

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD. AND
SAMSUNG ELECTRONICS AMERICA, INC.,
Petitioners,

v.

TOPWIRE LLC,
Patent Owner.

Case No. IPR2026-00324
Patent 9,859,202

**PATENT OWNER'S
REQUEST FOR DISCRETIONARY DENIAL**

PATENT OWNER'S EXHIBIT LIST

Exhibit No.	Description
2001	U.S. Patent No. 9,859,202
2002	Plaintiff's Original Complaint, <i>TopWire LLC, v. Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.</i> , ECF No. 1, No. 2:25-cv-01183-JRG (E.D. Tex. December 1, 2025)
2003	Plaintiff's Original Complaint, <i>TopWire, LLC v. Apple Inc.</i> , No. 7:25-cv-00551-ADA, ECF No. 1 (W.D. Tex. December 1, 2025)
2004	Plaintiff's Disclosure of Asserted Claims and Infringement Contentions, <i>TopWire, LLC v. Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.</i> , No. 2:25-cv-01183-JRG (E.D. Tex. March 12, 2025)
2005	Petition for Inter Partes Review of U.S. Patent No. 9,859,202, IPR2026-00303, Paper 2, (PTAB March 16, 2026)
2006	Notice of References Cited, U.S. Patent Application No. 17/185,283
2007	Office Action Summary, U.S. Patent Application No. 17/185,283
2008	U.S. Patent No. 11,483,930
2009	Information Disclosure Statement by Applicant, U.S. Patent Application No. 17/185,283 (October 21, 2022)
2010	Information Disclosure Statement by Applicant, U.S. Patent Application No. 18/502,657 (November 6, 2023)
2011	Information Disclosure Statement by Applicant, U.S. Patent Application No. 19/077,672 (March 12, 2025)
2012	Letter from R. Katz to Samsung Electronics Co., Ltd. Re: TopWire LLC (September 19, 2025)
2013	Chart showing statistics regarding success rates of motions to stay case pending inter partes review over the past five years
2014	"PTAB Trial Statistics", United States Patent and Trademark Office, Patent Trial and Appeal Board, Fiscal Year 2026 2 nd Quarter
2015	Docket Control Order, <i>TopWire LLC, v. Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.</i> , ECF No. 21, No. 2:25-cv-01183-JRG (E.D. Tex. April 7, 2026)
2016	First Amended Docket Control Order, <i>TopWire LLC, v. Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.</i> , ECF No. 29, No. 2:25-cv-01183-JRG (E.D. Tex. May 11, 2026)

2017	Discovery Order, <i>TopWire LLC, v. Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.</i> , ECF No. 23, No. 2:25-cv-01183-JRG (E.D. Tex. April 13, 2026)
2018	Protective Order, <i>TopWire LLC, v. Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.</i> , ECF No. 27, No. 2:25-cv-01183-JRG (E.D. Tex. April 22, 2026)
2019	Letter from S. Keller to N. Sirota regarding Discovery Expectations (May 18, 2026)
2020	Letter from F. Zhu to W. McCarty, III regarding Discovery Expectations (May 20, 2026)
2021	Plaintiff's First Set of Interrogatories, <i>TopWire LLC, v. Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.</i> , No. 2:25-cv-01183-JRG (E.D. Tex. May 18, 2026)
2022	Defendants' First Set of Interrogatories to Plaintiff, <i>TopWire LLC, v. Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.</i> , No. 2:25-cv-01183-JRG (E.D. Tex. May 20, 2026)
2023	Defendants' Initial Invalidity Contentions, <i>TopWire LLC, v. Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.</i> , No. 2:25-cv-01183-JRG (E.D. Tex. May 21, 2026)
2024	Email from S. Liquori to Counsel for Plaintiff re Defendants' Initial Invalidity Contentions (May 21, 2026)
2025	Additional Discretionary Institution Considerations – U.S. Manufacturing and Small Business Use of AIA Proceedings (“U.S. Manufacturing Memo”)
2026	Adnan Farooqui, “Where are Samsung phones made? It’s not where you think”, Sammobile.com, May 12, 2026
2027	Adnan Farooqui, “Samsung confirms it may relocate some production sites to avoid US tariff impact”, Sammobile.com, April 30, 2025
2028	Listing of Samsung’s Foreign Suppliers, Samsung.com
2029	John VerWay, “Re-Shoring Advanced Semiconductor Packaging”, Center for Security and Emerging Technology, June 2022
2030	Global Network, Samsung Electro-Mechanics
2031	“Samsung Electronics to Invest \$4 Billion in Advanced Packaging Plant in Vietnam, Intensifying AI Semiconductor Competition”, BigGo Finance, April 9, 2026
2032	“[News] Samsung Reportedly Plans \$170M Chip Packaging R&D Center in Yokohama, Opening Mar. 2027”, Trendforce, August, 14, 2025

2033	“Our Taylor, Texas Fab in Numbers”, Samsung Semiconductor Global
2034	Arjun Kharpal, “ <i>Samsung to spend \$228 Billion on the world’s largest chip facility as part of South Korea tech plan</i> ”, CNBC, March 15, 2023
2035	Travis E. Poling, “ <i>Samsung says it’s on track for 2026 opening</i> ”, Taylor Press, February 11, 2026
2036	“ <i>Samsung Electronics to receive up to \$6.4 billion in direct funding under the CHIPS and Science Act</i> ”, Samsung.com, April 14, 2024
2037	“ <i>PTAB Appeal Statistics</i> ”, United States Patent and Trademark Office, Patent Trial and Appeal Board, April 30, 2026
2038	“ <i>PTAB data at a glance</i> ”, Patent Trial and Appeal Board, March 2026

