

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PALO ALTO NETWORKS, INC.,
Petitioner,

v.

QOMPLX LLC,
Patent Owner.

Case IPR2026-00431
Patent 12,301,627

PATENT OWNER'S DISCRETIONARY DENIAL BRIEF

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2005	First Amended Docket Control Order, <i>Qomplx LLC v. Palo Alto Networks, Inc.</i> , No. 2:25-cv-00913 (E.D. Tex.) (ordered Jan. 3, 2026) [Docket Control Order]
2006	Time to Trial: Judge Rodney Gilstrap, DOCKET NAVIGATOR (last visited July 29, 2026) [Gilstrap Time to Trial]
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2009	Defendant Palo Alto Networks, Inc.’s Redline Amended Preliminary Invalidity Contentions, <i>Qomplx LLC v. Palo Alto Networks, Inc.</i> , No. 2:25-cv-00913 (E.D. Tex.) (served Sept. 1, 2026) [Redline]

I. INTRODUCTION

This is the third IPR challenging the '627 patent and the second filed by PAN. Microsoft filed the first petition which PAN sought to join. It then waited more than two months to file this Petition—until after Patent Owner filed a substantive POPR identifying defects in the same Stokes-Crabtree grounds. PAN then used that POPR as a roadmap to materially expand those very arguments. No intervening event required the delayed petition. PAN's own explanation all but concedes the point: PAN admits that presenting its complete challenge in one petition "likely" would have warranted discretionary denial because of its overlap with Microsoft's IPR and the resulting burden on Board resources. Ranking, 2-3. PAN's "solution" was to split that concededly problematic challenge into two PAN petitions on top of Microsoft's IPR, creating still more overlap and burden. Whether treated as the roadmapped follow-on petition it is or as a purported "parallel" petition, this second PAN Petition should be denied. *See* Section III.A.

PAN's claim-construction conduct provides an independent reason for denial. It asked the Board to apply "the plain and ordinary meaning of all claim terms" while maintaining 35 undisclosed indefiniteness positions in district court. The Director's decisions reject both the undisclosed inconsistency and that kind of post-hoc, wait-and-see gamesmanship. *See* Section III.B.

Fintiv points the same way. Trial is scheduled more than five months before

the FWD, no stay has been sought or is likely, and substantial district-court work will precede institution. PAN's stipulation leaves its broader district-court validity case intact, while institution would add a third overlapping IPR rather than simplify anything. *See* Section III.C. The Director should deny institution.

II. FACTUAL BACKGROUND

This Petition is the third IPR petition challenging the '627 patent and the second filed by PAN. Microsoft filed the first, IPR2026-00325, on April 7, 2026. PAN followed on May 15 with IPR2026-00364, a “copycat” of Microsoft's Petition for which PAN sought joinder. PAN did not disclose that another PAN petition was coming, identify -00364 as one of multiple purportedly parallel petitions, or file a ranking paper. On the record then available, Patent Owner did not seek discretionary denial of the lone -00364 joinder petition; its brief would have been due July 20.

PAN used the ensuing two months to its advantage. On July 10, Patent Owner filed its substantive -00325 POPR identifying two independent defects in the common Stokes-Crabtree grounds. Ten days later—at 10:30 p.m. Eastern on the very day Patent Owner's discretionary-denial brief in -00364 was due—PAN served this Petition on Patent Owner's district court counsel, not its IPR counsel. This third petition challenges six additional dependent claims under admittedly “the same grounds” asserted in the two earlier petitions. Pet., 4. Every claim challenged here depends from claim 1 or claim 18, both already challenged in the earlier proceedings.

