

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AT&T SERVICES, INC. and STREAMWIDE INC.

Petitioners

v.

BK TECHNOLOGIES, INC.

Patent Owner

Case No. IPR2026-00349
U.S. Patent No. 12,375,890

PATENT OWNER'S DISCRETIONARY DENIAL BRIEF

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<i>Sand Revolution II, LLC v. Continental Intermodal Group-Trucking LLC</i> , IPR2019-01393, (PTAB Jun. 16, 2020)	13

EXHIBIT LIST

Exhibit No.	Description
2001	Reseller Agreement between StreamWide Inc. and BK Technologies, Inc. dated July 22, 2022
2002	Declaration of James Teel
2003	AT&T, <i>Introducing FirstNet Fusion: New Mission-Critical Platform will Revolutionize First Responder Communications</i> (Oct. 16, 2025), https://about.att.com/story/2025/firstnet-fusion.html
2004	StreamWide, <i>AT&T selects STREAMWIDE to power the FirstNet next-generation mission-critical application for public safety in the U.S.</i> (Sept. 30, 2025), https://www.streamwide.com/wp-content/uploads/2025/09/30092025-_-streamwide_firstnet_-att_-pr_-en-vfinal.pdf
2005	Complaint, Dkt. 1, <i>BK Technologies Inc. v. AT&T Mobility, LLC et al.</i> , No. 2:26-cv-00090 (E.D. Tex. Feb. 3, 2026)
2006	Motion to Intervene, Dkt. 16, <i>BK Technologies Inc. v. AT&T Mobility, LLC et al.</i> , No. 2:26-cv-00090 (E.D. Tex. May. 6, 2026)
2007	Coke Morgan Stewart, Memorandum re Interim Processes for PTAB Workload Management (Mar. 26, 2025), https://www.uspto.gov/sites/default/files/documents/InterimProcesses-PTABWorkloadMgmt-20250326.pdf
2008	Interim Director Discretionary Process, https://www.uspto.gov/patents/ptab/interim-director-discretionary-process
2009	DocketNavigator Statistics – Motion Success, accessed on June 29, 2026
2010	Declaration of Lisa Moyles
2011	Letter to AT&T from Lisa Moyles on behalf of BK Technologies dated November 13, 2025

I. INTRODUCTION

Patent Owner BK Technologies, Inc. (“BK Technologies”) respectfully requests that the Director exercise discretion under 35 U.S.C. § 314(a) to deny institution of this *inter partes* review (“IPR”) Petition filed by AT&T Services, Inc. (“AT&T”) and StreamWide Inc. (“StreamWide”) (collectively “Petitioners”) challenging claims 1-21 of U.S. Patent No. 12,375,890 (the “’890 Patent”).

Institution is unlikely to meaningfully simplify this dispute. The district court litigation encompasses not only patent infringement claims, but also contract and other non-patent claims that will proceed regardless of the outcome of this IPR. Petitioners have likewise identified invalidity positions outside this Petition and have declined to offer a *Sotera* stipulation. Accordingly, institution would create an additional forum for adjudicating issues that will remain before the district court in any event.

That is precisely the outcome the Office has cautioned against. Instituting review here would undermine the very considerations the Office has identified as central to the discretionary analysis: “the economy, efficient administration of the Office, the ability of the Office to timely complete its AIA reviews, and the integrity of the patent system.” *Magnolia Med. Techs., Inc. v. Kurin, Inc.*, No. IPR2026-00097, Paper 17 at 6 (PTAB May 14, 2026) (precedential) (citing 35 U.S.C. §

3165(b)). For the reasons set forth below, the Director should exercise discretion and deny institution.

II. FACTUAL BACKGROUND

BK Technologies is a recognized leader in wireless communication products. For decades, BK Technologies has pioneered critical communication solutions for first responders and military personnel developing groundbreaking inventions in the field of land mobile radios, particularly for use by emergency first responders. These inventions are protected by multiple United States patents, including the '890 Patent. In January of 2022, BK Technologies filed its first patent application for the technology that would evolve into its InteropONE[®] service, followed by a full nonprovisional patent application filed on June 20, 2022. EX1001 at 1. As development continued through the first half of 2022, BK Technologies approached StreamWide to discuss modification of StreamWide's Team On The Run ("TOTR") solution for BK Technologies' proprietary InteropONE service.

