

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
Petitioner,

v.

QOMPLX LLC,
Patent Owner.

IPR2026-00182
Patent 12,218,934

**PETITIONER'S OPPOSITION TO
PATENT OWNER'S DISCRETIONARY DENIAL BRIEF**

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EXHIBIT LIST

LIST OF NEWLY-FILED EXHIBITS

Exhibits concurrently filed with Petitioner's Opposition To Patent Owner's

Discretionary Denial Brief:

No.	Description
1068	<i>Microsoft Entra Expands Into Security Service Edge and Azure AD Becomes Microsoft Entra ID</i> , Microsoft, available at https://www.microsoft.com/en-us/security/blog/2023/07/11/microsoft-entra-expands-into-security-service-edge-and-azure-ad-becomes-microsoft-entra-id/
1069	United States District Courts Judicial Caseload Profile (excerpt)
1070	Judge Alan D. Albright Time to Trial, Docket Navigator (last visited Apr. 6, 2026)
1071	N/A
1072	Return of Service (ECF No. 11), <i>Qomplx LLC v. Microsoft Corporation</i> , 1:25-cv-01383-ADA (W.D. Tex. Sept. 8, 2025)
1073	<i>Annual Report 2025</i> , Microsoft, available at https://www.microsoft.com/investor/reports/ar25/index.html#
1074	N/A
1075	N/A
1076	President Trump's Cyber Strategy for America (March 2026)
1077	<i>Qomplx</i> website capture (March 26, 2026), available at: https://www.qomplx.com/
1078	<i>Department of Defense Announces Joint Warfighting Cloud Capability Procurement</i> , U.S. Dept. of Defense (Dec. 7, 2022), available at: https://www.war.gov/News/Releases/Release/Article/3239378/department-of-defense-announces-joint-warfighting-cloud-capability-procurement/

No.	Description
1079	<i>Microsoft Digital Defense Report 2024 – The Foundations and New Frontiers of Cybersecurity</i> , Microsoft (2024), available at: https://cdn-dynmedia-1.microsoft.com/is/content/microsoftcorp/microsoft/final/en-us/microsoft-brand/documents/Microsoft%20Digital%20Defense%20Report%202024%20%281%29.pdf
1080	<i>Microsoft Announces \$3.3 Billion Investment in Wisconsin to Spur Artificial Intelligence Innovation and Economic Growth</i> , Microsoft (May 10, 2024), available at: https://news.microsoft.com/source/2024/05/08/microsoft-announces-3-3-billion-investment-in-wisconsin-to-spur-artificial-intelligence-innovation-and-economic-growth/
1081	<i>Microsoft Makes New \$4B Data Center Investment in Wisconsin, Government Technology</i> (Sept. 24, 2025), available at: https://www.govtech.com/biz/microsoft-makes-new-4b-data-center-investment-in-wisconsin
1082	<i>Made in Wisconsin: The World’s Most Powerful AI Datacenter</i> , Microsoft (Sept. 18, 2025), available at: https://blogs.microsoft.com/on-the-issues/2025/09/18/made-in-wisconsin-the-worlds-most-powerful-ai-datacenter/
1083	<i>Microsoft Digital Defense Report 2025 – Lighting the path to a secure future</i> , Microsoft (2025), available at: https://cdn-dynmedia-1.microsoft.com/is/content/microsoftcorp/microsoft/msc/documents/presentations/CSR/Microsoft-Digital-Defense-Report-2025.pdf
1084	Plaintiff Qomplx’s Preliminary Infringement Contentions <i>Qomplx LLC v. Microsoft Corporation</i> , 1:25-cv-01383-ADA (W.D. Tex. Nov. 24, 2025)
1085	Exhibit A to Qomplx’s Preliminary Infringement Contentions (424 patent)
1086	Exhibit B to Qomplx’s Preliminary Infringement Contentions (934 patent)

No.	Description
1087	Exhibit C to Qomplx's Preliminary Infringement Contentions (426 patent)
1088	Exhibit D to Qomplx's Preliminary Infringement Contentions (627 patent)
1089	Exhibit E to Qomplx's Preliminary Infringement Contentions (627 patent)
1090	Exhibit F to Qomplx's Preliminary Infringement Contentions (627 patent)
1091	Exhibit G to Qomplx's Preliminary Infringement Contentions (628 patent)
1092	Exhibit H to Qomplx's Preliminary Infringement Contentions (628 patent)
1093	Exhibit I to Qomplx's Preliminary Infringement Contentions (663 patent)

