

IPR2026-00334
Patent No. 12,231,703

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PINTEREST, INC.,

Petitioner,

v.

OPENTV, INC.,

Patent Owner.

Case IPR2026-00334

Patent No. 12,231,703

PATENT OWNER'S MEMORANDUM
IN SUPPORT OF DISCRETIONARY DENIAL

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PATENT OWNER EXHIBIT LIST

Exhibit No.	Description
EX2001	Complaint, <i>OpenTV, Inc. v. Pinterest, Inc.</i> , No. 1-25:cv-01404-JCG, D.I. 1 (D. Del. Nov. 18, 2025)
EX2002	Answer, <i>OpenTV, Inc. v. Pinterest, Inc.</i> , No. 1-25:cv-01404-JCG, D.I. 20 (D. Del. Feb. 16, 2026)
EX2003	Complaint, <i>OpenTV, Inc. v. Pinterest, Inc.</i> , No. 1-24:cv-01301-JCG, D.I. 1 (D. Del. Nov. 27, 2024)
EX2004	Scheduling Order, <i>OpenTV, Inc. v. Pinterest, Inc.</i> , No. 1-25:cv-01404-JCG, D.I. 30 (D. Del. Mar. 25, 2026)
EX2005	Docket Print-Out, <i>Nagravision Sàrl v. Pinterest Inc. et al.</i> , No. UPC-CFI-0001506/2025
EX2006	Amended Scheduling Order, <i>OpenTV, Inc. v. Pinterest, Inc.</i> , No. 1-24:cv-01301-JCG, D.I. 68 (D. Del. Dec. 31, 2025)
EX2007	Docket Print-Out (ECF), <i>OpenTV, Inc. v. Pinterest, Inc.</i> No. 1:24-cv-01301-JCG
EX2008	App'x A to OpenTV's Disclosure of Asserted Claims and Infringement Contentions, <i>OpenTV, Inc. v. Pinterest, Inc.</i> , No. 1-25:cv-01404-JCG, D.I. 1 (D. Del. May. 1, 2026)
EX2009	Notice of Hearing (English Translation), <i>Nagravision Sàrl v. Pinterest Germany GmbH et al.</i> , No. 7 O 14220/25 (Munich District Court I Nov. 18, 2025)
EX2010	Statement of Defense (Excerpts, Redacted), <i>Nagravision Sàrl v. Pinterest Inc. et al.</i> , No. UPC-CFI-0001506/2025 (Mar. 26, 2026)
EX2011	European Patent No. 3,965,466
EX2012	Counterclaim for Revocation (Excerpts), <i>Nagravision Sàrl v. Pinterest Inc. et al.</i> , No. UPC-CFI-0001506/2025 (Mar. 26, 2026)

INTRODUCTION

The Board should deny institution of Petitioner's request for *inter partes* review of U.S. Patent No. 12,231,703 (the "'703 patent"). Petitioner is not pursuing *inter partes* review as an efficient alternative to litigation, but as part of broader strategy of multiplying proceedings.

The on-going litigation between the parties includes:

- *OpenTV, Inc. v. Pinterest, Inc.*, No. 1:24-cv-01301-JCG (D. Del.) where four unrelated patents are asserted (the "First District Court Action");
- *OpenTV, Inc. v. Pinterest, Inc.*, No. 1-25:cv-01404-JCG (D. Del.) where the '703 patent is asserted (the "Second District Court Action");
- *Nagravision Sàrl v. Pinterest Inc. et al.*, No. UPC-CFI-0001506/2025 (the "UPC Action") where a European counterpart of the '703 patent is asserted;
- *Nagravision Sàrl v. Pinterest Germany GmbH et al.*, No. 7 O 14220/25 (Munich District Court I) where an unrelated patent, European Patent No. 3,241,126 is asserted (the "German Action"); and
- IPR2026-00365 and IPR2026-00366, where Pinterest has filed IPRs on patents *that are not even in suit*, but are related to the '703 patent.