TABLE OF CONTENTS

I.	SUMMARY OF ARGUMENT	1
II.	BACKGROUND	1
III.	PATENT OWNER’S SETTLED EXPECTATIONS DEMONSTRATE DISCRETIONARY DENIAL IS WARRANTED	2
IV.	PETITIONER WAITED UNTIL MARCH 2026 TO FILE THIS PETITION DESPITE KNOWING ABOUT THE ’202 PATENT FOR YEARS	3
V.	THE <i>FINTIV</i> FACTORS DEMONSTRATE DISCRETIONARY DENIAL IS WARRANTED	4
a.	Factor 1 strongly favors denial because the Eastern District of Texas routinely denies motions to stay pending <i>inter partes</i> review.	5
b.	Factor 2 favors denial because the District Court trial date and the final written decision date are only a few months apart.....	7
c.	Factor 3 favors denial because there will have been significant investment in the parallel proceedings by the Court and the parties by the time of the institution decision.	9
d.	Factor 4 strongly favors denial because there is substantial overlap between issues raised in the petition and in the parallel proceedings.....	10
e.	Factor 5 favors denial because the parallel District Court litigation and Petition involve the same parties.	12
f.	Factor 6 favors denial because other circumstances impact the Director’s exercise of discretion, including the Petition’s weak merits.....	12
VI.	PETITIONER’S FOREIGN MANUFACTURING PRACTICES WEIGH IN FAVOR OF DISCRETIONARY DENIAL.....	16
VII.	PETITIONER’S HEAVY RELIANCE ON EXPERT TESTIMONY FAVORS DENIAL.....	18
VIII.	PTAB RESOURCES ARE BETTER SPENT ON <i>EX PARTE</i> APPEALS.....	20
IX.	CONCLUSION.....	20

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>10x Genomics, Inc. v. President and Fellows of Harvard Coll.</i> , IPR2023-01299, Paper 15, (P.T.A.B Mar. 7, 2024).....	12
<i>Advanced Micro Devices, Inc., et al v. XtreamEdge, Inc. et al</i> , IPR2025-00223, Paper 9, (Director June 12, 2025).....	8
<i>Amgen Inc. v. Bristol-Myers Squibb Co.</i> , IPR2025-00601, Paper 9, (Director July 24, 2025).....	2
<i>Apple Inc. v. Fintiv</i> , IPR2020-00019, Paper 11, (P.T.A.B Mar. 20, 2020).....	5
<i>Biofrontera Inc. et al v. Sun Pharmaceutical Indus., Inc.</i> , IPR2025-00287, Paper 10, (Director July 2, 2025).....	8
<i>Caihong Display Devices Co. Ltd. v. Corning, Inc.</i> , IPR2025-00439, Paper 18, (Director July 10, 2025).....	8
<i>Cisco Systems, Inc. v. Ramot at Tel Aviv University Ltd.</i> , IPR2020-00122, Paper 15, (P.T.A.B May 15, 2020).....	11
<i>Dabico Airport Sols. Inc. v. AXA Power ApS</i> , IPR2025-00408, Paper 21, (Director June 18, 2025).....	2
<i>Ericsson Inc. v. Collision Commc'ns, Inc.</i> , IPR2022-01233, Paper 12, (P.T.A.B Jan. 19, 2023).....	12
<i>EON Corp. IP Holdings, LLC v. Sensus USA Inc.</i> , No. 6:09-cv-116-JDL, 2009 WL 9506927 (E.D. Tex. Dec. 18, 2009)	7
<i>Full-Metal-Power B.V. v. InFocus Downhole Sols. USA LLC</i> , IPR2025-00391, Paper 14, (Director June 25, 2025).....	5

<i>Headwater Rsch. LLC v. Samsung Elecs. Co.</i> , No. 2:23-CV-00103-JRG-RSP, 2024 WL 5080240 (E.D. Tex. Dec. 11, 2024)....	6
<i>Helen of Troy Ltd. v. Tomy Int’l, Inc.</i> , IPR2021-01208, 2022 WL 442951 (P.T.A.B. Feb. 7, 2022)	14
<i>HS Hyosung Advanced Materials v. Kolon Indus., Inc.</i> , IPR2025-00662, Paper 12, (Director Aug. 14, 2025)	2
<i>Int’l Bus. Machs. Corp. v. Digital Doors, Inc.</i> , IPR2023-00970, Paper 8, (P.T.A.B Jan. 12, 2024)	12
<i>iRhythm, Inc. v. Welch Allyn, Inc.</i> , IPR2025-00377, Paper 10, (Director June 6, 2025)	4
<i>Kahoot! AS v. Interstellar Inc.</i> , IPR2025-00696, Paper 12, (Director July 31, 2025)	2
<i>KIPB LLC v. Samsung Elecs. Co.</i> , No. 2:19-cv-00056-JRG-RSP, 2019 WL 6173365 (E.D. Tex. Nov. 20, 2019)	7
<i>Lionra Techs. Ltd. v. Cisco Sys., Inc.</i> , No. 2:24-CV-00097-JRG, 2025 WL 1239317 (E.D. Tex. Apr. 29, 2025)	6
<i>PlaSmart, Inc. v. Kappos</i> , 482 F. App’x 568 (Fed. Cir. 2012)	14
<i>Magnolia Med. Techs., Inc. v. Kurin, Inc.</i> , IPR2026-00097, Paper 17, (Director May 14, 2026)	12, 17
<i>Omnivision Techs., Inc. v. RE Secured Networks LLC</i> , IPR2025-01019, Paper 14, (Director Oct. 10, 2025)	8
<i>Polaris Powered Techs., LLC v. Samsung Elecs. Am., Inc.</i> , No. 2:22-CV-00469-JRG, 2024 WL 1149223 (E.D. Tex. Mar. 15, 2024)	7, 8
<i>Samsung Display Co. v. Pictiva Displays Int’l Ltd.</i> , IPR2024-00855, Paper 12, (P.T.A.B. Nov. 19, 2024)	11, 12

<i>Samsung Elecs. Am., Inc. et al v. VB Assets, LLC</i> , IPR2025-00871, Paper 11, (P.T.A.B Oct. 10, 2025).....	8
--	---

