

**Opposition To Request For Discretionary Denial  
U.S. Patent No. 11,184,652**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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PINTEREST, INC.,

Petitioner,

v.

OPENTV, INC.,

Patent Owner.

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Case No. IPR2026-00366

U.S. Patent No. 11,184,652

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

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**I. INTRODUCTION**

Pinterest is an American company that has designed and offers for sale web-based services in the United States. OpenTV is a subsidiary of “the Kudelski Group,” a Swiss Corporation, and Patent Owner’s named real party-in-interest in this proceeding. Thus, this dispute is primarily between a foreign-based corporation (through its U.S. subsidiary, OpenTV) and an innovative, U.S.-based company that offers for sale web-based services in the United States.

The ’652 patent recently issued in 2021, so it does not benefit from any “settled expectations” that it is valid. Nor is it subject to any parallel litigation. Moreover, institution is appropriate to cure the material errors committed by the examiner. During prosecution of the ’652 patent, the examiner rejected all of the then-pending claims as disclosed by the prior art. The applicant gained allowance by amending the independent claims to incorporate limitations from two dependent claims—which the examiner had already found disclosed. All of these factors weigh heavily against discretionary denial.

Patent Owner’s other proceedings brought against Petitioner, involving different patents that describe different technologies, some even in foreign countries, have no bearing on this proceeding. Yet even if the Director were to consider the district court action against the related ’703 patent, trial is not scheduled until April 2028, months after the Board’s statutory deadline for Final Written Decision. Indeed,

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the parties have yet to begin claim construction briefing. Thus, even consideration of that case would weigh against denial.

**II. PETITIONER IS AN AMERICAN COMPANY WHO DEVELOPED THE ACCUSED PRODUCT WITHIN THE UNITED STATES**

Petitioner Pinterest, Inc. is an American company that was founded in 2009 in San Francisco, California. While San Francisco continues to be Pinterest's headquarters and largest engineering hub, Pinterest has continued to expand throughout the United States, and now has a large engineering presence in New York and Seattle. In March 2010, Petitioner launched the social media service Pinterest, which continues to be Petitioner's core business and the source of nearly all of its revenue. Since its release, Pinterest has been almost entirely developed by Pinterest employees working within the United States. Pinterest is currently used by approximately 100 million Americans.<sup>1</sup>

By contrast, Patent Owner OpenTV, Inc. is a fully-owned subsidiary of Kudelski SA, a Swiss corporation and Patent Owner's real party-in-interest. Paper 5. Patent Owner's complaint in the parallel litigation emphasizes this relationship—

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<sup>1</sup> See [https://s204.q4cdn.com/369458543/files/doc\\_earnings/2026/q1/earnings-result/Q126-PressRelease.pdf](https://s204.q4cdn.com/369458543/files/doc_earnings/2026/q1/earnings-result/Q126-PressRelease.pdf) at 2 (106 million monthly active users between the U.S. and Canada)

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the complaint’s description for OpenTV largely focuses on the works and products of Swiss-based Kudelski Group, including the works of its founder, Stefan Kudelski, a citizen of Switzerland. EX2001, ¶¶11-19, 26-32. For example, the complaint alleges that “OpenTV and *The Kudelski Group* companies have garnered a robust international portfolio of over 3,000 worldwide pending and issued patents,” that others have allegedly “acknowledged the commercial importance of *The Kudelski Group’s* patent portfolio,” and that “*Kudelski’s* inventions are now used to ... optimize content recommendation systems, enhance video streaming applications, and provide curated advertising recommendation and delivery functionality.” *Id.* Thus, even Patent Owner draws little distinction between itself and its Swiss real party-in-interest, Kudelski Group.

