

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
Petitioner,

v.

SANDPIPER CDN, LLC,
Patent Owner.

IPR2026-00190

Patent No. 9,456,053

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

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EXHIBIT LIST

No.	Exhibit
1001	U.S. Patent No. 9,456,053 (“’053 patent”)
1002	File History of U.S. Application 13/714,410 (“’053 File History”)
1003	Declaration of Mr. Mark Lanning
1004	Curriculum Vitae of Mr. Mark Lanning
1005	U.S. Patent 7,010,578 (“Lewin”)
1006	U.S. Patent 7,240,100 (“Wein”)
1007	U.S. Publication 2010/0257258 (“Liu”)
1008	U.S. Publication 2007/0156845 (“Devanneaux”)
1009	Erik Nygren, et al., <i>The Akamai Network: A Platform for High-Performance Internet Applications</i> , 2010 (“Nygren”)
1010	U.S. Publication 20100274819 (“Lewin819”)
1011	International Application Publication WO 001/13456 (“Crosbie”)
1012	U.S. Publication 2002/0065899 (“Smith”)
1013	U.S. Publication 2011/0082982 (“Harvell”)
1014	U.S. Patent 8,180,720 (“Kovacs”)
1015	U.S. Publication 2013/0103556 (“Lyon”)
1016	U.S. Patent 7,127,713 (“Davis”)
1017	Jennifer Mears, <i>Buyout ends Akamai, Speedera feud</i> (“Mears”), March 21, 2005 (“Mears”)
1018	U.S. Patent 6,343,236 (“Gibson”)
1019	U.S. Publication 2002/0129363A1 (“McGuire”)

1020	<i>HTTP, The Definitive Guide</i> by David Gourley, et al. (“ <i>Gourley</i> ”)
1021	<i>Globally Distributed Content Delivery</i> by John Dilley, et al. (“ <i>Dilley</i> ”)
1022	<i>Content Delivery Networks</i> by Rajkumar Buyya, et al. (“ <i>Buyya</i> ”)
1023	U.S. Patent 7,024,466 (“ <i>Outten</i> ”)
1024	<i>Caching and Prefetching for Web Content Distribution</i> by Jianliang Xu, et al. (“ <i>Xu</i> ”)
1025	U.S. Publication 2006/0015574 (“ <i>Seed</i> ”)
1026	U.S. Publication 2002/0004824 (“ <i>Cuan</i> ”)
1027	U.S. Publication 2001/0017707 (“ <i>Lee</i> ”)
1028	U.S. Publication 2007/0118617 (“ <i>Lee617</i> ”)
1029	U.S. Patent 7,340,510 (“ <i>Liskov</i> ”)
1030	U.S. Publication 2004/0221019 (“ <i>Swildens</i> ”)
1031	U.S. Publication 2004/0133629 (“ <i>Reynolds</i> ”)
1032	U.S. Publication 2006/0230104 (“ <i>Winter</i> ”)
1033	Declaration of June Munford (“ <i>Munford Declaration</i> ”)
1034	<i>Sandpiper CDN, LLC v. Microsoft Corp.</i> , No. 2:25-cv-00664 (E.D. Tex.), Docket
1035	Stipulation letter, dated January 22, 2026
1036	Patent Assignment Cover Sheet from Level 3 Communications, LLC to Sandpiper CDN, LLC, Reel No. 068256, Frames 0091-115
1037	Order, <i>Sandpiper CDN, LLC v. Comcast Cable Commc’ns, LLC</i> , No. 2:24-cv-00886 (E.D. Tex. Apr. 2, 2026), ECF No. 132
1038	Exemplary Search Results from https://ppubs.uspto.gov/pubwebapp/
1039	Bibliographic Data Sheet for U.S. App. No. 19/030,497
1040	U.S. Publication 2025/0310417 (“ <i>Lipstone</i> ”)

