

Patent Owner's Brief in Support of Request for Discretionary Denial
IPR2026-00414 (U.S. Patent No. 11,731,054)

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TWITCH INTERACTIVE, INC.,
Petitioner,

v.

CP STUDIOS LLC,
Patent Owner.

Case IPR2026-00414
Patent 11,731,054

**BRIEF IN SUPPORT OF PATENT OWNER'S REQUEST
FOR DISCRETIONARY DENIAL**

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PATENT OWNER’S EXHIBIT LIST

No.	Exhibit Description
2001	“An Inside Look at Squires’ Discretionary Denials”
2002	March 26, 2025, Acting Director’s Memorandum
2003	Excerpted Hrg. Tr., <i>Rex Computing, Inc. v. Cerebras Sys. Inc.</i> , No. 21-525 (MN) Dkt. 172 (D. Del. Nov. 30, 2022)
2004	<i>CP Studios LLC v. Twitch Interactive, Inc.</i> Case No. 26-cv-571, Dkt. 24, Scheduling Order
2005	US 2011/0320401, assigned to Zynga
2006	US 2012/0220377, assigned to Zynga
2007	US 2013/0035164, assigned to Zynga
2008	US 8,287,341, assigned to Zynga
2009	US 8,366,546, assigned to Zynga
2010	US 2012/0072855, assigned to Facebook
2011	US 2013/0097517, assigned to Facebook
2012	Nov. 17, 2025, Director’s Memorandum
2013	’596 Patent Excerpted File History
2014	’054 Patent Assignment History

I. INTRODUCTION

Patent Owner CP Studios LLC respectfully requests that the Board exercise its discretion and deny institution of this Petition for *inter partes* review of U.S. Patent No. 11,731,054 (*see* Ex. 1001) under 35 U.S.C. § 314(a).

Petitioner Twitch Interactive, Inc. (“Twitch”) seeks to take advantage of the petitioner-side IPR bar’s conclusion that “Petitioners who ... demonstrate some meaningful examiner error, should see increased chances of merits review.” Ex. 2001 (“An Inside Look at Squires’ Discretionary Denials”) at 5; *see also id.* at 4 (“Almost every petitioner alleges examiner error ...”); *Magnolia Med. Techs., Inc. v. Kurin, Inc.*, IPR2026-00097, Paper 17 at 8 (May 14, 2026) (precedential) (“A substantial showing of apparent examiner error can overcome other factors that suggest discretionary denial.”). To that end, Twitch argues that here “the Examiner’s errors threaten[] not only Twitch, but also the broader gaming ecosystem in the United States.” Pet. at 2. But the standard that Twitch deploys in alleging examiner error is so broad it would effectively swallow nearly every patent ever issued.

Here Twitch pursues the standard playbook in arguing a variant of, “[t]he petition identifies invalidating art, therefore the examiner erred.” Ex. 2001 at 4. Twitch grounds its “missing art” position—in this Petition, though not in all pending petitions that Twitch has filed against CP Studios’ patent portfolio—on a flawed proto-claim-construction argument that misinterprets the Examiner’s actual reasons

for allowance. But that is of no matter, given that Twitch's fundamental premise going to the existence of missing art—that “the Examiner never cited or raised *any* contemporaneous publications during prosecution” (Pet. at 1 (emphasis in original))—is a red herring. Rather, the Examiner identified and copiously cited contemporaneous *patent* art whose disclosures were substantially similar to the art on which Twitch bases the Petition. Once Twitch's examiner-error argument is set aside, remaining circumstances do not demonstrate a compelling case for institution.

First, an analysis of the *Fintiv* factors (with which the Petition does not engage at all) indicates that denial is warranted for several additional reasons, most notably:

- **Factor 1:** Twitch has not requested a stay of the companion district court litigation; the Petition does not analyze the likelihood of a stay; and the District Court has indicated that motions to stay should be denied where, as here, there is a substantial risk that system art may come into play.
- **Factor 2:** Based on the July 22, 2026, filing date accorded the Petition, this proceeding should conclude in January 2028, which deadline may be extended till mid-2028 for good cause. The district court's scheduling order provides that—while trial will not have occurred by mid-2028—much of the substantive aspects of litigation, including claim construction and all of fact and expert discovery, will have been completed. Accordingly, this IPR will not likely be an efficient alternative to litigation.

