

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DELL TECHNOLOGIES INC. AND DELL INC.,
Petitioners,

v.

CLOUD BYTE LLC,
Patent Owner.

Case IPR2025-01286
Patent No. 9,482,632

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

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1001	U.S. Patent No. 9,482,632 (the “’632 Patent”)
1002	Prosecution history of U.S. Application No. 14/018,152, which led to the issuance of the ’632 Patent
1003	Declaration of Himanshu Pokharna, Ph.D. in Support of <i>Inter Partes</i> Review of U.S. Patent No. 9,482,632
1004	<i>Curriculum vitae</i> for Himanshu Pokharna, Ph.D.
1005	English Translation of JP 2009-277053A (“Hira”)
1006	Certificate of Translation for JP 2009-277053A
1007	English Translation of WO 2010/050080A1 (“Shiga”)
1008	Certificate of Translation of WO 2010/050080A1
1009	U.S. Patent Application Publication No. 2011/0036554
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1014	Complaint for Patent Infringement
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1016	U.S. District Court – Judicial Caseload Profiles (March 2025)
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1019	Cloud Byte's Disclosure of Proposed Claim Constructions and Extrinsic Evidence with attached Exhibit A
1020	Declaration of Victoria C. Huang
1021	USPTO Assignment Database for U.S. Patent No. 9,651,320
1022	Office Action in <i>Ex Parte</i> Reexamination of U.S. Patent No. 7,739,544
1023	NEC – “Dell Technologies (Dell EMC) Storage Products”
1024	NEC – “Introducing Dell EMC PowerEdge”
1025	NEC – “NEC Launches NEC 5G Vertical Business Platform”
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1028	Cloud Byte LLC, Intellectual Property Asset Management
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1032	“Contracts for Aug. 7, 2024” (www.war.gov)
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1034	Defense Information Systems Agency Memorandum
1035	National Security Agency Cybersecurity Technical Report – UEFI Secure Boot Customization
1036	P.R. 4-5(d) Joint Notice Regarding Claim Construction Chart

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I. INTRODUCTION

Petitioners Dell Technologies Inc. and Dell Inc. (collectively, “Dell”) oppose Patent Owner’s request for discretionary denial.

The challenged ’632 Patent was obtained and owned by NEC Corporation for nearly all of the patent’s existence before Patent Owner acquired it in 2024 (and immediately sued Dell). Yet Dell had the settled expectation that it would not be sued on NEC patents, such as the challenged ’632 Patent, based on its longstanding relationship and collaboration with NEC involving the very same PowerEdge servers Patent Owner is now accusing of infringement. In contrast, Patent Owner had no settled expectations because the patent had never been commercialized or asserted. Indeed, if anything, Patent Owner must have expected this type of challenge when it acquired the patent and immediately used it to sue Dell.

Further, Dell’s requested *inter partes* review is an appropriate use of the Board’s resources. In contrast to Patent Owner, which has never developed any product (based on the ’632 Patent or anything else) and has no intention of doing so, Dell has made huge investments in research and development in the United States over decades to offer its products to customers throughout the country specifically including various agencies of the federal government such as the Department of War, the Department of Veterans Affairs, and the Department of

Homeland Security, which purchase millions of dollars in Dell products every year. Dell's petition shows that the '632 Patent is invalid, so Patent Owner's parallel lawsuit threatens to impose higher costs on Dell and its customers (including federal agencies) based on an invalid patent. This is true though Dell indisputably developed the accused products without any knowledge of the asserted patents. It is in the interest of the U.S. economy and national competitiveness to protect U.S. companies like Dell against invalid patents owned by foreign entities or acquired from them for the sole purpose of litigation.

Finally, the *Fintiv* factors, viewed in their totality, favor institution of Dell's requested review. Most significantly, Dell has stipulated that if review is instituted it will not assert any ground of invalidity that was or could have been raised in the petition *and further* that it will not assert any system art that corresponds to the prior art asserted in the petition. This broad stipulation avoids any possibility of overlap with the related lawsuit and makes Dell's requested review a true alternative to district court litigation.

Dell respectfully requests that the Director not exercise discretion to deny review and instead consider the petition's compelling merits and institute review.

II. BACKGROUND

The challenged '632 Patent claims priority to a Japanese patent application filed in 2012, and was originally assigned to the Japanese company NEC

Corporation. EX1001, 1. NEC held the patent (directly or through affiliates) for nearly all of its effective life until 2024, when Patent Owner acquired it in a large portfolio of NEC patents through an intermediary in March 2024. EX1021.