The totality of the circumstances, consistent with the *Fintiv* factors, support discretionary denial. Pinterest is involved in all of these actions, and the subject matter overlaps. The same or similar invalidity questions will be resolved in the UPC Action long before the Board could reach a final decision here, and then again in the Second District Court Action. There is no need for a third forum.

Additionally, Petitioner's narrow *Sotera* stipulation does not eliminate the risk of duplicative invalidity challenges between this Petition and the Second District Court Action. And, Petitioner has taken several claim construction positions in the UPC Action, but asserts plain and ordinary meaning here. It is highly likely that Petitioner will assert similar narrow, non-infringement style claim constructions in the Second District Court Action, in conflict with its Petition.

The parties will also reach trial first in the First District Court Action, and yet another action in Germany, prior to the estimated timing of the Board issuing a final written decision. Adding an IPR on the '703 patent, that will not resolve until after trial in these actions, is simply extra work for the parties, and the Board, that will not provide a lower-cost or otherwise efficient alternative to litigation. Instead, the additional IPRs Petitioner has filed on patents that are not in suit (and for which Patent Owner will seek discretionary denials) demonstrate that Petitioner's goal is the opposite of efficiency. Accordingly, Patent Owner respectfully requests that the

Board exercise discretion and deny Petitioner's request for *inter partes* review of the '703 patent.

BACKGROUND

OpenTV is a Delaware corporation with its principal place of business in the United States in Phoenix, Arizona. Ex. 2001, ¶ 5. OpenTV and its affiliates develop digital media technologies, employ hundreds of employees in the United States and worldwide, and protect that research and development through a patent portfolio comprising thousands of patents. *Id.*, ¶ 2. OpenTV was founded in 1996 as Thomson Sun Interactive, LLC, a joint venture of Thomson Multimedia SA and Sun Microsystems, Inc., and was converted into OpenTV in 1997. *Id.*, ¶ 20. From its inception, OpenTV has developed and commercialized patented technology for delivering television and other media content to consumers through cable, satellite, terrestrial, managed, and unmanaged networks. *Id.* OpenTV also has a long history of innovation in software for set-top boxes, including a partnership with EchoStar's DISH Network, the first satellite company to provide interactive television services in the United States. *Id.*, ¶ 21. Today, OpenTV develops software for intuitive and personalized viewing experiences, including advanced user interfaces, VOD, PVR, HD, interactive and addressable advertising, and enhanced television applications. *Id.*, ¶ 25.

OpenTV and Pinterest's disputes began long before the Second District Court Action and this Petition concerning the '703 patent. *See* Ex. 2003. The First District Court Action began on November 27, 2024, when OpenTV filed a district court complaint against Pinterest asserting four patents. Ex. 2003. Pinterest then filed an IPR petition challenging one of the asserted patents on July 11, 2025. *Pinterest, Inc. v. OpenTV, Inc.*, IPR2025-01184, Paper 1 (P.T.A.B. July 11, 2025). The Board discretionarily denied that petition on November 20, 2025. *Pinterest, Inc. v. OpenTV, Inc.*, IPR2025-01184, Paper 11 (P.T.A.B. Nov. 20, 2025). None of the other three asserted patents were challenged in IPR and that case is proceeding with a trial date scheduled for a little over a year from now—July 12, 2027. Ex. 2006 at 4.

The '703 patent issued on February 18, 2025 while the parties were already litigating the First District Court Action. *Compare* Ex. 1001 *with* Ex. 2003. OpenTV then filed the Second District Court Action asserting the '703 patent against Pinterest on November 18, 2025. Ex. 2001. In that action, OpenTV alleges that Pinterest's website and mobile applications infringe the '703 patent through, among other things, Pinterest's processing of video content. *Id.*, ¶¶ 1, 3, 85-89. The Complaint identifies Pinterest's use of video pins, adaptive bitrate streaming, ExoPlayer, and reuse of playback-pipeline components in connection with the accused Pinterest applications. *Id.*, ¶¶ 45-63, 98-123. Pinterest is both the defendant in the Second (and

First) District Court Action and the Petitioner in this proceeding. *See* Ex. 2001; Ex. 2003; Paper 1.