LIST OF PREVIOUSLY FILED EXHIBITS

No.	Description
1001	U.S. Patent No. 12,218,934 (“’934 patent”)
1002	File History of U.S. Patent No. 12,218,934
1003	Declaration of Dr. John Black, dated December 29, 2025
1004	U.S. Patent No. 10,063,654 (“Kirti”)
1005	David Coffin, <i>Expert Oracle and Java Security: Programming Secure Oracle Database Applications with Java</i> , Apress (2011) (“Coffin”)
1006	U.S. Patent No. 8,572,391 (“Golan”)
1007	U.S. Patent No. 7,979,899 (“Guo”)
1008	International Publication No. WO 2015/109947 (“Zhang”)
1009	U.S. Patent No. 8,312,540 (“Kahn”)
1010	U.S. Patent No. 10,021,108 (“Mankovskii”)
1011	U.S. Patent No. 7,908,645 (“Varghese”)
1012	U.S. Patent Application Pub. No. 2007/0079135 (“Saito”)
1013	N/A
1014	U.S. Patent No. 9,237,143 (“Dotan”)
1015	U.S. Patent No. 9,148,424 (“Yang”)
1016	U.S. Patent No. 9,319,419 (“Sprague”)
1017	U.S. Patent Application Pub. No. 2008/0249947 (“Potter”)

No.	Description
1018	International Pub. No. WO 2015/158874 (“Enqvist”)
1019	U.S. Patent No. 5,774,525 (“Kanevsky”)
1020	Olli Jarva, <i>Intelligent Two-Factor Authentication: Deciding Authentication Requirements Using Historical Context Data</i> , Aalto Univ. (May 13, 2014)
1021	U.S. Patent No. 9,298,890 (“Bajenov”)
1022	Affidavit of Mina Ching dated October 14, 2025 (“Azure Wayback”)
1023	U.S. Patent No. 9,955,349 (“McClintock”)
1024	U.S. Patent No. 11,184,766 (“Lord”)
1025	U.S. Patent No. 11,184,392 (“Thomas”)
1026	U.S. Patent No. 9,160,726 (“Kaufman”)
1027	U.S. Patent No. 9,122,866 (“Kolman”)
1028	U.S. Patent Application Pub. No. 2003/0115142 (“Brickell”)
1029	U.S. Patent Application Pub. No. 2014/0208419 (“Chang”)
1030	U.S. Patent Application Pub. No. 2018/0189470 (“Kim”)
1031	U.S. Patent Application Pub. No. 2014/0289833 (“Briceno”)
1032	U.S. Patent Application Pub. No. 2016/0191512 (“Tatourian”)
1033	U.S. Patent Application Pub. No. 2015/0150090 (“Carroll”)
1034	U.S. Patent Application Pub. No. 2017/0063896 (“Muddu”)
1035	U.S. Patent No. 10,432,605 (“Lester”)

No.	Description
1036	U.S. Patent Application Pub. No. 2010/0211996 (“McGeehan”)
1037	U.S. Patent No. 9,779,236 (“Abrams”)
1038	U.S. Patent No. 9,639,678 (“Moore”)
1039	U.S. Patent No. 9,648,034 (“Bailey”)
1040	U.S. Patent Application Pub. No. 2018/0027006 (“Zimmermann”)
1041	Shammi Ishara Hewamadduma, <i>Detection and Prevention of Possible Unauthorized Login Attempts Through Stolen Credentials from a Phishing Attack in an Online Banking System</i> , IEEE Int’l Conf. on Rsch. and Innovation in Info. Sys., at 13-18 (ICRIIS 2017) (“Hewamadduma”)
1042	U.S. Patent No. 8,266,682 (“Lee”)
1043	U.S. Patent No. 9,397,996 (“Roskind”)
1044	Affidavit of Mina Ching dated November 14, 2025 (“Phone Factor + Oracle Wayback”)
1045	Rajkumar Buyya, et al., <i>Cloud Computing Principles and Paradigms</i> , Wiley (2011) (“Buyya NPL”)
1046	U.S. Patent No. 9,448,852 (“Vemulapalli”)
1047	Ilia Pietri and Rizos Sakellariou, <i>Mapping Virtual Machines onto Physical Machines in Cloud Computing: A Survey</i> , ACM Computing Surveys, Vol. 49, No. 3, Article 49 (Oct. 2016) (“Pietri”)
1048	Declaration of Ingrid Hsieh-Yee dated December 16, 2025
1049	Affidavit of Mina Ching dated November 14, 2025 (“Coffin Wayback”)