The Director has expressed concern about “computer industries” within the United States “hav[ing] moved overseas.” March 11, 2026 Memorandum at 1. The Director has also expressed concern about not “giv[ing] a tactical advantage to companies that neither manufacture in the United States, nor are making American manufacturing investment.” *Id.* at 2. As a result, the Director has stated it will consider as a discretionary factor “the extent to which any products accused of infringement in a parallel proceeding are manufactured in the United States.” *Id.* at 2. Here, Kudelski Group, a Swiss company, has effectively sued Pinterest for

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infringement through its US subsidiary OpenTV.<sup>2</sup> As discussed above, Pinterest's products are developed, and continue to be developed in the United States, and it has almost 100 million American users. The Board thus has a significant interest in deciding the merits of this petition. Neither Kudelski nor its subsidiary OpenTV should be given a "tactical advantage" through discretionary denial, especially given the gamesmanship it engaged in to avoid a PGR.

**III. SETTLED EXPECTATIONS HEAVILY WEIGH AGAINST DENIAL  
IN FAVOR OF INSTITUTION**

Patent Owner lacks any settled expectations of validity because the '652 patent was only recently issued, on November 23, 2021. 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). In fact, the '652 patent's entire family is new—U.S. Patent Nos. 11,825,139 and 12,231,703 were issued in 2023 and 2025.

Patent Owner does not claim it otherwise has any other settled expectations of validity, nor could it. Patent Owner has never asserted the '652 patent, nor has Patent Owner ever attempted to license or commercialize the '652 patent. Patent Owner does not allege that it practices the '652 patent nor any related patent.

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<sup>2</sup> Kudelski Group is not a named plaintiff in the parallel litigation.

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**IV. THE EXAMINER ERRED IN ALLOWING THE '652 PATENT**

During prosecution of the '652 patent, the examiner rejected the then-pending claims as rendered obvious in view of U.S. Pat. Pub. No. 2011/01296047 to Orr ("Orr-047")<sup>3</sup> and Shintani. EX1003, 351-58. To overcome these references, the applicant made the following amendment to the independent claim:

1. (Currently Amended) A method comprising:  
causing playback, by a digital receiver, of a first piece of content at a first bitrate, the first bitrate being a bitrate adapted for playback of the first piece of content;  
receiving, by the digital receiver, a selection of a new piece of content for playback during the playback of the first piece of content;  
in response to the receiving of the selection, transitioning from ongoing playback of the first piece of content to the new piece of content by initiating playback of the new piece of content using the first bitrate used for playback of the first piece of content; [[:]]  
during playback of the new piece of content using the first bitrate, detecting whether the new piece of content can maintain playback at the first bitrate; and  
in response to the detecting that the new piece of content cannot continue playback at the first bitrate, adjusting the first bitrate.

EX1004, April 7, 2021 Claims at 2.

The examiner explained in his notice of allowance that "[t]he prior art fails to disclose adapting a first bitrate for playback of a first piece of content, using the first adapted bitrate for new content after a transition caused by receiving a selection, using and maintaining the first bitrate for playback of the new content while a detection is performed to determine if the new piece of content can maintain the first

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<sup>3</sup> Orr-047 is not related to the Orr reference used in the Petition.

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bitrate and adjusting the first bitrate in response to the new piece of content unable to maintain the first bitrate.”

The examiner erred because during prosecution of the related ’139 patent, the examiner found similar, if not identical, limitations to be disclosed in the prior art.

With respect to the limitation “the first bitrate being a bitrate adapted for playback of the first piece of content,” the then-pending claims of the ’139 patent recited the limitation “a bitrate used for the playback of the first piece of content,” which is substantively identical. EX1022, Nov. 9, 2021 Claims at 4 (claim 21). However, the examiner found that Orr-047 disclosed this limitation. EX1022, Dec. 22, 2022 Non-Final Rejection at 22.

With respect to the limitation “transitioning from ongoing playback of the first piece of content to the new piece of content by initiating playback of the new piece of content using the first bitrate,” the then-pending claims of the ’139 patent also recited a near-identical limitation. EX1022, Nov. 9, 2021 Claims at 4 (claim 21). However, the examiner found that Orr-047 disclosed this limitation. EX1022, Dec. 22, 2022 Non-Final Rejection at 22.