- **Factor 4:** Although Twitch recently filed a *Sotera* stipulation, it notably declined to file a “*Sotera Plus*” stipulation that would estop Twitch from raising or combining in the district court system art corresponding to the printed publications at issue in this IPR. Nor was this an inadvertent oversight, as Twitch just “tripled down” by filing an identical *Sotera* stipulation similarly excluding system art in its third IPR petition currently pending before the Board, even after CP Studios raised the exclusion of system art as a factor supporting discretionary denial in Twitch’s first-pending IPR. *See* IPR2026-00451, Paper 6; IPR2026-00397, Paper 8 at 3, 9-12. Especially considering that the core theme of Twitch’s Petition is the Examiner’s purported failure to consider contemporaneous publications describing then-extant developments in the mobile gaming industry, it is highly likely that Twitch’s choice is deliberate, and that it intends to assert duplicative system art in the District Court in parallel to this proceeding, thus further duplicating proceedings.

Second, the Board should also exercise its discretion and deny institution under certain of the discretionary factors outlined in Acting Director Stewart’s March 26, 2025, memorandum Ex. 2002 (as subsequently substantially adopted in the Director’s October 27, 2025, memorandum), including:

- The strength of the unpatentability challenge;

- The extent of the Petition's reliance on expert testimony;
- Settled expectations of the parties; and
- The existence of compelling economic interests.

Each of these factors further support discretionary denial here: (1) the merits of the Petition are intertwined with Twitch's fallacious claim-construction position; (2) Twitch cites its expert Dr. Houh's declaration approximately 1.3 times *per page* of the Petition; (3) Twitch has been on notice of the provisional application to which the '054 Patent claims priority since *Twitch's own aspirational claims* were rejected during prosecution based on that extended-family member of the '054 Patent; and (4) the '054 Patent has already changed hands based on expectations of its validity.

II. INSTITUTION SHOULD BE DENIED UNDER *FINTIV*

The Director should exercise his discretion to deny institution under *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential) ("*Fintiv I*"); *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 (PTAB Dec. 1, 2020) (precedential as to § II.A) ("*Sotera*"); and their progeny.

Under those authorities, the Director may deny institution of petitions when related litigation is co-pending and an IPR would not be "an effective and efficient alternative to district court litigation." *NHK Spring Co. v. Intri-Plex Techs., Inc.*, IPR2018-00752, Paper 8 at 20 (PTAB Sept. 12, 2018) (precedential) (quoting *Gen. Plastic Indus. Co. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 at 16-17

(PTAB Sept. 6, 2017) (precedential)). The Director should balance six factors when evaluating whether to deny a petition under *Fintiv*. *Fintiv I* at 5-6. “These factors relate to whether efficiency, fairness, and the merits support the exercise of authority to deny institution ...” *Id.* When analyzing and weighing these factors, the Director takes “a holistic view of whether efficiency and integrity of the system are best served by denying or instituting review.” *Id.*

As addressed below, the *Fintiv* factors¹ weigh in favor of denying the Petition.

A. *Fintiv* Factor 1: Twitch has not indicated that it intends to file for a pre- or post-institution stay

The ’054 Patent is asserted in U.S. District Court Civil Action No. 1:26-cv-00571 (MN) (D. Del.) (“Delaware Case”). Twitch has not requested a pre-institution stay in the Delaware Case, nor has it indicated that it plans to ask for a post-institution stay. Indeed, the district court in which the Delaware Case is pending has stated that motions to stay will be denied where “even if the paper prior art that this [request to stay pending IPR] is based on goes down, there is still system prior art out there.” Ex. 2003 (Excerpted Hrg. Tr., *Rex Computing, Inc. v. Cerebras Sys. Inc.*, No. 21-525 (MN) Dkt. 172 (D. Del. Nov. 30, 2022)) at 96:23-97:2. In particular, the