No.	Description
1050	Lucas Jellema, <i>Just Launched: The Oracle Identity Cloud Service – for Authentication and Authorization Across the Cloud and on Premises</i> , AMIS Tech. Blog (Nov. 2, 2016), available at: https://technology.amis.nl/platform/just-launched-the-oracle-identity-cloud-service-for-authentication-and-authorization-across-the-cloud-and-on-premises/
1051	John Ribeiro, <i>Oracle Will Acquire Cloud Security Vendor Palerra</i> , FoundryCo, Inc. (Sep. 18, 2016), available at: https://www.networkworld.com/article/955458/oracle-will-acquire-cloud-security-vendor-palerra-2.html
1052	Sarah Kuranda, <i>Oracle Acquires Cloud Access Security Brokerage Startup Palerra</i> , The Channel Co. (Sep. 19, 2016), available at: https://www.crn.com/news/security/300082128/oracle-acquires-cloud-access-security-brokerage-startup-palerra
1053	<i>Hiding in Plain Sight: How a Cloud Access Security Broker With Built-In User Behavior Analytics Unmasks Insider Threats in the Cloud</i> , Oracle (Jan. 2017)
1054	Ganesh Kirti, <i>Dealing With Dropbox: Unmasking Hackers With User Behavior Analytics</i> , Cloud Sec. Alliance (Sep. 7, 2016), available at: https://cloudsecurityalliance.org/blog/2016/09/07/dealing-dropbox-unmasking-hackers-user-behavior-analytics
1055	Mitch Wagner, <i>Oracle Buys Palerra to Boost Cloud Security</i> , Informa TechTarget (Sep. 18, 2016), available at: https://www.lightreading.com/security/oracle-buys-palerra-to-boost-cloud-security
1056	N/A
1057	Complaint, <i>Qomplx LLC v. Microsoft Corp.</i> , Case No. 1:25-cv-01383-ADA (W.D. Tex.) (Aug. 8, 2025)

No.	Description
1058	Affidavit of Mina Ching dated December 12, 2025 (“2016 White Paper”)
1059	U.S. Patent No. 10,742,647 (“Crabtree 647”)
1060	Guohui Wang and T.S. Eugene Ng, <i>The Impact of Virtualization on Network Performance of Amazon EC2 Data Center</i> , IEEE INFOCOM 2010, at 1163-1171 (Mar. 2010) (“Wang NPL”)
1061	U.S. Patent Application Pub. No. 2011/0314558 (“Song”)
1062	U.S. Patent No. 11,218,474 (“Crabtree 474”)
1063	U.S. Patent Application Pub. No. 2015/0319185 (“Kirti App.”)
1064	N/A
1065	Patent Comparison Chart
1066	Affidavit of Mina Ching dated December 24, 2025 (“APress-Coffin”)
1067	Email from Erik Fuehrer, et al. dated January 15, 2026, regarding <i>Qomplx LLC v. Microsoft Corporation</i> , Case No. 1:25-cv-01383-ADA (“ Sotera Plus Stipulation ”)

I. INTRODUCTION

The Director should not discretionarily deny institution. The '934 patent issued less than a year before the Petition was filed and the challenged claims saw little scrutiny during original prosecution, which lasted just five months. The Examiner did not consider Kirti, which alone renders all claims obvious, and this IPR would allow the Office to rectify the Examiner's error early in the '934 patent's life, making it precisely the kind of challenge that the Office should encourage.

This is one of six IPRs that together challenge all asserted claims of six patents asserted against Petitioner Microsoft in parallel litigation. *See* IPR2026-00183, -00184, -00298, -00325, -00326. Five of the six patents are less than two years old and the sixth is less than four years old. These six patents span diverse and complex subject matter, making the Board the best venue to resolve the parties' prior art unpatentability disputes. The PTAB is also the *only forum* for many challenged '934 patent claims because the Petition challenges more claims than are currently asserted in district court and considerably more than will ever reach a final verdict in the district court case. Thus, instituting these IPRs will minimize the chances that the challenged claims will be re-litigated in the future.

Finally, the *Fintiv* factors strongly weigh against discretionary denial. The risk of duplicative efforts or conflicting outcomes with the district court is low because (1) trial in the district court will likely not occur until months after the final written

decision (FWD), (2) Microsoft filed a *Tesla*-style *Sotera* plus stipulation that eliminates any potential overlap, and (3) Judge Albright will likely stay the district court litigation if all six IPRs are instituted. Moreover, the district court case is in its early stages, with expert discovery not set to begin until January 2027, and Microsoft filed the Petition promptly, roughly a month before serving invalidity contentions.

Thus, the Director should deny Patent Owner's request for discretionary denial and refer the Petition for consideration on the merits. IPR will allow the Office to evaluate—early in the '934 patent's life—previously unconsidered, highly-relevant prior art and correct material errors made during original examination. And IPRs on all six asserted patents will help to efficiently resolve the parties' disputes, minimizing future litigation over these young and wrongly issued patents.

