

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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INTEL CORP., DELL INC., AND DELL TECHNOLOGIES INC.,  
Petitioner,

v.

GENERAL VIDEO, LLC,  
Patent Owner.

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IPR2025-01038  
U.S. Patent No. 7,359,437

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

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**I. REVIEW OF THE ’437 PATENT IS AN APPROPRIATE USE OF OFFICE RESOURCES**

The ’437 patent only issued because of two significant errors during examination. First, the Applicant withheld from the Examiner its own prior art reference (*Kim* Ex.1005)—a reference that teaches the exact same transmission sequence that formed the basis of allowance. Second, that error was compounded by the Examiner, who failed to identify *Kim*—despite *Kim* having an identical subject matter focus, classification and assignee. These intertwined prosecution errors should be weighed and corrected by the merits panel.

Patent Owner cannot claim settled expectations in the validity of a patent that issued as a result of the Applicant’s failure to disclose its own prior art. And the remaining circumstances further undermine the notion of settled expectations. To start, Patent Owner waited 17 years before asserting the ’437 patent against Petitioner Dell’s use of the DisplayPort standard. That delay—waiting nearly two decades to assert a patent against a widely-used standard—would be inexplicable if the ’437 patent were directed toward DisplayPort. In fact, it is not. To the contrary, the ’437 patent is directed toward a different technology, Digital Visual Interface (“DVI”), and Patent Owner’s infringement allegations rely on stretching the claims to cover features that the patent itself describes as conventional. Patent Owner cannot credibly claim settled expectations when attempting to assert a patent directed to DVI against an entirely different technology.

Additionally, the Director should not discretionarily deny because (1) a single PTAB proceeding alleviates multiple district court trials, (2) Petitioner Intel is not a party to district court litigation and Dell's district court case is in its infancy with a scheduled trial date expected many months after a final written decision, and (3) the merits are compelling.

**A. The Applicant's withholding of *Kim* and the Examiner's material error require merits review.**

The Petition should proceed to a full merits review because the record demonstrates two independent yet reinforcing prosecution defects: (1) the Applicant withheld its own prior-art patent, U.S. Patent No. 5,835,498 to Kim ("*Kim*"), and (2) the Examiner materially erred by failing to identify *Kim* despite multiple red flags. Either defect alone upsets any "settled expectations" that the Patent Owner now invokes and together they compel review.

**1. Applicant withheld disclosure of *Kim*, which teaches the reasons for allowance.**

The duty of candor under 37 C.F.R. § 1.56 required the Applicant to disclose any reference "material to patentability." *Kim* squarely meets that standard because it expressly teaches the subject matter identified as the reason for allowing the claims of the '437 patent. Ex.1005, 5:19-24; Ex.1002, 165-167. Rather than identifying *Kim* to the Examiner in an IDS, as required, the Applicant kept silent and allowed the patent to issue. *See generally* Ex.1002.

The prosecution history clearly specifies the subject matter the Examiner deemed allowable. Ex.1002, 208-211. The originally filed claims related to encoding auxiliary data as a “*robust subset*” of “*selected code words.*” Ex.1002, 419-431; *see also* Ex.1001, 9:30-32 (“the *auxiliary data* are encoded in accordance with the invention using a *set of inventive code words*<sup>1</sup>.”). The Examiner found this “inventive” concept to be taught by the Myers reference (also relied on in this Petition). Ex.1002, 240. But the Examiner identified purported allowable subject matter in certain dependent claims, which required placing the “set of inventive code words” (auxiliary data) between bursts of video data. For example, original dependent claim 2 recited “*the transmitter is configured to transmit to the receiver over the serial link a first burst of the video code words followed by a burst of the selected code words followed by a second burst of the video code words.*” Ex.1002, 419. Dependent claim 56 similarly required transmitting selected code words between bursts of video code words. The '437 patent characterizes this purported allowable subject matter as transmitting the selected code words

