

**Opposition To Request For Discretionary Denial
U.S. Patent No. 11,539,663**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PALO ALTO NETWORKS, INC.,

Petitioner,

v.

QOMPLX LLC,

Patent Owner.

Case No. IPR2026-00362

U.S. Patent No. 11,539,663

**PETITIONER'S OPPOSITION TO PATENT OWNER'S REQUEST FOR
DISCRETIONARY DENIAL OF INSTITUTION**

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Ex.	Description
1001	U.S. Patent No. 11,539,663 (“ 663 patent ”)
1002	File History of U.S. Patent No. 11,539,663
1003	Declaration of Mark Crovella, dated Jan. 13, 2026 (“ Crovella Decl. ” or “ Crovella ”)
1004	U.S. Patent App. Pub. No. 2015/0281355 A1 to Maturana et al. (“ Maturana ”)
1005	U.S. Patent App. Pub. No. 2012/0246639 A1 to Kashyap et al. (“ Kashyap ”)
1006	U.S. Patent App. Pub. No. 2015/0178113 A1 to Steven Dake (“ Dake ”)
1007	B. Sosinsky, <i>Cloud Computing Bible</i> (2011) (“ Sosinsky ”) (excerpts)
1008	U.S. Patent App. Pub. No. 2012/0216181 A1 to Arcese et al. (“ Arcese ”)
1009	U.S. Patent App. Pub. No. 2013/0152080 A1 to Sachindran et al. (“ Sachindran ”)
1010	X. Jin et al., <i>Reinventing Virtual Appliances</i> , IBM J. of Res. and Dev., 53(4), Paper 7 (2009) (“ Jin ”)
1011	S. Mastrianni et al., <i>IT Autopilot: A Flexible IT Service Management and Delivery Platform for Small and Medium Business</i> , IBM Sys. J., 46(3), at 609-24 (2007) (“ Mastrianni ”)
1012	U.S. Patent App. Pub. No. 2017/0366606 A1 to Ben-Shaul et al. (“ Ben-Shaul ”)
1013	U.S. Patent App. Pub. No. 2016/0048408 A1 to Madhu et al. (“ Madhu ”)

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1014	Gabor Kecskemeti, et al., <i>Toward Efficient Appliance Delivery With Minimal Manageable Virtual Appliances</i> , IEEE Trans. On Services Computing, 7(2), at 279-92 (2014) (“ Kecskemeti ”)
1015	U.S. Patent No. 10,579,403 to Antony et al. (“ Antony ”)
1016	U.S. Patent App. Pub. No. 2007/0294676 A1 to Mellor et al. (“ Mellor ”)
1017	U.S. Patent App. Pub. No. 2019/0026138 A1 to Cao et al. (“ Cao ”)
1018	U.S. Patent App. Pub. No. 2019/0065213 A1 to Li et al. (“ Li ”)
1019	DMTF, <i>Open Virtualization Format White Paper</i> , ver. 1.0.0 (2009) (“ OVF-2009 ”)
1020	DMTF, <i>Open Virtualization Format White Paper</i> , ver. 2.0.0 (2014) (“ OVF-2014 ”)
1021	DMTF, <i>Open Virtualization Format Specification</i> , ver. 2.1.1 (2015) (“ OVF-2015 ”)
1022	U.S. Patent App. Pub. No. 2013/0283364 A1 to Chang et al. (“ Chang ”)
1023	<i>Qomplx LLC v. Microsoft Corp.</i> , No. 25-cv-01383-ADA (W.D. Tex.), Plaintiff Qomplx’s Preliminary Infringement Contentions (“ PICs ”)
1024	List of Challenged Claims

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1025	<i>Qomplx LLC v. Palo Alto Networks, Inc.</i> , No. 2:25-cv-00913 (E.D. Tex.), Excerpts of Exhibit D to Plaintiff Qomplx’s Preliminary Infringement Contentions ¹
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¹ Although Patent Owner Qomplx stamped this document as “CONFIDENTIAL” when it was served in the litigation, Petitioner confirmed with Patent Owner that the excerpts do not contain any confidential information.