<i>Trover Grp., Inc. v. Dedicated Micros USA</i> , No. 2:13-CV-1047-WCB, 2015 WL 1069179 (E.D. Tex. Mar. 11, 2015).....	6
--	---

<i>Wilus Inst. of Standards & Tech. Inc. v. HP Inc.</i> , No. 2:24-CV-00746-JRG, 2026 WL 1104330 (E.D. Tex. Apr. 23, 2026)	6
---	---

<i>Yangtze Memory Techs. Co., Ltd. v. Micron Tech., Inc.</i> , IPR2025-00498, Paper 11, (P.T.A.B. Aug. 14, 2025)	2
---	---

Statutes

35 U.S.C. § 6(b)(1).....	20
35 U.S.C. § 6(b)(2)-(4).....	20
35 U.S.C. § 314(a)	5

I. SUMMARY OF ARGUMENT

Pursuant to the “Interim Processes for PTAB Workload Management Memorandum” issued March 26, 2025 (“Workload Memo”), Patent Owner TopWire, LLC (“TopWire”) respectfully requests that the Director exercise discretion and deny institution of inter partes review.

Discretionary denial is warranted for several reasons: (1) Patent Owner’s settled expectations weigh against institution; (2) Petitioner waited too long to file this Petition (3) all six *Fintiv* factors favor denial; (4) Petitioner manufactures the accused smartphone products outside the United States and directs the overwhelming majority of its manufacturing investments outside the United States; (5) Petitioner improperly relies on unfocused expert testimony; and (6) institution would be an inefficient use of limited Board resources.

II. BACKGROUND

On December 1, 2025, TopWire asserted U.S. Patent Nos. 9,859,202 (EX2001, “the ’202 Patent”) against Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively, “Petitioner”) in the Eastern District of Texas and Apple, Inc. (“Apple”) in the Western District of Texas. *See* EX2002; EX2003. TopWire asserts claims 1–4, 6, and 9 of the ’202 Patent against Petitioner’s Samsung smartphone product lines (“the Accused Products”). *See* EX2002; EX2004. On March 16, Apple filed a Petition for *Inter Partes* Review against the ’202 Patent. *See*

EX2005. About two weeks later, Petitioner filed the instant Petition for *Inter Partes* Review (Paper 1) (“Pet.”) against the ’202 Patent on March 31, 2026.

III. PATENT OWNER’S SETTLED EXPECTATIONS DEMONSTRATE DISCRETIONARY DENIAL IS WARRANTED

There are settled expectations that the ’202 Patent will remain valid and undisturbed. The ’202 Patent issued on January 2, 2018. *See* EX2001. It therefore has been in force for over eight years. The Director has generally found that settled expectations exist once patents have been issued for six or more years. *See, e.g., Yangtze Memory Techs. Co., Ltd. v. Micron Tech., Inc.*, IPR2025-00498, Paper 11, at 2 (P.T.A.B. Aug. 14, 2025); *Kahoot! AS v. Interstellar Inc.*, IPR2025-00696, Paper 12, at 2 (Director July 31, 2025); *Amgen Inc. v. Bristol-Myers Squibb Co.*, IPR2025-00601, Paper 9, at 3 (Director July 24, 2025). As the Director has explained, “in general, the longer the patent has been in force, the more settled expectations should be. This approach aligns with other approaches to settled expectations and incentives, for example, for filing infringement lawsuits.” *Dabico Airport Sols. Inc. v. AXA Power ApS*, IPR2025-00408, Paper 21, at 3 (Director June 18, 2025). The Director has consistently denied challenges to patents that have been in force for at least six years. *See, e.g., id.* at 2 (“[T]he challenged patent has been in force almost eight years, creating settled expectations.”); *HS Hyosung Advanced Materials v. Kolon Indus., Inc.*, IPR2025-00662, Paper 12, at 2 (Director Aug. 14, 2025) (“[T]he challenged patents have been in force for more than seven, six, and

nine years, respectively, creating strong settled expectations for Patent Owner”).

Accordingly, these settled expectations weigh in favor of discretionary denial.

IV. PETITIONER WAITED UNTIL MARCH 2026 TO FILE THIS PETITION DESPITE KNOWING ABOUT THE '202 PATENT FOR YEARS

Petitioner has not been diligent in bringing this Petition. Petitioner has been aware of the '202 Patent since at least March 15, 2022—more than three years before Patent Owner filed its infringement suit. EX2006–07. On that date, a patent examiner cited the '202 Patent in a list of references cited during prosecution of U.S. Patent No. 11,483,930 (the “'930 Patent” or “Park”), titled “Electronic device including interposer” and assigned to Samsung Electronics Co. Ltd. The claimed invention in the '930 Patent—“an electronic device including an interposer, which can reduce an area of a printed circuit board (PCB) by inserting the interposer . . . between a first circuit board and a second circuit board,” EX2008, 1:22–28—is strikingly similar to infringing semiconductor structures Patent Owner identified in its complaint and infringement contentions. *Compare id.*, FIGS. 2, 4, 7 with EX2002, EX2004. Indeed, Park makes it clear that the claimed packaging structure is in the very Samsung Galaxy smartphones Patent Owner accuses of infringement. *See* EX2008 at FIG. 1, 8:37–44. Accordingly, Petitioner had advanced notice of infringement.

Petitioner's knowledge of the '202 Patent extends beyond this list of references cited. Between 2022 and 2025, Petitioner filed information disclosure statements during the prosecution of several related patents in which it identified the '202 Patent as prior art on the first page. *See, e.g.*, EX2009–11. Additionally, Petitioner received an infringement letter from Patent Owner on October 2, 2025—two months before Patent Owner filed its infringement suit against Petitioner—in which Patent Owner alleged that Petitioner was infringing the '202 Patent. *See* EX2012.