The parties' dispute also extends to Europe. The UPC Action began on November 10, 2025, when NagraVision Sàrl (an OpenTV affiliate) filed a complaint in the Unified Patent Court against Pinterest Germany GmbH, Pinterest Europe Ltd., and Pinterest Inc. for infringement of European Patent No. 3,965,466 (the "EP '466 patent"). Ex. 2005; Ex. 2010; Ex. 2011. The EP '466 is a counterpart to the '703 patent and is entitled "Bitrate and Pipeline Preservation for Content Presentation." The EP counterpart to the '703 patent contains substantially similar (and identical in many cases) claim language. *See* Ex. 2011; *see also* Ex. 1001. In the UPC Action, Pinterest has raised the same prior art references in its counterclaim for invalidity. *See* Ex. 2012 at 8 (Orr, Hervey, Lim, Hsu). Trial is expected in the UPC Action around November of 2026. *See* R. P. U.P.C., Preamble § 7 ("... proceedings shall be conducted in a way which will normally allow the final oral hearing on the issues of infringement and validity at first instance to take place within one year . . ."); Ex. 2005 at 17. In addition, the German Action was filed asserting unrelated European Patent No. 3,241,126 (the "'126 patent"). *See* Ex. 2009.

Finally, despite the '703 patent family members not being asserted by OpenTV against Pinterest, Pinterest recently petitioned the Board to institute IPR proceedings of U.S. Patent No. 11,184,652 (the "'652 patent") and U.S. Patent No.

11,825,139 (the “139 patent”). *See* Ex. 1001; Ex. 2001; Ex. 2003; *Pinterest, Inc. v. OpenTV, Inc.*, IPR2026-00366, Paper 2 (P.T.A.B. May 22, 2026); *Pinterest, Inc. v. OpenTV, Inc.*, IPR2026-00365, Paper 2 (P.T.A.B. May 22, 2026).

ARGUMENT

Pinterest’s Petition should be denied because institution would undermine, rather than advance, the efficiency and fairness objectives of AIA review. *See Gen. Plastic Indus. Co. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 at 16-17 (P.T.A.B. Sept. 6, 2017) (precedential). Institution of *inter partes* review is a matter of discretion. *Cuozzo Speed Techs. v. Lee*, 579 U.S. 261, 273 (2016) (citing 35 U.S.C. § 314); *Mylan Lab’ys Ltd. v. Janssen Pharmaceutica, N.V.*, 989 F.3d 1375, 1382 (Fed. Cir. 2021) (“[N]o petitioner has a right to such institution.”). “The Office institutes review to reconsider its own decision and correct a possible error in the original patent grant—not to shield a particular petitioner from infringement liability.” *See Magnolia Med. Tech., Inc. v. Kurin, Inc.*, IPR2026-00097, Paper 17 at 6 (P.T.A.B. May 14, 2026) (precedential). And where institution does not align with the AIA’s objective “to provide an effective and efficient alternative to district court litigation,” it should be denied. *Gen. Plastic Indus. Co.*, Paper 19 at 16-17.

Here, the history of the dispute between the parties, which generally aligns with the *Fintiv* factors, demonstrates that Pinterest is *not* using IPR as an efficient alternative to litigation, but rather as a tool to drag OpenTV into numerous additional

and parallel disputes, thus reducing efficiency and driving up costs. This directly contradicts the purpose of IPR proceedings as recently emphasized by Director Squires: “Congress intended AIA reviews to narrow disputes—not create another forum where litigation can be expanded.” *Magnolia Med. Tech., Inc.*, Paper 17 at 3-4. Additionally, Pinterest’s claim construction position on nearly identical claim terms in the UPC Action indicate Pinterest is likely to take a contradictory claim construction position as to the ’703 patent in the U.S., in violation of *Revvo*. The Board should deny institution accordingly.

