

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VIANT TECHNOLOGY LLC,
MEDIAOCEAN LLC, and
APPLOVIN CORP.,
Petitioners

v.

INTENT IQ, LLC,
Patent Owner

Case No. IPR2026-00330
Patent 11,949,962

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

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Patent Owner's Exhibit List for IPR2026-00330

Pursuant to 37 C.F.R. § 42.63(e), Patent Owner Intent IQ, LLC hereby submits its exhibit list associated with the above-captioned *inter partes* review of U.S. Patent No. 11,949,962.

Exhibit No.	Description
2001	Nisha Shetty, IAM, <i>The invention story of a small ad company that won \$122 million verdict from Amazon</i> , https://www.iam-media.com/article/the-invention-story-of-small-ad-company-won-122-million-verdict-amazon (Aug. 15, 2024)
2002	Intent IQ, <i>AlmondNet, Intent IQ and Datonics Announce Resolution of Patent Infringement Dispute with Amazon</i> , GLOBENEWSWIRE, https://www.globenewswire.com/news-release/2026/04/07/3269306/0/en/almondnet-intent-iq-and-datonics-announce-resolution-of-patent-infringement-dispute-with-amazon.html (Apr. 7, 2026)
2003	U.S. Patent No. 9,078,035 (ancestor of the challenged '962 Patent)
2004	U.S. Patent No. 8,566,164 (patent that issued from Shkedi-728)
2005	Mediaocean's Answer in <i>AlmondNet et al. v. Mediaocean LLC et al.</i> , C.A. No. 25-cv-406-MN (D. Del. Mar. 6, 2026)
2006	James Hercher, <i>Mediaocean Switches Private Equity Owners, as It Evolves for an Internet-Delivered Age</i> , ADEXCHANGER, https://www.adexchanger.com/digital-tv/mediaocean-switches-private-equity-owners-as-it-evolves-for-an-internet-delivered-age/ (Sept. 1, 2021)
2007	Mediaocean Team, <i>CVC and TA to Partner with Mediaocean and Fuel Growth of Global Omnichannel Advertising Platform</i> , MEDIAOCEAN, https://www.mediaocean.com/CVC-TA-announcement (Aug. 31, 2021)
2008	<i>Europe / Americas</i> , CVC.COM, available at https://www.cvc.com/strategies/europe-americas/ (last visited June 8, 2026)
2009	<i>Driving Value</i> , TA.COM, available at https://www.ta.com/driving-value/ (last visited June 8, 2026)

I. INTRODUCTION

As discussed further below, the settled expectations of the parties weigh heavily against institution because the challenged U.S. Patent No. 11,949,962 (the “’962 Patent”) has been licensed to companies including Google, Microsoft, Samsung, and Amazon, and was issued from a chain of continuations from a patent having **broader** scope in relevant respect which has been in force for over a decade. Furthermore, the Petition is weak on the merits (failing to allege that **any** limitations of the independent claims are disclosed by the prior art), and additionally appears to have violated the requirement that the Petition name all real parties-in-interest. And many of the traditional *Fintiv* factors additionally weigh in favor of discretionary denial.

Patent Owner thus respectfully requests discretionary denial of the Petition.

II. DENIAL OF INSTITUTION UNDER § 314 IS WARRANTED.

35 U.S.C. § 314(a) gives the Director discretion to deny institution of IPR. *See NHK Spring Co. v. Intri-Plex Techs., Inc.*, IPR2018-00752, Paper 8 at 19–21 (PTAB Sept. 12, 2018) (precedential).

The March 26, 2025 Memorandum regarding Interim Processes for PTAB Workload Management sets forth various relevant considerations which may weigh in favor of discretionary denial, including:

- Whether the PTAB or another forum has already adjudicated the validity or patentability of the challenged patent claims;

- Whether there have been changes in the law or new judicial precedent issued since issuance of the claims that may affect patentability;
- The strength of the unpatentability challenge;
- The extent of the petition's reliance on expert testimony;
- Settled expectations of the parties, such as the length of time the claims have been in force;
- Compelling economic, public health, or national security interests; and
- Any other considerations bearing on the Director's discretion.

Many of these factors, including settled expectations, no relevant changes in law, and the weak strength of the unpatentability challenge (including Petitioners' failure to explain the Petition's invalidity theories and apparent failure to name all real parties in interest) weigh strongly against institution.