1041	<i>Sandpiper CDN, LLC v. Google LLC</i> , No. 2:24-cv-03951, Dkt. 1 (C.D. Cal.)
1042	<i>Sandpiper CDN, LLC v. Google LLC</i> , No. 2:24-cv-03951, Dkt. 28 (C.D. Cal.)
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1044	<i>Sandpiper CDN, LLC v. Google LLC</i> , No. 2:24-cv-03951, Dkt. 93 (C.D. Cal.)
1045	<i>Sandpiper CDN, LLC v. Comcast Cable Commc'ns LLC</i> , No. 2:24-cv-00886, Dkt. 1 (E.D. Tex.)
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1056	Docket Navigator, Sandpiper CDN, Cases Search
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I. INTRODUCTION

The Office should reach the merits of this IPR challenging U.S. Patent No. 9,456,053 (“’053 patent,” EX1001). First, this IPR is an important use of Office resources because it will allow the Office to correct a material error in issuing the challenged claims, overriding any settled expectations Sandpiper CDN, LLC (“PO”) claims to have. Second, this IPR is also an important use of Office resources both because the Office is best positioned to review the 8 PO patents on which either Google or Microsoft has requested IPR and because a FWD of unpatentability would estop PO from obtaining patentably indistinct claims in a pending application—also overriding PO’s alleged settled expectations. Third, the *Fintiv* factors weigh against denial.

II. BACKGROUND

A. Sandpiper CDN, LLC

PO is a Delaware entity incorporated in 2024 for the apparent purpose of acquiring the ’053 patent and other patents from Level 3 Communications, LLC. EX1061 (incorporation in March 2024); EX1036 (May 2024 assignment). PO alleges that a “predecessor” developed the content-delivery network technology described in the ’053 patent. Paper 6, 2 (“DD”). However, given that PO did not exist until 2024, it has no connection to the technology, apart from its recent purchase of patents including the ’053 patent years after it issued.

B. The Google, Comcast, and Microsoft Litigations

Shortly after PO began acquiring Level 3 patents, it initiated a litigation campaign. On May 10, 2024, PO sued Google in the Central District of California. EX1041. In the Google litigation, PO currently alleges infringement of 5 patents.¹ The Google litigation is stayed pending instituted IPRs. EX1044. On November 1, 2024, nearly 6 months after PO filed the Google litigation, PO sued Comcast in the Eastern District of Texas. EX1045. PO alleges infringement of 4 patents.² The Comcast litigation is currently stayed until May 4, 2026 pending settlement. EX1037.

On June 26, 2025, nearly 8 months after filing the Comcast case and more than a year after filing the Google case, PO sued Microsoft in the Eastern District of Texas. EX1047. Complicating the litigations further, PO alleges infringement of 6 patents, only 2 of which overlap with the earlier cases (U.S. 8,478,903 (“’903 patent”) asserted against Google/Comcast and U.S. 9,762,692 (“’692 patent”) asserted against Comcast). EX1047-48.

¹ PO’s complaint alleged infringement of 6 patents. EX1041. The district court determined 2 of those patents are invalid under §101. EX1042, 11, 15-16. PO amended its complaint to assert an additional patent. EX1043.

² PO asserted 5 patents and dropped 1 patent. EX1045-46.

C. Google and Microsoft IPRs

Google has filed IPRs challenging all 5 patents currently asserted against it, all of which have been instituted³: IPR2025-00806 (U.S. 8,645,517 (“’517 patent”)); IPR2025-00826 (U.S. 9,021,112 (“’112 patent”)); IPR2025-00860 (U.S. 10,924,573 (“’573 patent”)); IPR2025-00969 (’903 patent); and IPR2025-01010 (U.S. 10,057,322 (“’322 patent”)). EX1049-55. Microsoft filed IPRs challenging 4 patents asserted against it in late 2025, including this IPR, IPR2026-00095 (’903 patent; requesting joinder with IPR2025-00969), IPR2026-00180 (U.S. 10,701,173 (“’173 patent”)), and IPR2026-00174 (’692 patent)). The Office declined PO’s request for discretionary denial in IPR2026-00095. IPR2026-00095, Paper 13. The institution decisions are due in May through July 2026.