I. The History of the Dispute Between the Parties Favors Discretionary Denial Because It Demonstrates that Pinterest is Not Using *Inter Partes* Review as an Efficient Alternative to Litigation.

Among other considerations, the Board aims to holistically determine “whether efficiency, fairness, and the merits support the exercise of authority to deny institution[.]” *Apple Inc. v. Fintiv, Inc.*, No. IPR2020-00019, Paper 11 at 6 (P.T.A.B. Mar. 20, 2020) (precedential); *see also In re Motorola Sols., Inc.*, 159 F.4th 30 (Fed. Cir. 2025) (upholding use of the *Fintiv* factors). In addition to the traditional *Fintiv* factors,¹ the Board has made clear that “[o]ther facts and circumstances may also impact the Board’s discretion to deny institution.” *Apple Inc.*, Paper 11 at 15-16.

¹ The *Fintiv* factors are: (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

The facts and circumstances surrounding the disputes between the parties reveal that institution here would result in piecemeal litigation, inefficiency, and increased costs, obviating the goal of AIA post-grant proceedings. *See id.* at 15-16; *Gen. Plastic Indus. Co.*, Paper 19 at 16-17. Therefore, the Board should exercise its discretion to deny Pinterest's Petition. *See Apple Inc.*, Paper 11 at 15-16.

The Efficiency of Continuing Under the Pending Proceedings: The Petitioner here and the defendant in the Second (and First) District Court Action are both Pinterest. *Compare* Ex. 2001 and Ex. 2003 *with* Paper 1; *see Apple Inc.*, Paper 11 at 5-6, 13-14 (discretionary denial favored when the PTAB petitioner and district court defendant are the same party).

The Board is not estimated to issue a written decision to these parties until October 6, 2027.² By October 2027, several major events in the parties' various

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.*, Paper 11 at 5-6.

² This estimate accounts for OpenTV's three-month patent-owner response period, the Board's three-month period to institute review, and the one-year deadline to issue a written decision. *See* 35 U.S.C. § 314(b); 37 C.F.R. §§ 42.100(c), 42.107(b). If the Board were to extend its written decision deadline for good cause, that opinion and trial in the Second District Court Action would, approximately, both fall in April of 2028. *See* 37 C.F.R. § 42.100(c).

disputes, including the First District Court Action, UPC Action, Second District Court Action, and German Action are expected to have taken place:

- briefing completed by August 26, 2026 in the UPC Action concerning the EP counterpart to the '703 patent, with a trial date anticipated several months later in January 2027, *see* Ex. 2010; Ex. 2012; R. P. U.P.C., Preamble § 7, R. 29;
- trial starting in the German Action on October 29, 2026 before the Munich District Court I of Germany concerning the EP '126 patent, Ex. 2009;
- claim construction in the Second District Court Action completed by January 19, 2027, Ex. 2004;
- trial in the First District Court Action in July 2027 concerning four other OpenTV patents infringed by Pinterest, Ex. 2006;
- expert discovery closed and reports exchanged in the Second District Court Action completed by July 30, 2027, Ex. 2004; and
- summary judgment briefing (if any) underway in the Second District Court Action before the Board's estimated October 6, 2027 written decision, Ex. 2004.

Additionally, OpenTV has already invested significantly in the First and Second District Court Actions and related litigation against Pinterest. *See* Ex. 2001;

Ex. 2003; Ex. 2004; Ex. 2006. OpenTV has engaged in related litigation with Pinterest for over eighteen months, defending two motions to dismiss and a motion for judgment on the pleadings, with document discovery nearly completed. *See* Ex. 2003; Ex. 2006 at 3; Ex. 2007. And OpenTV has litigated the Second District Court Action for over six months, Ex. 2001, and has invested significant resources in preparing detailed infringement charts, Ex. 2008. Thus, the public interest in conserving the limited resources of the USPTO favors exercising discretion and denying Pinterest's Petition. *See Magnolia Med. Tech., Inc.*, Paper 17 at 3-4; *Gen. Plastic Indus. Co.*, Paper 19 at 16-17. This is also consistent with *Fintiv* factors 2, 3, and 5, providing further weight in favor of denial. *See Apple Inc.*, Paper 11 at 5-6.