¹ Twitch’s Petition does not preemptively address the *Fintiv* factors. *See generally* Pet. CP Studios reserves all rights in connection with any forthcoming response.

court noted, “I have been having this a number of times where I stay cases and I don’t really get rid of anything because the same stuff is argued as system art as paper art.” *Id.* at 97:2-5. As addressed in more detail below, the Petition relies on the so-called “FarmVille for Dummies” publication as its lead purportedly invalidating reference. *See, e.g.*, Pet. at 7-10, 39, 42, 44. But Twitch has notably elected to file only a “standard” *Sotera* stipulation that does ***not*** disclaim Twitch’s ability to rely on overlapping system art in the parallel district court proceedings. *See* Paper 6; § II.D *infra*. Accordingly, it is highly likely that Twitch is deliberately preserving its ability to assert FarmVille-based system art in the parallel proceedings—which would thus weigh ***against*** the district court staying the case.

Accordingly, because there is no evidence indicating that a pre- or post-institution stay will be sought or granted in the parallel Delaware Case, the first *Fintiv* factor weighs in favor of denying institution.

B. *Fintiv* Factor 2: Significant proceedings will have occurred in the parallel district court as of the Board’s deadline for a final written decision

“If the court’s trial date is earlier than the projected statutory deadline, the Board generally has weighed this fact in favor of exercising authority to deny institution.” *Fintiv I* at 9. Here, the second *Fintiv* factor does not favor institution, or at the very least, is neutral. The Filing Date Accorded in this proceeding is July 22, 2026. *See* Paper 3. The deadline for a final written decision in this IPR is thus

January 22, 2028, which may be extended to July 22, 2028, for good cause. 37 C.F.R. § 42.100(c). The district court's scheduling order provides that substantial litigation activities will have concluded by mid-2028. Specifically:

- Fact discovery is likely to conclude by September 23, 2027;
- Claim construction is likely to commence March 16, 2027;
- The Markman hearing is likely to occur in March 2028; and
- Expert discovery is likely to conclude by June 23, 2028;
- Trial is proposed for January 2029.

Ex. 2004 (Delaware Case Dkt. 24) at 15-17. Thus, though trial will not have occurred before the deadline for final written decision for the instant prospective IPR, fact discovery, claim construction, and expert discovery will all likely have concluded by then. Thus, this *Fintiv* factor weighs in favor of denial.

C. *Fintiv* Factor 3: The parties have invested and will further invest in parallel proceedings, and Twitch delayed in filing the Petition

Factor 3 relates to the “amount and type of work already completed in the parallel litigation by the court and the parties at the time of the institution decision.” *Fintiv I* at 9. Here, Twitch and CP Studios have extensively briefed Twitch's motion to transfer. *See* C.A. No. 1:26-cv-00571 Dkt. 14-22. Moreover, the Delaware Case is anticipated to require significant additional resources to resolve—including tendering infringement and invalidity contentions, substantially completing

document production, examining source code, and exchanging written discovery and responses—within the next seven months. *See* Ex. 2004 at 15.

Moreover, the Director should consider Twitch's delay in filing the Petition. The instant Petition was filed on July 22, 2026, nearly seven months after the filing of CP Studios' December 2025 complaint. Twitch offers no explanation for its delay.

Thus, in addition to the significant resources CP Studios has expended addressing Twitch's pending motion to transfer, and notwithstanding Twitch's unexplained and unjustified delay in filing its Petition, CP Studios will expend significant additional resources actively litigating the Delaware Case in the coming months. This favors denial.