In *iRhythm, Inc. v. Welch Allyn, Inc.*, the Director observed that Petitioner “cited the then-pending application that issued as the challenged patent in an Information Disclosure Statement [it] filed in its own patent application.” IPR2025-00377, Paper 10, at 3 (Director June 6, 2025). The Director concluded that “Petitioner’s awareness of Patent Owner’s applications and failure to seek early review of the patents favors denial.” *Id.*

The same holds true here. Because Petitioner had ample notice of the '202 Patent before Patent Owner filed its infringement suit against Petitioner, this too weighs in favor of discretionary denial.

V. THE *FINTIV* FACTORS DEMONSTRATE DISCRETIONARY DENIAL IS WARRANTED

The *Fintiv* factors include the following:

1. whether the court granted a stay or evidence exists that one may be granted if

- a proceeding is instituted;
2. proximity of the court's trial date to the Board's projected statutory deadline for a final written decision;
 3. investment in the parallel proceeding by the court and the parties;
 4. overlap between issues raised in the petition and in the parallel proceeding;
 5. whether the petitioner and the defendant in the parallel proceeding are the same party; and
 6. other circumstances that impact the Board's exercise of discretion, including the merits

Apple Inc. v. Fintiv, IPR2020-00019, Paper 11, at 6 (P.T.A.B Mar. 20, 2020) (precedential).

As explained herein, the Director should exercise his discretion under 35 U.S.C. § 314(a) to deny institution because all six *Fintiv* factors favor discretionary denial.

a. Factor 1 strongly favors denial because the Eastern District of Texas routinely denies motions to stay pending *inter partes* review.

This factor favors denial when there is “insufficient evidence that the district court is likely to stay proceedings even if the Board were to institute trial.” *Full-Metal-Power B.V. v. InFocus Downhole Sols. USA LLC*, IPR2025-00391, Paper 14, at 2 (Director June 25, 2025). Here, neither party has moved to stay the case pending *inter partes* review, and the Eastern District of Texas routinely denies such motions. *See* EX2013 (showing most EDTX courts deny motions to stay case pending *inter partes* review over the past five years). Should Petitioner file a motion to stay, the result would be no different.

The Eastern District of Texas considers three factors when deciding whether to stay litigation pending IPR of the asserted patent(s): “(1) whether the stay will unduly prejudice the nonmoving party, (2) whether the proceedings before the court have reached an advanced stage, including whether discovery is complete and a trial date has been set, and (3) whether the stay will simplify issues in question in the litigation.” *Headwater Rsch. LLC v. Samsung Elecs. Co.*, No. 2:23-CV-00103-JRG-RSP, 2024 WL 5080240, at *1 (E.D. Tex. Dec. 11, 2024) (quoting *Trover Grp., Inc. v. Dedicated Micros USA*, No. 2:13-CV-1047-WCB, 2015 WL 1069179, at *2 (E.D. Tex. Mar. 11, 2015)). On balance, the three factors weigh in favor of denying the stay.

The first factor weighs heavily in Patent Owner’s favor. A stay would undoubtedly prejudice Patent Owner because it would delay the District Court trial date, delay Patent Owner’s recovery of damages, introduce potential appeals that will not likely be addressed until after the trial date, and provide Petitioner more time to evaluate and implement potential design-around strategies. *See Wilus Inst. of Standards & Tech. Inc. v. HP Inc.*, No. 2:24-CV-00746-JRG, 2026 WL 1104330 (E.D. Tex. Apr. 23, 2026); *Lionra Techs. Ltd. v. Cisco Sys., Inc.*, No. 2:24-CV-00097-JRG, 2025 WL 1239317, at *2–*3 (E.D. Tex. Apr. 29, 2025).

The second factor is neutral. The District Court has assigned the case a trial date and a *Markman* hearing date, but discovery began recently and the parties

recently served their respective contentions and disclosures. *See, e.g., KIPB LLC v. Samsung Elecs. Co.*, No. 2:19-cv-00056-JRG-RSP, 2019 WL 6173365, at *4 (E.D. Tex. Nov. 20, 2019) (finding the stage of the case factor neutral where “P.R. 3-3 and 3-4 Disclosures have already been disclosed and the parties have served initial disclosures and additional disclosures”); *EON Corp. IP Holdings, LLC v. Sensus USA Inc.*, No. 6:09-cv-116-JDL, 2009 WL 9506927, at *4 (E.D. Tex. Dec. 18, 2009) (finding the stage of the case factor neutral where the parties had “begun the discovery process and [Plaintiff] has completed its P.R. 3-1 and 3-2 disclosures”).

The third factor also weighs in Patent Owner’s favor. Because the merits of this petition are very weak as explained in more detail *supra* and the PTAB is likely to deny institution, *see* EX2014, the Asserted Claims will likely survive this Petition. *See Polaris Powered Techs., LLC v. Samsung Elecs. Am., Inc.*, No. 2:22-CV-00469-JRG, 2024 WL 1149223, at *5 (E.D. Tex. Mar. 15, 2024) (“In assessing this factor, it is critical to consider the likelihood that the PTAB will ultimately invalidate the challenged claims.”).

b. Factor 2 favors denial because the District Court trial date and the final written decision date are only a few months apart.

By the time the Board issues its final written decision, the District Court case will be very close to trial. The District Court set the case for trial on January 10, 2028. *See* EX2014, 1. The First Amended Docket Control Order did not change this deadline. *See* EX2016, 1. The projected statutory deadline for a final written decision

is October 2, 2027—approximately three months before the trial date. By that time, the parties will have already invested significant time and resources into the case: the Court will have held the claim construction hearing, fact and expert discovery will be complete, and the parties will have served expert reports. *See generally id.* This weighs in favor of denial. *See, e.g., Omnivision Techs., Inc. v. RE Secured Networks LLC*, IPR2025-01019, Paper 14, at 2–3 (Director Oct. 10, 2025) (denying petition in part because the *Markman* hearing, fact discovery, and expert report disclosures were complete before the final written decision date); *Caihong Display Devices Co. Ltd. v. Corning, Inc.*, IPR2025-00439, Paper 18, at 2 (Director July 10, 2025) (same); *Biofrontera Inc. et al v. Sun Pharmaceutical Indus., Inc.*, IPR2025-00287, Paper 10, at 2 (Director July 2, 2025) (same).