Just five months later, in August 2024, Patent Owner filed a lawsuit alleging infringement of seven unrelated patents, including the challenged '632 Patent, against Dell in the Eastern District of Texas. EX1014. Plaintiff accused Dell of infringing the '632 Patent by making and selling certain “Dell PowerEdge servers” naming dozens of different Dell products. EX1015, 5-6. Patent Owner did not contact Dell in an effort to negotiate a license before filing suit, and neither Patent Owner nor any prior owner ever asserted the challenged patent in any other lawsuit. EX1037, ¶2; EX1018.

On July 14, 2025, Dell filed a petition seeking *inter partes* review of the '632 Patent (and four other NEC patents at issue in the related litigation). The petition showed that the combination of two prior art references—Hira and Shiga—discloses and renders obvious every limitation of all claims of the '632 Patent. Paper 3 (“Pet”) at 3. Like the challenged patent, Hira discloses a method and device for detecting server cooling system abnormalities like a clogged dust filter. EX1001, 1:13-16 (The '632 Patent describes “an abnormality detection device that detects an abnormality of a cooling function of ICT...equipment such as a server” where the abnormality may be “clogging of a filter.”); EX1005, [0001]

(Hira discloses a “dust filter clogging status detection” method and device “for detecting clogging status of dust filters inside information processing devices such as PCs and server systems.”). When paired with Shiga, the combination of Hira-Shiga discloses every limitation of the challenged claims. Because neither reference was before the examiner during prosecution, the petition shows that every challenged claim is invalid based on prior art never considered by the PTO.

This petition is one of five filed by Dell challenging patents asserted in the related litigation, in which Patent Owner asserts seven unrelated patents, in different families, addressing different technologies, and targeting scores of different Dell products.¹ In the related litigation, Patent Owner broadly alleges that “Dell infringes Cloud Byte’s patented technologies across many different parts of its business, including in: all ethernet switches, SmartFabric services, and edge

¹ The other four petitions were filed in IPR2025-01284, -01285, -01287, and -01287. The sixth asserted patent is subject to a Final Rejection in an *ex parte* reexamination. EX1020. The seventh asserted patent is so clearly not infringed that Dell anticipates it will be dropped from the case before trial, making it less worthy of the Board’s resources. Indeed, Patent Owner has already dropped one of the asserted patents. On October 20, 2025, Patent Owner ***dropped U.S. Patent No. 9,560,177***, which is the subject of IPR2025-01285. EX1037, ¶3.

networking products and servers incorporating same...; all products and services relating to Redundant Array of Independent Disks (RAID) technology and servers incorporating same...; and all server systems supporting high availability or fault tolerance features, abnormality detection, airflow cooling, and/or temperature control...” EX1015, 3-4.

III. THE SETTLED EXPECTATIONS OF THE PARTIES FAVOR INSTITUTION

A. Dell Had the Settled Expectation That It Would Not Be Sued on the Challenged Patent

1. NEC Is a Reseller of Dell Products, Including Accused PowerEdge Servers, Creating Settled Expectations for Dell

For years, NEC has offered Dell products (and products of its former subsidiary EMC) for resale on NEC’s website. EX1023, 1-2 (“NEC and Dell Technologies (Dell EMC) have built a strong partnership over many years.”; “NEC has been handling Dell EMC storage products for over 25 years.”). Indeed, to this day, NEC is offering to resell and provide maintenance for Dell products including those Patent Owner is now accusing of infringing the ’632 Patent. EX1024 (NEC offering Dell/EMC products including PowerEdge R750, R750xs, R650, R650xs, R550, and R450 as well as others not specifically listed); EX1015, 5-6 (listing accused products including same PowerEdge products). Given NEC’s decision to market, sell, and service Dell’s PowerEdge products, Dell had settled expectations that it would not be sued for infringing any NEC patents based on those same

products. Yet, that is exactly what Patent Owner has now done.

