

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.,
PETITIONER,

v.

VUSURA TECHNOLOGY LLC,
PATENT OWNER.

CASE IPR2026-00255
PATENT 11,227,303

PATENT OWNER'S DISCRETIONARY DENIAL REQUEST
35 U.S.C. § 314(a)

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CURRENT EXHIBIT LIST¹

No.	Brief Description
1001	U.S. Patent No. 11,227,303 (“’303 Patent”)
1002	Prosecution History of the ’303 Patent
1003	Declaration of Petitioner’s Expert Thomas F. La Porta, Ph.D.
1004	U.S. Patent Publication No. 2007/0173237 (“Roundtree”)
1005	WIPO International Publication No. WO 2006/130783
1006	U.S. Patent Publication No. 2007/0116227 A1
1007	Excerpts of J. Thorner, “Intelligent Networks,” Artech House, Inc. 1994
1008	Excerpts of L. Goleniewski, “Telecommunications Essentials,” Pearson Education, Inc., 2003
2001	Application Data Sheet for ’303 Patent Ancestor (filed Apr. 8, 2025)
2002	U.S. Patent No. 10,198,741 to Wendell D . Brown (filed Apr. 1, 2016) (issued Feb. 5, 2019) (“’741 Patent”)
2003	U.S. Patent No. 7,418,092 (filed Mar. 8, 2004) (issued Aug. 26, 2008) (“’092 Patent”)
2004	Complaint, <i>Vusura Technology LLC v. Cisco Systems, Inc.</i> , Case No. 2:25-cv-00871 (E.D. Tex. filed Aug. 25, 2025) (Dkt. 1)
2005	Defendant Cisco Systems, Inc.’s Invalidity Contentions, <i>Vusura Technology LLC v. Cisco Systems, Inc.</i> , Case No. 2:25-cv-00871 (E.D. Tex. served Jan. 9, 2026)
2006	Complaint, <i>Alto Ventures, Inc. v. Convergys Corp.</i> , No. 2-11-cv-01056 (D.N.V. filed June 27, 2011) (Dkt. 1)
2007	First Amended Docket Control Order, <i>Vusura Technology LLC v. Cisco Systems, Inc.</i> , Case No. 2:25-cv-00871 (E.D. Tex. entered Jan. 2, 2026) (Dkt. 31)
2008	’741 Patent File History

¹ Relevant portions of Patent Owner’s exhibits may be highlighted to help the Director locate cited sections.

I. INTRODUCTION

Vusura Technology LLC asks the Director to exercise his discretion to deny Cisco Systems, Inc.'s petition for IPR of U.S. Patent No. 11,227,303 (“’303 Patent”).

First, the traditional *Fintiv* factors all militate in support of discretionary denial. Petitioner only brought ***one of three*** related patents from the same patent portfolio at issue in a parallel litigation, virtually guaranteeing that the district court will not stay its proceedings regardless of institution. The litigation is between the same parties here, is speeding along, and is scheduled to complete months ahead of the IPR. Moreover, it is certain there will be inefficient duplicative work in the PTAB and district court and a risk of inconsistent results in the two forums, given that Petitioner offers no *Sotera* stipulation, has said that it “may” use the Petition art in district court, and has asserted system art in the litigation not eligible as a basis for unpatentability in an IPR. Penultimately—and dispositive on its own—Petitioner has inconsistently argued the claims are invalid as indefinite in district court in an attempt to avoid infringement, while simultaneously arguing the same claims should have broad plain and ordinary meanings in its endeavor to invalidate the claims before the PTAB. Ultimately, the Petition is simply weak on the merits, given Petitioner admits a key limitation is not present.

Second, Petitioner is attempting to game the system by choosing not to seek an IPR for two related patents that have a presumption of settled expectations and

are part of a patent portfolio that has actively been asserted in Petitioner's technology space. Therefore, the inefficiency of trying only one of three patents boosts the '303 Patent's settled expectations and also weighs in favor of discretionary denial.

Patent Owner now discusses these and other issues in more detail.

II. *FINTIV* FACTORS OVERWHELMINGLY SUPPORT DISCRETIONARY DENIAL

Small entity² Patent Owner asserted the '303 Patent, along with U.S. Patents Nos. 10,198,741 (Ex. 2002, "'741 Patent") and 7,418,092 (Ex. 2003, "'092 Patent"), against Petitioner in *Vusura Technology LLC v. Cisco Systems, Inc.*, No. 2:25-cv-00871 (E.D. Tex. filed Aug. 25, 2025) ("EDTX Litigation"). See Ex. 2004 (Complaint) at 1. Considering this parallel proceeding, the *Fintiv* factors weigh heavily in support of discretionary denial.