Although the scheduled trial date is after the final written decision date, the Board has still denied institution in such cases. *See, e.g., Advanced Micro Devices, Inc., et al v. XtreamEdge, Inc. et al*, IPR2025-00223, Paper 9, at 2 (Director June 12, 2025) (denying institution and reasoning that “[e]ven though a district court trial date that occurs after a projected final written decision date reduces the possibility of conflicting decisions, that benefit does not outweigh the efficiencies gained by avoiding parallel proceedings . . . because of the parties’ meaningful investment in the district court proceedings.”); *Samsung Elecs. Am., Inc. et al v. VB Assets, LLC*, IPR2025-00871, Paper 11, at 2 (P.T.A.B Oct. 10, 2025) (same).

c. Factor 3 favors denial because there will have been significant investment in the parallel proceedings by the Court and the parties by the time of the institution decision.

As of this writing, seven months have passed since District Court litigation began. *See* EX2002. In that time, the parties have exchanged infringement and invalidity contentions—despite Petitioner slow rolling disclosure of their invalidity contentions after it filed its Petition¹—provided initial disclosures, negotiated discovery and protective orders, exchanged discovery letters, and exchanged interrogatories. *See* EX2004, 2016–23. Patent Owner expects to invest considerable time reviewing Defendants’ voluminous invalidity contentions containing 54 exhibits and thousands of pages of invalidity charts. *See generally* EX2023.

At the time of the institution decision, discovery will have been proceeding for about five months. Consistent with Samsung’s discovery approach in previous cases, Patent Owner expects Petitioner to have produced thousands of documents at that time—some of which will likely follow time-consuming discovery disputes. Indeed, as of May 21, 2026, Samsung has already produced more than 10,000 pages of documents in this case. *See* EX2024. Additionally, Patent Owner expects to have deposed several witnesses at that time, including third-party witnesses that Patent

¹ On April 15, 2026, Petitioner requested a four-week extension to file their invalidity contentions, which were originally due May 7, 2026. Such an extension would have moved the deadline to June 4, 2026—two days after Respondent’s discretionary denial brief was due. The parties agreed to a two-week extension. *See* EX2016, 5.

Owner may need to subpoena. The time required to review these documents and prepare for these depositions will be considerable. *See XtreamEdge*, IPR2025-00223, Paper 9, at 2 (denying institution in part because seven months of discovery was a “meaningful investment in the district court proceeding”).

Additionally, because Petitioner has been aware of the '202 Patent and its infringement of it for over three years and therefore not diligent in bringing this Petition for the reasons explained in Section IV, this makes factor 3 further favor denial. *See Fintiv*, IPR2020-00019, Paper 11, at 9 (emphasizing that Petitioner’s lack of diligence can weigh factor 3 in favor of denial).

d. Factor 4 strongly favors denial because there is substantial overlap between issues raised in the petition and in the parallel proceedings.

Petitioner recycles “the same or substantially the same claims, grounds, arguments, and evidence” here that they presented in the Eastern District of Texas. *Fintiv*, IPR2020-00019, Paper 11, at 12. Petitioner’s District Court invalidity contentions assert both anticipation and obviousness based on the same seven references disclosed in the Petition. *Compare* EX2023, A-31(Sun), A-3 (Chen), A-24 (Love), A-13 (Hu), A-38 (Benson, Polymer Adhesives and Encapsulants), A-33 (Waite), A-43 (IPC-1761 Design Guide) *with* EX1005 (Sun), 1006 (Chen), 1007 (Love), 1008 (Hu), 1009 (Benson, Polymer Adhesives and Encapsulants), 1010 (Waite), 1011 (IPC-1761 Design Guide). Petitioner’s invalidity contentions

encompass the same combinations disclosed in the Petition. Each limitation charted in Petitioner's invalidity charts ends with the same boilerplate language:

To the extent Plaintiff contends that [Reference] fails to disclose this limitation, it would have been obvious to one of ordinary skill in the art based on this reference **alone or in combination with** (i) the general knowledge of one of ordinary skill in the art and/or (ii) **the teachings of any of the charted references** with respect to this limitation.

See generally EX2023 (emphasis added). In other words, all the charted references are purportedly combination references with each other. Accordingly, the combinations in Petitioner's invalidity contentions overlap the combinations disclosed in the Petition.

Petitioner's disclosures "rais[e] the specter of significant overlap and duplication of efforts." *Samsung Display Co. v. Pictiva Displays Int'l Ltd.*, IPR2024-00855, Paper 12, at 11 (P.T.A.B. Nov. 19, 2024). "In at least these ways, the parallel proceedings would duplicate effort. [Therefore,] [t]his is an inefficient use of Board, party, and judicial resources and raises the possibility of conflicting decisions." *Cisco Systems, Inc. v. Ramot at Tel Aviv University Ltd.*, IPR2020-00122, Paper 15, at 10 (P.T.A.B May 15, 2020).

The substantial overlap here is precisely the kind of parallel litigation the Director has identified as undermining the purpose of AIA review. As the Director recently observed, "many petitioners do not avail themselves of AIA review as an

‘alternative’ to litigation” but instead “seek AIA review in parallel with litigation to gain litigation leverage.” *Magnolia Med. Techs., Inc. v. Kurin, Inc.*, IPR2026-00097, Paper 17, at 3 (Director May 14, 2026) (precedential). When, as here, “the co-pending litigation involves either the same arguments as the AIA review, or a petitioner asserts system art in the litigation that overlaps with the patents or printed publications asserted in the AIA review,” it is “a tell-tale sign that the AIA review is not functioning as a litigation alternative.” *Id.* at 3. Petitioner’s recycling of the same invalidity grounds in this Petition that it presented in the Eastern District of Texas is precisely the type of duplicative conduct the Director has cautioned against.

e. Factor 5 favors denial because the parallel District Court litigation and Petition involve the same parties.