2. NEC Has Promoted the Use of Dell PowerEdge Servers in Its 5G Vertical Business Platform, Creating Settled Expectations for Dell

From about 2019, NEC began using and promoting Dell’s PowerEdge servers (i.e., the type of servers accused of infringement) as part of NEC’s 5G Vertical Business Platform for communications service providers moving to 5G networks. For instance, NEC stated in one press release that “Dell EMC OEM Solutions worked with NEC to design [Dell’s] PowerEdge servers into NEC’s Hybrid Cloud solution....” EX1025, 2. In another press release, NEC stated that it would partner with Dell—which it referred to as an “ecosystem partner”—at an industry trade show to introduce the 5G Vertical Business Platform. EX1026, 1. NEC’s press release quoted a Dell representative stating that Dell “partnered with NEC to design our PowerEdge servers as well as IoT solutions into NEC’s Hybrid Cloud solution to help enable their 5G Vertical Business Platform.” *Id.*

NEC has continued to work with Dell and its PowerEdge servers. Indeed, earlier this year, NEC announced its certification of Dell PowerEdge R660 and R760 servers for use in NEC 5G Core. EX1027, 2. These servers are among those accused of infringement. EX1015, 6. Dell’s longstanding collaboration and relationship with NEC—involving the same Dell servers accused of infringement in the related litigation—created settled expectations in Dell that it would not be

accused of infringing NEC patents like the '632 Patent based on those very same servers.

B. Patent Owner Has No Settled Expectations in the Challenged Patent

1. Patent Owner Only Recently Acquired the Patent, Which Has Not Been Commercialized and Has Not Been Asserted Except in the Related Litigation Against Dell

Patent Owner has no settled expectations in the challenged patent. Indeed, Patent Owner only acquired the challenged patent five months before filing suit against Dell in August 2024. EX1021. Patent Owner did not attempt to commercialize the patent and has represented in the related litigation that it knows of no efforts to commercialize the patent by anyone. EX1015, 11. Patent Owner itself has no intention of developing a product to practice the patent as it publicly describes itself as merely an “intellectual property asset management” company that “acquires, manages and licenses patents.” EX1028, 1. The failure to commercialize, mark, license, or otherwise apply the challenged patent in Dell’s technology space (or any other for that matter) weighs against Patent Owner’s assertion of settled expectations. *See Shenzhen Tuozhu Tech. Co., Ltd. v. Stratasy, Inc.*, IPR2025-00531, Paper 10 at 3 (PTAB July 17, 2025) (fact that “the challenged patents have never been ‘commercialized, asserted, marked, licensed, or otherwise applied’ in Petitioner’s ‘particular technology space’” weighed “against Patent Owner’s claim of strong settled expectations”) (quoting *Intel Corp.*

v. Proxense LLC, IPR2025-00327, Paper 12 at 2-3 (PTAB June 26, 2025)).

Further, Patent Owner must have known that Dell would defend against claims of patent infringement—including by challenging the validity of the patent—because Patent Owner never contacted Dell to negotiate a license and instead ran directly to court to file suit in its preferred venue. EX1036, ¶2. Moreover, though NEC owned the challenged patent for more than seven years after issuance, NEC never asserted it against Dell (or any other company) even though it was using and publicizing Dell’s accused servers. *See Intel Corp.*, IPR2025-00327, Paper 12 at 2-3 (a patent that was never previously asserted weighs against the patent owner’s claimed settled expectations). To the extent Patent Owner had any expectation when it acquired the challenged patent and then immediately sued Dell, it must have been that Dell would challenge the validity of the patent as it had never been previously asserted or otherwise tested.

2. Evidence of “Forward Citations” Favors Rejecting Patent Owner’s Request for Discretionary Denial

Patent Owner’s claim to settled expectations relies on its argument that “[t]he ’632 Patent and related patent applications have been cited over a dozen times during prosecution of patents filed by companies such as Canon and Toshiba.” Paper 8 at 5. But Patent Owner’s cited evidence shows exactly the opposite: the patent applications identified by Patent Owner do not cite to the ’632 Patent, they are *cited by the ’632 Patent*. *Id.* (citing EX2001:

US2009/0323277, EX2002: US2002/0135496); *see also* EX1001, 1-2. Patent Owner's evidence does not show that any entity in Dell's field of technology knew anything about the '632 Patent. Instead, this evidence supports Dell's argument that Patent Owner had no settled expectations in the challenged '632 Patent.

IV. INSTITUTION OF *INTER PARTES* REVIEW IS AN APPROPRIATE USE OF BOARD RESOURCES

A. The Requested *Inter Partes* Review Will Serve National Security Interests and Benefit the United States Government

Dell is an American technology company headquartered in Round Rock, Texas, employing tens of thousands of people out of offices in 16 states and territories throughout the United States. Dell sells products and services to various federal agencies. Indeed, since 2008, the federal government has made purchases from Dell and its affiliates totaling more than \$20 billion. EX1029; EX1030. This has included billions of dollars in purchases by the Department of War (including the Departments of Army, Navy, and Air Force), the Department of Veterans Affairs, and the Department of Homeland Security, among others. And these purchases have included the same products Patent Owner accuses of infringing the '632 Patent. EX1031 (examples of accused PowerEdge device purchases).

