to any trial date. DM notes that it is “inefficient to maintain two parallel proceedings.” Paper 7, 1 (*citing Shenzen Tuozhu Tech. Co. v. Stratasys, Inc.*, IPR2025-00354, Paper 11, 2 (PTAB June 12, 2025)). It is for that reason that the parties are actively litigating which district court should hear the dispute and whether the E.D. Tex. action should be dismissed or transferred to N.D. Cal. If the E.D. Tex. court dismisses or transfers *Dynamic Mesh IV*, its scheduling order would

become irrelevant. In any event, median time-to-trial statistics for both courts strongly suggest that a trial will not occur until several months after the expected Final Written Decision.

C. Fintiv Factor 3 Strongly Favors Institution: The Parties and Court Have Minimal Investment in The Parallel Proceedings and Cisco Filed Expeditiously.

Fintiv Factor 3 weighs strongly against discretionary denial. Both the N.D. Cal. and E.D. Tex. cases are in their earliest stages, and Cisco filed this Petition promptly after DM's initial complaint.

As described above, neither the parties nor the courts have made any meaningful investment in *Dynamic Mesh III*, *IV*, or *V*. As of this filing, discovery has barely begun—DM has made only a single limited document production; no third-party subpoenas have been served; and no depositions have been noticed or taken. Although DM has served preliminary infringement contentions, Cisco has not yet served invalidity contentions, and the court has not addressed any substantive issues related to the patents-in-suit. In fact, *Dynamic Mesh III* does not even have a scheduling order, and in *Dynamic Mesh IV* and *V*, the Markman hearing is set for September 29, 2026, well after this case's institution decision is due in February 2026.

These facts stand in sharp contrast to the record in *International Business Machines Corp. v. Digital Doors, Inc.*, IPR2023-00968, Paper 7 at 10–11 (PTAB

Dec. 1, 2023), cited by DM, where over 11,000 pages of contentions had been exchanged, multiple depositions completed, and several discovery rounds concluded. Here, there has been no comparable effort or investment.

Where investment in parallel litigation is minimal, as here, the Office has regularly denied discretionary denial requests. *See Cambridge Indus. USA, Inc. v. Applied Optoelectronics, Inc.*, IPR2025-00434, Paper 11, 2 (Dir. June 26, 2025) (referring decision to Board where no trial date was set and Markman was vacated); *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11, 10 (PTAB Mar. 20, 2020).

Cisco's expeditious filing of the Petition further weighs against denial. DM filed its initial (now-dismissed) complaint in *Dynamic Mesh I* on May 5, 2025, and Cisco filed the instant Petition in less than five months, on September 23, 2025. Paper 2. The Office has found similar filing intervals to demonstrate diligence. *Samsung Elecs. Co. v. Mullen Indus. LLC*, IPR2024-01472, Paper 9, 10 (PTAB Mar. 31, 2025) ("Petitioner's diligence in filing its Petition (a) less than five months after receiving Patent Owner's infringement contentions and (b) prior to the parties briefing claim construction issues weighs against exercising discretionary denial.").

D. Fintiv Factor 4 Slightly Favors Institution: Petitioner's Sotera Stipulation Reduces the Risk of Overlap and Duplicative Efforts.

Factor 4 weighs against discretionary denial because Cisco made a *Sotera* stipulation (Ex.1037) to DM, reducing both overlap and duplicative efforts between

the IPR and the district court proceedings. Such stipulations favor institution because they “mitigate concerns of duplicative efforts between the district court and the Board, as well as concerns of potentially conflicting decisions.” *HP Inc. v. Universal Connectivity Tech., Inc.*, IPR2024-01428, Paper 12, 8 (PTAB Apr. 8, 2025); *Nikon Corp. v. Optimum Imaging Techs., LLC*, IPR2024-01373, Paper 17, 23 (PTAB Apr. 23, 2025). This factor weighs in Cisco’s favor particularly given the strength of the Petition’s merits. *MediaTek Inc. v. Daedalus Prime LLC*, IPR2025-00100, Paper 10, 34 (PTAB May 19, 2025) (“The particularly strong merits of Petitioner’s case and the *Sotera* stipulation ... lead us to conclude that the trial date and other factors favoring denial are outweighed.”).