On July 22, 2022, BK Technologies entered into a Reseller Agreement with StreamWide. EX2001. Under the Reseller Agreement, BK Technologies paid StreamWide to modify its TOTR solution using BK Technologies' proprietary information. EX2001 at 38. The TOTR platform was specified to include multi-tenant capabilities to enable a software-as-a-service ("SaaS") delivery model, which would ultimately be branded as BK Technologies' InteropONE service. EX2001 at

40. Critically, under the Reseller Agreement, StreamWide expressly acknowledged that “Reseller Improvements” to the TOTR solution (including U.S. Patent App. No. 17/844,488 (from which U.S. Patent App. No. 18/431,686 claims priority and issued as the ’890 Patent)) remained “the proprietary (Intellectual Property) and Confidential Information” of BK Technologies. EX2001 at 128. To the extent StreamWide made any improvements to its TOTR solution, those improvements incorporate BK Technologies’ proprietary and confidential information and therefore remain BK Technologies’ “proprietary (Intellectual Property) and Confidential Information.” *Id.* This relationship between BK Technologies and StreamWide is central to the present dispute: Petitioners now seek to invalidate intellectual property arising from a platform that StreamWide was contractually engaged to modify using BK Technologies’ proprietary information, even though StreamWide agreed it held no ownership rights in that technology.

On July 2, 2024, nearly two years later, James Teel, General Manager of BK Technologies’ Solutions business, spoke by telephone with Bob Fowler of AT&T. EX2002 ¶ 3. During that conversation, Mr. Teel and Mr. Fowler discussed, among other topics, a potential white label solution for the InteropONE service to be offered through AT&T, as well as AT&T’s licensing of InteropONE’s “on the fly” group capability. *Id.* Following the call, Mr. Teel sought to advance these discussions and followed up via email. *Id.* ¶ 4. However, no collaboration ever materialized. *Id.*

On October 16, 2025, over a year after BK Technologies first discussed this technology with AT&T, AT&T announced FirstNet Fusion, a “new mission-critical platform” that it touted would “revolutionize first responder communications.” EX2003 at 1. Around the same time, StreamWide announced it had been selected by AT&T to “power” FirstNet Fusion. EX2004 at 1. Recognizing AT&T’s apparent renewed interest in technology enabling access for non-subscribers, BK Technologies sent AT&T a letter on November 13, 2025, expressing its interest in collaborating with AT&T. EX2010; EX2011. AT&T declined to substantively engage in the proposed collaboration. With no reply forthcoming, and based on its belief that FirstNet Fusion infringes the ’890 Patent (and that StreamWide wrongfully offered BK Technologies’ proprietary technology to AT&T), BK Technologies filed a patent infringement action against AT&T in the Eastern District of Texas on February 3, 2026. EX2005 at 1. On May 6, 2026, StreamWide moved to intervene in that litigation and, in its proposed amended answer and counterclaims, asserted non-patent counterclaims including breach of contract and tortious interference with existing contract, in addition to a counterclaim for inequitable conduct. EX2006 at 36, 40-43. This timeline demonstrates that Petitioners filed this IPR only after being sued for infringement and then multiplying the litigation exponentially, underscoring that the Petition is a litigation-driven tactic

for resolving a private dispute rather than a good-faith effort to correct an alleged error in the original patent grant.

III. LEGAL STANDARD

The Director's March 26, 2025, Memorandum identifies the following non-exclusive considerations relevant to discretionary denial:

- 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 the 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.

EX2007 at 2-3.

Additionally, in *Magnolia Medical Technologies, Inc. v. Kurin, Inc.*, the Director recently clarified that AIA reviews relate to the public interest, and that the Director's discretion to deny institution should consider the public interest:

Unlike court proceedings, AIA reviews are not solely about resolving "a private dispute." 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. The breadth of a court's scrutiny over patent validity is greater than the Office's in an AIA review and courts are, and always have been, the primary forum

for adjudicating private disputes. Accordingly, the factors Congress requires the Director to consider in promulgating rules sound in the public interest rather than the private interests of the parties before the Board. The factors include the economy, efficient administration of the Office, the ability of the Office to timely complete its AIA reviews, and the integrity of the patent system.

IPR2026-00097, Paper 17 at 6-7 (PTAB May 14, 2026) (precedential) (internal citations omitted); *see also id.* at 3 (recognizing that many petitioners misuse AIA review in parallel with litigation to gain litigation leverage, as opposed to its proper use as an alternative to litigation).

IV. INSTITUTION SHOULD BE DENIED DUE TO PUBLIC INTEREST CONSIDERATIONS

The Director should exercise discretion to deny institution because the Petition does not serve the public interest purposes that Congress intended for AIA reviews. As the Director recently clarified in *Magnolia*, “[u]nlike court proceedings, AIA reviews are not solely about resolving ‘a private dispute.’” IPR2026-00097, Paper 17 at 6. Rather, “[t]he 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.” *Id.* The Director further recognized that “courts are, and always have been, the primary forum for adjudicating private disputes,” and that the factors Congress requires the Director to consider “sound in the public interest rather than the private interests of the parties before the Board.” *Id.* Each of these principles confirms that the Petition should be denied.