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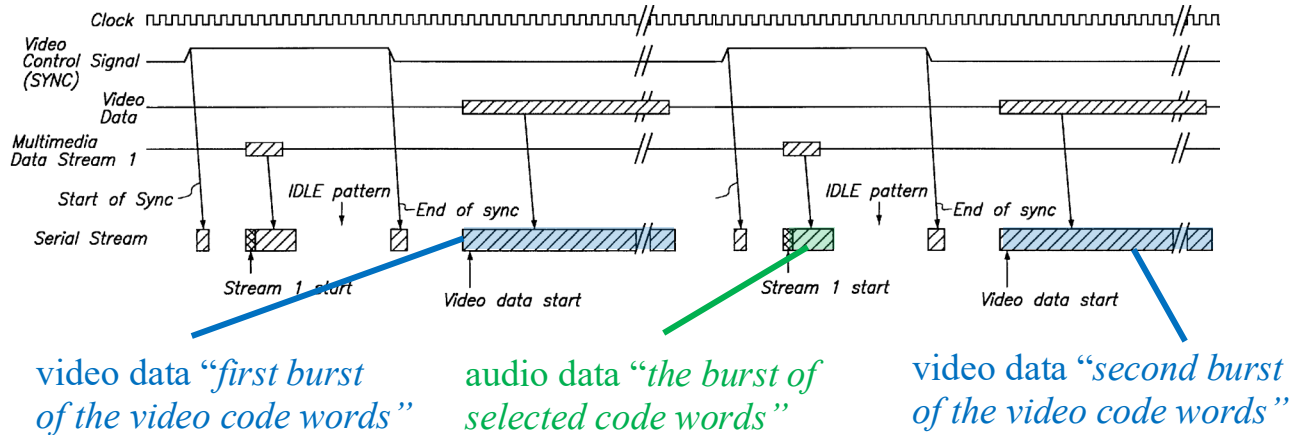
<sup>1</sup> In the claims, the “inventive code words” are recited as the “selected code words.” Ex.1001, 6:58-63 (“The robust subset will sometimes be referred to herein as a ‘selected’ (or ‘inventive’) set of code words, and the code words in the robust subset will sometimes referred to as the ‘inventive’ code words”).

(auxiliary data) in the “blinking intervals” between active video data

transmissions. Ex.1001, 5:11-17 (“These blanking intervals provide an opportunity (exploited in some embodiments of the present invention) for auxiliary data to be transported.”). In response to the Examiner’s indication of these features as allowable subject matter, the Applicant rewrote dependent claims 2 and 56 (among others) in independent form and, ultimately, the claims issued as independent claims 1 and 41, respectively. Ex.1002, 218, 227.

But, notably, the concept of placing auxiliary data between bursts of video data (e.g., within a “blinking interval”) was already well known to the Applicant. Indeed, years before the '437 patent, *Applicant's own patent*, i.e., *Kim*, describes “mixing various *multimedia data streams* into the display refresh data (primary stream) using the unused bandwidth of *horizontal and vertical blanking periods*.” Ex.1005, 5:19-24. “Possible multimedia data streams that can be mixed include, but are not limited to audio...” Ex.1005, 5:24-28. Kim’s transmission of **auxiliary data**, such as audio data, in the blanking intervals between active **video data**, results in the same **video** and **selected code word** transmission sequence the Examiner cited in allowing the '437 patent, as shown in the figure below.

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**Ex.1005, Fig. 4A (modified, annotated).**

Ex. 1005, Fig. 4A; Pet., 54; cf. Ex.1002, 419 (“the transmitter is configured to transmit to the receiver over the serial link a **first burst of the video code words** followed by a **burst of the selected code words** followed by a **second burst of the video code words.**”) (portion of claim 1 deemed allowable by examiner, as discussed *supra*). As such, *Kim* teaches the very concepts the Examiner deemed allowable. Had the Applicant disclosed *Kim*, as required under 37 CFR 1.56, the claims would not have issued. The patent therefore issued only because the Applicant remained silent.

**2. The Examiner erred in a manner material to patentability by failing to identify *Kim*.**

The Examiner had every reason to locate *Kim* yet inexplicably failed to do so. *Kim* was not an obscure reference. It shares the same assignee (Silicon Image); the same U.S. classification (348/423); and the same subject matter (serial-link transmission) as the '437 patent. Ex.1001, face; Ex.1005, face.