With respect to the limitation “during playback of the new piece of content using the first bitrate, detecting whether the new piece of content can maintain playback of the first bitrate,” the then-pending claims of the ’139 patent recited a near-identical limitation. EX1022, Nov. 9, 2021 Claims at 4 (claim 22). However,

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the examiner found that Orr-047 disclosed this limitation. EX1022, Dec. 22, 2022 Non-Final Rejection at 23.

Thus, for each of the amendments that the applicant made during prosecution of the '652 patent, those same limitations were found to be disclosed in the prior art. The examiner of the '652 patent therefore materially erred in allowing the claims of the '652 patent.

**V. THE PROCEEDINGS BETWEEN THE PARTIES DO NOT WARRANT DENIAL**

The fact that the '652 patent is not involved in parallel litigation weighs against denial. *CSPC Megalist Biopharmaceutical Co. Ltd. v. Shanghai Miracogen Inc.*, IPR2025-00685, Paper 9 (P.T.A.B. July 31, 2025) (“[T]he parties are not involved in a parallel proceeding involving the challenged patent. ... As a result, there is no concern of inconsistent outcomes and duplication of efforts resulting from two proceedings operating in parallel.”). Rather than focus on discretionary factors related to the '652 patent, Patent Owner’s Request instead focuses on proceedings involving different patents that ***Patent Owner*** brought, none of which involve the '652 patent. These proceedings have little to no relevance to the proceeding here—and Patent Owner’s arguments should be rejected.

**A. The Other Proceedings Between The Parties Do Not Warrant Denial Under *Fintiv***

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Each of the *Fintiv* factors weigh against denial because there is no parallel proceeding involving the '652 patent. Patent Owner attempts to muddy the waters by discussing the *Fintiv* factors in view of the combined schedules of *all* of the proceedings that Patent Owner has brought against Petitioner—none of which involve the '652 patent. This includes a first Delaware litigation where Patent Owner has asserted four unrelated patents accusing completely different technology (“First District Court Action”), and a second Delaware litigation where Patent Owner has asserted the related '703 patent (“Second District Court Action”). This also includes two proceedings in Europe—one against a European counterpart to the '703 patent (“UPC Action”) and another against an unrelated patent (“German Action”). Patent Owner’s decision to litigate against Petitioner in numerous venues involving a broad swath of patents, none of which include the '652 patent, should not be held against Petitioner.

Patent Owner argues that instituting the IPR would not be an efficient use of resources because “several major events” in other proceedings not involving the '652 patent will have occurred by the time the Board issues its Final Written Decision. Request, 8-9. But none of these proceedings involve the '652 patent, and the First District Court Action and German Action involve unrelated patents and technology. Thus, none of these proceedings will have any bearing on this challenge.

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Even if one were to consider the Second District Court Action, where Patent Owner has asserted the related '703 patent, the *Fintiv* factors would weigh heavily against denial. Trial is currently scheduled for April 3, 2028, over four months after the statutory deadline for the Final Written Decision—November 29, 2027. The parties have invested very little in that case, having not even responded to initial discovery requests, nor provided any claim construction briefing. The Court has scheduled a claim construction hearing for January 19, 2027, nearly two months after the Board's statutory deadline for institution.

Patent Owner claims it has “invested significantly in the First and Second District Court Actions.” Request, 9-10. But as explained above the parties have invested very little into the “Second District Court Action.” Moreover, the “First District Court Action” involves four unrelated patents directed to completely different technology. Whereas the '652 patent is directed to reusing a bitrate for new content, the patents in the First District Court Action involve generating a customized playlist, serving customized ads, and initiating video playback based on available resources. Thus, the First District Court Action involves very different accused technologies. There is simply no justification to consider what has occurred in the First District Court Action.