Repetitive and Parallel Proceedings: While Pinterest has yet to serve invalidity contentions in the Second District Court Action, Pinterest has raised affirmative defenses under 35 U.S.C. §§ 102 and 103. *Compare* Ex. 2002 at 32 with Paper 1 at 3. While Pinterest has filed a *Sotera* stipulation, *see* Paper 6, that stipulation does not fully address the Board's concerns with parallel litigation. The USPTO has proposed rulemaking to address issues with the existing *Sotera* stipulation practice and its impact on parallel litigation. *See Revision to Rules of Practice Before the Patent Trial and Appeal Board*, 90 Fed. Reg. 48,335 (proposed Oct. 17, 2025). There, the USPTO explained that:

PTAB precedent stipulations not to pursue invalidity challenges in district court or at the ITC based on an invalidity ground that a petitioner raised or could have raised in an IPR petition, and the AIA IPR estoppel provisions mitigate these problems, but *petitioners still frequently bring ‘repetitive challenges based on slightly rebranded evidence.’*

Id. at 48,336 (quoting *Contour IP Holding LLC v. GoPro Inc.*, No. 17-cv-04738, 2025 WL 1218748, at *13 (N.D. Cal. Mar. 24, 2025)) (emphasis added). To prevent repetitive challenges based on slightly rebranded evidence, the USPTO proposed a rule requiring a broad stipulation that the petitioner “will not raise grounds of invalidity or unpatentability with respect to the challenged patent under 35 U.S.C. 102 or 103 in any other proceeding.” *Id.* at 48,341.

Pinterest’s stipulation, on the other hand, is limited to the “grounds in the Petition (Paper 1) or any grounds that could have reasonably been raised before the Board.” Paper 6. Thus Pinterest may yet raise duplicative system art as invalidity references in the litigation.³ For example, one of Pinterest’s two main references, Hervey, is related to a software product—allegedly a new GStreamer pipeline element, decodebin3. Paper 1 at 9. Pinterest’s *Sotera* stipulation is silent on whether it would attempt to assert the decodebin3 software element as system prior art in the

³ While Pinterest “reserved the right to modify its stipulation to conform to the regulations” proposed at 90 Fed. Reg. 48,335, that reservation does nothing to reduce the risk of duplicative proceedings here if the new rules are not promulgated in time. *See* Paper 6 at 2 n.2.

Second District Court Action. *See generally*, Paper 6. Therefore, the Petition should be denied because institution is inconsistent with IPR's purpose of increasing efficiency and fairness through an *alternative* proceeding, *see Magnolia Med. Tech., Inc.*, Paper 17 at 3-4; *Gen. Plastic Indus. Co.*, Paper 19 at 16-17, which is also consistent with *Fintiv* factor 4. *See Apple Inc.*, Paper 11 at 5-6.

Furthermore, Pinterest's conduct here is not limited to the '703 patent or its pending, related case. *See* Ex. 2003. Despite the fact that other members of the '703 patent family have not been asserted by OpenTV against Pinterest, Pinterest recently petitioned the Board to institute IPR proceedings against the '652 patent the '139 patent. *See* Ex. 1001; Ex. 2001; Ex. 2003; *Pinterest, Inc. v. OpenTV, Inc.*, IPR2026-00366, Paper 2 (P.T.A.B. May 22, 2026); *Pinterest, Inc. v. OpenTV, Inc.*, IPR2026-00365, Paper 2 (P.T.A.B. May 22, 2026). Those petitions further confirm that Pinterest is using AIA proceedings to expand the parties' disputes beyond the patents and claims OpenTV chose to assert, rather than to provide an efficient alternative forum for resolving the parties' pending litigation. This additional collateral IPR activity underscores the inefficiency and unfairness of institution here, and reinforces that discretionary denial is warranted. *See Magnolia Med. Tech., Inc.*, Paper 17 at 3-4; *Gen. Plastic Indus. Co.*, Paper 19 at 16-17.