Moreover, *Kim* is a continuation-in-part of *Shin*, a reference that was already of record. *See* Ex. 1005, 1:7-20; Ex. 1002, 246. A routine citation check of related applications would have led directly to *Kim*. The Examiner, however, overlooked that *Shin*'s child continuation-in-part case (*Kim*) disclosed the subject matter deemed allowable. The newly added subject matter of *Kim* includes its teachings regarding auxiliary data placed between bursts of video data. Ex.1005, 5:19-24; Ex.1007. Had the Examiner identified *Kim*, which discloses the only subject matter deemed allowable, the '437 patent would not have issued.

This error should be corrected. As the Director has recently acknowledged, even in instances where the "patent has been in force for fifteen years...it is an appropriate use of Office resources to review the potential error." *Taiwan Semiconductor Manufacturing Company LTD. v. Marlin Semiconductor LTD*, IPR2025-00847, Paper 15 at 4 (PTAB Jul. 16, 2025); *see also, Anthony Inc., v. Controltec, LLC*, IPR2025-00559, Paper 9 at 2 (PTAB Jul. 16, 2025) (holding that even though the "patent has been in force for fifteen years...it is an appropriate use of Office resources to review the potential error."); *Xencor, Inc., v. Merus N.V.*, IPR2025-00604, Paper 12, 2-3 (PTAB July 17, 2025) ("discretionary denial...is not appropriate because the Office materially erred during prosecution of the challenged patent."); *Amazon.com, Inc., v. Soundclear Technologies LLC*, IPR2025-00565, Paper 11, 2 (PTAB July 10, 2025) (holding that the Office's error

“in a manner material to the patentability of the challenged claims with respect to previously presented prior art” weighs in favor of consideration of the Petition by a merits panel); *Ecto World, LLC v. RAI Strategic Holdings, Inc.*, IPR2024-01280, Paper 13, 5-6 (PTAB May 19, 2025) (precedential).

Because the Applicant withheld and the Office overlooked a reference that nullifies the sole basis for allowance, this factor weighs in favor of institution.

**B. Patent Owner’s delay in asserting the ’437 patent undermines any settled expectations.**

Despite the ’437 patent issuing in April 2008, Patent Owner did not file suit against Petitioner Dell for infringement of that patent until 2024—*over sixteen years later*. That delay created a settled expectation that the Patent Owner would not assert the ’437 patent against Dell’s products. The Director has recognized that such situations favor referral. *See Intel Corp. v. Proxense LLC*, IPR2025-00327, Paper 12 at 2 (PTAB June 26, 2025) (“For example...a patent may have been in force for years but may not have been commercialized, asserted, marked, licensed, or otherwise applied in a petitioner’s particular technology space, if at all.”).

Patent Owner attempts to shift the blame to Dell for its own delay, arguing that Dell waited “almost four years” to file the Petition after purportedly being notified of the ’437 patent and its alleged infringement in June of 2021. But that argument does not justify discretionary denial.

First, the facts do not support Patent Owner’s argument. The March 2015

communication from MPEG LA to Dell that Patent Owner cites *did not even mention the '437 patent*, let alone assert that any Dell product infringed that patent. Ex.1018. The letter instead attached a draft patent license agreement for eight *other* patents—and did not assert infringement of any of those patents, either. Ex.2018. Dell, after consideration, informed MPEG LA in 2015 that it did not need a license to the MPEG LA patent pool. Ex.1019. Patent Owner contends that MPEG LA also provided a link to a URL where it might add more patents to the license and that MPEG LA later added the '437 patent to this URL *six-years* later, in 2021 (where it was then listed among 91 other patents). Ex.2018. But this argument concedes that MPEG LA had no authority to license to the '437 patent in 2015. And Patent Owner cites no subsequent communication informing Dell that MPEG LA had added the '437 patent to the list in 2021. And MPEG LA's silent addition of the '437 patent to the license did nothing to inform Dell that it somehow infringed that patent.