Finally, Patent Owner argues the Board is not an “efficient alternative forum for resolving the parties’ pending litigation” because Petitioner has filed IPR

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petitions against the '652 patent and the related '139 patent, neither of which have been asserted. Patent Owner's argument is illogical. By accusing Petitioner of infringing multiple unrelated patents in multiple countries, Patent Owner has assured that the Board *cannot* be an alternative forum for resolving *all* of the parties' pending litigation. Obviously, the Board can only resolve certain validity issues with respect to the '652 patent—it was solely Patent Owner's choice to create disputes with Petitioner that go well-beyond the '652 patent. Petitioner's IPR challenges do not change this fundamental fact arising out of Patent Owner's deliberate litigation tactics.

Petitioner's IPR challenges against the '139, '652, and '703 patents, in fact, prove that instituting here is an efficient use of resources. The '703 and '139 patents are directed to preserving the playback pipeline when new content is selected, which the '652 patent recites in its dependent claims. All three patents also recite reusing bitrates for new content. Because of the significant overlap between the '652 patent and the two related patents, many substantive issues decided in this proceeding will apply to the other two proceedings. This allows the Board to efficiently adjudicate the patentability of all three patents, improving the patent system—by either invalidating obvious patents or upholding novel ones—for a fraction of the cost otherwise.

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**B. Petitioner Has Not Taken Inconsistent Claim Construction Positions**

Petitioner has proposed that the terms of the '652 patent be given their plain and ordinary meaning. Patent Owner argues that *Revvo* should speculatively apply because Petitioner has construed two terms in the UPC action involving a related European patent that are also found in the '652 patent, and has also proposed those same two terms be construed in the Second District Court Action involving the related '703 patent. Request, 12-13. Patent Owner speculates that Petitioner “intends to take inconsistent positions on [] two claim terms found in related patents asserted in the UPC and the district court.” Request, 12-13.

With respect to the Second District Court Action, Petitioner has since provided proposed constructions—but none of them are inconsistent with the positions taken in this proceeding. EX1021. Specifically, Petitioner proposed that the proper construction for “selection” is its “Plain meaning, which in the context of the claims and specification is ‘a user’s choice.’” *Id.* at 2. And Petitioner proposed that the proper construction for “during” is its “Plain meaning, which in the context of the claims and specification is ‘at some point in the course of.’” *Id.* at 3. These positions are not inconsistent with the petition. With respect to Ground 1, Petitioner took the position that these limitations are met because Orr discloses that “[d]uring operation, the device user may request a channel change to render content from a

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different channel.” Pet. 26-27; EX1005, ¶[0020]. With respect to Ground 2, Petitioner took the position that these limitations are met because Hervey discloses that “during ongoing playback,” the system receives a “requested stream[]” and the user “ha[s] a chance to change the input.” Pet. 64-65; EX1009, slides 28, 32. These positions are consistent and commensurate with the constructions that Petitioner proposed in the Second District Court Action.

With respect to the foreign UPC action, *first*, Patent Owner does not in any way explain how the UPC claim constructions are inconsistent with the positions taken here—they are not, for the same reasons explained above. *Second*, claim construction positions in a foreign venue involving a different patent using completely different standards of construction and evidence do not trigger any of the Director’s concerns mentioned in *Revvo*. *Revvo* explains that its claim construction rules “ensure that the Board correctly construes claim terms and to minimize inconsistency in claim construction between forums.” *Revvo*, at 4. There is no danger of inconsistency because the UPC is not construing the ’652 patent and does not use the same standards of construction or evidence—neither the District Court or the Board is under any obligation to even consider what a foreign court does. Thus, it is not surprising that Patent Owner does not argue that *Revvo* should apply to the UPC claim constructions. Instead, Patent Owner uses the UPC claim

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constructions to speculate about what Petitioner will do in the parallel district court action. But as discussed above, such speculation is baseless and wrong.

DATED: August 31, 2026

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on August 31, 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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DATED: August 31, 2026

Respectfully submitted,

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