D. *Fintiv* Factor 4: The Petition and the parallel Delaware Case will likely raise substantially overlapping issues, and Twitch has not submitted a “*Sotera Plus*” stipulation

There is substantial overlap in the issues raised in the Petition and the parallel Delaware Case favoring denial. This *Fintiv* factor looks at “whether all or some of the claims challenged in the petition are also at issue in district court” and whether the “petition includes the same or substantially the same claims, grounds, arguments, and evidence” as the parallel district court case. *Fintiv I* at 12-13. Here, Twitch challenges all claims of the '054 Patent, thus ensuring overlap. Twitch has further failed to submit a sufficiently broad stipulation to limit redundancy.

First, the Petition challenges claims 1-20 of the ’054 Patent—i.e., all claims, at least some of which will be asserted in the parallel litigation.² *See* Pet. at 1; Ex. 1001 at 70-71. The overlap of the claims at issue counsels against institution. *See, e.g., Pharaoh Energy Servs., LLC v. Flex-Chem Holding Co.*, IPR2024-00815, Paper 7 at 13-14 (PTAB Sept. 20, 2024) (denying institution in part because the same claims were challenged at the PTAB and asserted in litigation); *EClinicalWorks, LLC v. Decapolis LLC*, IPR2022-00229, Paper 10 at 9 (PTAB Apr. 13, 2022).

Second, although Twitch has not yet indicated what prior art it intends to rely upon in the Delaware Case,³ Twitch has deliberately elected to file a standard *Sotera* stipulation that disclaims its ability to rely only on “any ground that the petitioner raised or reasonably could have raised during [this] inter partes review.” Paper 6 at 1. Twitch argues therein that “this stipulation ensures that this proceeding would be a ‘true alternative’ to the district court proceeding” (*id.*)—but the specifics of the invalidity allegations in Twitch’s Petition practically guarantee that this is not correct. Here Twitch’s grounds Nos. 1-4 each rely on the same lead reference—“a

² CP Studios is due to serve infringement contentions with a complete list of asserted claims on January 4, 2027. Ex. 2004 at 15.

³ Twitch is due to serve invalidity contentions with a complete disclosure of asserted references on March 2, 2027. Ex. 2004 at 15.

268-page guide to FarmVille, ‘the most popular Facebook application created to date.’” Pet. at 7, quoting Ex. 1004. It is almost certain that Twitch’s chosen printed publication inherently displays near-identical overlap with the video game system it describes. And that overlap renders Twitch’s decision *not* to file a “*Sotera Plus*” stipulation—i.e., a stipulation also disclaiming Twitch’s ability to rely on related system art before the district court—all the more telling. Additionally telling is Twitch’s filing of an identical *Sotera* stipulation similarly excluding system art in its third IPR petition currently pending before the Board, even after CP Studios raised the exclusion of system art as a factor supporting discretionary denial in Twitch’s first-pending IPR. *See* IPR2026-00451, Paper 6; IPR2026-00397, Paper 8 at 3, 9-12.

Twitch thus essentially reserves itself the opportunity to reassert FarmVille-system-based prior art challenges in the Delaware Case with those it raises based on the corresponding printed publication here. This of course would render “the overlap in issues between the two proceedings ... substantial.” *See, e.g., Code200, UAB v. Luminati Networks, Ltd.*, IPR2020-01506, Paper 10 at 11-12 (PTAB Feb. 16, 2021) (*Fintiv* Factor 4 weighed in favor of denial of institution given common prior art challenges between the proceedings); *U.S. Venture, Inc. v. Sunoco Partners Mktg. & Terminals LP*, IPR2020-00728, Paper 10 at 11-12 (PTAB Oct. 1, 2020) (overlap between primary references, even without overlap of all secondary references, weighed in favor of institution denial), *reh’g denied*, Paper 13 (PTAB Dec. 17,

2020); *DataDome S.A. v. Arkose Labs Holdings, Inc.*, IPR2025-00693, Paper 13 at 3 (Aug. 14, 2025) (“Petitioner has not offered a stipulation to address concerns of duplicative efforts and potentially conflicting decisions, which weighs in favor of discretionary denial.”); *Motorola Solutions Inc. v. Stellar, LLC*, IPR2024-01205, Paper 19 at 3-4 (PTAB Mar. 28, 2025) (vacating institution where district court invalidity contentions included system art beyond scope of *Sotera* stipulation).