A. Factor 1: Whether the Court Granted a Stay or Evidence Exists That One May Be Granted if a Proceeding Is Instituted

Neither Party has filed a motion to stay in the EDTX Litigation and all available evidence indicates that the court would deny such a request, even if the Board orders a trial in this IPR. This is so because simplification is "the most important factor" and "even an ultimate finding in favor of [petitioner] invalidating

² See ADS listing Vusura as a small entity in the '303 Patent ancestor application as of April 8, 2025. Ex. 2001 at 7.

all claims of the patents in the instituted IPRs would leave material disputes for the Court to decide,” given two additional patents would remain at issue in the EDTX Litigation. *Headwater Rsch. LLC v. Samsung Elecs. Co.*, No. 2:23-cv-00103-JRG-RSP, 2024 WL 5080240, at *2 (E.D. Tex. Dec. 11, 2024); *see also Force Mos Tech. Co. v. Asustek Comput., Inc.*, No. 2:22-CV-00460-JRG, 2024 WL 1586266, at *4 (E.D. Tex. Apr. 10, 2024) (denying motion to stay pre-institution *with prejudice* because defendant only filed IPR petitions for two out of three patents-at-issue, so regardless of institution “the IPRs cannot simplify the issues to the extent necessary to justify a stay”). As such, Factor 1 supports discretionary denial.

B. Factor 2: Proximity of the Court’s Trial Date to the Board’s Projected Statutory Deadline for a Final Written Decision

The trial to address the validity of the ’303 Patent is set for July 12, 2027. Ex. 2007 at 1. The Board is scheduled to issue a final written decision (“FWD”) by September 6, 2027 (the Monday after 18 months from the accorded filing date of March 5, 2026). *See* Paper 6; *see also* 35 U.S.C. §§ 314(b), 316(a)(11); 37 C.F.R. § 42.100(c). Thus, “it is unlikely that a final written decision in th[is] proceeding[] will issue before the district court trial occurs, resulting in significant duplication of effort, additional expense for the parties, and a risk of inconsistent decisions.” *Nvidia Corp. v. Neural AI, LLC*, IPR2025-00606-18, at 2 (Director July 31, 2025) (noting trial date set about 1 month before an FWD). Therefore, Factor 2 also supports discretionary denial.

C. Factor 3: Investment in the Parallel Proceeding by the Court and the Parties

The EDTX Litigation is currently in the middle of discovery, with claim construction set to start in under three months, September 1, 2026. *See* Ex. 2007 at 5–6. Therefore, Factor 3 is neutral.

D. Factor 4: Overlap between Issues Raised in the Petition and in the Parallel Proceeding

Petitioner based its IPR invalidity theory solely on U.S. Patent App. Pub. No. 2007-0173237 (“Roundtree”), Pet. 19–20; yet, Petitioner did not explicitly list Roundtree in its list of “Prior Art Patents and Applications” in the EDTX Litigation invalidity contentions, Ex. 2005 at 17. Indeed, Petitioner does not mention Roundtree anywhere. *See generally id.* Rather, Petitioner says that it “*may* rely on arguments, disclosures and evidence set forth in any petitions for *inter partes* review.” *Id.* 11 (emphasis added).

If Petitioner’s hedge is effective, there is substantial overlap among the IPR and the EDTX Litigation because the same prior art and nearly all the same claims are at issue in the different forums. *Compare* Pet. at 19 (challenging claims 1–25) with Ex. 2005 at 1 (noting claims 1, 4–6, 8–11, 13–14, 17–19, and 21–24 of the ’303 Patent are at issue). Moreover, the Board has found that even if the Petition “challenges claims in addition to those that are challenged in the district court, it may still be inefficient to proceed because the district court may resolve validity of

enough overlapping claims to resolve key issues in the petition.” *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019-11, at 13 (PTAB Mar. 20, 2020) (precedential). This is true where, as here, all the independent claims, and most of the dependent claims, overlap.