II. STATEMENT OF FACTS

On August 28, 2025, Qomplx filed suit against Microsoft in the Western District of Texas, alleging infringement of six patents by at least seven different accused technologies. EX1057 (Complaint). The asserted patents implicate complex and diverse subject matter including virtual appliances, streaming data analysis, multi-dimensional databases, distributed computational graphs, transformation pipelines, multi-factor authentication, brute force attack detection, anomalous access detection, and attack path identification. *E.g.*, EX1057, ¶¶ 27-35, 62-68, 94-100,

126-133, 162-169, 196-203. The case has been assigned to Judge Albright. *See* EX2003, 6.

The '934 patent is asserted against technology first released at least as early as August 2023. EX1068; EX1057, ¶ 71; EX1068, 1-2.

The '934 patent issued February 4, 2025, from an application filed September 13, 2024. EX1001, 1. Each of the other five asserted patents issued less than four years ago. *E.g.*, EX1057, ¶¶ 23, 90, 122, 158, 192.

Plaintiff served preliminary infringement contentions on November 24, 2025 (EX1084), identifying claims 1, 2, 4, 5, 9, 11, 12, 14, 15, 18, 20, 21, 24, 26, 28, and 29 as the asserted claims. EX1086. Microsoft served preliminary invalidity contentions on January 26, 2026. EX2003, 1-2. Final infringement and invalidity contentions are currently due July 20, 2026. *Id.*, 3. A *Markman* hearing is scheduled for June 1, 2026. *Id.* Fact discovery opens June 2, 2026, and closes December 14, 2026. *Id.*, 3-4. Expert discovery opens January 18, 2027, and closes March 15, 2027. *Id.*, 4.

On December 30, 2025, Microsoft filed its Petition challenging all claims of the '934 patent. Paper 3 at 1. Microsoft has since filed IPR petitions challenging all asserted claims of the other five asserted patents. *See* IPR2026-00183, -00184, -00298, -00325, -00326.

On January 15, 2026, Microsoft made a *Tesla*-style *Sotera*-plus stipulation to not assert certain invalidity defenses in district court should the Board institute IPR and not subsequently vacate institution. EX1067. The stipulated defenses include any ground that reasonably could have been raised in this IPR and “any ground asserting a combination of system prior art with any reference asserted as part of a ground raised in [this IPR].” EX1067.

This IPR has an institution decision deadline of July 8, 2026, and a projected FWD deadline of July 8, 2027. Paper 3.

Judge Albright has set a district court trial date of June 21, 2027. EX2003, 6. Median time-to-trial statistics from uscourts.gov, however, suggest a trial date of roughly August 28, 2027. EX1069. Statistics from Docket Navigator for the past two years indicate a 34-month median time-to-trial for Judge Albright, which would put trial at roughly June 28, 2028. EX1070.

III. ARGUMENT

Discretionary denial is not appropriate based on a holistic evaluation of the *Fintiv* and other discretionary factors.

A. The Recent Issuance Of The '934 Patent Weighs Against Discretionary Denial

Discretionary denial is inappropriate at least because the '934 patent issued less than eleven months before the Petition was filed. EX1001, 1; Paper 3 at 1. Early

challenges like this “favor robust, predictable patent rights and weigh against discretionary denial.” *Ascentcare Dental Products, Inc. v. Solmetex, LLC*, IPR2025-01104, Paper 11 at 2 (Acting Director Oct. 17, 2025). Consistently, Patent Owner does not allege settled expectations.

Moreover, Microsoft’s accused technology (Entra ID) predates the ’934 patent. EX1084, 8; EX1057, ¶ 71; EX1068, 1-2. Entra was initially released no later than May 2022, and at that time, included Azure AD. EX1068, 1-2. Azure AD was then rebranded in July 2023 to Microsoft Entra ID. *Id.* The application leading to the ’934 patent, however, was not even filed until September 2024. EX1001, 1. While the ’934 patent alleges priority to numerous applications dating back to 2015 (EX1001, 1-2, 1:4-2:9) and Qomplx alleges entitlement to a priority date of October 19, 2017 (EX1084, 8), Microsoft has not been accused of infringing any patent that issued off any of these earlier applications. This further weighs against discretionary denial because it would be objectively reasonable not to expect assertion of a patent that issued years after the accused technology was developed and released.

B. IPR Should Be Instituted To Correct Examiner Error

Patent Owner does not dispute that the Examiner erred in failing to uncover Kirti and in issuing the challenged claims without a single prior art rejection, as explained in the Petition. Paper 2 at 2, 14-15. As explained in the Petition, prosecution lasted just five months, with no prior art rejections and only a limited

prior art search that omitted crucial search terms such as “anomalous” and “brute force,” and failed to uncover relevant prior art, including the Kirti reference that alone renders all 30 challenged claims obvious. *Id.*; *see also* EX1002, 186-267, 281-282. Under such circumstances, discretionary denial is inappropriate. *See e.g., Microsoft Corp. v. ParTec AG*, IPR2025-00318, Paper 9 at 2-4 (Acting Director Jun. 12, 2025) (finding it was an appropriate use of Office resources to review the potential error even where the district court trial date preceded the FWD); *Padagis US LLC v. Neurelis, Inc.*, IPR2025-00466, Paper 12 at 2-3 (Acting Director Jul. 16, 2025) (denying request for discretionary denial at least in part because of material error during prosecution despite a district court trial date preceding the FWD deadline by seven months).