Because of the guaranteed overlap of claims and the strong likelihood of substantively overlapping prior art at issue, as well as Twitch’s failure to offer a sufficiently broad stipulation to minimize efficiency concerns stemming from that potential overlap, the fourth *Fintiv* factor weighs in favor of denying institution.

E. *Fintiv* Factor 5: Twitch is the parallel proceeding defendant

Twitch is undisputedly the defendant in the parallel Delaware Case, and thus “this factor weighs in favor of discretionary denial.” *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 15 at 15 (PTAB May 13, 2020).

F. *Fintiv* Factor 6: The merits of Twitch’s arguments concerning examiner error do not withstand scrutiny

Twitch incorrectly argues that the Examiner erred during the prosecution of the ’054 Patent. Nothing that Twitch alleges, however, evinces such error.⁴

⁴ Twitch’s only allegation of “error[]” relates to the Examiner’s alleged failure to

First, Twitch alleges that the “[t]he Examiner allowed the claims because he misunderstood ‘interaction’ as requiring a ‘*comment* ... includ[ing] one or more keywords.’” Pet. at 1 (emphasis in original) (citing Ex. 1003 at 28; characterized by Twitch as “Examiner referring to this as his reason for allowance”). Twitch’s argument that this statement by the Examiner was error, and that instead “a user ‘interaction’ via a social online service ... would include *clicks* on Facebook” is effectively a veiled claim construction position. Pet. at 1 (emphasis in original). But

“cite[] or raise[] *any* contemporaneous publications during prosecution.” Pet. at 1-2 (emphasis in original). This allegation concerns only Twitch’s Grounds 1-4 based on FarmVille, and not Grounds 5-6 based on the Barclay references. See Pet. at 52-101. Twitch acknowledges Barclay ’363 was before the Examiner (see Pet. at 89), which satisfies Advanced Bionics Part One. See *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 8-9 (PTAB Feb. 13, 2020) (precedential). Yet Twitch identifies *no* material error in the Office’s treatment of Barclay ’363; this complete omission to address Advanced Bionics Part Two independently supports discretionary denial under 35 U.S.C. § 325(d). See *Ecto World, LLC v. RAI Strategic Holdings, Inc.*, IPR2024-01280, Paper 13 at 4-6 (Director May 19, 2025) (precedential as to § A) (establishing petitioner’s burden to show the Examiner’s material error concerning art before the PTO).

Twitch denies it is taking any such position. *See id.* at 5 (“The Board need not construe any of the claims”). This disclaimer, if the Board accepts it (which the Board should not) would effectively allow Twitch to “have it both ways.” As Twitch currently challenges the validity of the ’054 Patent in this proceeding, it interprets the claims as broadly as possible to expand the universe of purportedly invalidating art. But—notwithstanding that the Petition itself references comments purportedly *made by the Examiner about the scope of the claims* as being supposedly relevant to Twitch’s argument for examiner error—Twitch undertakes this claim construction argument *implicitly*, without acknowledging the implications of its arguments about proper claim scope. By doing so, Twitch maintains flexibility to pivot and seek a narrowing construction in the district court, to minimize its chance of infringement.

But setting Twitch’s inconsistent⁵ (and unsupported) claim interpretation aside, the file history preceding the Notice of Allowance does not show that the

⁵ Twitch’s petitions directed to CP Studios’ ’132 and ’373 Patents contain near-identical assertions of the FarmVille reference as invalidating prior art—but those petitions do not argue the Examiner misconstrued claim scope. *See* IPR2026-00451, Paper 2 (Pet.) at 1, 7; IPR2026-00514, Paper 2 (Pet.) at 1, 5-6. Twitch thus takes the position that the Examiner should necessarily have identified and considered the FarmVille reference whether or not the Examiner correctly understood the claims.