A. Settled expectations and lack of relevant change in law favor discretionary denial.

Here, the '962 Patent is part of a family that claims priority to August 3, 2011. *See* Ex. 1001 at 2 (claiming priority to an August 3, 2011 provisional application). The oldest enforceable patent in the family, U.S. Patent No. 8,683,502, was issued on March 25, 2014.

Most relevant to Patent Owner's settled expectations in the '962 Patent, the '962 Patent resulted from a series of continuations from U.S. Pat. App. No. 14/196,844, which issued as U.S. Pat. No. 9,078,035 (the "'035 Patent"). The '035

Patent has been in force since July 7, 2015, and as such will have been in effect for over *eleven years* at the time any institution decision is reached. *See* Ex. 1001; Ex. 2003 ('035 Patent). Accordingly, Patent Owner has established settled expectations that the '035 Patent's claim scope would not be subject to invalidity challenge in an IPR, well over a decade past issuance. These same settled expectations apply equally to the challenged claims of the '962 Patent, because those claims are *narrower* in relevant respect than the claims of the '035 Patent.

A side-by-side comparison of representative claim 1 of the '035 Patent and representative claim 1 of the '962 Patent is provided below.

'035 Patent	'962 Patent
1. A computer-implemented method of dealing with online activity of a user having a set-top box and a secondary online device, the method comprising: (a) receiving at a computer system a notification, wherein the notification: (i) includes or references a set-top box identifier, and (ii) results from and signifies a television advertisement being presented using the set-top box that corresponds to the set-top box identifier; and (b) based on the notification, automatically with the computer system causing an action to be taken with respect to online activity through the secondary online device subsequent to presentation of the television advertisement, which secondary online	1. A method comprising: (a) with a programmed hardware computer system automatically storing first electronic indicia of an association between a first online device (OD1) and a set-top box (STB) by matching (i) first personally identifiable information (PII) about a user of the OD1, which first PII is received by the computer system from a third party, with (ii) second personally identifiable information about a user of the STB; and (b) with the computer system automatically measuring effectiveness of an advertisement displayed via the STB by tracking user behavior performed on a second online device (OD2) following delivery of the advertisement, based on an association between the OD2 and the STB, which

device corresponds, at the time of the action, to a secondary online device identifier, (c) wherein the secondary online device identifier is associated with the set top box identifier, and that association is indicated by (i) stored electronic indicia of a proxy location of the set-top box, which proxy location is a location of a primary online device at a time when the primary online device is estimated to have been at a geographic location shared with the set-top box, and (ii) stored electronic indicia indicating that the secondary online device is estimated to have been at least transiently located at the proxy location of the set-top box.	association has been determined using both (i) the first electronic indicia of the association between the OD1 and the STB stored pursuant to part (a), and (ii) stored second electronic indicia of an association between the OD2 and the OD1, which have been associated based on use by the OD1 of a common proxy IP address and based on use by the OD2 of the common proxy IP address, wherein the common proxy IP address is an IP address through which network traffic of the OD1 and the OD2 was routed, wherein the association between the OD1 and the OD2 has been determined by a computer system located outside a local area network (LAN) defined by the common proxy IP address.
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As shown above, the '035 Patent and '962 Patent both recite a computer-implemented method. The '962 Patent, however, is significantly narrower regarding numerous specifics of the claimed method.

For example, the '035 Patent recites “causing an action to be taken with respect to online activity through the secondary online device subsequent to presentation of the television advertisement.” The '962 Patent also recites causing an action to be taken subsequent to presentation of a television advertisement, but includes the *stricter* requirement that the action is *specifically* “measuring effectiveness of an advertisement displayed via the [set-top box]... following delivery of the advertisement.”

Likewise, the '035 Patent requires an association between devices by reference to a “proxy location” of a set-top box and “indicia indicating that the secondary online device is estimated to have been at least transiently located at the proxy location of the set-top box.” The '962 Patent *also* requires an indication that the two devices were at the same proxy location, but is *additionally* more restrictive in requiring that this proxy location is a “local area network (LAN) defined by [a] common proxy IP address” by requiring that the “common proxy IP address” is used to associate the two devices. The '962 Patent is *also* more restrictive by requiring that “the association” is “determined by a computer system” *outside* the specified proxy location (i.e., outside the “local area network (LAN) defined by the common proxy IP address”).

The '962 Patent is *further* narrowed by requiring that the association is additionally determined by “matching (i) first personally identifiable information (PII) about a user of the [first online device / OD1]... with (ii) second personally identifiable information about a user of the STB.”