As just one recent example, the U.S. Air Force recently announced a contract award to Dell (through an affiliate) of more than \$100 million for "hardware" to support "four different hardware form factors: *rack-mounted server*,

mobile server, mobile lightweight sensor, and common hardware switch for both rack-mounted and mobile servers.” EX1032, 1 (emphasis added).

Dell has worked closely with the federal government, including the Department of War (formerly, Department of Defense or DoD), to validate the compliance of Dell products with stringent federal government standards. For example, earlier this year, Dell achieved DoD validation for replicating the DoD “zero trust architecture.” EX1033, 5. To do so, “Dell completed a rigorous assessment by the U.S. DoD where [Dell’s] Project Fort Zero was tested to withstand sophisticated cyberattacks.” *Id.* In addition, the DoD’s Defense Information Systems Agency issued a memorandum in December 2024 extending the Joint Interoperability Certification for Dell PowerEdge MX7000 servers, which are accused of infringing the ’632 Patent in the related lawsuit. EX1034; EX1015, 5.

The National Security Agency has also tested and validated certain accused Dell PowerEdge servers. For example, in a March 2023 Cybersecurity Technical Report, the agency tested and used Dell PowerEdge servers as part of its “comprehensive guide for customizing a Secure Boot policy”—rather than disabling Secure Boot—so that administrators can “realize the benefits of boot malware defenses, insider threat mitigations, and data-at-rest protections.” EX1035, 4. The report included images of Dell PowerEdge servers to illustrate

recommended steps for customizing a secure boot policy. *Id.*, 23. Further, the report specifically identified Dell’s PowerEdge R640 and R740 servers, and it noted that “[o]nly Dell servers from the 14th generation (and some models from the 13th generation) provide” certain relevant configuration mechanisms not available in Dell workstation products or products from any other vendors at that time. *Id.*, 22. These Dell servers are among those accused of infringement in the related litigation. EX1015, 7 (identifying “14th generation” including R640 and R740).

Thus, numerous federal agencies, including our military forces and intelligence agencies, rely on Dell products to perform their service. Those products include the same servers that Patent Owner accuses of infringing the ’320 Patent, which Dell has shown in its petition is clearly invalid in light of the cited prior art. Should Patent Owner prevail in the district court case, the result could very well lead to the government paying higher prices for Dell products—higher prices born by U.S. taxpayers. Given the complexity of the ’320 Patent (and other asserted patents challenged by Dell), the PTAB provides a far superior venue for analyzing the validity of the challenged claims.² Yet, the federal government

² As in *Tesla v. Intellectual Ventures II*, the “large number and vast scope of the patents asserted in the district court litigation...weighs against discretionary denial,

cannot itself use this venue to challenge the claims of the '320 Patent. *See Return Mail, Inc. v. U.S. Postal Service*, 587 U.S. 618, 637 (2019) (“a federal agency is not a ‘person’ who may petition for post-issuance review under the AIA”). Dell’s requested *inter partes* review of the '320 Patent is therefore an effective use of the Board’s resources as it will further national security interests, support various agencies of the United States government, and protect the competitiveness of a long-established U.S. company.

B. The Requested *Inter Partes* Review Can Correct Patent Office Error

Dell’s requested *inter partes* review is also a reasonable use of Board resources because it provides an opportunity to correct the erroneous allowance of the '632 Patent due to the examiner’s failure to identify relevant prior art. *See Microsoft Corp. v. Partec Cluster Competence Ctr. GmbH*, IPR2025-00318, Paper 9 at 3 (PTAB June 12, 2025) (“Petitioner appears to show a material error by the Office and it is an appropriate use of Office resources to review the potential error.”); *Oticon Medical AB v. Cochlear Ltd.*, IPR2019-00975, Paper 15 at 19 (PTAB Oct. 16, 2019) (precedential in relevant part) (finding “error in the prosecution” where examiner failed to locate and consider relevant prior art relied

as the Board is better suited to review a large number of patents involving diverse subject matter.” IPR2025-00217, Paper 9 at 2-3 (PTAB June 13, 2025).

on in petition). Patent Owner concedes in its opening brief that “settled expectations can be outweighed by material examiner error” like failure to identify invalidating prior art. Paper 8 at 5.