Had the Examiner properly searched the prior art, Kirti should have been uncovered because it expressly discloses detecting “anomalous behavior” relative to “baseline user profiles over various periods of time,” using historic user login data. EX1004, 14:5-7, 24:33-50; Paper 2 at 38-41. Kirti also expressly discloses detecting brute force access requests. EX1004, 15:49-59; Paper 2 at 46.

Although the Examiner searched for “additional” near “verification” (*e.g.*, EX1002, 263), the Examiner did not search for “two-factor authentication.” *Id.*, 186-267, 274-275. Had he done so, he might have uncovered prior art Coffin, which has an entire chapter on the subject. EX1005, 177.

**C. The Complex And Diverse District Court
Litigation Further Weighs Against Discretionary Denial**

Discretionary denial is inappropriate because the district court litigation involves six patents spanning diverse and complex subject matter, non-overlapping inventors, and at least seven accused products. *Supra* pp. 2-3; *see Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00217, Paper 9 at 2-3 (Acting Director Jun. 13, 2025) (informative) (finding that the “complex and diverse [district court] litigation” involving “eleven patents spanning nine different families that involve a diverse range of subject matter” “tip[ped] the balance against discretionary denial.”); *Shenzhen Tuozhu Tech. Co. v. Stratasy, Inc.*, IPR2025-00438, Paper 10 at 3 (Acting Director Jul. 17, 2025) (fact that district court litigation involved nine patents spanning six families involving a diverse range of subject matter weighed against discretionary denial); *Samsung Elecs. Co. v. Wilus Inst. of Standards and Tech. Inc.*, IPR2025-00933, Paper 11 at 3 (Deputy Director Oct. 10, 2025) (finding that the parallel district court proceeding’s twelve patents spanning eight families with a diverse range of subject matter weighed against discretionary denial).

Microsoft has challenged all six patents asserted in district court: U.S. Patent Nos. 12,218,934 (IPR2026-00182), 11,539,663 (IPR2026-00183), 12,231,426 (IPR2026-00184), 12,143,424 (IPR2026-00298), 12,301,627 (IPR2026-00325), and 12,301,628 (IPR2026-00326). *See* EX1057 at 2 (Qomplx’s complaint); EX1084

(Qomplx's preliminary infringement contentions). The challenged patents cover diverse subject matter, including multi-factor authentication ('934 and '426 patents), data ingestion using a midserver ('663 patent), data processing using computational graphs ('424 patent), and cybersecurity attack path and threat detection analysis ('627 and '628 patents). EX1001; EX1057, ¶¶ 27-35, 62-68, 94-100, 126-133, 162-169, 196-203. This diverse subject matter is reflected in four different groups of named inventors, as well as the fact that Patent Owner accuses at least seven different accused products. EXS1084-1093.

D. The *Fintiv* Factors Weigh Against Discretionary Denial

No *Fintiv* factor favors discretionary denial, and most weigh against denial.

1. Factor 1 (Stay) Weighs Against Denial Or Is Neutral

If all six IPRs are instituted, Factor 1 will weigh against denial because Judge Albright is likely to grant a motion to stay¹ in such circumstances. *See, e.g., ParkerVision, Inc. v. NXP Semiconductors N.V.*, No. W-23-CV-00389-ADA, ECF No. 110 (W.D. Tex. May 27, 2025) (Judge Albright granting motion to stay even though fact discovery was set to close in approximately one month because IPRs had been instituted on all asserted claims and would therefore simplify the case if

¹ In accordance with standard practice before Judge Albright, Microsoft plans to file a motion to stay once the Board issues institution decisions.

successful in invalidating the asserted claims); *Lone Star SCM Sys., Ltd. v. Zebra Techs. Corp.*, No. 6:21-cv-00842-ADA, ECF No. 85 (W.D. Tex. Jul. 31, 2023) (Judge Albright granting motion to stay because, based on the PTAB’s institution decision, it was likely that all asserted claims would be invalidated); *Sonrai Memory Ltd. v. Western Digital Techs., Inc.*, No. 6:21-cv-01168-ADA, ECF No. 104 (W.D. Tex. Aug. 4, 2022) (Judge Albright granting motion to stay despite the “advanced stage” (*id.*, at 8) of the district court action because, based on the PTAB’s institution decisions, it was likely that all asserted claims of all asserted patents would be invalidated).

