UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PALO ALTO NETWORKS, INC.,
Petitioner,

v.

QOMPLX LLC,
Patent Owner.

Case IPR2026-00362
Patent 11,539,663

PATENT OWNER'S DISCRETIONARY DENIAL BRIEF

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2004	Defendant Palo Alto Networks, Inc.'s Preliminary Invalidity Contentions, *Qomplx LLC v. Palo Alto Networks, Inc.*, No. 2:25-cv-00913 (E.D. Tex.) (served Jan. 12, 2026) [Preliminary Invalidity Contentions]
2005	Petition for Inter Partes Review of U.S. Patent No. 11,539,663, *Microsoft Corp. v. Qomplx LLC*, IPR2026-00183, Paper 2 (filed Jan. 14, 2026) [-00183 Pet.]

I. INTRODUCTION

Institution should be discretionarily denied because it presents a challenge the Director has already rejected. The Petition seeks to join Microsoft's IPR2026-00183 (the "-00183" IPR), an IPR that has already been denied on the merits. *See* Ex. 2003 [-00183 DDI] 2 ("Pursuant to 35 U.S.C. § 314(a), after review of the merits, the petitioner has failed to show a reasonable likelihood of prevailing with respect to at least one of the claims challenged in the petition. Accordingly, institution of inter partes review is denied."). Petitioner concedes that the Petition is "substantively identical" and nearly a "word-for-word" copy of the IPR2026-00183 petition. Mot. for Joinder ("Mot."), 4-5, 5 n.1. It raises the same ground and challenges the same claims. Having already rejected the IPR2026-00183 petition, the petition here too should also be denied. *See* Section II.A. Relatedly, because the Petition raises precisely the same art and arguments the Office has already considered, it should also be rejected under 35 U.S.C. § 325(d). *See* Section II.B.

Even apart from those defects, the Petition should be denied institution on account of its unexplained and inconsistent claim construction positions. In the district court, Petitioner maintains that four different limitations are indefinite. *See* Ex. 2004 [Preliminary Invalidity Contentions] 109. Petitioner makes no mention of that position here and instead "applies the plain and ordinary meaning." *See*

Pet., 21-22. Under *Revvo*, *Tesla*, and *Sun*, that unexplained inconsistency independently warrants denial. *See* Section II.C.

II. INSTITUTION SHOULD BE DISCRETIONARILY DENIED.

A. The Petition Is Attempting To Join An IPR That Was Already Denied Institution On The Merits.

The Director has already determined that the ground presented here fails on the merits. Ex. 2003 [-00183 DDI] 2. On June 12, 2026, the Director denied institution in IPR2026-00183 based on "review of the merits," not discretionary considerations. *Id.* PAN admits that its "petition is a 'copycat' of Microsoft's petition." Pet., 2. PAN identifies no materially different argument or evidence that could justify departing from the Director's determination, much less reaching the opposite result.

The Director's determination addressed the same challenge PAN presents here: the same claims and the same Maturana-Kashyap ground:

Comparison of Microsoft and PAN's Grounds

IPR2026-00183 (Microsoft)

	Reference(s)	Basis	Claims
Ground 1	Maturana (EX1004) and Kashyap (EX1005)	35 U.S.C. § 103	1, 4

IPR2026-00362 (PAN)

Ground	Basis	Reference(s)	Claims
1	§103	Maturana, Kashyap	1, 4

Pet., 2, 4; Ex. 2005 [-00183 Pet.] 3. As PAN acknowledges, this is a "copycat" petition filed for the express purpose of joining Microsoft's proceeding. Pet., 2.

PAN's joinder motion further confirms that the two petitions "are substantively identical" as they "contain the same grounds (based on the same prior art combinations and supporting evidence) against the same claims, using substantially the same evidence and arguments, and rely on the same testimony from the same expert." Mot., 3. PAN further states that its Petition is, "for the most part," a "word-for-word copy" of Microsoft's Petition, with changes made only to account for the different parties, and that there are "no changes to the facts, citations, evidence, or arguments" supporting the ground. *Id.*, 5 n.1, 6. PAN thus affirmatively disclaimed any merits distinction that could support a different institution result. *See id.*, 7 ("Because the Instant Petition is substantively identical to the Microsoft Petition, with the same grounds applied to the same claims, there would be no new issues for Patent Owner to address … Due to the same issues being presented in the Microsoft Petition, Patent Owner will not be required to present any additional responses or arguments.").

The Office has confirmed that a prior merits denial should result in denial of a later follow-on petition. For example, in *Sportradar AG v. SportsCastr Inc.*, the Acting Director found that "discretionary denial of institution is appropriate" where "Petitioner presents challenges here that are identical" to earlier petitions

against the same patent that were denied on the merits. *Sportradar AG v. SportsCastr Inc.*, IPR2025-00634, Paper 16, 2 (July 24, 2025); *see also Intel Corp. v. Advanced Cluster Sys., Inc.*, IPR2025-00794, Paper 13, 2-3 (Aug. 14, 2025) ("Even absent road mapping, repeated prior challenges weigh against institution" where two previous petitions had been denied institution on the merits); *Qualcomm Inc. v. Collabo Innovations, Inc.*, IPR2025-01015, Paper 10, 2-3 (Oct. 10, 2025) (similar).