“interaction” term was at issue and that the claims were allowed because the Examiner understood “interaction” as requiring a “a comment,” let alone “a comment including one or more keywords.” Rather, the Applicant’s final amendments inserted the limitations “receiving one or more interactions via a social network service in association with an event from one of the first gameplay and the second gameplay of the video gaming application”; “determining an influence to one of the first gameplay and the second gameplay of the video gaming application based on the one or more interactions via the social network service”; and “modifying one of the first gameplay and the second gameplay of the video gaming application based on the influence.” *See* Ex. 1003 at 217-226, 231-232 (2/23/2023 Am. B to Resp. After Final, submitted by 3/17/2023 Req. for Cont’d Exam.). It was this amendment that thus led the Examiner to view the claims as allowable; not an allegedly erroneously narrow interpretation of “interaction,” as Twitch’s Petition alleges. Further, in the previous rounds of rejections and responses within the file history, there was no discussion that would indicate that allowance hinged on the interpretation of the word “interaction.” *See* Ex. 1003 at 181-189 (11/28/2022 OA). Accordingly, Twitch’s Petition does not show that the proper scope of “interaction” was ever a relevant issue as the Examiner determined to allow the claims, and thus cannot support Twitch’s argument that “[h]ad the Examiner considered the actual scope of the independent claims, the patent would not have issued.” Pet. at 1.

Nonetheless, even assuming *arguendo* that Twitch's implied claim construction argument has any relevance (it does not), Twitch further faults the Examiner for "never cit[ing] or rais[ing] *any* contemporaneous publications during prosecution"—because such publications would allegedly have addressed "social network interaction (e.g., clicks) on Facebook and Twitter." Pet. at 1 (emphasis in original). As noted above, such generic arguments—i.e., if only the examiner had properly appreciated the scope of the claims, the petitioner's asserted art would be invalidating—if accepted by the Board, would support examiner error in support of *any* IPR petition and cannot be the "examiner error" envisioned by the Patent Office.

Moreover, substantively, Twitch's accusation—that despite the functionality and popularity of Facebook and FarmVille by 2012, the Examiner never raised any contemporaneous publications during prosecution—is misguided. Because Twitch ignores that the Examiner located and listed several patents and patent applications by Facebook and Zynga that described their functionality. *See* Ex. 1001 at 1 (citing Ex. 2005 (US 2011/0320401, assigned to Zynga); Ex. 2006 (US 2012/0220377, assigned to Zynga); Ex. 2007 (US 2013/0035164, assigned to Zynga); Ex. 2008 (US 8,287,341, assigned to Zynga); Ex. 2009 (US 8,366,546, assigned to Zynga); Ex. 2010 (US 2012/0072855, assigned to Facebook); Ex. 2011 (US 2013/0097517, assigned to Facebook). Indeed, Ex. 2005 (US 2011/0320401) is the Mahajan reference that was cited and relied upon by the Examiner multiple times. *See* Ex.

1003 at 157-161 (7/28/22 OA); *id.* at 204-210 (12/23/22 OA). Twitch's Petition makes no showing that the disclosures of this patent art bearing on mobile gaming were so deficient that the Examiner must necessarily have erred by failing to identify the non-patent publications identified in the Petition. As above, if the Board were to accept this argument, every IPR petition would plausibly identify Examiner error.

Lastly, it should be noted that Twitch's Petition does not disclose how Twitch identified the purportedly invalidating references, to illustrate why the Examiner should allegedly have found them during prosecution. *See* Ex. 2012 (Nov. 17, 2025, Director's Memorandum) at 2 ("The voluntary submission of [a Search Disclosure Declaration] will be considered as a non-exclusive, non-dispositive **favorable discretionary factor** supporting institution, particularly where the SDD reveals new or underutilized pathways relevant to Office search practice. An SDD also may be helpful in demonstrating Office error during examination.") (emphasis in original).