Second, Patent Owner's allegation is an admission of its own delay in asserting its patent, which supports merits review. The Office has recently found that a Patent Owner's delay in filing suit after notifying the Petitioner of infringement "counsel[s] against discretionary denial. *See See Apple v. Ferid Allani* IPR2025-00856, Paper 10, 2 (September 4, 2025) (referring an IPR of a 13-year-old patent "because Patent Owner did not assert the challenged patent against

Petitioner until eleven years after the parties’ discussion about that patent”). So too here, Patent Owner’s *own* alleged timeline weighs against discretionary denial: Patent Owner points to discussions in 2015 and allegedly providing Dell notice in 2021, but Patent Owner did not file suit until 2024.

Further highlighting Patent Owner’s delay is the fact that the DisplayPort standard was first introduced in 2006, before the ’437 patent even issued. Ex.1017. Yet the ’437 patent was not even added to Patent Owner’s license pool until 2021—13 years after issuance. And then the ’437 patent was not asserted until years later in 2024.

The 16 years of silence since issuance and failure to bring suit—against Dell or anyone else that practiced DisplayPort—created settled expectations for Petitioners that they would not be sued for infringement of that patent. As such, this case warrants review by a merits panel.

**C. The newly expanded claim scope further undermines any settled expectations.**

Patent Owner now asserts the ’437 patent with a broad, new scope—one that covers what the patent itself describes as “conventional.” In fact, Patent Owner itself took *thirteen years* after issuance to come up with this reinterpretation of the claims in Patent Owner’s suit against Petitioner Dell. This radical change in scope outweighs any settled expectations.

The ’437 patent is directed to DVI. Ex. 1001, 1:19-22 (invention relates to

“transmission of encoded data” over a “TMDS link”), 2:5-27 (“TMDS serial link” is part of “DVI”). Patent Owner now asserts that claim 41 applies to DisplayPort’s use of conventional 8b/10b encoding. Ex.1012, 6 (“The DisplayPort interface uses the *ANSI standard 8b/10b encoding*”). But the ANSI standard 8b/10b encoding was released in 1994 and was considered conventional at the time of the ’437 patent filing. *See* Ex.1012, 6 (“ANSI X3.230-*1994*”). And the ’437 patent itself repeatedly describes 8b/10b encoding as “conventional.” Ex.1001, 4:50-63 (“There are several *conventional* TMDS-like links ... [including] *8b10b coding*.”); 1:28-36 (“One conventional serial link...each 8-bit word of digital video data is converted to an encoded 10-bit word); *see also* 7:50-52 (describing “*conventionally* encoded” data using “*8-bit* source data words” from “the set of *10-bit* code words employed in a *conventional* TMDS link.”). In sum, this abrupt reinterpretation blindsides the industry and undermines any reliance interests. When combined with the prosecution defects described above, the equities favor review.

**D. A single PTAB proceeding alleviates multiple district court trials.**

The ’437 patent is being litigated by *four* accused infringers in *three* jurisdictions (WDTX, EDTX, DDE), with multiple trials scheduled months *after* the Board’s projected final written decision. Ex.1015, 7. Resolving patentability now avoids duplicative litigation, corrects Office error, and promotes uniformity. Resolution would be much more efficient at the Office. *Berkshire Hathaway*

*Energy Company et al. v. Birchtech Corp.* IPR2025-00274, Paper 23, 2 (July 2, 2025). (“Because the litigation between the parties would proceed to several district court trials in different jurisdictions, resolving the dispute between the parties at the Office would be more efficient.”).

## **II. DISCRETIONARY DENIAL UNDER 35 U.S.C. § 325(D) IS UNWARRANTED**

Consistent with the discussion above, the *Advanced Bionics* factors favor referral. *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 7-8 (Feb. 13, 2020) (precedential).

### **A. *Advanced Bionics* first prong: discretionary denial is not appropriate because the prior art and arguments are not substantially the same.**

The Petition challenges the claims as being unpatentable over *Kim* in view of *Myers* (and *Shin*, which *Kim* incorporates by reference). *Kim* was never before the Office—though it should have been for the reasons explained in Section II.

While *Myers* was cited by the Examiner during prosecution, the Office never considered *Myers*’ teachings as applied to *Kim* as presented in the Petition.