III. THE OFFICE SHOULD REJECT PO’S DISCRETIONARY REQUEST

A. This IPR Will Allow the Office to Correct a Material Error During Prosecution

This IPR challenges, *inter alia*, independent claims 1 and 27, based on two primary grounds: (1) U.S. 7,010,578 (“Lewin”) and U.S. 7,240,100 (“Wein”); and (2) U.S. 2010/0257258 (“Liu”) and U.S. 2007/0156845 (“Devanneaux”). Paper 1,

³ The Office discretionarily denied IPRs as to the 2 previously asserted patents determined invalid under §101. *Google LLC v. Sandpiper CDN, LLC*, IPR2025-00846, -00952, Paper 10 (Oct. 10, 2025).

2-3. There is no dispute under *Advanced Bionics* prong 1 that, besides Wein, these references were before the Examiner.

However, under *Advanced Bionics* prong 2, the Office committed material error in allowing the challenged claims to issue for two reasons. First, in advancing a rejection based on Lewin, the Examiner mis-mapped Lewin’s teachings to the claims, and thus allowed the Applicant to make a trivial amendment to overcome the rejection. The rejection should have been retained under a proper mapping. Second, the Examiner failed to assert a combination of Liu and Devanneaux, which together taught every element of the claims but were buried among two-dozen Information Disclosure Statements.

1. ’053 Patent Prosecution History

During prosecution, the Examiner rejected claims 1 and 27 as being anticipated by Lewin (EX1002, 530-31, 536 (non-final office action)), a reference that described ways for third parties to supplement a content delivery network (“CDN”) with their own cache servers (Lewin, Abstract). Claims 1 and 27 both required a cache server that obtains “customer configuration information associated with [at least one/a particular] customer of the CDN.” EX1002, 90, 94-95 (claims).

To meet this limitation, the Examiner relied upon Lewin’s teachings that a third-party “cache obtains content from the CDN” by obtaining an “object” (e.g., content) “and then return[ing] it to the requesting client.” Lewin, 7:7-8, 7:24-28;

EX1002, 530-31, 536 (citing Lewin, 7:24-28). The Examiner thus relied on an exchange with a “*client*” to meet the claimed “*customer* configuration information.”

In response, the Applicant amended the claims to clarify the distinction between CDN clients and customers: that “the CDN serv[es] resources *on behalf of one or more customers* of the CDN,” and the CDN cache servers provide those resources “to *a client*.” EX1002, 592, 597 (emphasis added). Thus, the Examiner could not rely on an exchange with a *client* to meet “*customer* configuration information,” and “[t]he Examiner agreed that these features are not shown in Lewin.” EX1002, 603. As explained below, however, the Examiner failed to appreciate that Lewin actually disclosed the claimed “customer configuration information” when the “customer” is understood to be a CDN content owner, as required by the amended claim.

During examination, the Applicant also submitted twenty-four separate Information Disclosure Statements collectively listing hundreds of patents, applications, office actions, and search reports. EX1002, 163, 197-200, 210, 221, 232-33, 333, 393, 401, 409, 418, 426, 434, 442, 457-58, 507, 515, 568-69, 580, 618, 657-66, 692, 731-32, 764, 804. The Examiner marked each as considered. EX1002, 542-61, 567-69, 636-38, 648, 708-18, 754-55, 796, 826. Buried among those disclosures included Liu (EX1002, 567) and Devanneaux (EX1002, 708), neither of which were applied by the Examiner against the claims.

2. The Examiner's Material Error During Prosecution Overrides Any Settled Expectations PO Claims to Have

The prosecution history demonstrates the Office committed material error in allowing challenged claims 1 and 27 for two independent reasons.

First, the Office materially erred by mis-mapping Lewin's teachings to the claims, pointing to an exchange between a cache server and "clients" (e.g., end users who request access to content stored in the CDN) to meet the claimed "*customer* configuration information," rather than any exchange between the cache server and CDN "customers" (e.g., content owners who store and serve their content through the CDN). In other words, the Examiner pointed to teachings regarding end-user "customers" (i.e. clients) as opposed to teachings regarding content-owner "customers." This enabled the Applicant to make a trivial change to the claims—clarifying that the CDN serves resources on behalf of CDN customers and provides those resources to clients—to overcome the rejection, despite Lewin elsewhere teaching "customer configuration information" under the proper understanding that a "customer" is a content owner.