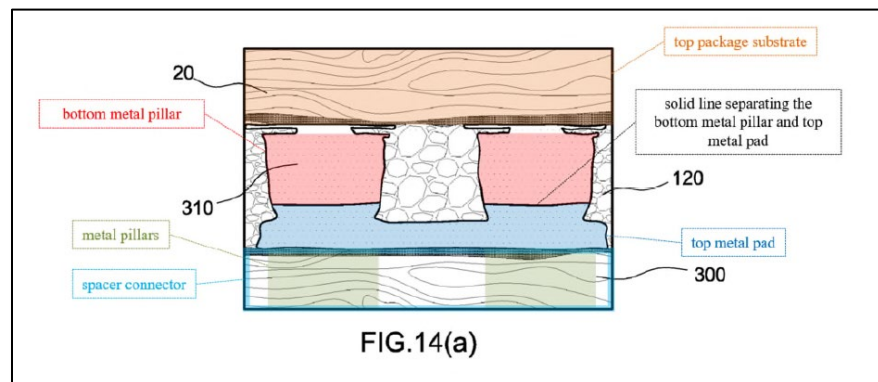
Factor 5 favors denial because there is no dispute that the pending parallel district court case involves the same parties and the same challenged patent. *See Int’l Bus. Machs. Corp. v. Digital Doors, Inc.*, IPR2023-00970, Paper 8, at 13 (P.T.A.B Jan. 12, 2024); *Ericsson Inc. v. Collision Commc’ns, Inc.*, IPR2022-01233, Paper 12, at 16 (P.T.A.B Jan. 19, 2023); *10x Genomics, Inc. v. President and Fellows of Harvard Coll.*, IPR2023-01299, Paper 15, at 20 (P.T.A.B Mar. 7, 2024).

f. Factor 6 favors denial because other circumstances impact the Director’s exercise of discretion, including the Petition’s weak merits.

Because the first five *Fintiv* factors weigh in favor of denial, a merits analysis under the sixth factor is appropriate. *See Pictiva*, IPR2024-00855, Paper 12, at 12.

Petitioner relies on two primary references to invalidate the sole independent claim in the '202 Patent: U.S. Patent Publication Nos. 20110147908 (“Sun”) and 2013/0182402 (“Chen”). Both references do not “plainly lead to a conclusion that one or more claims are unpatentable by a preponderance of the evidence.” *Id.* at 13 (internal citations omitted).²

First, Sun does not disclose, teach or suggest “a plurality of top metal pads, each on a top end of a corresponding metal pillar among the plurality of metal pillars.” Petitioner claims Figure 14(a) anticipates this limitation. *See* Pet. at 19. Indeed, Petitioner identifies an unlabeled part of Figure 14(a) as the “top metal pad” and adds annotations for the “metal pillars”:



EX1005, FIG. 14(a) (annotations added by Petitioner).

“[D]rawings can be used as prior art, without referring to the surrounding description, **only if the prior art features are clearly disclosed by the drawing.**”

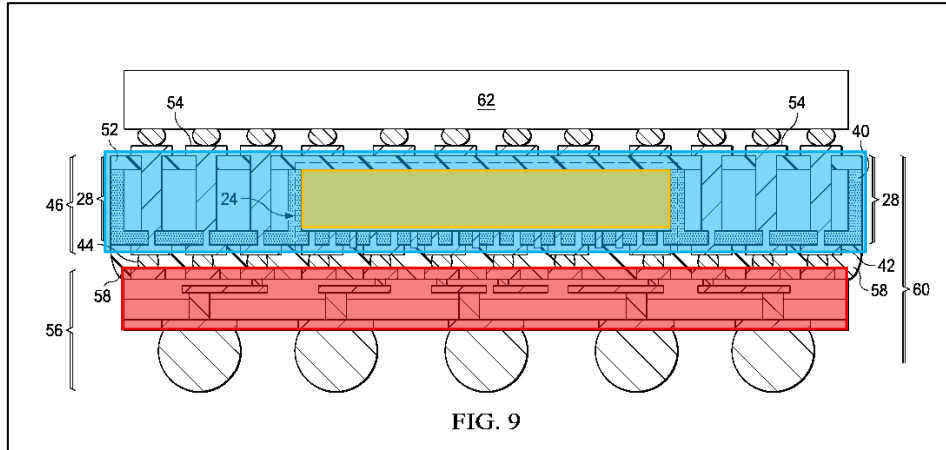
² Patent Owner will provide further arguments in its Patent Owner Preliminary Response.

PlaSmart, Inc. v. Kappos, 482 F. App'x 568, 572 (Fed. Cir. 2012) (emphasis added).

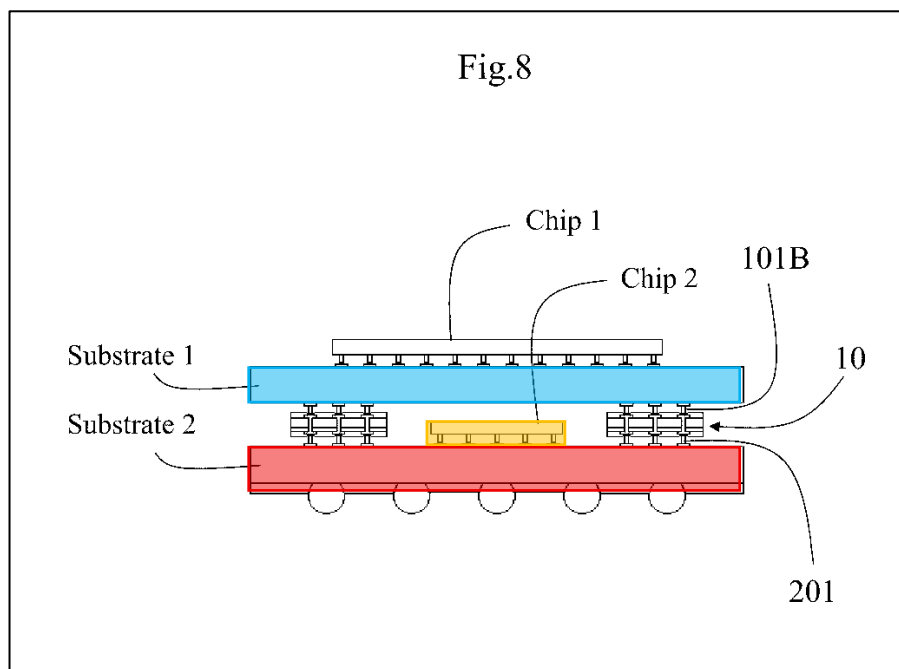
Here, Figure 14(a) does not clearly disclose that the part Petitioner purports to be the “metal pad” is “on a top end of a corresponding metal pillar among the plurality of metal pillars.” Petitioner cannot rely on annotations to show what Figure 14(a) clearly fails to disclose. *See Helen of Troy Ltd. v. Tomy Int'l, Inc.*, No. IPR2021-01208, 2022 WL 442951, at *6 (P.T.A.B. Feb. 7, 2022) (rejecting Petitioner's reliance on annotated figures for invalidity arguments).