PAN's accompanying Ranking Paper revealed for the first time that PAN considered its two petitions "parallel," ranked this later Petition first, and explained that PAN had split its challenge to preserve joinder. PAN acknowledged that presenting its complete challenge in one petition "likely" would have been denied for discretionary reasons. Ranking, 1-3. Having also obtained Patent Owner's July 10 POPR, PAN materially expanded its analysis of both defects Patent Owner had identified.¹

PAN was simultaneously maintaining a fundamentally different claim-scope position in the District Court Action. Its January 12, 2026 Invalidity Contentions asserted that 35 terms of the '627 patent are indefinite, while this Petition simply states that PAN "applies the plain and ordinary meaning of all claim terms." Pet., 12. Only after Patent Owner exposed that manner of inconsistency to the Office in another PAN IPR did PAN attempt to retreat. On September 1, in an unsolicited email to Qomplx's litigation counsel, PAN announced for the first time that it "does not intend to argue" indefiniteness and served a redline purporting to strike those designations. But PAN has not sought leave to amend as the Court's rules require, and its redline expressly retains the right "to assert that a claim is indefinite."

¹ PAN also filed a second, roadmapped petition in IPR2026-00432, challenging Qomplx's '424 patent. *See also* IPR2026-00298 (original Microsoft petition); IPR2026-00363 (PAN joinder petition).

Meanwhile, the Eastern District of Texas litigation continues toward trial. PAN is the defendant there and served extensive invalidity contentions in January 2026. By the projected January 21, 2027 institution date, claim-construction briefing will be complete and document production substantially complete; the claim-construction hearing is set for February 1, 2027. Trial is scheduled for August 16, 2027, more than five months before the projected January 21, 2028 FWD. And the IPR cannot replace PAN’s district-court invalidity case. PAN asserts 26 anticipation references there, including three prior-art systems or products, along with extensive § 112 theories directed to the same “relationship” and “attack path” limitations central to this Petition. Although PAN has offered a prior-art stipulation, Stokes is not even among its identified district-court references, while Sekar and several Crabtree-related references are. The District Court Action also involves four asserted patents, and Microsoft’s IPR against another of them—the ’663 patent—has already been denied on the merits. Thus, validity and trial will remain live in district court regardless of institution here.

III. INSTITUTION SHOULD BE DISCRETIONARILY DENIED.

A. PAN’s Strategically Staggered Second Petition Warrants Denial.

The Office’s multiple-petition rules prevent petitioners from using an earlier proceeding as a roadmap for a later one to multiply attacks on the same patent. *General Plastic* addresses staggered or “follow-on” petitions by the same party; the

parallel-petition guidance separately makes clear that even multiple concurrently filed petitions are rarely justified. PAN’s strategy runs afoul of both principles.

This is a textbook roadmapped follow-on petition. PAN filed a copycat joinder petition, then waited more than two months—until after Patent Owner filed a substantive POPR exposing defects in those same grounds—to file again. PAN’s second Petition materially expanded its arguments on the very issues Patent Owner had identified. *See* Section III.A.1. PAN fares no better under its “parallel” label. Its own Ranking Paper admits that presenting its complete challenge in one petition “likely” would have warranted discretionary denial because of its overlap with Microsoft’s IPR and the resulting burden on Board resources. Ranking, 2-3. PAN’s crafty workaround was to split that challenge into two PAN petitions on top of Microsoft’s existing IPR, creating still more burden and duplication than the structure it admits warranted denial. PAN cannot justify a second petition by making the very problem it identifies worse. *See* Section III.A.2. The second Petition should be denied under either framework.

1. The Petition Is A Roadmapped Follow-On Petition And Should Be Denied Under *General Plastic*.

This is no parallel petition. The Trial Practice Guide (“TPG”) distinguishes follow-on petitions challenging a patent “challenged previously” from parallel petitions filed “at or about the same time,” ordinarily before the first preliminary

response. TPG, § II.D.2. PAN's filings fall squarely in the former category. PAN filed -00364 on May 15, then waited more than two months—and until after Patent Owner disclosed its substantive defenses in the July 10 POPR—to file this Petition on July 20. That is paradigmatic follow-on sequencing.