A. This IPR Is Being Used to Gain Litigation Leverage in a Private Dispute

This proceeding is precisely the type of parallel AIA review that *Magnolia* recognized as contrary to Congress’s intent. BK Technologies entered into a Reseller Agreement with StreamWide under which BK Technologies paid StreamWide to modify StreamWide’s TOTR solution using BK Technologies’ proprietary information; that modified solution was ultimately incorporated into BK Technologies’ InteropONE service, which practices the ’890 Patent. EX2001 at 1, 37, 40. Despite this contractual relationship, and StreamWide’s express acknowledgment that it held no ownership rights in the intellectual property resulting from the modifications made using BK Technologies’ proprietary information (*id.* at 127), StreamWide subsequently deployed and maintained BK Technologies’ communications platform for AT&T’s FirstNet Fusion platform. On information and belief, FirstNet Fusion is built on the same technological capabilities that StreamWide was engaged to modify for BK Technologies and for which BK Technologies owns the intellectual property rights.

Petitioners are using this IPR as a tactical supplement to the pending litigation rather than as an alternative to litigation, which is precisely the type of duplicative proceeding that *Magnolia* warned against. As the Director explained, “many petitioners seek AIA review in parallel with litigation to gain litigation leverage,”

and when this occurs, “the parties spend more time and resources litigating patent validity than they would have in the absence of AIA reviews.” *Magnolia*, IPR2026-00097, Paper 17 at 3; *see also id.* at 3-4 (“Congress intended AIA reviews to narrow disputes—not create another forum where litigation can be expanded.”). Instituting this IPR would do exactly that: expand the dispute across two forums, involving multiple, overlapping invalidity challenges (*see infra* § IV.C), rather than serve as a cost-effective alternative to litigation.

B. The IPR Cannot Resolve the Parallel District Court Litigation

The inefficiency of instituting this proceeding is further demonstrated by the breadth of the claims asserted in the parallel district court case, which extend beyond the patentability of the '890 Patent. StreamWide has moved to intervene in the district court litigation, and its proposed answer asserts non-patent counterclaims including breach of contract and tortious interference with existing contract, and a counterclaim for iniquitable conduct. EX2006 at 36, 40-43. Even if the Board were to institute *inter partes* review, and even if all of the challenged claims were adjudicated invalid, the district court litigation could continue unabated on the remaining non-patent counterclaims. Institution would fragment the litigation across different forums while leaving the parties' contractual and tort-based claims untouched. Instituting this IPR would therefore be an inefficient use of the Board's

limited resources and would not serve the congressional purpose of streamlining patent disputes.

C. Petitioners Have Already Advanced Multiple Different Invalidity Theories and Have Not Offered a *Sotera* Stipulation

Petitioners have compounded the inefficiency of parallel proceedings by failing to offer a *Sotera* stipulation. Rather than committing to use this IPR as an alternative to district court validity challenges, Petitioners seek to invalidate the '890 Patent in both forums simultaneously, with no commitment to forgo the same prior art arguments in both proceedings. Petitioners have asserted invalidity defenses and counterclaims in the district court. This parallel pursuit of invalidity before both the district court and the Board, even potentially involving the very same prior art, renders institution an inefficient use of the Board's resources.

This concern is further amplified by Petitioners' shifting invalidity positions. In a matter of weeks, Petitioners advanced at least three different theories of invalidity. First, in a meeting on March 31, 2026, Petitioners alluded to prior sales by StreamWide as potentially invalidating prior art, even though StreamWide had acknowledged BK Technologies' ownership of the intellectual property related to the InteropONE service in the Reseller agreement. EX2002 ¶ 5. Second, on April 2, 2026, Petitioners disclosed U.S. Patent No. 9,794,761 to Mazzarella et al. ("Mazzarella") (asserted in this IPR) and U.S. Patent No. 9,380,080 ("Siegel") as

the basis for invalidity. EX2010 ¶ 5. Third, the present IPR petition marks the latest iteration of Petitioners' evolving positions, now relying on newly identified references U.S. Patent No. 9,525,981 ("Tillet '981" and U.S. Patent No. 9,763,066 ("Tillet '066") (collectively, the "Tillet References") in combination with Mazzarella. This pattern demonstrates that, absent a *Sotera* stipulation, Petitioners are not only preserving their ability to pursue the same invalidity theories in parallel proceedings, but wishes to remain free to assert additional or different invalidity grounds in the district court beyond those presented here. Such a moving target would exacerbate, rather than mitigate, duplicative proceedings between the Board and the district court.