Accordingly, the combination of *Kim*, *Shin*, and *Myers* is new and non-cumulative under the first prong of *Advanced Bionics*.

### **B. *Advanced Bionics* second prong: discretionary denial is not appropriate because of material Examiner error.**

Even considering the second prong of *Advanced Bionics*, the evidence shows that the Examiner “erred in a manner material to the patentability of challenged

claims” by failing to consider *Myers* in combination with other references such as *Kim. Advanced Bionics*, at 2. The second prong is guided by *Becton, Dickinson* factors (c), (e), and (f). *Id.* at 9-10, n. 10 (citing *Becton, Dickinson & Co. v. B. Braun Melsungen AG*, IPR2017-01586, Paper 8 at 17-18 (Dec. 15, 2017)). These factors weigh against exercising discretion.

With respect to factor (c), Petitioners’ proposed combination relies on a combination of references (*Kim, Shin, and Myers*) that has never been previously presented to the Office. While *Myers* was cited by the Examiner during prosecution as an anticipation and obviousness reference, the Applicant did not dispute that *Myers* teaches the limitations related to encoding audio data with a “robust subset.” Ex.1002, 240-41. Instead, the Applicant overcame *Myers* by canceling the rejected claims and accepting the allowable subject matter of the dependent claims, which related to placing the auxiliary data within the blanking intervals of the video stream. Ex.1002, 218-31.

Because the Petition presents the new combination of *Kim, Shin, and Myers*, its grounds of unpatentability are not merely “a disagreement with a specific finding of record by the Office.” *Advanced Bionics* at 10-11; *see also Puma N. Am., Inc. v. Nike, Inc.*, IPR2019-01058, Paper 10, 19 (PTAB Oct. 31, 2019) (instituting where the Petition presented “new non-cumulative evidence.... probative to issues of patentability and helpful to our consideration of a prior art

combination that was not before the Examiner”). This factor thus favors institution.

With respect to factors (e) and (f), the Examiner materially erred by overlooking *Myers* in combination with other references such as *Kim*. Here, the Office materially erred by failing to consider prior art that taught the subject matter of the allowable dependent claims. As explained above in Section I.A, the Examiner had plenty of reasons to identify *Kim*—Applicant’s own withheld reference—but failed to do so. While the Examiner correctly found that *Myers* teaches the claim limitations related to the “*robust subset*,” the Examiner did not consider *Myers* in combination with other references such as *Kim*. *Kim*’s disclosure is non-cumulative because it teaches placing auxiliary data in blanking intervals, which was the concept recited in several dependent claims that were deemed allowable. Ex.1002, 218-41.

Notably, Petitioner does not disagree with the Examiner’s finding that *Myers* teaches the limitations related to the “*robust subset*.” Petitioners respectfully request that the Office consider *Myers* in combination with *Kim* with respect to the limitations that resulted in allowance of the ’437 patent. Accordingly, the Board should not exercise its discretion to deny the Petition under § 325(d).

### **III. DISCRETIONARY DENIAL UNDER *FINTIV* IS NOT WARRANTED**

Petitioner Intel is not a party to litigation and Petitioner Dell’s trial date is several months after the final written decision. Ex.1015, 7. Thus, *Fintiv* does not

apply here. Nevertheless, the analysis below addresses the *Fintiv* factors.

**A. Factor 1 is neutral: No evidence regarding a stay.**

No motion to stay has been filed, so the Director should not infer the outcome of such a motion. *Sand Revolution II, LLC v. Continental Intermodal Group – Trucking LLC*, IPR2019-01393, Paper 24, 7 (PTAB June 16, 2020) (informative). This factor is thus neutral.