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I. INTRODUCTION

The discretionary factors strongly weigh against denial. Patent Owner does not contend that it has any settled expectations in the '663 patent—nor could it given its recent issuance. Nor does Patent Owner contend that *Fintiv* weighs against denial, as the litigation is in its early stages, trial is only a few months after the expected final written decision, and Petitioner has filed a broad stipulation. Petitioner instead asks the Director to consider the merits of the Petition. But the purpose of the Director's bifurcated process is to consider the merits of IPR petitions *after* deciding on the discretionary factors. Patent Owner provides no good reason to deviate from the Director's well-established process.

II. SETTLED EXPECTATIONS HEAVILY WEIGH AGAINST DENIAL IN FAVOR OF INSTITUTION

Patent Owner lacks any settled expectations of validity because the '663 patent was only recently issued, on December 27, 2022. Thus, PO “has not developed strong settled expectations that favor discretionary denial.” *See Cambridge Indus. USA, Inc. v. Applied Optoelectronics, Inc.*, IPR2025-00434, Paper 11 at 2-3 (June 26, 2025).

Patent Owner does not claim it has any settled expectations of validity, nor could it. Prior to filing its lawsuits against Microsoft and Palo Alto Networks on August 28, 2025, Patent Owner had never asserted the '663 patent, nor has Patent

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Owner ever attempted to license or commercialize the '663 patent. Patent Owner does not allege that it practices the '663 patent nor any related patent.

III. THE *FINTIV* FACTORS WEIGH AGAINST DISCRETIONARY DENIAL

The *Fintiv* factors heavily weigh against denial, including the fact that trial is scheduled for August 16, 2027, a mere three months before the latest due date for the Final Written Decision. The parallel litigation has barely progressed, with defendant having just filed its Answer. The parties have not produced much discovery nor have they exchanged claim construction positions. And Petitioner has filed a robust stipulation to avoid overlap between this proceeding and the parallel litigation.

A. Factor 1: Likelihood of Stay

This factor is at worst neutral because the Court has not indicated whether it would stay the case against Petitioner. The Board declines to engage in such speculation when the district court has not expressed any position on the matter, instead treating this factor as neutral. *Apple, Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 15 at 12 (P.T.A.B. May 13, 2020) (declining to “infer, based on actions taken in different cases with different facts, how the District Court would rule”).

If institution occurs across all the patents brought against Petitioner, the Court would likely consider and potentially approve a stay. *See, e.g., Emerging*

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Automotive LLC v. Kia Corp., No. 2:23-cv-00437-JRG, Dkt. 301 (E.D. Tex. Jun. 30, 2025) (granting stay following institution of IPRs and ex parte reexamination against all asserted patents). Indeed, the Court has shown a recent willingness to grant stays even close to trial. *Id.* (approving stay three weeks pre-trial); *Stellar LLC v. Motorola Sols., Inc.*, No. 4:23-cv-750-SDJ, Dkt. 156 (E.D. Tex. Feb. 24, 2025) (imposing stay two weeks before trial, even while awaiting institution decisions on some asserted patents).

B. Factor 2: Proximity of Trial Date and Final Written Decision

Trial is scheduled for August 16, 2027, about three months before the latest statutory deadline for the Final Written Decision—November 19, 2027. However, this date is not guaranteed given Judge Gilstrap’s busy trial docket. Even if the scheduled trial date is accepted, the Director has referred petitions to the Board despite comparable timing concerns, particularly where other factors—like lack of settled expectations—weigh against denial. *See Zhuhai CosMX Battery Co. v. Ningde Ampere Tech. Ltd.*, IPR2025-00385, Paper 9 at 2-3 (P.T.A.B. July 2, 2025) (lack of settled expectations justified referral to the Board despite trial scheduled to occur before FWD).