Alternatively, if Petitioner’s incorporation by reference is ineffective, then Roundtree’s absence from Petitioner’s invalidity contentions in the EDTX Litigation suggests a conscious choice to manufacture no overlap, because Petitioner can hardly plead ignorance regarding Roundtree in the EDTX action. The USPTO published Roundtree almost 20 years ago and before other patent applications Cisco listed in the invalidity contentions. Ex. 1004 at (43); Ex. 2005 at 17. Indeed, the same law firm that prosecuted Roundtree before the USPTO wrote and served Petitioner’s invalidity contentions in the EDTX Litigation. *Compare* Ex. 1004 at (76) *with* Ex. 2005 at 57. And Cisco used Roundtree in its Petition just one month after serving the contentions.

The conclusion that Petitioner’s division of prior art references in different forums is intended to give it “two bites at the (invalidity) apple” is bolstered by the fact that Petitioner has not offered a *Sotera* stipulation that it will not pursue invalidity based upon any grounds that could have reasonably been raised in the petition if the Board institutes. *Cf. Sotera Wireless Inc. v. Masimo Corp.*, IPR2020-01019-12, at 13 (PTAB Dec. 1, 2020) (precedential). Having taken no steps to

mitigate the possibility of duplicative work or conflicting claim constructions, Petitioner's tactic goes against the very reason for IPRs, wherein the "AIA [IPR] proceeding is structured as a *complete alternative* to litigation of . . . issues" regarding such art. *SAS Inst., Inc. v. ComplementSoft, LLC*, 825 F.3d 1341, 1354 (Fed. Cir. 2016) (citing 35 U.S.C. § 311(b)) (emphasis added).

Further undermining the utility of an IPR, Petitioner has asserted "system art" against the '303 Patent that is not eligible for an IPR. *See* Ex. 2005 pp. 21–24; 35 U.S.C. § 311(b). Thus, even if the Board issues an FWD finding Petitioner did not prove unpatentability in this IPR, this will not estop Petitioner from retrying system validity in the EDTX action. *See* 35 U.S.C. § 315(e)(2). Regardless of the outcome of the IPR, the PTAB will not be an alternative forum; it will be a duplicative one. *See Motorola Solns, Inc. v. Stellar, LLC*, IPR2024-01205-19, at 3–4 (Director Mar. 28, 2025).

In short, either there is substantial overlap between the petition and the EDTX action, meaning Factor 4 supports discretionary denial, or Petitioner is engaging in gamesmanship that should not be rewarded.

E. Factor 5: Whether the Petitioner and the Defendant in the Parallel Proceeding Are the Same Party

It is undisputable that "Petitioner and Patent Owner are the same parties as in the district court." Pet. 68. And "[i]f the petitioner and the defendant in the parallel proceeding are the same, this factor weighs in favor of discretionary denial."

See, e.g., Cisco v. Ramot, IPR2020-00122-15, at 10 (PTAB May 15, 2020) (Paper 15). Factor 5 again favors discretionary denial.

F. Factor 6: Other Circumstances That Impact the Board’s Exercise of Discretion, Including the Merits

1. Petitioner’s Inconsistent Claim Construction Positions Warrant Denial of Institution

In this IPR, Petitioner tells the Board it has no problem understanding the claim scope or any issue identifying every limitation in the prior art under every term’s “plain and ordinary” meaning. Pet. §§ IV(D) & V. But Petitioner simultaneously takes the position in the EDTX Litigation that no less than *nine terms* are so indefinite that the limitations give a POSITA no “clear notice of what is claimed” or a “reasonable certainty [of] the scope of the limitation(s) incorporating such term or phrase[s].” Ex. 2005 at 55–56.

Denial of institution is appropriate in this case where Petitioner “advance[s] a claim construction before the Board when that petitioner has made inconsistent indefiniteness arguments in district court” because so doing “detracts from[] the Office’s goal of providing greater predictability and certainty in the patent system.” *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00340-18, at 4 (Director Nov. 5, 2025) (informative) (*citing Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632-20, at 4-5 (Director Nov. 3, 2025) (precedential)) (internal quotations omitted). Indeed, advancing different positions in the two forums does

not “compl[y] with Rule 42.104(b)(3)” and “[o]rdinarily . . . mean[s] a denial of institution.” *Revvo Techs., Inc.*, IPR2025-00632-20, at 5.

2. The Petition Fails on the Merits Because of an Admittedly Missing Limitation

Petitioner relies on a single prior art reference, Roundtree. Petitioner does not argue that Roundtree anticipates the ’303 Patent under § 102; instead, Petitioner argues only that Roundtree renders the ’303 Patent obvious. Pet. 19. This is a tacit admission that Roundtree does not explicitly teach all of the limitations.