As noted above, the petition shows that the challenged patents are obvious based on the combination of Hira and Shiga, neither of which was identified by the examiner during prosecution. This was error because Hira, in particular, discloses the very limitations the examiner determined were missing from the prior art the examiner did consider. In particular, during prosecution the examiner initially rejected the claims based on a combination of two prior art references. EX1002, 87-96. In response, the applicant amended the claims and used the new limitations to distinguish the cited prior art. *Id.*, 122-130. The applicant argued that the combination of references did not teach both “detecting an intake air temperature” and also “detecting a detected equipment temperature.” *Id.*, 128-129. In response, the examiner allowed the claims based on the applicant’s amendments and argument. *Id.*, 148-155.

As explained in the petition, Hira discloses a clogged dust filter detection method and device that includes a sensor for detecting an “intake air temperature” as well as sensors for detecting that status of “the ICT equipment,” as recited in the claims. Pet. at 35-39. Thus, the petition’s combination of Hira and Shiga discloses the same limitations the examiner found missing from the prior art. The examiner’s

failure to identify and apply this—or substantially similar—invalidating art resulted in the erroneous issuance of claims that were not properly examined. The Board is well-positioned to correct the error and ensure that the patent system functions as intended.

V. DISCRETIONARY DENIAL IS NOT WARRANTED UNDER THE *FINTIV* FACTORS

The *Fintiv* factors, considered as a whole, do not warrant discretionary denial. *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential). While the proximity of the trial date may slightly favor Patent Owner, it is outweighed by Dell’s broad stipulation precluding any potential overlap in issues before the Board and the district court. Paper 7. All other factors are neutral or favor institution.

A. Factor 4: Dell’s Expansive Stipulation

This factor strongly favors institution because Dell has made a stipulation that is broader than a *Sotera* stipulation and is equivalent to broad *Sotera-Plus* stipulations cited favorably in recent decisions. *See Shenzhen Tuozhu Tech.*, IPR2025-00531, Paper 10 at 3; *Tesla, Inc.*, IPR2025-00217, Paper 9 at 2-3. Specifically, Dell stipulated:

[I]f the Board institutes review in this proceeding, Petitioners will not pursue in the Related Lawsuit:

- (i) the specific grounds raised in the petition (Paper 3);
- (ii) any other grounds that could have reasonably been raised

before the Board in this proceeding; and

(iii) any ground under 35 U.S.C. §§ 102 or 103 on the basis of system art corresponding to a reference asserted as part of a ground in the petition, as reflected in the Identification of Challenge section (Paper 3 at 2-3).

Paper 7 at 1-2. Dell's stipulation goes far beyond the estoppel of 35 U.S.C. § 315(e)(2), and it also fully addresses the concern raised by the Acting Director in *Motorola Solutions Inc. v. Stellar, LLC* regarding potential overlap in combinations of system art with the references asserted in the *inter partes* review. IPR2024-01205, Paper 19 at 3-4 (PTAB Mar. 28, 2025). Dell's stipulation means there can be no overlap between the issues before the Board and the district court. Dell respectfully submits that this expansive stipulation outweighs all other *Fintiv* factors as it effectively eliminates overlap with invalidity issues raised in the parallel proceeding.

In addition, this factor further supports institution because the petition challenges all nine claims of the '632 Patent, while only three are at issue in the district court case. EX1037, ¶3. Patent Owner asserts only independent claim 1 and two of its dependent claims but does not assert most of the claims specifically including independent claims 8 and 9, which will not be addressed at all in district court. Proceeding with a single *inter partes* review of all claims will be more efficient than piecemeal challenges to different subsets of claims in multiple

different district court proceedings Patent Owner will presumably file against others in the same industry.

B. Factor 2: Proximity of Trial Date

Timing of trial in the related lawsuit has far less relevance here in light of Dell's stipulation precluding any overlap in issues. Moreover, Patent Owner's evidence shows the time-to-trial for the Eastern District of Texas is more than 25 months. EX2004. That evidence suggests a trial in September 2026, which would be approximately four months before the Board's Final Written Decision. Paper 8 at 10. The Director has referred other cases with similar times to a merits panel. *See, e.g., Samsung Electronics Co., Ltd. v. Wilus Institute of Standards and Tech. Inc.*, IPR2025-00935, Paper 12 at 2-3 (PTAB Sept. 26, 2025) (referring petition to merits panel although trial was scheduled six months before final written decision); *Apple Inc. v. Ferid Allani*, IPR2025-00856, Paper 11 at 2-3 (PTAB Sept. 5, 2025) (referring to merits panel although trial was scheduled more than five months before final written decision); *Shenzhen Tuozhu Tech.*, IPR2025-00438, Paper 10 at 2-4 (referring to merits panel although trial was scheduled more than four months before final written decision); *Padagis US LLC v. Neurelis, Inc.*, IPR2025-00464, Paper 12 at 2-4 (PTAB July 16, 2025) (referring to merits panel although trial was scheduled more than seven months before final written decision).