C. Factor 3: The Parties’ Limited Investment In The District Court

This factor significantly weighs against discretionary denial. As of the filing of this Opposition, the parallel litigation is in its early stages. Petitioner only recently

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served its Answer and very little discovery has taken place. As for claim construction, the parties are not scheduled to exchange terms until September 28, 2026, and briefing will not be completed until early next year—January 19, 2027. The Court has scheduled a claim construction hearing for February 1, 2027, over two months after the Board’s statutory deadline for institution.

D. Factor 4: Petitioner’s Broad Stipulation

Petitioner has filed a broad *Sotera*-plus stipulation (Paper 7) agreeing not to raise any challenges it could have brought in this proceeding or any ground of invalidity under Sections 102 or 103 that include the Petition art. By removing the Petition art from all potential district court §§ 102 or 103 grounds—including combinations with system art—Petitioner’s stipulation effectively eliminates the possibility of duplicative or conflicting adjudication. This stipulation therefore closes the loophole that the Director identified in *Motorola. Motorola Sols.*, IPR2024-01205, Paper 19 at 4 (“Petitioner’s invalidity arguments in the district court are more expansive and include combinations of the prior art asserted in these proceedings with unpublished system prior art, which Petitioner’s stipulation is not likely to moot.”). Petitioner’s broad stipulation therefore significantly weighs against denial. *See, e.g., Samsung Electronics Co., Ltd. v. Wilus Institute of Standards and Technology Inc.*, IPR2025-00933 *et al.*, Paper 11 (Director Oct. 10,

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2025) (“Petitioner has filed a broad stipulation that reduces the concern of inconsistent outcomes or significant duplication of efforts.”).

E. Factor 5: Petitioners Being the District Court Defendants Does Not Outweigh the Factors Weighing Against Discretionary Denial

Petitioner is the defendant in the district court case. This factor does not outweigh the other factors discussed above.

IV. THE DENIAL OF MICROSOFT’S IPR DOES NOT WARRANT DISCRETIONARY DENIAL HERE

Rather than focus on discretionary factors, Patent Owner’s Request instead focuses on the fact that the IPR petition brought by Microsoft was denied after review of the merits. Request at 2-5. While the petition here is a copycat of Microsoft’s petition, the denial of Microsoft’s petition does not warrant discretionary denial of the petition here, since the Director’s exercise of discretion to deny a petition generally does not involve a review of the merits. For example, in declining to discretionarily deny Microsoft’s petition, the Director stated that “after review of discretionary considerations, the [Microsoft] proceeding[] will be *reviewed for merits* and non-discretionary considerations.” IPR2026-00183, Paper 15. Accordingly, assessment of the IPR petition here on its merits is premature.

Even if the Director were to consider the merits under Patent Owner’s Section 325(d) argument, the denial of Microsoft’s IPR was in error and therefore denial under Section 325(d) is not warranted. Request at 4-5. Patent Owner’s arguments

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on the merits during the Microsoft IPR were largely predicated on narrowing claim constructions that were not justified by the plain meaning of the terms or the patent's intrinsic evidence.

First, Patent Owner argued that lexicography requires that the claimed “midserver” run one or more containerized services. IPR2026-00183, Paper 12 (“POPR”) at 6-8. While Patent Owner relied on a “Definitions” section describing a “midserver,” that passage cannot be used to restore language deleted during prosecution. In response to a prior art rejection, applicants amended the claims to remove the same “containerized services” language that Patent Owner now seeks to add. EX1002, 411-412/497; *id.*, 365-368/497. In fact, in making that amendment and others (including the recitation that the midserver has a “virtual appliance software application” that “transforms” data streams), the applicant stated the amendments in totality were made “to more clearly teach the functions of the midserver,” and that they “clearly teach the operation of the midserver” and “distinguish[]” the cited art. *Id.*, 415/497. Yet the only midserver function the applicant discussed was the virtual appliance software application and that it transforms data streams—nothing about containerized services. *Id.*