That delay was consequential. By July 20, PAN had Patent Owner's -00325 POPR for ten days, and this Petition materially expanded PAN's analysis of both defects Patent Owner had identified. At the same time, PAN withheld its second-petition strategy until the day Patent Owner's discretionary-denial brief in -00364 was due, disclosing it only at 10:30 p.m. Eastern and only to district-court counsel—not Patent Owner's IPR counsel—thereby ensuring that Patent Owner would not be able to reference the second petition in any discretionary denial brief in that proceeding. Ex. 2007. PAN identifies no justification for this delay or secrecy. This is a particularly aggravated example of the serial-petition shenanigans *Gen. Plastic Indus. Co., Ltd. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 (Sept. 6, 2017) (precedential) (“*General Plastic*”) guards against.

PAN's Ranking Paper confirms that this was deliberate strategy, not later-arising necessity. PAN kept its -00364 petition identical to Microsoft's to preserve joinder while placing additional claims here and unabashedly states that presenting its complete challenge in one petition “likely” would have been discretionarily denied. Ranking, 2-3. The *General Plastic* factors strongly favor denial.

Factor 1 favors denial because PAN has already petitioned against the same patent. Factor 1 considers whether the same petitioner previously filed a petition directed to the same claims of the same patent. *General Plastic*, 16. This is PAN’s second petition challenging the ’627 patent. Although this Petition adds dependent claims not separately challenged in -00364, every such claim depends from claim 1 or claim 18, both of which PAN already challenged there. The new claims therefore incorporate the same limitations, and PAN again relies on the same Stokes-Crabtree grounds and references to satisfy them. Pet., 4. Factor 1 favors denial.

Factor 2 strongly favors denial because PAN already knew and had asserted every reference and combination used here. Factor 2 asks whether PAN knew or should have known of the later-asserted art when it filed its first petition. *General Plastic*, 16. PAN indisputably did: it admits that the grounds here “are the same grounds raised in Microsoft’s IPR2026-00325 and [PAN’s] IPR2026-00364.” Pet., 4. Thus, when PAN filed -00364, it already possessed and asserted every reference and combination it later asserted here. Factor 2 strongly favors denial.

Factor 3 strongly favors denial because PAN used Patent Owner’s POPR as a roadmap to improve its second Petition. Factor 3 concerns whether, when the later petition was filed, the petitioner already had Patent Owner’s preliminary response and used it as a roadmap to improve the second attack. *General Plastic*, 16-18. Patent Owner filed its -00325 POPR on July 10; PAN filed this Petition ten

days later. Although the POPR responded to Microsoft's petition, PAN had copied that petition in -00364 and admittedly asserts the same grounds here. Pet., 4.

The July 10 POPR raised two independent defects in the common Stokes-Crabtree grounds. In response, PAN's follow-on Petition materially expanded its analysis of both. First, the POPR explained that Stokes's event edges and generic "connection relationships" failed to show the claimed "relationships," illustrating the distinction with the '627 patent's "HasSession" relationship. -00325 POPR, 12-23. PAN then doubled its "relationship" analysis, added the patent's "physical or logical connections" language, and newly invoked Figure 22 as "showing nodes can have a 'HasSession' relationship." Pet., 24. None of that appeared in PAN's May petition. *Compare* Pet., 24, *with* -00364 Pet., 22-23.

Second, the POPR explained that Stokes's attack-path analysis remains backward-looking despite its reference to "possible lateral movement": Stokes starts from a compromised node and searches for other computers or accounts already compromised. -00325 POPR, 35-36. PAN then newly characterized Stokes's paths as "actual or potential," newly cited Stokes ¶ 20 for "potential malicious lateral movement paths," and added Stokes's false-positive discussion as evidence of "potential attack paths." Pet., 33. Those arguments likewise were absent from PAN's May petition. *Compare* Pet., 32-36, *with* -00364 Pet., 31-34.

PAN thus did precisely what *General Plastic* warns against: it used the POPR as a roadmap to refine the same grounds in a follow-on petition.