Significantly, Petitioner concedes that Roundtree “does not use the word ‘pausing’ or ‘delaying,’” Pet. 21, despite the fact that every claim requires “***pausing establishment of the communication*** connection without soliciting action by the first party pausing establishment of the communication connection,” Ex. 1001, at independent claims 1, 13, and 14 (emphasis added); *see also id.* at claim 16 (requiring “pausing establishment of the communication connection comprises instructing the first device ***to delay***”) (emphasis added).

Moreover, the ’741 Patent, which is in the same family as the ’303 Patent, has similar limitations that are instructive regarding this pausing/delay limitation’s meaning, as shown below. *See Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 789 F.3d 1335, 1343 (Fed. Cir. 2015) (“[S]tatement[s] made during prosecution of related patents may be properly considered in construing a term common to those patents, regardless of whether the statement pre- or post-dates the issuance of the

particular patent at issue.”) (citation omitted).

'303 Patent (Ex. 1001) Claim 1	'741 Patent (Ex. 2002) Claim 1
upon receipt of notification of initiation of a communication connection from a first device . . .	receiving notification of a call from a first communication device; in response to the notification
pausing establishment of the communication connection without soliciting action by the first party pausing establishment of the communication connection	delaying routing of the call without soliciting action by a first operator of the first communication device

Further, during the '741 Patent prosecution, attorneys for Mr. Brown explained that incidental actions that happen to delay do not meet the claim limitation, because “these actions do not entail affirmatively delaying or pausing call routing.” Ex. 2008 at 61, 140. That is, “the independent claims require receipt of a notification of a call from a first device and, in response to the notification, automatically delaying routing of the call.” *Id.* at 61. And “any secondary effect that performing some other action (e.g., playing a greeting) may have upon the call establishment process is not equivalent to the express, automatic, and affirmative type of delay recited in Applicant's claims.” *Id.* at 62.

Yet, the best Petitioner can muster is that “upon receiving an indication of a voice call,” a call is “intercepted” to do various determinations, Pet. 34, and maps this interception to “pausing,” *id.* 37. But mere “interception” for routine processing is not the equivalent of “pausing” or “delay,” as explained in the '741 Patent

prosecution and by the examiner in her reasons for allowance. Ex. 2008 at 21–22 (noting that pre-routing processor checks do not “disclose or specifically suggest[] delaying routing of the call”).

Patent Owner submits that such a significant hole in the Petition’s position negates any “reasonable likelihood” that the challenger would prevail on one or more claims, further supporting discretionary denial.

3. Piecemeal Validity Challenges Are Not a Good Use of PTAB Resources

As discussed above, there is a vanishingly small chance that the EDTX Court is going to stay the parallel litigation when only one patent-in-suit is subject to an IPR request. *See* § II.A *supra*. Further, as also noted above, the ’741 and ’092 Patents, for which Petitioner *chose* not to request an IPR,³ are related to the ’303 Patent such that the meaning of a term in one patent-in-suit may inform the meaning in the others. *See* § II.F.2 *supra*.

Therefore, not only is it a poor use of Office resources to have the District Court and the Board consider the patentability of the ’303 Patent over printed publications in parallel, this is doubly so where *only* the District Court will

³ Petitioner could have brought a petition for all three, as Petitioner alleges that printed prior art renders these additional patents anticipated/obvious in the EDTX Litigation. *See* Ex. 2005 pp. 14–23

evaluate the '303 Patent via-a-vis system art and the two closely related patents. *Cf. Zimmer Biomet Holdings, Inc. v. Lifenet Health*, IPR2025-00248-13, at 2-3 (Acting Director June 26, 2025) (“[I]t is an efficient use of Board resources to address the related patent [that has settled expectations]” with other patents that do not). Petitioner’s conscious decision to request an IPR on only the '303 Patent necessarily will result in a duplication of work between the two forums and risk inconsistent results.

* * * * *

The *Fintiv* factors clearly and convincingly point to only one result: discretionary denial is appropriate here. Additionally, as now discussed, Petitioner’s attempt to try only one of three related patents from a portfolio in Petitioner’s technological wheelhouse, and that has been enforced since 2011, means that a holistic settled expectation’s analysis also weighs in favor of discretionary denial.

III. CONSIDERING THE HIGHLY RELATED PATENTS ALSO AT ISSUE IN LITIGATION, DISCRETIONARY DENIAL DUE TO SETTLED EXPECTATIONS IS APPROPRIATE

As the Director has found, “there is no bright-line rule on when expectations become settled.” *Dabico Airport Solns Inc. v. AXA Powers APS*, IPR2025-00408-21, at 3 (Director June 18, 2025). Thus, the '303 Patent’s issuance on January 18, 2022, Ex. 1001 at (45), over 4 years prior to the Petition’s filing date of February 24, 2026, Pet. at 70, is not dispositive on the “settled expectations” issue.