II. Pinterest’s Petition Is Inconsistent With Claim Construction Positions It Has Taken in the UPC Action for a Related Patent.

Pinterest’s Petition advances inconsistent claim construction positions with those advanced in the UPC Action and therefore there is a high risk of inconsistent positions taken in the Second District Court Action as well. In *Revvo*, Director Squires held that “when a petitioner takes alternative positions before the Board and a district court, that petitioner should, at a minimum, explain why alternative positions are warranted.” *Revvo Technologies, Inc. v. Cerebrum Sensor Tech., Inc.*, IPR2025-00632, Paper 20 at 3-4 (P.T.A.B. Nov. 3, 2025). In its Petition, Pinterest takes the position that the ’703 patent claim terms should be given their plain and ordinary meaning. *See* Paper 1 at 18; Ex. 1002, ¶ 19.

The ’703 patent’s European counterpart at issue in the UPC Action uses substantially similar claim language as that before the Board here. *E.g., compare* Ex. 1001, Claim 1 (“ . . . determining whether the new piece of content is of a same content type as the first piece of content . . .”), *with* Ex. 2011, Claim 1 (“ . . . determining (404) whether the new piece of content is of a same content type as the first piece of content . . .”). Despite this similar, and in many cases, identical, claim language, Pinterest has dedicated nearly twelve pages in the UPC Action to detailing its narrow claim construction position. Ex. 2010 at 6-17. Examples of Pinterest’s inconsistent constructions include:

U.S. '703 patent claim term (Claim 1) / EP '466 patent claim term (Claim 1)	Pinterest's '703 patent claim term construction	Pinterest's EP '466 patent claim term construction
"selection of a new piece of content"	"plain and ordinary meaning"	requires that "the user consciously selects a specific video"
"during playback of a first piece of content"	"plain and ordinary meaning"	"when the digital receiver is still playing back the first piece of content to the user"
"content type"	"plain and ordinary meaning"	"the streaming protocol used for delivery of the respective piece of content"

See Paper 1 at 18 ("... claim terms should be given their plain and ordinary meaning . . ."); Ex. 1001, Claim 1; Ex. 2010 at 6-17; Ex. 2011, Claim 1. Conveniently, Pinterest uses its narrow claim construction in the UPC Action to argue non-infringement. *E.g., compare* Ex. 2010 at 7 (Pinterest's construction that "the [selection of a new piece of content] requires that the user consciously selects a specific video"), *with id.* at 27-28 (Pinterest arguing that the claimant's "infringement allegations . . . are based on its flawed claim interpretation. . . . [A] selection as claimed . . . requires a conscious decision by the user to view a specific new piece of content").

While OpenTV cannot say with certainty what Pinterest's claim construction position will be in the Second District Court Action at this time, it strains credulity to believe that Pinterest will argue, across the board, for plain and ordinary meaning there as it now does before the Board. *See id.* Its Petition should be denied accordingly under *Revvo*, as Pinterest has offered no explanation for its plain and ordinary meaning position. *See* Paper 1 at 18; Ex. 1002, ¶ 19; *Revvo Technologies, Inc.*, Paper 20.

CONCLUSION

For the foregoing reasons, the Board should decline to institute *inter partes* review of the '703 patent.

Dated: June 8, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Patent Owner's Memorandum in Support of Discretionary Denial was served on June 8, 2026, by electronic mail to Petitioner's counsel at the following addresses indicated in Petitioner's Mandatory Notices:

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