Factor 4 strongly favors denial because PAN waited more than two months after indisputably possessing the same art and grounds. Factor 4 considers the time between when PAN learned of the later-asserted art and filed its follow-on petition. *General Plastic*, 16. Microsoft presented these same references and grounds on April 7, and by May 15 at the latest PAN indisputably possessed them: PAN copied those grounds into -00364 and sought joinder to Microsoft's proceeding. Yet PAN waited until July 20 to file this Petition. It disclosed the second Petition only at 10:30 p.m. Eastern on the very day Patent Owner's discretionary-denial brief in -00364 was due (Ex. 2007)—and ten days after receiving Patent Owner's substantive POPR.

Factor 5 strongly favors denial because PAN explains the split, but not the delay. Factor 5 asks whether PAN adequately explains the time between its petitions. *General Plastic*, 16. PAN explains why it filed two petitions: it kept -00364 identical to Microsoft's petition to preserve joinder while challenging the additional asserted claims separately. Ranking, 2-3. But PAN never explains why it staggered those petitions by more than two months. By May 15, PAN already knew the asserted claims and possessed every reference and combination asserted

here. If its joinder strategy required two petitions, PAN could have filed both then. Factor 5 strongly favors denial.

Factors 6 and 7 strongly favor denial because PAN’s strategy multiplies rather than conserves Board resources. Factor 6 considers the Board’s finite resources, and Factor 7 its ability to complete instituted proceedings within the statutory time limit. *General Plastic*, 16. PAN itself acknowledges that its complete challenge would substantially overlap Microsoft’s IPR and require the “unnecessary expenditure of additional Board resources.” Ranking, 2-3.

PAN’s split only adds to that burden. Every claim challenged here depends from claim 1 or claim 18, both already challenged in Microsoft’s -00325 Petition and PAN’s copycat -00364 Petition. This Petition therefore requires the Board to adjudicate again whether the same (but improved upon) grounds satisfy those incorporated independent-claim limitations. Adding an unnecessary third proceeding also consumes resources needed to dispose of instituted IPRs within the statutory period. PAN’s strategy thus worsens the very overlap and resource burden it invokes to justify splitting its challenge. Factors 6 and 7 strongly favor denial.

2. Even If Treated As Parallel, PAN Has Not Justified A Second Petition.

Even accepting PAN’s characterization of its petitions as “parallel,” the second Petition should be denied. “[O]ne petition should be sufficient” in most

cases, multiple petitions are unnecessary in “the vast majority of cases,” and more than one petition is “rare[ly]” justified. TPG, § II.D.2. Multiple petitions effectively expand the permitted petition word count and impose a “substantial and unnecessary burden on the Board and the patent owner.” *PacifiCorp v. Birchtech Corp.*, IPR2025-00687, Paper 40, 2-4 (Jan. 12, 2026) (precedential).

PAN identifies no rare circumstance requiring two petitions. This is not a case where additional claims were asserted only after the first petition. PAN knew by November 2025 that Qomplx asserted all six dependent claims challenged here. Ex. 2004 [Invalidity Contentions] 1. Nor does PAN identify newly discovered art, a later-arising priority dispute, or a new claim-construction issue requiring a second petition. The same grounds and references were available when PAN filed -00364.

PAN’s own explanation confirms that the second Petition is strategic, not necessary. PAN kept -00364 identical to Microsoft’s petition to preserve joinder while placing the additional dependent claims here. Ranking, 2-3. It further admits that presenting its complete challenge in a single petition “likely” would have been denied because of its “significant overlap with Microsoft’s IPR” and the resulting “unnecessary expenditure of additional Board resources.” *Id.* That explanation is self-defeating. PAN agrees that the overlap and resource burden of one complete challenge likely warranted denial, yet its solution was to split that challenge into two PAN petitions on top of Microsoft’s existing IPR, creating still more proceedings

and duplicated adjudication. Every claim challenged here incorporates the limitations of claim 1 or claim 18, both already challenged in Microsoft's -00325 Petition and PAN's -00364 Petition, requiring the Board to adjudicate the same Stokes-Crabtree theories yet again. PAN cannot manufacture the "rare" circumstance required for multiple petitions by adopting a structure that exacerbates the very problem it identifies. The second Petition should be denied.