At worst, this factor is neutral since the Board “will not attempt to predict how the district court in the related district court litigation will proceed.” *Sand Revolution II, LLC v. Cont’l Intermodal Group-Trucking LLC*, IPR2019-01393, Paper 24 at 7 (PTAB Jun. 16, 2020) (informative) (finding Factor 1 to be neutral where Petitioner had not yet filed a motion to stay in the district court proceeding).

**2. Factor 2 (Trial Date) Weighs
Against Denial Because Statistics Suggest
Trial Will Occur After The Final Written Decision**

Factor 2 weighs against discretionary denial because statistics indicate the district court trial will occur up to eleven months after issuance of the final written decision (FWD). *See, e.g., Volkswagen Grp. of Am. Inc. v. Longhorn Auto Grp. LLC*, IPR2025-01064, Paper 9 at 2 (Acting Director Oct. 10, 2025) (finding Factor 2

neutral where district court scheduled trial date was over four months before FWD deadline but where median time-to-trial statistics suggested trial would begin weeks after the FWD).

Here, Judge Albright's tentative trial date (June 21, 2027) precedes the FWD deadline (July 8, 2027) by less than three weeks. EX2003; Paper 3. The most recent U.S. Courts' median time-to-trial statistics, however, put trial in late August 2027—nearly two months after the FWD deadline. EX1069 (median time-to-trial = 24.0 months). Docket Navigator statistics for Judge Albright's last two years put trial even later, in June 2028—eleven months after the FWD deadline. EX1070 (median time to trial = 34 months).²

**3. Factor 3 (Investment) Weighs Against Denial
Because Microsoft Filed Its Petitions Quickly And
The District Court Litigation Is In Its Early Stages**

Factor 3 weighs against discretionary denial at least because, by the institution decision deadline of July 8, 2026, there will have been minimal investment in the district court litigation. Although the district court will have held a *Markman* hearing, by that date the parties will not have served final contentions, fact discovery will have just opened, with five months remaining until closure on December 14,

² Patent Owner cites Judge Albright statistics dating back to January 2021 (EX2022), which do not accurately reflect recent time-to-trial trends.

2026, and initial expert reports will not be due for another six months, on January 18, 2027. EX2003, 3-4.

Under these circumstances, Factor 3 weighs against denial. *See, e.g., SAP Am., Inc. v. Cyandia, Inc.*, IPR2024-01432, Paper 14 at 8-9 (PTAB Apr. 7, 2025) (finding factor 3 favored institution even after *Markman* briefing was complete and where expert discovery was set to close only two months after the institution decision deadline); *Samsung Display Co., v. Pictiva Displays Int’l Ltd.*, IPR2024-01222, Paper 12 at 7 (PTAB Mar. 6, 2025) (Finding factor 3 weighed against denial, even though a *Markman* hearing had been held, in part because “much remain[ed] to be done, including expert discovery.”).

Patent Owner’s cited cases are inapposite. In one, fact discovery was about half-completed at the time of the institution decision. *NXP USA, Inc. v. Redstone Logics LLC*, IPR2025-00485, Paper 7 at 4, 9 (PTAB May 12, 2025). In another, the parties had already conducted over seven months of fact discovery. *AMD, Inc. v. Concurrent Ventures, LLC*, IPR2025-00223, Paper 9 at 2 (PTAB June 12, 2025). In the third case cited by Patent Owner, the parties had already served expert reports and conducted depositions. *Motorola Sols., Inc. v. Stellar, LLC*, IPR2024-01205, Paper 19 at 3 (PTAB Mar. 28, 2025). Here, fact discovery opens just before the institution decision deadline and expert discovery will not open until six months after institution. EX2003, 3-4.

Microsoft's diligence further weighs against discretionary denial, as it filed the Petition roughly one month before serving preliminary invalidity contentions and over eight months before the one-year statutory deadline. *Samsung v. Pictiva Displays Int'l Ltd.*, IPR2024-01222, Paper 12 at 7 (PTAB Mar. 6, 2025) ("diligence in filing ... approximately 7 months before the one-year statutory deadline weighs against discretionary denial."); *Applied Materials, Inc. v. Ocean Semiconductor LLC*, IPR2021-01344, Paper 17 at 26 (PTAB Feb. 9, 2022) (weighing Factor 3 slightly against discretionary denial at least in part because of "Petitioner's diligence in filing the Petition before any of the invalidity contentions deadlines"). The Complaint was served September 4, 2025, and Microsoft filed the Petition less than four months later, on December 30, 2025, and then served preliminary invalidity contentions on January 26, 2026. EX1072; Paper 3 at 1; EX2004, 148.