In the related IPR proceeding for U.S. Patent No. 7,885,243, DM cited two PTAB decisions denying institution of IPR Petitions in which *Sotera* stipulations were filed. IPR2025-01304, Paper 8 at 13. Neither of those decisions supports denial. In *Cisco Systems, Inc. v. Estech Systems, Inc.*, IPR2021-00333, Paper 12 at 6, 13 (PTAB July 7, 2021), the Office found that the *Sotera* stipulation was outweighed only because two district court trials were scheduled eleven and seven months before the expected Final Written Decision. Here, by contrast, the Final Written Decision is reasonably expected before any district court trial, and discovery has scarcely begun. Similarly, in *Motorola Solutions v. Stellar, LLC*, IPR2024-01205, Paper 11 at 11 (PTAB Feb. 13, 2025), the Office denied institution only after the district court

had already appointed a technical advisor, conducted a Markman hearing, and ruled on sixteen claim terms—none of which has occurred here.

Finally, DM’s arguments regarding the availability of *ex parte* reexamination (EPR) are unavailing. DD Br., 16-17. In *Apotex Inc. v. Alkermes Pharma Ireland Ltd.*, the Director denied institution of an IPR because an EPR of the same patent *was already pending*. IPR2025-00514, Paper 10, 2 (Dir. July 2, 2025). No such co-pending proceeding exists here.

E. *Fintiv* Factor 5 Favors Institution: Any District Court Trial Will Likely Occur After the Final Written Decision.

“[F]actor 5 generally follows factor 2, such that this factor ‘favors denial if trial precedes the Board’s Final Written Decision and favors institution if the opposite is true.’” *Nikon*, IPR2024-01374, Paper 19, 23–24. As discussed in Section V.B, the district court cases remain in their earliest stages, and the timing of any trial date in the two copending cases is uncertain. Accordingly, like Factor 2, Factor 5 weighs in favor of institution.

DM’s citation to *Comcast Cable Communications, LLC v. Entropic Communications, LLC*, IPR2025-00183, Paper 11, 2-3 (Dir. June 25, 2025), is inapposite. In *Comcast*, the Board had already denied two earlier petitions related to a patent with similar claims on the merits, and the district court defendant had filed a notice disclaiming any intent to be bound by IPR estoppel—significantly limiting

the potential for simplification. *See* IPR2025-00183, Ex.2015. Here, by contrast, no prior IPRs have been filed, Cisco is the sole petitioner, and Cisco has made a *Sotera* stipulation. Adjudicating invalidity on IPR-eligible prior art in this forum will simplify the district court proceedings and avoid potential inconsistencies.

F. *Fintiv* Factor 6 Favors Institution: The Merits and Other Circumstances Favor Institution.

Factor 6 weighs firmly in favor of institution. The Petition presents strong merits, addresses clear material error during prosecution, and was filed diligently.

Cisco's Petition presents compelling grounds for review. Cisco's Grounds rely on Castagnoli and Liu, which were not before the Examiner. Paper 2. Moreover, the Examiner's search strategy was demonstrably deficient and failed to conduct a proper search for the features that resulted in allowance of the claims.

None of DM's arguments addressing the merits allege any failure of the Petition to demonstrate the obviousness of any claim limitation. DM's only arguments addressing the Petition's analysis of the claims are vague accusations that the primary reference *alone* does not explicitly disclose various claim features. DD Br., 19. DM's remaining arguments merely allege that the Petition cites references related to the background knowledge of a POSITA and that the Petition includes too many cites to the expert Declaration. DD Br., 19-20. These arguments do not identify

any specific weakness in the Petition's obviousness grounds with respect to any claim limitation.

Evaluating DM's merits arguments is for the Board to evaluate at trial, once they have been sufficiently briefed. DM's inability to identify any overt weaknesses in the Petition counsels strongly in favor of institution.

VI. CONCLUSION

For the foregoing reasons, Cisco requests institution of this *inter partes* review.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on January 2, 2026, a complete copy of the foregoing **Petitioner's Opposition to Patent Owner's Discretionary Denial Brief and corresponding exhibits** were served on counsel of record for the Patent Owner by filing the documents through P-TACTS and by sending via electronic mail to the following addresses:

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