Here, in addition to just considering the '303 Patent's age, the Director should also weigh Petitioner's decision not to include the older related patents in the EDTX Litigation and Petitioner's knowledge of this portfolio in its call center technology space.

All three patents concern technology applicable to call centers, *see, e.g.*, Exs. 1001 at 3:47–52; 2002 at 4:63:67; 2003 at (54), and are highly intertwined. Each has a common inventor, Mr. Wendell Brown.⁴ *See* Exs. 1001, 2002, and 2003 at (75). The '741 Patent has a still-enforceable common ancestor with the '303 Patent, U.S. Patent No. 8,804,930. *Compare* Ex. 1001 at (63) *with* Ex. 2002 at (63). Indeed, Patent Owner accuses the same product, Cisco's Webex Contact Center, of infringing all three patents in the EDTX Litigation. Ex. 2004 ¶¶49, 74, 95. And Petitioner has further confirmed the interrelatedness of the patents in the EDTX action by asserting that its own call center systems are relevant prior art to all three. Ex. 2005 at pp. 20–22. In fact, Petitioner has asserted that the '092 Patent disclosure is so similar to the '741 Patent that the former may render the latter's claims unpatentable “on its own.” Ex. 2005 at 15, 39.

⁴ Mr. Brown was the co-founder and Chief Ideas Officer of eVoice, a large-scale Internet-enabled voicemail system developed around 1998 and acquired by AOL Time-Warner in 2001. Ex. 2004 at ¶21. Since that time, Mr. Brown has been an independent inventor. *Id.* ¶¶21–22.

Moreover, settled expectations are clearly in play for the '741 and '092 Patents, which had been enforceable for *over 7 years* and *over 17 years* prior to the day Petitioner filed its petition, respectively. *See Dabico*, IPR2025-00408-21, at 3. In addition to having constructive notice of these patents, Petitioner should have been aware that Patent Owner was actively enforcing this portfolio in the call center technology space because five telecommunication companies were sued for infringing the '092 Patent *in 2011*. *See* Ex. 2006; *cf. Intel Corp. v. Proxense LLC*, IPR2025-00327-12, at 2–3 (Acting Director June 26, 2025) (noting that failure to assert a portfolio may cut against settled expectations; meaning, active enforcement should bolster the same factor).

Petitioner's delay in filing its petition until after it was sued, over four years after the '303 Patent's issuance, and over a decade since the portfolio was enforced, is hardly an "early challenge." That is, while the fact that the '303 Patent has been in force for a little over four years ordinarily "might counsel against discretionary denial, [because] the district court will be considering the validity of the patents [with settled expectations], along with the validity of the patent challenged . . . referring [the challenged patent] to the Board would be an inefficient use of Board resources and tips the balance to discretionary denial as to that patent too." *See Amazon.com, Inc. v. Audio Pod IP, LLC*, IPR2025-00768-15, at 3 (Director Aug. 14, 2025) (considering challenged patent in force for only 4.4 years as of the petition

date).

In short, in addition to the *Fintiv* analysis that strongly favors discretionary denial, the efficiency of trying the '303 Patent with two closely related patents that presumptively have settled expectations in the EDTX Litigation should also tip the settled expectation scales in favor of discretionary denial of the '303 Patent as well.

IV. CONCLUSION

A straightforward analysis shows that at least five of the six traditional *Fintiv* factors heavily favor denying the petition, including the very basic issue that the Petition is weak on the merits. But a wider view illustrates that Petitioner is trying to “spread its bets,” dividing the challenged patents, its prior art, and even its claim constructions, among the PTAB and the EDTX Litigation in hopes of getting multiple shots at invalidating the '303 Patent. This is just the inefficient situation rife with potential inconsistencies that discretionary denial was designed to address. As such, Patent Owner respectfully requests that the Director exercise his discretion to deny Petitioner’s petition.

Dated: May 5, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on the fifth day of May, 2026, a complete and entire copy of the foregoing “PATENT OWNER’S DISCRETIONARY DENIAL REQUEST,” including exhibits, if any, was served on the date below on the following counsel of record via email per Petitioner’s consent to electronic service.

See Paper 2 at 69:

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