Second, Chen discloses an entirely different packaging structure from the one disclosed in the '202 Patent. Chen discloses a die-level package-on-package structure with a die device inside a substrate. *See* EX1006, [0024] (“In accordance with other embodiments, a device includes a bottom package, and a top package component bonded to the bottom package. The bottom package includes a package substrate, a plurality of connectors over the package substrate, and a package. The package includes a device die, and a TAV Module substantially level with the device die.”). Therefore, the device die, which is not even a “chip”³, is not “arranged in the space between the bottom package substrate or the top package substrate” or “mounted to the top surface of the bottom package substrate.” EX2001, Cl. 1.

³ Petitioner asserts “chip” should have its plain and ordinary meaning. *See* Pet. at 5 (not identifying “chip” for construction and proposing that “all terms be given their ordinary and customary meaning”). With this in mind, Petitioner correctly acknowledges that chips are different from dies. *See id.* at 6 (distinguishing between “semiconductor dies” and “packaged chips”).



By contrast, the '202 Patent discloses a chip-level board-on-board structure. *See* EX2001, 2:30–35 (“FIG. 8 shows two spacer connectors 10 are configured in between **package substrate 1** and **package substrate 2**. FIG. 8 shows chip 1 is configured on a top center of **package substrate 1**. **Chip 2** is configured on a top center of **package substrate 2**. **Package substrate 1** is stacked on a top of **package substrate 2**.”).



Beyond these issues, there are additional reasons that further counsel toward denial, such as those that Patent Owner addresses in the following Sections VI through VIII—all of which demonstrate that, under a holistic approach, discretionary denial is warranted.

VI. PETITIONER’S FOREIGN MANUFACTURING PRACTICES WEIGH IN FAVOR OF DISCRETIONARY DENIAL

On March 11, 2026, Director Squires issued a memorandum identifying three additional discretionary institution considerations tied to domestic manufacturing and small-business status:

1. the extent to which any products accused of infringement in a parallel proceeding are manufactured in the United States or are related to investments in American manufacturing operations;
2. the extent to which any products made, sold, or licensed by the patent owner that compete with the accused products are manufactured in the United States; and
3. whether the petitioner is a small business that has been sued for infringement of the patent at issue.

EX2025 (the “U.S. Manufacturing Memo”).

The first factor strongly weighs in favor of discretionary denial. As discussed, the Accused Products are Samsung smartphones containing package structures that infringe ’202 Patent. Petitioner has never manufactured any of its smartphones on American soil. *See* EX2026. Petitioner instead assembles most of these products overseas—the vast majority in Vietnam and India. *See id.* Reports indicate that Petitioner plans to manufacture more of its smartphones in India as part of its tariff

avoidance strategy. *See* EX2027.

Equally critical, the key component—the packaging technology integral to the Accused Products—is manufactured overseas. *See* EX2028 (listing foreign suppliers); *see also* EX2029, 9, 13. Samsung’s semiconductor packaging arm, Samsung Electro-Mechanics, does not have any production sites in the United States. *See* EX2030. Samsung has also pledged to invest billions in new advanced semiconductor packaging plants in Vietnam and millions for similar plants in Japan. *See* EX2031–32.

Although Samsung operates semiconductor—not smartphone—manufacturing facilities in Texas, factor 1 focuses on *the extent* of American manufacturing and investment. The overwhelming majority of Samsung’s manufacturing operations and investments related to semiconductor technology are directed outside the United States. *Compare* EX2033 *with* EX2034. Additionally, Samsung’s new fab in Taylor, Texas is not yet operational, and the U.S. government—not Samsung—will provide at least \$6.4 billion in funding for this fab. *See* EX2035–36.

The Director recently reinforced the significance of this factor. As the Director has explained, the USPTO considers “whether AIA reviews provide a tactical advantage to companies that neither manufacture in the United States nor make American manufacturing investments.” *Magnolia*, IPR2026-00097, Paper 17, at 7.

Petitioner fits this characterization—it has for years used AIA proceedings to gain a tactical advantage in defending patent lawsuits, despite manufacturing its products abroad.

The second and third factors are neutral. Patent Owner has never manufactured any products in the U.S. *See* EX2004, 7. Petitioner is not a small entity either.

Accordingly, the additional considerations in the March 11, 2026 U.S. Manufacturing Memo weigh strongly in favor of discretionary denial.

VII. PETITIONER’S HEAVY RELIANCE ON EXPERT TESTIMONY FAVORS DENIAL

“The extent of the petition’s reliance on expert testimony” is a consideration set forth in the Workload Memo. The USPTO has explained that “[e]xtensive reliance on expert testimony and/or reasonable disputes between experts on dispositive issues may suggest that the questions are better resolved in an Article III court,” and that “[t]he failure to provide focused expert testimony may weigh against institution.” FAQs for Interim Processes for PTAB Workload Management, at #21 (published Apr. 25, 2025), <https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management> (“FAQ #21”).