III. ADDITIONAL FACTORS SET FORTH IN THE DIRECTOR'S MEMORANDUM SUPPORT DISCRETIONARY DENIAL

A. The Strength of the Unpatentability Challenge

The Director's Memorandum lists "[t]he strength of the unpatentability challenge" as one factor upon which the Director may determine to deny institution. Ex. 2012. As explained, "[t]he strength of the unpatentability challenge" is weak and the Petition lacks adequate support. *See supra* § II.F. The Petition therefore fails to

show a reasonable likelihood of prevailing, and should be discretionarily denied.

B. The Extent of the Petition's Reliance on Expert Testimony

The Director's Memorandum also establishes that "[t]he extent of the petition's reliance on expert testimony" is a factor relevant to discretionary denial. Ex. 2012. Twitch's Petition relies on the **229-page** expert declaration of Dr. Henry Houh (Ex. 1002), citing his declaration **128 times** within Twitch's 101-page Petition, or an average of approximately 1.3 times per page.

Moreover, Dr. Houh's expert declaration is substantially duplicative of the attorney arguments in Twitch's Petition. *Compare, e.g.*, Ex. 1002 ¶ 78 ("FarmVille and Shedlesky are analogous to the '054 Patent, from the same field of endeavor, and all relate to the same technical problems") *with* Pet. at 40 ("The[references] are analogous to the '054 Patent, from the same field of endeavor, and relate to the same technical problems.") (citing Ex. 1002 ¶ 209). The Board has recognized that such circular citations are afforded little weight and favor discretionary denial. *See, e.g., Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 at 15-17 (PTAB Aug. 24, 2022) (precedential) (denying institution and noting the petitioner's expert declaration "merely repeats, verbatim, the conclusory assertion for which it is offered to support ... and is entitled to little weight"), *sua sponte Director Review*, Paper 12 at 5 (PTAB Feb. 10, 2023) (affirming denial of institution and "giving little weight to Petitioner's expert because the expert declaration merely offered

conclusory assertions without underlying factual support and repeated, verbatim, Petitioner's conclusory arguments"), *POP Review denied*, Paper 13 (PTAB Feb. 10, 2023). Because the Petition pervasively cites Dr. Houh's declaration, which duplicates Twitch's counsel's arguments nearly verbatim, the declaration should be accorded little weight, and the Director should discretionarily deny the Petition.

C. Settled Expectations of the Parties

The Director's March 2025 Memorandum also lists "[s]ettled expectations of the parties, such as the length of time the claims have been in force" as another factor based upon which the Director may determine to deny institution. Ex. 2002 at 2. The "settled expectations" at issue are especially strong with regard to Twitch.

The '054 Patent's claims issued in August 2023. *See* Ex. 1001 at 1. But Twitch has been on particular notice of the '054 Patent's extended family since at least February 2, 2018. During prosecution of Twitch's U.S. Patent No. 10,105,596, the Examiner cited CP Studios' '132 Patent (which descends from the *same provisional application* No. 61/643,352 as does the '054 Patent, and which is the subject of a co-pending petition filed by Twitch) in rejecting two claims sought by Twitch. Ex. 2013 ('596 Patent excerpted file history) at 4 ¶ 6. In response, Twitch did not attempt to traverse the rejection, but simply canceled the claims. *Id.* at 17.

Notwithstanding that Twitch has thus long been on notice of CP Studios' patents, and their intimate and overlapping relation to Twitch's own line of business,

Twitch did not challenge the '054 Patent until July 2026, eight years after the Patent Office's rejection of Twitch's claims based on CP Studios' patents, and over six months after Twitch was first "served with a complaint alleging infringement of the patent." 35 U.S.C. § 315(b); *see also* C.A. No. 1:25-cv-01542 (MN) (D. Del.) Dkt. 1 (Dec. 19, 2025). This delay further supports the settled expectations of the parties. *See DataDome S.A. v. Arkose Labs Holdings, Inc.*, IPR2025-00693, Paper 13 (Aug. 14, 2025) (denying institution where patent owner gave pre-suit written notice in December 2023 to petitioner identifying challenged patents).