Pursuant to the Interim Director Discretionary Process, Petitioners who intend to file a *Sotera* stipulation should do so as soon as practicable so that the patent owner may address it in its discretionary denial brief. EX2008 at § I.D. Petitioners have not done so, and their silence speaks volumes. Petitioners have no intention of committing to forego the same (or any) invalidity theories before both the district court and the Board, confirming that institution of this IPR would result in duplicative proceedings and constitute an inefficient use of the Board's limited resources.

D. The Petition Serves Only Private Interests

Viewed in totality, Petitioners' IPR strategy is entirely about advancing their private litigation interests, not about correcting a possible error in the original patent grant. The dispute at its core is a private commercial one: StreamWide was paid by BK Technologies to modify StreamWide's TOTR solution using BK Technologies' proprietary information under the Reseller Agreement; StreamWide then deployed and maintained competing, infringing technology for AT&T using the same technology and know-how; and BK Technologies sued for infringement. StreamWide's own proposed non-patent counterclaims make clear that the heart of this case is a private commercial dispute, not a matter of public concern, and instituting IPR proceedings in parallel to the district court litigation would not serve the public interest considerations that inform the Director's discretion. Thus, in balancing the economy and efficient administration of the Office, the ability of the Office to timely complete its AIA reviews, and the integrity of the patent system, institution should be denied.

V. INSTITUTION SHOULD BE DENIED ON BALANCE OF THE FINTIV FACTORS

Moreover, a holistic application of the *Fintiv* factors independently supports denying institution to preserve efficiencies and avoid duplicative proceedings that could result in inconsistent outcomes.

A. *Fintiv* Factor 4: The Potential Overlap Between the Asserted Art and Petitioners' Invalidity Arguments in the District Court is Significant

Factor four weighs in favor of denying institution. “[I]f the petition includes the same or substantially the same claims, grounds, arguments, and evidence as presented in the parallel proceeding, this fact has favored denial.” *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 12 (PTAB Mar. 20, 2020) (precedential) . As discussed in Section IV.C above, Petitioners have elected not to file a *Sotera* stipulation. In the absence of a *Sotera* stipulation, Petitioners are free to assert the exact same art and invalidity arguments before both the Board and the district court, creating a substantial risk of duplicative efforts and inconsistent results. Petitioners’ failure to completely disclaim all validity challenges in the parallel proceeding (or other proceedings) should this IPR be instituted, enables Petitioners to pursue the invalidity challenges in two forums in parallel and/or serially. That overlap heightens the risk of inconsistent outcomes and weighs against institution. Thus, because there is likely to be substantial overlap between the invalidity positions advanced in the Petition and those before the district court, as well as potential additional invalidity positions, *Fintiv* factor four favors discretionary denial.

B. *Fintiv* Factor 1: Petitioners Have Not Sought A Stay and the District Court is Unlikely to Grant One If Filed, Favoring Discretionary Denial

Factor one favors discretionary denial: Petitioners have not sought a stay pending an institution decision in the parallel district court litigation, there is no indication one will be sought, and BK Technologies will neither seek nor consent to one. Moreover, even if Petitioners were to seek a stay at this point, that motion would almost certainly be denied.

Although “[i]n the absence of specific evidence, [the Board] will not attempt to predict” whether a district court will grant a stay (*see Sand Revolution II, LLC v. Continental Intermodal Group-Trucking LLC*, IPR2019-01393, Paper 24 at 7 (PTAB Jun. 16, 2020) (informative)), the present facts weigh against the grant of a stay. Even post-institution, the district court judge is unlikely to stay the case absent agreement from the parties. EX2009 (showing nearly 68%, 54%, and 57% of motions to stay pending IPR denied in 2023, 2024, and 2025 respectively). Accordingly, a stay is unlikely regardless of whether institution is granted, and institution would likely lead to parallel proceedings and duplicative efforts, which weighs in favor of discretionary denial under *Fintiv* factor one.

C. *Fintiv* Factor 5: The Identity of the Parties Favors Discretionary Denial

Factor five also weighs in favor of discretionary denial because the parties are the same in both the parallel litigation and this proceeding. Although StreamWide is not yet formally a party in the parallel proceeding, it recently filed a motion to intervene, which BK Technologies did not oppose and which is expected to be granted. EX2006. Once StreamWide's intervention is granted, the parties in this IPR and the district court litigation will be identical, which highlights the inefficiency of instituting an IPR proceeding in parallel to a district court litigation with the same parties. *Fintiv* factor five, therefore, favors discretionary denial of institution.