4. Factor 4 (Overlap) Weighs Against Denial Because Microsoft's Sotera Plus Stipulation Prevents Overlap And Because Many Claims Are At Issue Only Before The Board

Microsoft's *Sotera* plus stipulation (EX1067) is of the type found by the Acting Director to be "broad" and to "counsel against discretionary denial." *See Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00217, Paper 9 at 2 (Acting Director Jun. 13, 2025) (finding Petitioner's stipulation (EX1067) to be "broad" and to "counsel against discretionary denial."); *see also id.*, EX1067 (Tesla stipulation).

As in *Tesla*, Microsoft’s stipulation would maintain IPR as a true alternative to district court by effectively barring any printed publication prior art defenses and system prior art defenses involving the same publications that form the IPR’s grounds. This stipulation eliminates possible overlap and thus avoids the “two bites at the apple” argued by Patent Owner. Confirming this, Patent Owner has not identified any overlap that would remain given Microsoft’s stipulation. *See* Paper 9 at 8-12. Patent Owner cites the *Cyandia* decision denying institution but—unlike here—that case involved a petition that presented grounds that relied on publications describing the same IBM prior art system relied on in a district court defense. *SAP Am., Inc. v. Cyandia, Inc.*, IPR2024-01496, Paper 13 at 8-9 (PTAB Apr. 7, 2025).

Patent Owner’s suggestion that petitioners must forfeit all prior art invalidity defenses in district court ignores existing Office practice, which imposes no such requirement, and would leave Microsoft with nowhere to raise its system art defenses. *See* 35 U.S.C. § 311(b). Patent Owner also faults Microsoft because its preliminary invalidity contentions identify publications (not relied on in this IPR) to evidence prior art Microsoft systems. Paper 9 at 9-10. But this ignores that final invalidity contentions are not due until July 20, 2026, and may include non-publication evidence, such as source code, the prior art systems themselves, and deposition testimony, none of which could be used as part of an IPR ground.

Stipulation aside, fourteen of the thirty challenged claims are not asserted in district court and thus IPR would resolve substantial issues that the district court will not. *Compare* Paper 2 at 3 with EX1086 (asserting claims 1, 2, 4, 5, 9, 11, 12, 14, 15, 18, 20, 21, 24, 26, 28, and 29); *see Apple Inc. v. Seven Networks, LLC*, IPR2020-00156, Paper 10 at 17 (PTAB Jun. 15, 2020) (weighing Factor 4 against discretionary denial because only four of twelve challenged claims were asserted in district court).

Further, looking at all six asserted patents, only a fraction of the 98 challenged claims³ will ever be tried since Judge Albright typically allows no more than ten claims to go to trial. *E.g., Quartz Auto Techs. LLC v. Lyft, Inc.*, No. 1:20-cv-00719-ADA, ECF No. 343 (W.D. Tex. Mar. 5, 2026) (5 claims tried); *Katana Silicon Techns. LLC v. GlobalFoundries, Inc.*, No. 1:22-cv-00852-ADA, ECF No. 318 (W.D. Tex. July 18, 2025) (3 claims tried); *WSOU Invs., LLC v. Cisco Sys., Inc.*, No. 6:21-cv-00128-ADA, ECF No. 281 (W.D. Tex. Feb. 12, 2025) (3 claims tried).

³ Across the six IPRs, Microsoft challenges 98 total claims, 37 of which are unasserted in district court. EXS1084-1093; Paper 2 at 3; IPR2026-00184, Paper 2 at 3; IPR2026-00183, Paper 2 at 2-3; IPR2026-00298, Paper 2 at 2-3; IPR2026-00325, Paper 2 at 2-3; IPR2026-00326, Paper 2 at 2.

Thus, at best, the district court litigation might resolve the validity of just a small fraction of the challenged claims. This further reduces any concerns of overlap with the district court, further weighing Factor 4 against denial.

Further, because the IPRs challenge so many of the patents' claims (e.g., this IPR challenges every claim of the '934 patent), instituting IPR would provide a comprehensive early review of these recently issued patents and minimize the need to re-litigate the patents' validity in the future.

**5. Factor 5 (Same Party) Weighs Against Denial,
As The Projected Trial Date Falls After The Projected FWD**

As explained above for Factor 2, median time-to-trial statistics suggest a trial date nearly two months after the projected FWD deadline of July 8, 2027. *Supra* Section III.D.2. Under these circumstances, Factor 5 weighs against discretionary denial, even though the parties here are the same as in district court. *See, e.g., Samsung Elecs. Co. v. Staton Techiya, LLC*, IPR2022-00302, Paper 13 at 18-19 (PTAB Jul. 11, 2022) (Finding factor 5 weighed against discretionary denial despite same parties, because the Board's "statutory deadline falls before the Court's expected trial date based on the most recent median time-to-trial statistics.").