B. PAN's Undisclosed District-Court Indefiniteness Positions And Post-Hoc Attempt To Retreat Favor Denial.

PAN asked the Board to apply "the plain and ordinary meaning of all claim terms." Pet., 12. Yet when PAN filed this Petition, it had been maintaining for more than six months that 35 distinct terms and limitations of the same patent are indefinite under 35 U.S.C. § 112. Ex. 2004 [Invalidity Contentions] 119-123. PAN disclosed none of those positions, much less explained how they could be reconciled with the "plain and ordinary meaning" position it asks the Board to apply.

That omission directly contravenes the Director's precedential decision in *Revvo*, which issued more than eight months before PAN filed this Petition. *Revvo* explained that, although the Board's rules "do not necessarily prohibit petitioners from taking inconsistent claim construction positions before the Board and a district court," a petitioner advancing different positions "should, at a minimum, explain why alternative positions are warranted." *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)). PAN provided no explanation because it disclosed no inconsistency at all. And the Director has since made the governing principle still more explicit: “a petitioner should pick one [construction], and one consistent with its asserted District Court position.” *Infineon Techs. Am. Corp. v. Mosaid Techs. Inc.*, IPR2025-01456, Paper 27, 3-4 (Mar. 17, 2026).

Tesla applied *Revvo* to essentially this same kind of inconsistency, denying institution where the petitioner asserted indefiniteness in district court while telling the Board that no express construction was required. *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00340, Paper 18, 3-4 (Nov. 5, 2025) (informative). Even more, *Tesla* involved one term; here, there are 35. PAN did not merely fail to reconcile its positions—it did not disclose them at all. And PAN filed this Petition after *Revvo* and *Tesla*. See also *TikTok, Inc. v. Shopsee, Inc.*, IPR2025-01485, Paper 13, 2-3 (Jan. 16, 2026) (informative).

After Patent Owner exposed the same conduct to the Office in another PAN IPR, PAN told Patent Owner’s litigation counsel that it “does not intend to argue” that terms of the ’627 patent are indefinite and served a redline purporting to strike those positions. Ex. 2008 [Email]; Ex. 2009 [Redline] 119-123. But PAN was not entitled simply to erase its final district-court contentions by emailing Patent Owner

a redline. Eastern District of Texas Patent Rule 3-6 provides that invalidity contentions are “deemed to be that party’s final contentions.” E.D. Tex. P.R. 3-6. Amendment without leave is permitted only in specified circumstances following a claim-construction ruling—a ruling not expected here until early 2027. E.D. Tex. P.R. 3-6(a); Ex. 2005 [Amended Docket Control Order] 3. All other “[a]mendment or supplementation” “may be made only by order of the Court,” and such an order “shall be entered only upon a showing of good cause.” E.D. Tex. P.R. 3-6(b). PAN sought no such order, and none has issued. Its inconsistent district-court position therefore did not disappear merely because PAN served a redline after Patent Owner exposed its pattern of inconsistency.

Nor did PAN even purport to abandon indefiniteness unequivocally. Its email says only that PAN presently “does not intend to argue” indefiniteness. Ex. 2008 [Email]. And PAN retained in its purportedly amended contentions its express reservation of the right “to assert that a claim is indefinite.” Ex. 2009 [Redline] 3. PAN therefore continues to preserve the option to seek institution under “plain and ordinary meaning,” observe the claim-construction positions taken by Patent Owner and the District Court, and later return to indefiniteness.

That is the very “wait and see” litigation strategy the Director has condemned. In *Infinion*, the Director explained that the Office is “not in the business of aiding parties to stress test claim constructions to see which will prevail” and instructed

petitioners to select one construction consistent with their district-court position. *Infineon*, 3-4. Likewise, *Terumo* reiterated that “a petitioner should present a single construction and apply that construction consistently before the Board and the district court.” *Terumo BCT, Inc. v. Haemonetics Corp.*, IPR2025-01374, Paper 20, 3-5 (May 12, 2026) (informative).