Consistent with these prosecution statements, claims 1 and 4 do not recite a bare “midserver,” but instead are directed almost entirely to specifying the midserver's structure and operation. EX1001, 24:21-39, 24:47-63. And outside the

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Definitions section, the specification describes the midserver functionally (e.g., EX1001, 7:60-66) and containerized services permissively (EX1001, 10:27-29 (“may be designed” to run containerized services), 15:16-21 (embodiments “may contain” containers)).

Second, Patent Owner argues that “single data stream” requires a continuous non-packetized transport protocol. POPR, 13-16. Neither the claims nor intrinsic evidence support Patent Owner’s narrowing construction. In fact, the specification describes “the sending and receiving of *data packets* over a computer network.” EX1001, 20:31-32.

Third, Patent Owner argues that “establish[ing] a secure network connection” requires a physical-device-specific authentication. POPR, 17-24. Yet the claims do not recite any specific protocol. The specification also describes secure connectivity broadly, including the use of “standard VPN or similar encryption-based network transport technologies,” certificates, and TLS, confirming that “secure network connection” encompasses secure connections without further limitation. EX1001, 9:48-52, 16:11-60.

Finally, Patent Owner argues that a POSITA would not be motivated to combine Maturana with Kashyap. POPR, 27-32. PO cannot plausibly argue that virtualization defeats Maturana when Maturana contemplates virtualization. Maturana discloses its components running on “virtual machine(s)” (EX1004,

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[0042]), and its registry embodiment validates the cloud agent and issues a certificate to create the secure communication channel (*id.*, [0089]-[0094]). Pet., 28-37 (citing these disclosures); EX1003, ¶¶62-75 (same). When combined with Maturana, Kashyap’s teachings standardize authorized installation and configuration of Maturana’s cloud agent; the combination does not enable unauthorized relocation.

V. PETITIONER HAS NOT PROPOSED INCONSISTENT CLAIM CONSTRUCTIONS

Patent Owner argues the petition should be denied under *Revvo* because Petitioner identified certain indefiniteness positions in its preliminary invalidity contentions in the parallel litigation. However, Petitioner’s litigation positions are not inconsistent with its assertions here that the terms should be given their plain and ordinary meaning. Below, Petitioner provides the “sufficient explanation” for why its “alternative positions are warranted” and not inconsistent. *Revvo*, IPR2025-00632, Paper 20 at 3-5 (Nov. 3, 2025).

For each of the terms for which Petitioner raised indefiniteness, Petitioner’s position in both the litigation and here is that these terms have a plain and ordinary meaning, and that the prior art discloses these limitations under their plain meaning. Indeed, Petitioner relied on the same plain and ordinary meaning that it advanced in the Petition in the invalidity claim charts that it served as part of its preliminary invalidity contentions in the district court. However, Patent Owner’s infringement

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contentions have broadly construed these terms beyond their plain meaning in such a way that would make the terms lack “reasonable certainty” as to their scope. *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 910 (2014). To be clear, unlike in *Revvo*, the Petition here does not rely on Patent Owner’s broader application of the terms. It only relies on the same plain meaning that Petitioner alleges both here and the litigation.