**B. Factor 2 weighs against denial: The Final Written Decision would issue before the parallel litigation's trial date.**

Factor 2 weighs against denial. First, the trial date for Petitioner Dell's case in WDTX is currently set for March 29, 2027, which would occur *three months after* the FWD (December 23, 2026). Ex.1020,7. Patent Owner's argument regarding its motion to move Dell's trial date is meritless. *See Apple Inc. v. Fintiv, Inc.*, IPR2020- 00019, Paper 15 at 13 (P.T.A.B. May 13, 2020) (informative) ("We generally take courts' trial schedules at face value absent some strong evidence to the contrary."). Furthermore, this argument ignores Chief Judge Moses' order that, going forward from January 2025, Judge Albright is taking on **40%** of the docket in the Austin division. Ex.1021 (Paper 7, 12). In the about seven months since Chief Judge Moses's order, the Austin division has transferred over 400 cases to Judge Albright, including 80 patent cases. Ex.1022; Ex.1023. The result has been that the judge is handling more cases (600) by the end of July 2025 than he did in total in either of the two previous years (529 and 571). Ex.1024. The volume and

timing of the new cases assigned to the judge strongly indicates that Patent Owner's motion will be denied and weighs against discretionary denial.

Second, Patent Owner's arguments regarding the timing of the HP and ASUSTeK Cases in the EDTX (collectively EDTX Cases) are misplaced. DD Req., 11-12. Neither HP nor ASUSTeK are a Petitioner in the present IPR. Under *Fintiv*, “[i]f a petitioner is unrelated to a defendant in an earlier court proceeding, the Board has weighed this fact against exercising discretion to deny institution[.]” *Fintiv*, 13-14. Additionally, these unrelated parties may settle at any time before reaching the validity issues presented in the Petition, which weighs against *Fintiv* denial. *See Nikon et al. v. Optimum Imaging Tech, LLC.*, IPR2024-01372, Paper 17, 13 (PTAB Mar. 20, 2020) (“[B]ecause a settlement of the district court litigation would remove the potential for duplication of efforts and an earlier trial date in district court, it undermines the entire premise of a *Fintiv* denial”). As Patent Owner notes, Acer, who was sued in EDTX, has since settled without adjudicating validity. DD Req., 3. For this reason, the Director's determination is based on “whether the PTAB or another forum *has already* adjudicated the validity or patentability of the challenged patent claim.” Ex.1026, March 26, 2025, UPSTO Memorandum, “*Interim Procedure for PTAB Workload Management*” (hereafter “March 2025 Office Memo”). Because no such adjudication has already taken place—nor will take place at the time of the institution decision—this factor

weighs against denying institution.

Moreover, even if the Director was to consider the EDTX Cases, the trial timing is only around two months before the FWD and under similar circumstances trial has been instituted. Ex.1025, 1; *see e.g., Liberty Energy, Inc. v. U.S. Well Services, LLC.*, IPR2025-00031, Paper 9, 10, 17-19 (PTAB Apr. 29, 2025). Under *Fintiv*, “[i]f the court’s trial date is at or around the same time as the projected statutory deadline..., the decision whether to institute will likely implicate other factors.” *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11, 9 (PTAB Mar. 20, 2020) (precedential) (“*Fintiv*”).

Third, Patent Owner ignores that following Lenovo’s dismissal from the EDTX litigation, Lenovo filed a declaratory judgment on the ’437 patent in DDE, will have a trial date *more than a year* after the FWD. Ex.1027. Accordingly, this factor weighs against denial.

**C. Factor 3 weighs against denial: Minimal relevant investment by the parties.**

Factor 3 weighs against denial because, at institution, investment by the court and parties at issue in the present proceeding will have been relatively minimal as to the activities pertinent to *Fintiv*. Indeed, Patent Owner fails to identify any substantial investment by the parties that are participating in this proceeding, which weighs this factor against denial. This is not surprising because fact discovery for Petitioner Dell’s case in WDTX does not completely open until

the Markman hearing, which is not scheduled yet.

Recognizing the deficiency, Patent Owner focuses on the HP and ASUSTeK EDTX Cases. These activities should be given little weight because HP and ASUSTeK are not petitioners—they are in an entirely separate case from Dell. But, even ignoring that issue, the HP and ASUSTeK activities do not support discretionary denial. “If, at the time of the institution decision, the district court has not issued orders related to the patent at issue in the petition, this fact weighs against exercising discretion to deny institution.” *Fintiv*, 10 (emphasis added).