Moreover, as noted above, the Barclay '363 reference *was disclosed to the Examiner during prosecution*. Pet. at 89; *see also, e.g.*, Ex. 1003 at 136; Ex. 1001 at 2. Nor does Twitch allege the Examiner erred in connection with that submission. *See* Pet. at 89. Thus, expectations concerning the novelty of the '054 Patent in light of Barclay '363 reference have been long-settled, and should not be now disturbed.

Thus, CP Studios' three years of settled expectations concerning the issued '054 Patent—including CP Studios' October 2020 disclosure of the Barclay '363 reference and the Examiner's failure to act thereon—as further combined with Twitch's choice not to challenge the '054 Patent family, despite its particularized awareness thereof, weighs in favor of discretionary denial.

D. Compelling Economic Interests

The '054 Patent issued based on the investments of CP Studios' predecessor, American startup Checkpoint Studios. *See* Ex. 2014 ('054 Patent Assignment History). Such investment in research and development by American startups—as embodied by subsequent patent protection—represents a compelling economic interest. Relatedly, beyond the time and resources invested in initially obtaining patents, the parties to the follow-on divestment transaction each also hold a compelling economic interest in preserving the benefit of that bargain (in particular as to patents such as the '054 Patent with long-settled expectations), so that American startup Checkpoint Studios was able to recoup some of its investment based on CP Studios' reasonable expectation of return.

Thus, because of the compelling economic interest in encouraging the continued investment in research and development protected by patents, and allowing companies to recoup such investment through the sale of those patents that have also accumulated settled expectations to other parties, this factor merits discretionary denial of the Petition.

IV. CONCLUSION

The Board should exercise its discretion to deny institution of the Petition because, as addressed above, on balance the *Fintiv* factors and additional considerations from the 2025 Director's Memorandum counsel in favor of denial.

Patent Owner's Brief in Support of Request for Discretionary Denial
IPR2026-00414 (U.S. Patent No. 11,731,054)

Respectfully Submitted,

Dated: September 30, 2026

/Timothy Dewberry/

Timothy F. Dewberry (Reg. No. 62,947)

Moses Xie (Reg. No. 74,491)

Folio Law Group PLLC

1200 Westlake Ave. N., Suite 809

Seattle, WA 98109

Tel: (206) 809-6809

Email: timothy.dewberry@foliolaw.com

moses.xie@foliolaw.com

Attorneys for Patent Owner

**CERTIFICATION UNDER INTERIM DIRECTOR DISCRETIONARY
PROCESS (II)(C)(iii)**

Under the provisions of 37 C.F.R. § 42.24(d), the undersigned hereby certifies that the page count for all portions of the foregoing Patent Owner's Brief in Support of Request for Discretionary Denial totals 20 pages per Microsoft Word, which complies with the requirement of 20 pages allowed under the Interim Director Discretionary Process. *See* Interim Director Discretionary Process (II)(C)(iii) (<https://www.uspto.gov/patents/ptab/interim-director-discretionary-process>).

Dated: September 30, 2026

/Timothy Dewberry/

Timothy Dewberry (Reg. 62,947)

Moses Xie, (Reg. No.74,491)

Folio Law Group PLLC

1200 Westlake Ave. N., Suite 809

Seattle, WA 98109

Tel: (206) 809-6809

Email: timothy.dewberry@foliolaw.com

moses.xie@foliolaw.com

Attorneys for Patent Owner

CERTIFICATE OF SERVICE

As authorized by Patent Owner's Mandatory Notice, I hereby certify that on September 30, 2026, a copy of this document has been served in its entirety by electronic mail on Petitioner's lead and backup counsel.

Alex Yap
ayap@mofo.com

Mehran Arjomand
marjomand@mofo.com

Yunan Yuan
ayuan@mofo.com

Dated: September 30, 2026

/Timothy Dewberry/
Timothy Dewberry (Reg. 62,947)
Folio Law Group PLLC
1200 Westlake Ave. N., Suite 809
Seattle, WA 98109
Tel: (206) 809-6809
Email: timothy.dewberry@foliolaw.com

Attorneys for Patent Owner