As the Petition explains (Petition, 17-20), in other parts of Lewin not cited by the Office, Lewin describes two sources of configuration information distinct from the client-based exchange the Examiner relied on: (1) third parties who add their own cache server to a CDN can configure those third-party caches—and thus, when the third party is a CDN customer, those configurations are "customer configuration

information” as claimed (Lewin, 3:53-56, 4:8-26); and (2) alternate-resource locators (ARLs)—a term of art referring to content identifiers that incorporate additional control information about how a CDN should handle specific content *from a specific customer* (Lewin, 3:19-23; *see also id.*, 6:15-24).

Lewin recognized that it did not describe in detail what an ARL is (and instead incorporated U.S. 6,108,703 to provide additional details (Lewin, 6:15-24)), which should have motivated the Office to look elsewhere to understand Lewin’s disclosure of ARLs. And a simple search of the USPTO databases for “alternate resource locator,” before the priority date of the ’053 patent (Dec. 14, 2011), would have returned just six results, three of those being Lewin (U.S. 7,010,578), the reference Lewin incorporated (U.S. 6,108,703), *and Wein* (U.S. 7,240,100). EX1038, 1. The Petition uses Wein to explain how Lewin’s ARLs constitute “customer configuration information.” Petition, 18, 20. The Examiner’s failure to appreciate Lewin’s other disclosures of the claimed configuration information constitutes material error. *See, e.g., Eunsung Glob. Corp. v. HydraFacial LLC*, IPR2025-00445 et al., Paper 14, 2-3 (July 10, 2025) (referring petition where petitioner demonstrated the examiner “overlooked certain teachings” in a cited reference).

Second, the Office’s failure to advance a rejection based on Liu and Devanneaux constitutes further error. Under the second part of *Advanced Bionics*, a

petitioner “may point to the fact that even though the asserted prior art is listed on an IDS, the Examiner did not issue any prior art rejections during examination, so the Examiner materially erred by overlooking certain teachings in the prior art on the IDS.” *Ecto World, LLC v. RAI Strategic Holdings, Inc.*, IPR2024-01280, Paper 13, 5-6 (May 19, 2025) (precedential); *see also Rode Microphones, LLC v. Zaxcom, Inc.*, IPR2025-00232, Paper 14, 16-17 (June 16, 2025).

Despite being inundated with prior art through twenty-four separate IDSs, the Office should have homed in on Liu and Devanneaux regardless. Because allowance turned on whether the prior art taught “customer configuration information,” the Office at a minimum should have examined references specifically directed to this feature. The Office *never ran a search looking for “customer configuration”-related teachings*, and often restricted text searches to narrow combinations or exact claim text. EX1002, 565-66, 642-43, 719-20, 747-48, 802-03, 829. But a simple USPTO database search for “customer configuration information” or “customer configuration files”—in the context of “content delivery” networks—would have returned just thirteen results before the priority date of the ’053 patent, one of those again being Wein and another being Devanneaux. EX1038, 2.

Devanneaux, however, does not expressly discuss some of the higher-level architecture of the CDN recited in the claims, and thus another reference should have been identified to serve as the foundation, even if it did not teach the specific

customer-configuration information like Wein and Devanneaux do. On this point, a PCT search report was before the Office that identified Liu as a general background reference (an “A” reference). EX1002, 166. At a minimum, that warranted a look at Liu. *Cf. Axioma Metering UAB v. Kamstrup A/S*, IPR2019-01640, Paper 32 at 5, 18 (Apr. 1, 2021) (finding claims unpatentable using a prior-art reference identified as an “A” reference in the PCT search report).

These material errors support reaching the merits of this IPR. *See, e.g., Eunsung*, IPR2025-00445 et al., Paper 14, 2-3; *Anthony Inc. v. Controltec LLC*, IPR2025-00559 et al., Paper 12, 2 (July 16, 2025) (referring petitions challenging patents in force 17 and 18 years based on material error).