And while the '035 Patent recites “receiving at a computer system a notification, wherein the notification: (i) includes or references a set-top box identifier, and (ii) results from and signifies a television advertisement being presented using the set-top box that corresponds to the set-top box identifier,” a requirement not expressly disclosed by the '962 Patent, this is of similar scope to

other '962 Patent requirements. For example, the '962 Patent recites that the computer-implemented method must associate a set-top box with a first and second online device, such that the set-top box must be somehow *identified*, and must take action (“measuring effectiveness”) following the delivery of an advertisement (such that there must be some notification signifying that the television advertisement was delivered or presented to the user).

This similarity is supported by the Petition’s theory regarding how the claims of the '962 Patent are satisfied. For example, the Petition cites disclosures of association of *identifiers* in support of its allegation of the obviousness of associating *devices*. See Pet. 21 (discussing “the association of an STB identifier with an online access identifier”). The Petition’s theory also involves “tracking a user’s online behavior *after* a TV ad has been delivered” to “measure the effectiveness” of the ad (Pet. 21), which of course requires some notification that the ad was in fact delivered. Thus, even if the '962 Patent is arguably somehow broader with respect to these limitations, such additional breadth would have relevance to the specific challenge raised by the Petition.

In other words, the claims of the '962 Patent are significantly *narrower* in relevant respect than the claims of the '035 Patent that has been in force for over a decade. Given that Patent Owner has strong settled expectations in the '035 Patent, Patent Owner likewise reasonably expected that the *even narrower* claims of the

'962 Patent would not be subject to reconsideration in an IPR.

These settled expectations are bolstered by the fact that the '962 Patent's family (and thus the '962 Patent itself) is subject to significant licensing activity. Although third-party confidentiality requirements prohibit a detailed disclosure, there are several portfolio licenses that date back as early as 2013 that license the '962 Patent's family as part of a portfolio including other Datonics, AlmondNet, and Intent IQ patents. For example, as detailed in an article published by Intellectual Asset Management, in 2013 AlmondNet, Intent IQ, and Datonics entered into "a less-than-perfect licensing deal with Google" that covered the '962 Patent family. *See* Ex. 2001 at 2. More recently, portfolio licenses including the '962 Patent and its family were granted to Microsoft and LinkedIn in June of 2024, and Roku and Samsung in June of 2025, and Amazon in 2026 (*see* Ex. 2002 at 1) following AlmondNet's \$122M infringement verdict against Amazon (Ex. 2001).

Additionally, no changes in the law support reconsideration of the validity of the '962 Patent claims in any way that would justify disregarding Patent Owner's settled expectations.

B. The merits of the Petition also weigh strongly in favor of discretionary denial.

As the Supreme Court has made clear, in an obviousness analysis "[u]nder §103, the scope and content of the prior art are to be determined[and the] *differences*

between the prior art and the claims at issue are to be ascertained.” Graham v. John Deere Co. of Kansas City, 383 U.S. 1, 17 (1966).¹ It is only “[a]gainst this background” that “the obviousness or nonobviousness of the subject matter is determined.” *Id.*

The Petition, however, contains essentially no analysis regarding any “differences between the prior art and the claims at issue.” For example, in its analysis of the challenged independent claims, the Petition does not allege that the prior art discloses (as opposed to renders obvious) **any** of the claim limitations. *See generally* Pet. 14–30 (analysis of independent claim 1, alleging every limitation is obvious but not alleging any limitation to be disclosed); 54–55 (same regarding the Petition’s analysis of independent claim 22). This is not some oversight, as can be seen by the rare dependent limitation the Petition **does** expressly allege to be disclosed by the prior art. *See* Pet. 34 (alleging that the prior art “discloses that the common proxy IP address is a dynamically assigned IP address” as required by dependent claim 4).

The Petition’s failure to specify what it contends is **disclosed** in the prior art (as opposed to merely **rendered obvious** by the prior art) is at odds with the obviousness framework required by *Graham*. And it obfuscates any understanding of which limitations Petitioners believe require **modifications** to the prior art. For

¹ All emphases in quotations herein are added unless otherwise specified.

instance, Patent Owner intends to argue (including in its forthcoming POPR) that the Petition's proposed combination of references to arrive at certain limitations would not have been obvious. But the Petition's failure to specify which limitations rely on the proposed combination of references (as opposed to actual disclosure in the prior art by any particular reference) raises the possibility that Petitioners will attempt to argue that the claims are obvious *notwithstanding* the Petition's failure to show the obviousness of aspects of its proposed combination. The fact that these theories are not clear from the Petition itself prevents the Board and Patent Owner from adequately understanding Petitioners' theory (and gives flexibility to Petitioners to make any argument they like on this issue in responding to Patent Owner's Response, should this proceeding ultimately be instituted).