Ford forecloses PAN’s effort to cure the defect only after Patent Owner exposed it. There, the petitioner responded to *Revvo* and *Tesla* by offering an unequivocal stipulation to withdraw all indefiniteness arguments from the related litigation. The Director nevertheless found that stipulation “insufficient” because the petitioner acted only after Patent Owner brought the inconsistency to the Office’s attention, and vacated institution. *Ford Motor Co. v. AutoConnect Holdings LLC*, IPR2025-01342, Paper 27, 3-4 & n.3 (May 12, 2026) (informative). That PAN attempted to change course before Patent Owner filed this Brief does not distinguish *Ford* or cure the violation. The relevant sequence is that PAN filed the Petition without disclosing its 35 contrary positions and retreated only after Patent Owner exposed the same inconsistency to the Office in another PAN IPR. PAN has also done less than the petitioner in *Ford*. It offers no stipulation, has not obtained leave to withdraw its district-court positions, and expressly reserves the right to assert indefiniteness later.

The relevant sequence is therefore straightforward. PAN filed this Petition

asking for “plain and ordinary meaning” while maintaining 35 contrary district-court positions, disclosed none of them, and attempted to retreat only after Patent Owner exposed the same conduct to the Office. Its retreat is neither complete nor binding. *Revvo, Tesla, Ford, Infineon, Terumo*, and *TikTok* all predated this Petition and gave PAN ample notice that this kind of undisclosed, wait-and-see claim-construction practice weighs against institution. Institution should be denied.

C. The Petition Should Be Denied Under *Fintiv*.

The *Fintiv* factors strongly favor denial. The district court trial is scheduled five months before the FWD, no stay is entered or likely, and the parties have made substantial investments. Though this is the third IPR challenging the same patent under the same grounds, its substantive arguments leave the district-court validity dispute live. Institution would multiply duplicative proceedings for no good reason.

Factor 1: The District Court Action is not and not likely to be stayed. PAN has neither sought nor indicated that it will seek a stay of litigation commenced over a year ago. Trial is scheduled for August 16, 2027, more than five months before the projected FWD, and PAN waited eleven months after the August 2025 complaint to file this Petition. Ex. 2005 [Docket Control Order] 1. The District Court Action involves four asserted patents, and Microsoft’s petition against one of them has since been denied on the merits, virtually guaranteeing denial of PAN’s copycat petition. Institution therefore would neither resolve validity nor eliminate the need for trial.

PAN's district-court invalidity case is also substantially broader, asserting 26 anticipation references, including three prior-art systems and products. Ex. 2004 [Invalidity Contentions] 20-21, 70-73. Judge Gilstrap recently denied a stay where, as here, the FWD was due more than five months after trial and the IPR addressed only part of the defendant's invalidity case. *Lionra Techs. Ltd. v. Cisco Sys., Inc.*, No. 2:24-CV-00097-JRG, 2025 U.S. Dist. LEXIS 80719, at *3-11 (E.D. Tex. Apr. 28, 2025). Factor 1 strongly favors denial.

Factor 2: the District Court trial is scheduled to occur five months before the projected FWD deadline. The FWD will be due around January 21, 2028, more than five months after the August 16, 2027 trial date. See Ex. 2005 [Docket Control Order] 1. That trial date is consistent with Judge Gilstrap's 21-month median time to trial, which would place trial in late May 2027. Ex. 2006 [Gilstrap Time to Trial].

The former Acting Director has recognized the inefficiency of maintaining parallel proceedings even where the district-court trial and projected FWD are merely "in close proximity." *Shenzhen Tuozhu Tech. Co., Ltd. v. Stratasys, Inc.*, IPR2025-00354, Paper 11, 2 (June 12, 2025). Here, trial precedes the FWD altogether. Indeed, Factor 2 can favor denial even where trial is scheduled ***after*** the FWD when the parties have meaningfully invested in the district-court proceeding. *Adv. Micro Devices, Inc. v. Concurrent Ventures, LLC*, IPR2025-00223, Paper 9, 2 (June 12, 2025) ("*Concurrent*"). Factor 2 therefore strongly favors denial.