**B. The Office’s Institution of IPRs Regarding Other PO Patents
Makes the Office a More Efficient Forum to Address
Unpatentability**

The large number of patents at issue in litigation further demonstrates that this IPR is an important use of Office resources. PO currently asserts 10 unique patents in the Google and Microsoft litigations. *See* EX1043; EX1047-48; EX1056. Google and Microsoft have filed 9 IPRs (including this one) challenging 8 of those patents, and the Office has instituted all 5 Google IPRs regarding patents currently asserted against it. §II.C. The Office declined PO’s request for discretionary denial in Microsoft’s IPR2026-00095, which requests joinder with Google’s IPR2025-00969. *Id.* The discretionary denial decisions remain pending in the other 3 Microsoft IPRs

(including this one), and institution decisions remain pending in all 4 Microsoft IPRs. The Board's investment demonstrates that it is in a better position than the district courts to address the unpatentability of this large number of patents consistently and efficiently. *See, e.g., Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00217 et al., Paper 9, 2-3 (June 13, 2025) (informative); *Shenzen Tuozhu Tech. Co. v. Stratasy, Inc.*, IPR2025-00438 et al., Paper 10, 3 (July 17, 2025).

C. A FWD of Unpatentability Would Estop PO From Obtaining Patentably Indistinct Claims in a Pending Application

Discretionarily denying this IPR may result in the Office issuing yet another patent in error. PO has filed an application claiming priority to the '053 application that remains pending. EX1039 (application data for US 19/030,497); EX1040, (63) (stating that it claims priority to App. 13/714,410, which is the '053 application). If the challenged claims are held unpatentable, PO would be estopped from obtaining patentably indistinct claims, thus avoiding the need to relitigate invalidity. 37 C.F.R. §42.73(d)(3)(i); *SoftView LLC v. Apple Inc.*, 108 F.4th 1366 (Fed. Cir. 2024).

D. The Office Should Reject PO's "Settled Expectations" Arguments

PO argues that it has settled expectations in the '053 patent because (1) it has been in force over 9 years; and (2) Microsoft was allegedly aware of it because of Microsoft's business relationships with a prior owner. DD, 10-11. To start, any alleged PO "settled expectations" based on patent age are outweighed by material error during prosecution and the efficiencies gained by the Office considering the

unpatentability of PO's patents. *See* §§III.A-III.C. As to efficiency, the Office has thus far declined to discretionarily deny and instituted Google's IPRs challenging 5 of PO's patents, including the '322 patent, which—like the '053 patent—has been in force more than 6 years. EX1049-55; IPR2025-01010, EX1001 (showing that '322 patent issued in 2018).

Even setting that aside, PO's "settled expectations" arguments are weak. PO fails to acknowledge that it could not have developed "settled expectations" based on events alleged to have occurred before 2024 because PO did not exist before 2024 and has no relationship with the original "Sandpiper" or the prior owner, Level 3. In addition, PO's allegations regarding Microsoft's prior knowledge based on business relationships also fail because they are based solely on PO's complaint allegations—not evidence. DD, 10-11 (citing EX2005). The complaint allegations are also facially deficient because they do not identify facts demonstrating Microsoft was aware of the '053 patent before PO's 2025 complaint, let alone that PO (or prior owner Level 3) ever discussed the '053 patent with Microsoft. EX1057, 3; EX1058, 2-4. PO also fails to acknowledge that, even if it could plausibly allege that Microsoft was aware of the '053 patent before PO filed the Microsoft litigation (it cannot), Level 3 held the patent from its issuance in September 2016 through the May 2024 assignment to PO and did not allege infringement despite alleged prior business relationships. Rather than supporting PO's alleged settled expectations, this created

settled expectations for Microsoft that the '053 patent would not be asserted against it.

E. The *Fintiv* Factors Weigh Against Denial

1. Factor 1: The Likelihood of a Stay is Neutral

Microsoft has not yet filed a motion to stay the parallel litigation, and the district court has not indicated whether a stay would be granted. Thus, this factor is neutral. *Sand Revolution II, LLC v. Cont'l Intermodal Grp.-Trucking LLC*, IPR2019-01393, Paper 24, 7 (June 16, 2020) (informative). PO cites stay statistics (DD, 10), but those statistics are not “specific evidence” indicating this factor supports denial. *See Sand Revolution II*, IPR2019-01393, Paper 24, 7.