The failure to allege what is *disclosed* (rather than merely *rendered obvious*) by the prior art—in addition to violating the Supreme Court's *Graham* framework for obviousness analyses—also raises the serious possibility of gamesmanship on the part of Petitioners. For example, Patent Owner is currently asserting claims of infringement of U.S. Patent No. 8,566,164 (Ex. 2004, or the "'164 Patent") against Petitioner Mediaocean in *AlmondNet et al. v. Mediaocean LLC et al.*, C.A. No. 25-cv-406-MN (D. Del.). The '164 Patent issued from Shkedi-728, the Petition's primary prior art reference. Ex. 2004 (listing Shkedi-728 as "Prior Publication Data"). And Mediaocean is alleging that the '164 Patent fails to meet the requirements of 35

U.S.C. §112 (*see* Ex. 2005 at ¶50), which includes the written description requirement.

Mediaocean has thus left itself maximum flexibility to argue before the district court that various concepts are not adequately disclosed by the '164 Patent, by saying *almost nothing* about what is disclosed by that patent's specification. Regardless of whether or not Mediaocean *intentionally* remained ambiguous about the prior art's disclosure for this purpose, the Director can discourage future parties from engaging in gamesmanship by exercising discretion to deny institution here.

Finally, the Petition relies extensively on expert testimony (Ex. 1003) to explain the relevance of the prior art, even though witness credibility is better evaluated by a District Court than the Board (which typically does not consider live witness testimony). Furthermore, the expert testimony is almost entirely *verbatim* recitation of the attorney argument presented in the Petition. *See, e.g.*, Ex. 1003, ¶¶72–75 (verbatim recitation, including emphases and alterations, of the argument presented in the Petition from pages 24–27). Additionally, given that the Petition has taken no position on what the prior art actually *discloses*, there is no allegation that all claim limitations are actually present in the prior art. Accordingly, the Petition's extensive reliance on expert testimony is an improper attempt to “supply... missing claim limitation[s],” contrary to 37 C.F.R. §42.104(b)(4) and the Acting Director's guidance that “expert testimony... may not be used to supply a missing claim

limitation.” See July 31, 2025 Stewart Memorandum regarding Enforcement and Non-Waiver of 37 C.F.R. §42.104(B)(4) and Permissible Uses of General Knowledge in *Inter Partes* Reviews (available at https://www.uspto.gov/sites/default/files/documents/aapa_memo_final_signed.pdf).

C. Substantial questions regarding Petitioners’ real-party in interest identification also favor discretionary denial.

On October 28, 2025, the Director provided a “Precedential designation of *Corning Optical Communications RF, LLC v. PPC Broadband Inc.*, IPR2014-00440, Paper 68 (PTAB Aug. 18, 2014) (except for § II.E.1)” (hereinafter “*Corning Designation Memo*”) (available at https://www.uspto.gov/sites/default/files/documents/Precedential_designation_of_Corning_Optical_Communications_RF_LC_v._PPC_Broadband_Inc_Memo_-_Dated_10_28_25.pdf). As the *Corning Designation Memo* makes clear, the “integrity of PTAB proceedings depends on knowing who is behind a petition—who funds it, directs it, and/or benefits from it.” *Id.* at 4. “Any opacity in that chain of control” would “serve[] only to undermine public confidence in the integrity of the patent system.” *Id.*

Here, there are serious questions as to whether Petitioners (and particularly Petitioner Mediaocean LLC) identified all real parties-in-interest. Specifically, the publicly available information shows that two private equity investors, CVC Capital Partners and TA Associates, have a significant equity stake in (and operating control