6. Factor 6 Weighs Against Discretionary Denial

The additional factors discussed above in Sections III.A-C all weigh against discretionary denial. In addition, the merits of the Petition are strong. A single prior art reference (Kirti) renders the challenged claims obvious, and the addition of the

Coffin reference further reinforces the claims' obviousness by providing implementation details on multifactor authentication that were well known in the art. Paper 2 at 16-72. The claimed concepts were also well known in the art, as evidenced by the plethora of background references cited by the Petition and Microsoft's expert, further demonstrating the strength of the Petition's obviousness grounds. Paper 2 at 5-10; EX1003, ¶¶ 37-50. Patent Owner's discretionary denial request does not assert otherwise.

Though Patent Owner alleges "substantial" success (Paper 9 at 15-16), all indications are that it is a failed company with no product offerings. Dr. Sellers is no longer with the company (Paper 9 at 14), Patent Owner's website does not advertise any products or services (EX1077), and there is no indication that Qomplx has many or any employees. Patent Owner's cited exhibits allegedly showing success (EXS2013-2015) are stale (from 2021 or earlier). Only one of these exhibits suggests any revenue but that exhibit supposedly comes from an unverified third party website and, even if taken at face value, suggests that QOMPLX had no net income. EX2013, 3 ("QOMPLX did not mention EBITDA or net income in [] its list of financial metrics.") (parenthetical omitted). Patent Owner has not alleged any secondary considerations of nonobviousness, either in district court or elsewhere.

Microsoft, on the other hand, is a preeminent American technology company that invests heavily in U.S. jobs and infrastructure, including an estimated more than

\$7 billion in Wisconsin-based data centers between 2024 and 2028. EX1073, 6, 27 (approximately 55% of Microsoft’s workforce and 62% of its long-lived assets are based in the US); EX1078, 1; EX1079, 6-7; EX1080, 1 (Microsoft’s \$3.3 billion investment in a state-of-the-art data center campus in Mount Pleasant, Wisconsin “is expected to bring an influx of 2,300 union construction jobs” and be a “watershed moment for Wisconsin.”); EX1081, 1 (Microsoft planning to spend an additional \$4 billion between 2025 and 2028 to build a second data center near the existing facility in Mount Pleasant); EX1082, 1 (same); EX1083, 6-7. It is also a leading innovator in cybersecurity that protects America’s national security interests. Microsoft systems protect our nation from many unique threat groups, including foreign state actors from China, Russia, and North Korea. EX1079, 6-7, 12-13, 15-16; EX1083, 6-7, 39-40, 44-48. Microsoft has assigned over 34,000 full-time engineers to security initiatives, and is one of only four companies awarded the Department of Defense’s Joint Warfighting Cloud Capability (JWCC) contract. EX1078, 1; EX1079, 6; EX1083, 6.

Subjecting Microsoft to an expensive district court litigation based on invalid patents from a defunct company only stifles innovation and hinders America’s ability to stay ahead of foreign rivals in the rapidly developing cybersecurity arms race. EX1076, 5 (explaining how President Trump’s cyber strategy involves working with the private sector to sustain superiority in critical and emerging cybersecurity

technologies). Instead, Microsoft seeks to resolve Patent Owner's meritless lawsuit in a more efficient manner at the PTAB, in line with the purpose of the IPR statute.

IV. CONCLUSION

The Director should deny Patent Owner's request for discretionary denial and refer this IPR for consideration on the merits. IPR on this young, barely-examined patent would allow the Office to correct the Examiner's material errors early in the '934 patent's life. And since the petition challenges all 30 claims, IPR would resolve many issues not at play in the district court (where only 16 claims are asserted). More broadly, institution of IPR on all six asserted patents would likely lead to a stay of the district court case before expenditure of significant resources. The Board is better suited than a jury to review the unpatentability of the patents' varied and complex subject matter. Final written decisions on these patents would greatly simplify, if not eliminate the need for, the district court litigation. Overall, IPR on the '934 patent—and the other five asserted patents—will provide a more efficient and cost-effective resolution to the parties' disputes.

Respectfully submitted,

Dated: April 8, 2026

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CERTIFICATE OF SERVICE
IN COMPLIANCE WITH 37 C.F.R. § 42.6(e)(4)

The undersigned certifies that on April 8, 2026, the **PETITIONER'S OPPOSITION TO PATENT OWNER'S DISCRETIONARY DENIAL BRIEF** and **EXHIBITS 1068-1070, 1072-1073, and 1076-1093** were served on counsel for Patent Owner via electronic mail as follows:

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