2. Factor 2: The Trial Date Is at Worst Neutral

The FWD in this IPR would be due by July 8, 2027.⁴ The scheduled trial in the Microsoft litigation is in April 2027 (EX1059, 1), but statistics suggest trial will begin 24 months after the complaint, i.e., in the last week of June 2027. EX1060, 35. This factor is at worst neutral. *See, e.g., Caption Health, Inc. v. Univ. of British Columbia*, IPR2025-01066, Paper 13, 2 (Oct. 10, 2025) (determining trial date “neither favor[ed] nor counsel[ed] against discretionary denial” where FWD was due in Dec. 2026 and statistics suggested trial could occur in close proximity to FWD). Even if the Office finds the trial date favors denial, material error during

⁴ This assumes the Office will issue an institution decision 3 months after the POPR.

prosecution overrides the trial date. *See, e.g., Padagis US LLC v. Neurelis, Inc.*, IPR2025-00464-466, Paper 12 at 3 (July 16, 2025) (informative). PO argues this factor strongly favors denial (DD, 7-8), but PO ignores the material error and statistics suggesting the FWD will issue in close proximity to trial.

3. Factor 3: Investment in the Parallel Litigation Weighs Against Denial Because the Litigation Is in Its Early Stages

This factor weighs against denial. The parties have invested minimal resources in the parallel litigation. The *Markman* hearing is not scheduled until Oct. 2026, the deadlines for close of fact discovery/opening expert reports are not until Nov. 2026, and dispositive motions are not due until Dec. 2026. EX1059, 3-4; *see, e.g., All. Laundry Sys., LLC v. PayRange LLC*, PGR2025-00027, Paper 11, 2 (July 17, 2025) (referring petitions and noting “there has been relatively little investment”).

PO argues “significant work will have been done” by the time of the institution decision in June 2026. DD, 12. But PO only identifies exchange of infringement/invalidity contentions, unexplained “extensive fact discovery” (which is inconsistent with the actual schedule), and claim construction exchanges. *Id.* The fact is that most work will remain to be done.

4. Factor 4: The Lack of Overlap Between Issues Raised in the Petition and the Parallel Litigation Weighs Against Denial

This factor weighs against denial. Microsoft submitted a *Sotera* stipulation,

agreeing to be “bound by the full scope of estoppel under 35 U.S.C. §315(e)(2).” EX1035. This covers the full breadth of statutory estoppel (*see* 35 U.S.C. §§311(b) and 315(e)(2)) and weighs strongly against denial. *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12, 19 (Dec. 1, 2020) (precedential as to §II.A); *see also, e.g., Apple Inc. v. Vampire Labs, LLC*, IPR2025-01215, Paper 8, 8-9 (Oct. 17, 2025) (referencing *Sotera* stipulation), Paper 9, 2 (Nov. 20, 2025) (referring for merits review); *Google LLC v. Sandpiper CDN, LLC*, IPR2025-00969, Paper 8, 2 (Sept. 18, 2025) (referencing *Sotera* stipulation), Paper 13, 2 (Oct. 10, 2025) (referring for merits review), Paper 19, 2 (Jan. 12, 2026) (denying Director review).

PO incorrectly argues this factor favors denial. DD, 13-14. First, PO contends that Microsoft’s invalidity contentions “completely overlap with its IPR challenges.” *Id.*, 13. This ignores that Microsoft’s *Sotera* stipulation removes the alleged “overlap” if IPR is instituted. Second, PO contends Microsoft’s stipulation does not preclude combining Petition art with system art. *Id.*, 13-14. In support, PO cites *Motorola Solutions, Inc. v. Stellar, LLC*, IPR2024-01205, Paper 19, 3-4 (Mar. 28, 2025). However, the relevant facts in *Motorola* were completely different. There, the Acting Director determined that “although Petitioner’s *Sotera* stipulation may mitigate some concern of duplication between the parallel proceeding and this proceeding, the stipulation does not outweigh the substantial investment in the district court proceeding or *Fintiv* factors 1, 2, and 5, which the Board found weighed

in favor of denial.” *Id.*, 4. As to “substantial investment,” the parties had “served opening and rebuttal expert reports, filed claim construction briefs, and conducted several depositions” by the time of the POPR. *Id.*, 3. “The court also had held a claim construction hearing and construed the disputed claim terms.” *Id.* Here, there has been no such “substantial investment,” and factors 1, 2, and 5 are at worst neutral. Thus, the reasoning in *Motorola* does not apply. Third, PO contends this factor supports denial because Microsoft’s stipulation does not prevent §101 arguments. *Id.*, 14. PO cites no authority requiring forgoing invalidity arguments that are unavailable in IPR proceedings.