Factor 3: the parties have expended significant resources in the District Court Action. PAN served invalidity contentions on January 12, 2026. Ex. 2005 [Docket Control Order] 5. By the institution deadline, the parties will have completed claim-construction briefing and substantially completed document production and exchanged privilege logs. *Id.*, 4. The Office treats such contentions and claim-construction proceedings as meaningful investments under Factor 3. *Motorola Sols., Inc. v. Stellar, LLC*, IPR2024-01205, Paper 19, 3 (Mar. 28, 2025); *Concurrent*, 2. Factor 3 strongly favors denial.

Factor 4: PAN's stipulation does not establish that institution would simplify the parallel litigation. *Magnolia Med. Techs., Inc. v. Kurin, Inc.* explains that even when invalidity theories are “substantially different” between forums, AIA review may simply provide additional arguments, causing the parties to “spend more time and resources litigating patent validity” rather than “narrow disputes.” IPR2026-00097, Paper 17, 3-4 (May 14, 2026) (precedential). That is true here. PAN's district-court contentions identify Sekar and related Crabtree references, as well as numerous other theories, including combinations involving the MulVAL System, NetSPA System, and Advanced Cyber Decision Platform. Ex. 2004 [Invalidity Contentions] 20-21. Although PAN did not identify Stokes, its contentions expressly reserve the right to amend or supplement its theories. *Id.*, 2.

Nor does PAN's stipulation address the duplication already before the Board. This is the third IPR—and the second by PAN—challenging the same patent under the same grounds. This Petition requires the Board again to decide whether those same grounds satisfy the incorporated independent-claim limitations. Institution would not substitute one validity proceeding for another; it would add a third IPR proceeding in addition to the district court validity dispute. PAN's stipulation may reduce the possibility that identical grounds are adjudicated in district court, but it does nothing to eliminate that broader duplication. Factor 4 thus favors denial.

Factor 5: Petitioner is the defendant in the District Court Action. Factor 5 thus strongly favors denial.

Factor 6: PAN's conduct strongly favors denial. PAN has used IPR to multiply proceedings. It filed two overlapping PAN IPRs against the '627 patent on top of Microsoft's already-pending IPR: first -00364, a copycat joinder petition, and then this Petition, which again relies on "the same grounds" to satisfy independent-claim limitations already at issue in both earlier IPRs. PAN did not disclose the second petition when it filed -00364, waited until nearly the last hour of Patent Owner's discretionary-denial deadline to reveal its purported "parallel" strategy, and filed only after obtaining Patent Owner's substantive POPR and using it to strengthen those same grounds. PAN's Ranking Paper confirms that strategy was deliberate: presenting its complete challenge together "likely" would have resulted

in discretionary denial. Ranking, 2-3.

PAN followed the same pattern of gamesmanship with claim construction. It filed this Petition while maintaining 35 indefiniteness positions in the District Court Action, but disclosed none of them to the Board. Only after Patent Owner exposed the same pattern of inconsistency in another IPR did PAN attempt to retreat. On September 1—one day before its opposition was due there—PAN stated that it “does not intend to argue” indefiniteness and served purportedly amended invalidity contentions. But PAN did not obtain the leave required, no court order authorizing the amendment has issued, and PAN expressly retained the right “to assert that a claim is indefinite.” The Director has treated such “strategic litigation-style behavior” as evidence that a petitioner is not using IPR “as a district court alternative.” *Terumo*, 3-5. Taken together, PAN’s overlapping IPRs, roadmapping, undisclosed district-court positions, and post-hoc retreat are not isolated procedural choices; they are a pattern of litigation gamesmanship designed to preserve as many bites at the apple as possible. These are precisely the sort of multi-forum shenanigans discretionary denial exists to prevent. Factor 6 strongly favors denial.

IV. 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: September 21, 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 2004-2009

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