D. *Fintiv* Factor 6: The Merits of the Petition Are Weak¹

Factor six, as well as one factor in the Director's March 26, 2025, Memorandum, relates to the strength of the unpatentability challenge, which in this case weighs against institution. While the merits will be more fully addressed in Patent Owner's Preliminary Response (which is incorporated herein by reference

¹ Petitioners chose not to submit expert testimony despite relying on technically complex arguments through attorney argument. There are numerous instances of attorney argument that are unsupported statements in the Petition. The absence of expert support further illustrates the limited strength of the Petition, and does not shore up Petitioners' apparent attempt to avoid discretionary denial based on the guidance set forth in the Director's March 26, 2025 Memorandum, which expressly identifies "[t]he extent of the petition's reliance on expert testimony" as a factor relevant to discretionary denial. EX2007 at 2.

pursuant to the Interim Director Discretionary Process Section II.C.i (EX2008 at 7)), several deficiencies are noted here to illustrate the weakness of Petitioners' arguments.

First, Petitioners' primary reference, U.S. Patent No. 9,794,761 ("Mazzarella") describes a communication system based on a materially different architecture and approach to establishing and managing talkgroups, including reliance on disparate control components that decentralize those functions. Petition at 10-14. As a result, Mazzarella fails to teach or suggest the claimed system and process, which requires a control device to both manage a talkgroup and provide the claimed access mechanism.

Moreover, Petitioners' analysis depends on unsupported interpretive leaps that disregard key aspects of Mazzarella's express disclosures, including its characterization of talkgroups as push-to-talk based and its distinct process for user onboarding and participation. Petition at 10-14. Petitioners likewise fail to articulate a persuasive rationale for modifying Mazzarella or combining it with the Tillet References in a manner that would yield the specifically claimed functionality. *Id.* at 44-49. The absence of any sort of expert analysis is glaring; either it is a veiled attempt to game the system in order to avoid discretionary denial (*see* note 1, *supra*) or Petitioners could not find a technical expert willing to support its position. Either

way, Petitioners have not demonstrated that Mazzarella alone, or in combination with the Tillet References, discloses all claim limitations.

Therefore, *Fintiv* Factor six favors discretionary denial of institution.

E. *Fintiv* Factors 2 & 3: The Investment in the Parallel Proceeding and the Timing of the Final Written Decision Are Relevant, but Not Dispositive

Although the Final Written Decision is expected to issue before trial in the parallel proceeding and investment in the parallel proceeding has been relatively minimal, the Director has exercised discretion to deny institution when these factors are outweighed by others, as they are here. *See, e.g., iRhythm Techs., Inc. v. Welch Allyn, Inc.*, IPR2025-00363, Paper 10 at 2-3 (PTAB June 6, 2025) (discretionarily denying institution despite “little investment” in the district court proceeding and a district court trial scheduled after the expected Final Written Decision date). Therefore, although Factors 2 and 3 may not independently favor denial, they do not outweigh the strong public interest and efficiency considerations supporting discretionary denial here.

VI. THERE HAVE BEEN NO INTERVENING CHANGES IN THE LAW THAT WEIGH AGAINST DISCRETIONARY DENIAL

Lastly, no intervening change in law justifies reconsidering the validity of the claims of the '890 Patent. The '890 Patent issued on May 28, 2024, and no statutory amendment, judicial decision, or regulatory change since that date has altered the

patentability standards applicable to the challenged claims. This lack of change in the law confirms that the Petition does not serve the purpose of correcting a potential error in the original patent grant, but has instead been filed as a litigation-driven tactic. The lack of change in law further weighs in favor of discretionary denial.

VII. CONCLUSION

Thus, Patent Owner respectfully requests that the Director exercise discretion to deny institution of *inter partes* review.

Dated: July 7, 2026

Respectfully submitted,

/Lisa. J. Moyles /
Reg. No. 40,737

Lead Counsel for Patent Owner

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CERTIFICATE OF COMPLIANCE

Pursuant to the Interim Director Discretionary Process, I certify that this paper complies with the 20-page limit requirement for discretionary denial briefs.

Dated: July 7, 2026

/Lisa J. Moyles/

Lisa J. Moyles (Reg. No. 40,737)

Lead Counsel for Patent Owner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R § 42.6(e), I hereby certify that a true and correct copy of the foregoing was served on Counsel for Petitioner via filing through the P-TACTS System, as well as by delivering a copy via electronic mail to the following:

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