5. Factor 5: The Parties Factor Is at Worst Neutral

The FWD is projected by July 8, 2027, trial is scheduled in April 2027, and trial is projected to begin around the last week of June 2027. This factor is at worst neutral. *E.g., Shenzhen Root Tech. Co. v. Chiaro Tech. Ltd.*, IPR2024-01296, Paper 9, 14, 19-20 (Feb. 25, 2025) (factor neutral even though patent owner speculated that trial in litigation involving the petitioner would occur 2 months before the FWD).

6. Factor 6: Other Circumstances Weigh Heavily Against Denial

As explained in §§III.A-III.E.5, there are compelling reasons for the Office to decline to discretionarily deny this IPR. This factor thus strongly weighs against denial. PO contends this factor favors denial because the “Petition fails to establish that the challenged claims are invalid over the asserted Grounds.” DD, 15. Aside

from pointing to its forthcoming POPR without explanation, PO argues the Petition relies on expert gap filling. DD, 15. Not so.

As to 1(b)(2)(2)/27(c) for the Liu-Devanneaux grounds, PO does not dispute that Petitioner identifies “customer configuration information,” but implausibly argues that Petitioner relies on its expert to conclude that a cache “**obtain[s]**” that information. DD, 18-19. That is wrong. The Petition cites numerous passages from both Liu and Devanneaux explaining how CDN servers are configured (e.g., obtain) using customer-configuration parameters (Liu) or files (Devanneaux) to control how the CDN servers handle and deliver content to clients. *See* Petition, 47 (citing Liu, ¶¶82, 90-96 (explaining that caches may be configured to check content settings), 269 (“When a customer updates its Website, *it can tell the [CDN] network.*”); Devanneaux, Abstract (“A CDN edge server is configured...using configuration files...*distributed to the edge servers.*”) (emphasis added), ¶¶11 (same), 21-23 (detailing distributing XML configuration files to servers).

As to 1(b)(2)(3)/27(D) for the Lewin-Wein ground, PO also does not dispute that Petitioner identifies “global configuration data” and “customer configuration information,” but argues Petitioner relies on its expert to conclude that content is “**serv[ed] to a client...in accordance with**” those configurations. DD, 19. This is wrong again. The Petition explains that Lewin expressly discloses serving content to clients. Petition, 20 (citing Lewin, 3:7-42). Further, the Petition cites to the prior

discussions of “global configuration data” and “customer configuration information,” which show that these two sets of configurations each dictate how content is handled in and delivered by the CDN and/or third-party caches added to the CDN. Petition, 20 (citing analyses of 1(b)(1)-1(b)(2)(2)/27(A)-27(C)), 14-17 (citing, e.g., Lewin, 4:57-6:3 and Wein, 8:3-5 to describe global configuration, which controls things like cache validity, data logging, URL mapping, and content parsing), 17-20 (citing, e.g., Lewin, 3:19-23, 4:63-67, 5:4-8, 5:35-36; Wein, 4:39-52, 4:62-5:26, 8:12-31 to describe customer configurations, which control cache interactions with a CDN for delivery and content handling).

In sum, PO only identifies instances where Petitioner’s expert offered opinions as to “what [a prior art]’s teachings would indicate to a skilled artisan”—which is entirely proper. *Yealink (USA) Network Tech. Co. v. Barco N.V.*, IPR2025-00491, Paper 20, 28 (July 29, 2025).

IV. CONCLUSION

There are persuasive reasons to reach the merits of this IPR, and PO’s request for discretionary denial should be denied.

Dated: April 8, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that true copies of Petitioner's Opposition to Patent Owner's Request for Discretionary Denial and EXHIBITS 1036 – 1061 were served upon the below listed counsel by electronic mail:

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