over) Mediaocean. *See* Ex. 2006, 1 (“Mediaocean will be switching private equity portfolios, moving from Vista Equity to CVC Capital Partners and TA Associates....”). While the exact amount of ownership “was not disclosed” (*id.*), the article describing the investment makes clear that the investors are part of, or closely affiliated with, Mediaocean’s “leadership team,” evidencing the ability to participate in and control the instant IPR proceedings. *See id.* at 5 (“I think you also have an ***incredibly hungry and confident leadership team*** at Mediaocean.... ***We like the aggregation of teams that just came together with CVC and TA.***”); *see also id.* at 6 (“CVC has the mindset that products need to lead the market”); Ex. 2007 at 3 (“Managing Partner at CVC” stating: “We are committed to building a dynamic customer-facing organization and we strongly believe helping agencies and marketers navigate the increasingly complex digital advertising landscape is critical to success. We look forward to supporting Mediaocean in working to achieve this.”); *id.* at 4 (noting that TA Associates “help[s] management teams build lasting value”); Ex. 2008 at 1 (“CVC’s Europe / Americas private equity strategy is focused on ***control or co-control investments*** in market-leading businesses across these regions.”); Ex. 2009 at 1 (TA Associates stating: “We are a proven growth investor ***and collaborative partner....***”).

Thus, if this proceeding is instituted, substantial resources will be devoted to discovery and arguments regarding Mediaocean’s relationship to CVC Capital

Partners and TA Associates. Given that the publicly available evidence strongly suggests that both companies “could have exercised[] control over Petitioner’s participation in this proceeding, and should have been named as real parties-in-interest” (*see Corning*, IPR2014-00440, Paper 68 at 5), it is likely that the IPR will ultimately be dismissed for failure to identify all real parties-in-interest, such that in the meantime resources will be unnecessarily devoted to the substantive merits of the Petition. And the parties will need to litigate the real party-in-interest issue, which imposes an additional cost beyond the ordinary cost of litigating validity before a district court. The strong likelihood of the Petition’s futility, as well as the additional costs that the real party-in-interest analysis will introduce to this proceeding, weigh in favor of discretionary denial.

D. *Fintiv* factors also weigh against institution.

In addition to the factors discussed above, the Board has set forth six factors for determining whether discretionary denial in light of parallel litigation is appropriate:

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;
6. other circumstances that impact the Board's exercise of discretion, including the merits.

Apple Inc. v. Fintiv, Inc., IPR2020-00019, Paper 11 at 5-6 (PTAB Mar. 20, 2020) (precedential) (“*Fintiv I*”). In evaluating these factors, the Board “takes a holistic view of whether efficiency and integrity of the system are best served by denying or instituting review.” *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 15 at 7–17 (PTAB May 13, 2020) (informative) (“*Fintiv II*”). As explained below, many of the *Fintiv* factors weigh in favor of discretionary denial in light of the related district court litigations involving Petitioners. *See* Pet. 60 (listing cases).

1. *Fintiv* Factor 1: The likelihood of a stay is neutral.

Fintiv Factor 1 looks to “whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted.” *Fintiv I* at 5-6.

The Board ordinarily “will not attempt to predict” how a district court will proceed if a stay has not been granted (*see Sand Revolution II, LLC v. Continental Intermodal Group-Trucking LLC*, IPR2019-01393, Paper 24 at 7 (June 16, 2020) (informative)). Here, not only has a stay not been granted, but Petitioners have not even ***requested*** a stay. Therefore, this factor is neutral, if not weighing in favor of discretionary denial.

**2. *Fintiv* Factors 2-3: Time to trial and amount of work
already completed are outweighed by other factors.**

Fintiv Factor 2 looks to “proximity of the court's trial date to the Board's projected statutory deadline for a final written decision.” *Fintiv I* at 5–6. *Fintiv* Factor 3 looks to “amount and type of work already completed in the parallel litigation by the court and the parties at the time of the institution decision.” *Fintiv I* at 9.

Here, the district court litigations are in their early stages and do not have a set trial date. But even though these factors do not weigh in favor of discretionary denial, numerous other factors discussed above and below do weigh in favor of discretionary denial.

**3. *Fintiv* Factor 4: There is likely to be substantial overlap
between this IPR and the district court proceeding.**

Fintiv Factor 4 evaluates “concerns of inefficiency and the possibility of conflicting decisions” when substantially identical prior art is submitted in both the district court and the IPR proceeding. *Fintiv I* at 12. Here, all claims of the '962 Patent (claims 1–34) are challenged such that this proceeding necessarily covers all claims that will be addressed in the district court proceeding.

Here, Petitioners have offered *no* stipulation regarding what invalidity grounds they will pursue in the district court. Accordingly, Petitioners reserve for

themselves the right to raise the exact same art raised in this proceeding, at least until a final written decision would issue. And even after a final written decision issues, Petitioners would be able to present any publication art (including the exact art presented in this proceeding), so long as that art is at least nominally presented in combination with system art.