The only one of the multiple activities in the HP and ASUSTeK EDTX Cases listed by Patent Owner that relates to an order regarding the '437 patent is the Markman hearing. DD Req., 16. But even after Markman is complete “much other work remains in the parallel proceeding as it relates to invalidity,” including “fact discovery,” “expert reports,” and “substantive motion practice.” *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12, 16 (PTAB Dec. 1, 2020) (precedential as to § II.A). Here, the completion of each of these activities will take place about two to five months after the institution decision. Ex.1020. Patent Owner also ignores that the Lenovo declaratory judgment was just filed in the DDE and therefore has minimal investment. Ex.1027. Accordingly, this factor weighs against denial.

**D. Factor 4 weighs against denial: this IPR is a “true alternative” to parallel litigations.**

Patent Owner’s assertions regarding factor 4 are meritless.<sup>2</sup> DD Req., 17-23. First, Petitioner Dell has made a *Sotera* stipulation. *See* Pet., 11-12. This *Sotera* stipulation renders the IPR a “true alternative” to the parallel litigation because the stipulations disclaim “grounds that were raised or reasonably could have been raised during the IPR (i.e., any ground that could have been raised under 35 U.S.C. §§ 102 or 103 on the basis of prior art patents or printed publications).” *Id.* These “grounds are the theories of invalidity available to challenge a claim under 35 U.S.C. §§ 102 and 103, which are limited in an IPR to asserting that the claimed invention was patented or described in a printed publication (or would have been obvious only on the basis of prior art patents or printed publications).” *Ingenico Inc. v. IOENGINE, LLC*, 136 F.4th 1354, 1366 (Fed. Cir. 2025).

Also favoring institution under Factor 4 is that the Petition ***challenges claims that are not asserted in the parallel proceedings***, which further minimizes overlap. *See Fintiv*, Paper 11 at 13 (“The existence of non-overlapping *claim challenges* will weigh for or against exercising discretion to deny institution under NHK depending on the similarity of the claims challenged in the petition to those

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<sup>2</sup> Petitioner Dell is not asserting systems art in the WDTX case that map to the prior art raised in the Petition.

at issue in the district court.”) (emphasis added). In *Klein Tools, Inc. v. Milwaukee Electric Tool Corp. et al.*, the Board found that where “6 of the 11 claims of the challenged patent [were] not addressed by the” parallel proceeding, factor 4 “weighs heavily against discretionary denial.” IPR2024-01400, Paper 17 at 19 (April 8, 2025). Here, only claim 41 has been asserted in district court. The Petition challenges an additional nine claims (including three independent claims) on top of the asserted claim 41. Accordingly, factor 4 weighs against denial.

**E. Factor 5 is neutral: whether Petitioners are defendants in parallel litigations.**

Petitioner Intel is *not* a defendant in parallel litigation. Petitioner Dell is a defendant in parallel litigation, but that is true of most IPR petitioners. *See HP Inc. v. Slingshot Printing LLC*, IPR2020-01084, Paper 13, 9 (PTAB Jan. 14, 2021). And, as discussed above, the final written decision would issue several months before the WDTX trial date where Dell is a defendant. This factor is neutral or slightly weighs against denial.

**F. Factor 6 weighs against denial: The merits of the Petition are strong.**

Factor 6 weighs *heavily* against denial. As shown in Sections II.A and B above and detailed in the Petition, *Kim* teaches the limitations that the Examiner identified in the reasons for allowance. Thus, the evidence of unpatentability is strong here, and the PTAB should not deny institution under *Fintiv*. Accordingly, the merits are strong and factor 6 weighs *heavily* against denial.

**IV. PATENT OWNER'S REMAINING ARGUMENTS ARE MERITLESS.**

Patent Owner's argument that it "will need to seek third-party discovery" to "investigate whether it can swear behind" is meritless. DD Req., 53. The district court's subpoena powers are available to Patent Owner regardless of whether this IPR is instituted. And Patent Owner has not yet asked the court for any subpoenas or otherwise indicated that it will have sufficient evidence to swear behind. Patent Owner's speculative plans should not be a reason for discretionary denial.