Specifically, for “automatically install a virtual appliance software,” Patent Owner alleges in its infringement contentions that this limitation is met when the accused product automatically receives updates “*without having to install a new VM.*” EX1025, 4. In other words, Patent Owner interprets the term “automatically install” to apply where the product is not automatically installing a virtual appliance software application. Thus, while the prior art discloses “automatically install” under the term’s plain meaning (*see* Pet. 44-45 (“the server (midserver) automatically installs the cloud agent (virtual appliance software application) of Maturana-Kashyap when the virtual appliance is deployed to the server”)), Patent Owner’s interpretation broadens the scope of the term beyond its reasonable limits. Thus, the prior art discloses the term under its plain meaning, but the full scope of the term under Patent Owner’s interpretation that “automatically install” does not require that installation of the virtual appliance software application occur automatically lacks reasonable certainty as to its boundaries. To be clear, Petitioner

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does not agree with Patent Owner's interpretation and does not rely on it in its Petition. Thus, there is no inconsistency between this proceeding and the litigation—Petitioner's position in both proceedings is that the term's plain meaning of "automatically install" is disclosed within the prior art, and that to the extent the term also includes Patent Owner's broader infringement interpretation that "automatically install" does not require automatic installation, the term is indefinite with respect to that broader scope.

Similarly, for the term "virtual appliance software application configured to automatically load a plurality of stored configurations on the midserver," Patent Owner's infringement contentions rely on documentation stating that a user must "right-click, and select Configure" to "edit Broker VM configuration." EX1025, 7. In other words, Patent Owner's interpretation of "automatically load" includes a user-initiated manual configuration. Again, it is Petitioner's position both here and the litigation that the term's plain meaning of "automatic"—which is met by the prior art (*see* Pet. 45-48 (describing automatic scripts))—does not include Patent Owner's broader application of the term to include a manual process, and that the boundaries of the term's scope under Patent Owner's interpretation lacks reasonable certainty. There is therefore no inconsistency between Petitioner's positions.

For the term "establish a secure network connection to an external network," once again, Patent Owner has applied the term "external network" in its infringement

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contentions in a way that lacks reasonable certainty as to its boundaries. Specifically, for the preamble of claim 1, which recites “A system for ingestion of data into a cloud-based service from an external network,” Patent Owner’s infringement contentions point to both data going from a local network to a cloud network, as well as data going from a cloud network to a local network, suggesting that the “external network” may be either the local network or the cloud network. EX1025, 2. Then, for the limitation requiring “establish[ing] a secure network connection to an external network,” Patent Owner points in its contentions to establishing a connection from the local network to a cloud network, suggesting that the external network is the cloud network. EX1025, 7-9. Thus, Patent Owner’s contentions are unclear as to what the external network is. Again, it is Petitioner’s position both here and in the litigation that the term “external network” has a plain meaning. *See* Pet. 37-39 (Maturana’s cloud services receive data from the external cloud agents), 48-49 (Maturana depicts the cloud agent connecting to cloud services on an “external network” in FIG. 1). But Patent Owner’s inconsistent application of the term “external network” renders the full scope of the term indefinite. There is again no inconsistency between Petitioner’s plain meaning position here and its litigation position that Patent Owner’s interpretation is indefinite.

Finally, for the term “retransmit the received data over the secure connection as a single data stream,” Patent Owner’s infringement position again applies an

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interpretation of the claim that is so broad that the scope of the claim lacks reasonable certainty. Patent Owner alleges that the “retransmit” step is met by the Broker “forward[ing] logs and files for analysis” (EX1025, 13), regardless of how the data is forwarded or the format of that data. The uncertainty in the scope that Patent Owner gives to this claim language is further exacerbated by the arguments Patent Owner raised in its POPR that this element allegedly requires a continuous non-packetized transport protocol. POPR, 13-16. The Petition, on the other hand, applies the plain meaning of “single data stream” in contending that Maturana discloses that “data is provided as a single data stream because ‘data from multiple sensors measuring related aspects of an automation system can be identified and aggregated into a single cloud upload packet by cloud agent 202.’” Pet. 58. Thus, Petitioner has not taken inconsistent positions—the term has a plain meaning and the prior art discloses a system that falls within the scope of the plain meaning, but Patent Owner’s broad application of the term lacks reasonable certainty as to the full scope of the term.

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DATED: August 19, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 19, 2026, true and correct copies of the foregoing document and supporting materials were served in its entirety at the following email addresses:

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