This consideration strongly favors denial here. Petitioner’s technical expert, Mr. Peter Elenius, submits 231 pages of largely conclusory, unfocused testimony that is unhelpful for the Board. *See generally* EX1003. Petitioner cites Mr. Elenius’s

expert declaration no less than **212 times** in its Petition. *See generally* Pet. Virtually every invalidity argument Petitioner makes cites Mr. Elenius’s expert declaration for support. *Id.* Mr. Elenius’s “analysis” consists primarily of conclusory statements followed by direct quotes from the cited references—something Petitioner also did in its Petition. *Compare id. with* EX1003.

Worse yet, Petitioner uses Mr. Elenius’s testimony as a crutch to address shortcomings in its obviousness and claim construction positions. Petitioner, for example, relies on Mr. Elenius’s testimony to address deficiencies with their primary references. *See, e.g.,* Pet. at 18–21 (filling in *Sun*’s deficiencies for 1[f]), 63–64 (filling in *Chen*’s deficiencies for 1[f]) 65–67 (filling in *Chen*’s deficiencies for 1[h]), 78–80 (filling in *Chen*’s deficiencies for claims 5[a]-[b] and 6[a]), 83 (filling in *Chen*’s deficiencies for claim 8).

Petitioner also primarily relies on extrinsic evidence, including Mr. Elenius’s declaration, patents, and non-patent literature, instead of the intrinsic record for its proposed constructions. *See* Pet. at 5–8 (quoting more extrinsic evidence than intrinsic evidence); EX1003, 5–8 (same). This improper claim construction infects Petitioner’s invalidity positions. For example, Petitioner’s incorrect conclusion that “metal pillars” include vias—despite this technical term appearing nowhere in the specification—leads Petitioner to incorrectly conclude that *Sun* invalidates the ’202 Patent.

Petitioner's extensive reliance on unfocused expert testimony favors denial. The Board's resources would be better allocated to other petitions more grounded in the substance of the prior art.

VIII. PTAB RESOURCES ARE BETTER SPENT ON *EX PARTE* APPEALS

The Director should also deny institution because its limited resources are better spent on the backlog of *ex parte* appeals. Per 35 U.S.C. § 6(b)(1), the PTAB is tasked with “review[ing] adverse decisions of examiners upon applications for patents pursuant to section 134(a).” Congress also tasked the PTAB with reviewing appeals of reexaminations, derivation proceedings, IPRs, and PGRs. 35 U.S.C. § 6(b)(2)-(4). Current Office policy is to focus on *ex parte* appeals “[t]o ensure that the PTAB continues to meet its statutory obligations as to *ex parte* appeals, while continuing to maintain its capacity to conduct AIA proceedings, the Director will exercise her discretion on institution of AIA proceedings. . . .” Workload Memo at 1. The Board should exercise that discretion here because the pendency of *ex parte* appeals has increased over the last year and year-over-year since Fiscal Year 2022. *See* EX2037, 7; EX2038, 2. The PTAB should focus its efforts on the pending *ex parte* appeals—not this IPR.

IX. CONCLUSION

For the reasons set forth above, TopWire respectfully requests that the Director exercise discretion and deny institution.

Respectfully submitted,

Dated: June 2, 2026

/s/ Sean Keller

Sean Keller
Reg. No. 83,409
Attorney for Patent Owner
TopWire, LLC

AHMAD ZAVITSANOS & MENSING PLLC
2001 Ross Avenue, Suite 520
Dallas, TX 75201
Telephone: (214) 800-4501
Facsimile: (713) 655-0062

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITS

I hereby certify that this paper complies with the 20-page limit requirement for discretionary denial briefs filed after September 1, 2025.

Dated: June 2, 2026

/s/ Sean Keller

Sean Keller
Reg. No. 83,409
Attorney for Patent Owner
TopWire, LLC

AHMAD ZAVITSANOS & MENSING PLLC
2001 Ross Avenue, Suite 520
Dallas, TX 75201
Telephone: (214) 800-4501
Facsimile: (713) 655-0062

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Patent Owner's Request for Discretionary Denial was served on June 2, 2026, by electronic mail to the following:

Lead Counsel	Back-up Counsel
Eliot D. Williams, Reg. No. 50,822 Baker Botts L.L.P. 700 K Street, N.W. Washington, D.C. 20001-5692 Phone: 202.639.1334 Fax: 202.639.7890 eliot.williams@bakerbotts.com	Neil Sirota, Reg. No. 38,306 Baker Botts L.L.P. 30 Rockefeller Plaza, Ste 4340 New York, NY 10112-4498 Phone: 212.408.2548 Fax: 212.259.2548 neil.sirota@bakerbotts.com Frank Zhu, Reg. No. 71,214 Baker Botts L.L.P. 30 Rockefeller Plaza, Ste 4340 New York, NY 10112-4498 Phone: 212.408.2639 Fax: 212.259.2439 frank.zhu@bakerbotts.com Coleman Strine, Reg. No. 79,981 Baker Botts L.L.P. 30 Rockefeller Plaza, Ste 4340 New York, NY 10112-4498 Phone: 212.408.2595 coleman.strine@bakerbotts.com Pilseon Yoo (pro hac vice forthcoming) Baker Botts L.L.P. 101 California Street, Ste 3200 San Francisco, CA 94111 Phone: 415.291.6206 pilseon.yoo@bakerbotts.com

Respectfully submitted,

Dated: June 2, 2026

/s/ Sean Keller

Sean Keller

Reg. No. 83,409

Attorney for Patent Owner

TopWire, LLC

**AHMAD ZAVITSANOS & MENSING
PLLC**

2001 Ross Avenue, Suite 520

Dallas, TX 75201

Telephone: (214) 800-4501

Facsimile: (713) 655-0062