Also, Patent Owner's arguments regarding expert testimony are meritless. DD Req., 48-52. The unpatentability grounds set forth in the Petition are fully supported by the references themselves—Dr. Wolfe's testimony serves to confirm, support, and explain the disclosures of the references from the perspective of a POSITA. Accordingly, the Petition's proper reliance on evidence-backed expert testimony to support the unpatentability grounds weighs against denial.

**V. CONCLUSION**

For the above reasons, Petitioner respectfully requests that the Director refrain from exercising her discretion to deny the petition and instead pass it to a merits panel for consideration.

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Respectfully submitted,

Date: September 23, 2025

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**PETITIONER’S EXHIBIT LIST**

Ex.1001	U.S. Patent No. 7,359,437.
Ex.1002	Prosecution History of U.S. Patent No. 7,359,437.
Ex.1003	Declaration of Dr. Andrew Wolfe under 37 C.F.R. § 1.68.
Ex.1004	<i>Curriculum Vitae</i> of Dr. Andrew Wolfe.
Ex.1005	U.S. Patent No. 5,835,498 to <i>Kim et al.</i> (“ <i>Kim</i> ”)
Ex.1006	U.S. Patent No. 5,625,644 to <i>Myers</i> (“ <i>Myers</i> ”)
Ex.1007	U.S. Patent No. 5,974,464 to <i>Shin</i> (“ <i>Shin</i> ”)
Ex.1008	European Patent 0241014 B1 to Asai, (“Asai”)
Ex.1009	U.S. Patent No. 7,356,051 to Pasqualino (“Pasqualino”)
Ex.1010	U.S. Patent No. 7,143,328 to Altmann (“Altmann”)
Ex.1011	The Authoritative Dictionary of IEEE Standards Terms” Seventh Edition, (“IEEE Dictionary”)
Ex.1012	<i>General Video, LLC v. Dell Inc. et al.</i> 5:24-cv-00124, EDTX - Complaint - Appendix E
Ex.1013	<i>General Video, LLC v. Dell Inc. et al.</i> 5:24-cv-00124, EDTX - Complaint
Ex.1014	<i>General Video, LLC v. Dell Inc. et al.</i> 5:24-cv-00124, EDTX – Infringement Contentions
Ex.1015	<i>General Video, LLC v. Dell Inc. et al.</i> 5:24-cv-00124, EDTX – Scheduling Order
Ex.1016 (NEW)	Assignment Record
Ex.1017 (NEW)	DisplayPort Release Date
Ex.1018 (NEW)	MPEG LA Letter to Dell re DisplayPort License (2015-03-18)

Opposition to Patent Owner’s Request for Discretionary Denial  
IPR2025-01038 (U.S. Patent 7,359,437)

Ex.1019 (NEW)	Dell Letter to MPEG LA re DisplayPort (2015-07-13)
Ex.1020 (NEW)	WDTX Agreed Scheduling Order
Ex.1021 (NEW)	Judge Moses Order 1/31/24
Ex.1022 (NEW)	Total Transfers to Judge Albright (LexMachina)
Ex.1023 (NEW)	Patent Transfers to Judge Albright (LexMachina)
Ex.1024 (NEW)	Federal District Court Cases for Judge Albright
Ex.1025 (NEW)	EDTX First Amended Docket Control Order
Ex.1026 (NEW)	March 26, 2025, UPSTO Memorandum, <i>“Interim Procedure for PTAB Workload Management”</i>
Ex.1027 (NEW)	DDE Lenovo Complaint for Declaratory Judgment of Non-Infringement and Invalidity
Ex.1028 (NEW)	General Video, LLC's Preliminary Disclosure of Asserted Claims and Infringement Contentions to Dell (Served 2025-03-19)

**CERTIFICATE OF SERVICE**

The undersigned certifies, under 37 C.F.R. § 42.6, that service was made on the Patent Owner as detailed below.

*Date of service* September 23, 2025

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[IPR2025-01038@mcandrews-ip.com](mailto:IPR2025-01038@mcandrews-ip.com)

*Documents served* **Petitioner's Opposition to Patent Owner's Request for Discretionary Denial; Exhibits Ex.1016 – Ex.1028.**

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