Additionally, Petitioners' stipulation still permits subsequent *ex parte* reexamination petitions on grounds that could have been raised in the Petition. Repeated challenges to the same patent by the same defendant in multiple venues are thus possible, obviating the very purpose of the IPR process to streamline the patent system and reduce litigation costs. *See, e.g.*, H.R. Rep. No. 112-98, at 39–40 (2011) (“The legislation is designed to establish a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs.”). While the Director’s concerns in *Motorola v. Stellar* focused on concerns over the duplication between the PTAB and district court proceedings, expecting the Patent Office (through the PTAB and the Central Reexamination Unit) to hear two serial challenges to the same patent is little better.²

² While 35 U.S.C. § 315(e) does preclude a petitioner from filing an *ex parte* reexamination based on any invalidity grounds “which petitioner raised or reasonably could have raised,” this language does not fully protect patent owners from serial

Accordingly, Petitioners' failure to offer *any* stipulation prevents this IPR proceeding from being a "true alternative" to the District Court litigation. *See Motorola v. Stellar*, IPR2024-01205, Paper 19 at 3–4 (Mar. 28, 2025) (Director vacating decision granting institution where the petitioner's "stipulation does not ensure that these [inter partes review] proceedings would be a 'true alternative' to the district court proceeding").

Thus, *Fintiv* Factor 4 weighs strongly in favor of discretionary denial.

validity attacks using substantially the same prior art. As the Federal Circuit has explained, if a petitioner seeks to serially challenge a patent (i.e., by filing an *ex parte* re-examination right after conclusion of an IPR proceeding against the same patent), "[t]he burden of proving, by a preponderance of the evidence, that a skilled searcher exercising reasonable diligence would have identified an invalidity ground rests on the **patent holder**." *See Ironburg Inventions Ltd. v. Valve Corp.*, 64 F.4th 1274, 1298–99 (Fed. Cir. 2023). Thus, petitioners may still abuse the system by withholding certain prior art during the initial IPR challenge, then filing an *ex parte* proceeding if the IPR challenge fails, forcing the patent owner to then carry the burden of proving that the petitioner could have found the additional references with reasonable diligence.

4. *Fintiv* Factor 5: Petitioners are defendants in the district court litigation.

Fintiv Factor 5 looks to “whether the petitioner and the defendant in the parallel proceeding are the same party.” *Fintiv I* at 5–6. Specifically, when “the petitioner and the defendant in the parallel proceeding are the same party, this factor weighs in favor of discretionary denial.” *Fintiv II* at 15. Here, the Petitioners are defendants in the parallel litigation.

Thus, *Fintiv* Factor 5 weighs in favor of discretionary denial.

5. *Fintiv* Factor 6: Other considerations support discretionary denial.

Fintiv Factor 6 looks to “other circumstances that impact the Board's exercise of discretion, including the merits.” *Fintiv I* at 5-6. This factor also weighs heavily against institution for at least three reasons.

First, contrary to Petitioners’ assertions, the Petition fails to present any compelling merits of unpatentability. The Petition does not present anticipatory prior art under §102. Instead, the Petition relies solely on obviousness under §103. *See generally* Petition. And as noted above, the Petition fails to allege that *any* limitations of the independent claims are disclosed by the prior art; instead, the Petition relies on expert testimony to satisfy missing claim limitations. Patent Owner intends to highlight additional deficiencies in its forthcoming POPR merit-based

briefing.

Second, as noted above, the Petition fails to name TA Associates and CVC Capital Partners, which appear to be the real parties-in-interest, such that the requirements for institution have not been satisfied. If the Petition is instituted, the parties will expend substantial resources litigating both the real party-in-interest issue *and* the substantive merits of the invalidity challenge, with the likely result that the IPR will, ultimately, be dismissed for failure to name all real parties-in-interest. Efficiency would be better served by denying institution outright.

Third, as discussed above, the factors discussed in the Acting Director's March 26, 2025 Memorandum regarding Interim Processes for PTAB Workload Management weigh ***strongly*** in favor of discretionary denial, including the length of time family members with even broader scope have been in effect.

III. CONCLUSION

Patent Owner respectfully requests that the Director exercise discretion under Section 314(a) to deny institution.

Date: June 8, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))

The undersigned hereby certifies that the above document was served on June 8, 2026 by filing this document through the Patent Trial and Appeal Case Tracking System (PTACTS) as well as delivering a copy via electronic mail upon the following attorneys of record for Petitioner:

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