Thus, because the Petition is a copycat of IPR2026-00183 which was already denied on the merits, it too should be denied.

B. The Petition Should Be Rejected Under § 325(d).

For much the same reason, the Petition should also be denied because "the same or substantially the same prior art or arguments previously were presented to the Office." 35 U.S.C. § 325(d). Again, PAN's Petition is a "copycat" of Microsoft's -00183 Petition that was already considered and denied by the Office. Pet., 2. Under *Advanced Bionics*, the Office considers: (1) whether the same or substantially the same art or arguments previously were presented to the Office; and, if so, (2) whether the petitioner has demonstrated that the Office materially erred. *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6, 8 (Feb. 13, 2020) (precedential). Both prongs of the *Advanced Bionics* test are clearly met here.

The first prong is undeniably met as PAN's own joinder motion states that the PAN and Microsoft petitions "are substantively identical"; contain "the same grounds (based on the same prior art combinations and supporting evidence) against the same claims"; use "substantially the same evidence and arguments"; and "rely on the same testimony from the same expert." Mot., 3. PAN further represents that its Petition is, "for the most part," a "word-for-word copy" of Microsoft's Petition, with changes made only to account for the different parties. *Id.*, 5 n.1. Indeed, PAN expressly confirmed that "[t]here are no changes to the facts, citations, evidence, or arguments" supporting the asserted grounds. *Id.*, 6. Thus, this is not merely a case involving similar references or overlapping theories. Precisely the same art and arguments were previously presented in the -00183 IPR.

The second prong is undeniably met here as well as PAN cannot demonstrate material Office error. The Director reviewed Microsoft's identical challenge on the merits and determined that it failed to demonstrate a reasonable likelihood of prevailing with respect to at least one challenged claim. Ex. 2003 [-00183 DDI] 2. PAN's Petition supplies no different evidence or argument that could call that determination into question. To the contrary, PAN has confirmed that there is no merits-related difference between the two petitions. Mot., 7 ("Due to the same issues being presented in the Microsoft Petition, Patent Owner will not be required to present any additional responses or arguments.").

C. The Petition Does Not Disclose Or Reconcile Its District Court Claim Construction Positions.

In the Petition, Petitioner asserts that it "applies the plain and ordinary meaning of all claim terms," while also maintaining that it "does not … waive any argument in any litigation that claim terms in the '663 patent are indefinite or otherwise invalid, nor does Petitioner waive its right to raise additional issues of claim construction in any litigation." Pet., 21-22. In its invalidity contentions in *Qomplx LLC v. Palo Alto Networks, Inc.*, No. 2:25-cv-00913 (E.D. Tex.), on the other hand, Petitioner argues that "automatically install a virtual appliance software application," "the virtual appliance software application configured to automatically load a plurality of stored configurations on the midserver," "establish a secure network connection to an external network," and "retransmit the received data over the secure connection as a single data stream" are indefinite. Ex. 2004 [Preliminary Invalidity Contentions] 109.

Petitioner offers no explanation of how a term it contends is indefinite in district court can be applied here without construction. In *Tesla*, the Director denied institution where the petitioner argued indefiniteness of a term in district court while telling the Board that "no claim term requires express construction," holding that the mere fact that indefiniteness cannot be raised in an IPR "is not a sufficient explanation" for the divergent positions and that, at a minimum, the

petitioner had to either justify the difference or show that, even assuming definiteness, the prior art still met the limitation. *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00340, Paper 18, 3-4 (Nov. 5, 2025) (informative). Petitioner does neither here.

Moreover, in *Revvo*, the Director explained that while "the Board's trial rules 'do not necessarily prohibit petitioners from taking inconsistent claim construction positions before the Board and a district court,'" a petitioner that advances different positions "should, at a minimum, explain why alternative positions are warranted" in order to comply with 37 C.F.R. § 42.104(b)(3)'s requirement that the petition must set forth a statement of "[h]ow the challenged claim is to be construed" *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20, 3-5 (Nov. 3, 2025) (precedential) (quoting *Cambridge Mobile Telematics, Inc. v. Sfara, Inc.*, IPR2024-00952, Paper 12, 8-9 (Dec. 13, 2024) (informative)); *see also Sun Pharm. Indus. Inc. v. Nivagen Pharm., Inc.*, IPR2025-00893, Paper 18, 2-3 (Sept. 19, 2025) (denying institution where petitioner advanced narrow construction in district court and a broader "plain and ordinary meaning" in petition without sufficient explanation, noting that unexplained differences undermine the Office's goal of "uniformity and predictability" in claim construction). Petitioner's failure to explain its inconsistent positions—which were inconsistent when the Petition was filed—is

further reason to deny institution.

Thus, under *Revvo*, *Tesla*, and *Sun*, Petitioner's failure to disclose its position before the district court let alone explain how a term it contends is indefinite in district court can be applied here without construction weighs against institution.

III. CONCLUSION

For the foregoing reasons, Patent Owner respectfully requests that institution be denied under 35 U.S.C. § 314(a).

Respectfully submitted,

/ Kenneth J. Weatherwax /

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Date: July 20, 2026

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the following documents were served by electronic service, by agreement between the parties, on the date below:

PATENT OWNER'S DISCRETIONARY DENIAL BRIEF

EXHIBITS 2003-2005

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