C. Factor 3: Investment in District Court

This factor favors institution—or is at least neutral—because the parties and court in the related litigation have not yet invested substantial effort on activities pertinent to *Fintiv* and will not need to in light of Dell’s expansive stipulation. The parties have focused primarily on Dell’s motion to dismiss for improper venue; indeed, Dell did not file an answer to the complaint until September 26, 2025. To date, the district court has conducted claim construction proceedings, but those proceedings involved only one term for the ’632 Patent. EX1036. Thus, the district court judge has expended only limited resources so far on issues related to the patents’ validity and will expend no effort on overlapping issues in light of Dell’s stipulation if review is instituted.

D. Factors 1 and 5

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 at 7 (PTAB June 16, 2020) (informative). Petitioners are the defendants in the related litigation, which is true of most IPR petitioners. Both factors are thus neutral. *See Roku, Inc. v. IOENGINE, LLC*, IPR2022-01554, Paper 11 at 14-15 (PTAB May 5, 2023); *HP Inc. v. Slingshot Printing LLC*, IPR2020-01084, Paper 13 at 9 (PTAB Jan. 14, 2021).

E. Factor 6: Compelling Merits

As discussed above, the petition shows that every claim of the '632 Patent is unpatentable based on a combination of two references disclosing the limitations found missing in prosecution. Regarding Factor 6, Patent Owner asserts that the merits of the petition are “weak” but fails to say why. Indeed, rather than addressing the merits—even in shorthand fashion—Patent Owner purports to “incorporate[] by reference its *forthcoming* Preliminary Response.” Paper 8 at 18 (emphasis added). It is inappropriate to incorporate by reference in *inter partes* review briefing. 37 C.F.R. § 42.6(a)(3); *Cisco Systems, Inc. v. C-Cation Techs., LLC*, IPR2014-00454, Paper 12 at 7 (PTAB Aug. 29, 2014) (informative). Patent Owner compounds the problem by seeking to incorporate from an optional brief that *has not been filed yet*.

VI. APPLICATION OF RECENT MEMORANDA

To preserve its position and avoid waiver, Dell respectfully states that the Director’s Memoranda of March 24, 2025 and October 17, 2025, should not be applied to the present petition because to do so would be inconsistent with the Due Process Clause, the America Invents Act (AIA), the Administrative Procedure Act (APA), and the PTO’s existing policies and regulations (including at least 37 C.F.R. §42.108). Dell submits that the AIA forecloses discretionary denial on grounds not specifically set forth therein, including those identified in the Memoranda. Dell

further posits that application of the Memoranda infringes upon Dell’s Due Process rights in view of Dell’s reliance on earlier rules, policies, and procedures. Dell also posits that if the policies articulated in the Memoranda are proper at all, the APA required the PTO to promulgate them through notice-and-comment rulemaking. Further, consistent with the requirements of the APA, Dell requests a reasoned articulation of the basis for a decision on Patent Owner’s request for discretionary denial and the decision on institution of review, rather than summary determination. *See, e.g., In re Sang Su Lee*, 277 F.3d 1338, 1342 (Fed. Cir. 2002) (“For judicial review to be meaningfully achieved within these strictures [of the APA], the agency tribunal must present a full and reasoned explanation of its decision.”).

VII. CONCLUSION

Dell’s petition compellingly demonstrates that every claim of the ’632 Patent is invalid. Patent Owner’s request for denial without consideration of the merits should be rejected for the reasons discussed above.

Respectfully submitted,

/James L. Day/

James L. Day
Registration No. 72,681
FARELLA BRAUN + MARTEL LLP
One Bush Street, Suite 900
San Francisco, California 94104
jday@fbm.com

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2025, the document entitled
**PETITIONERS' OPPOSITION TO PATENT OWNER'S REQUEST FOR
DISCRETIONARY DENIAL** was served along with all supporting exhibits on
Patent Owner's counsel via email at the following email addresses:

jimglass@quinnemanuel.com
brianmack@quinnemanuel.com
quincylu@quinnemanuel.com
ronhagiz@quinnemanuel.com

/James L. Day/
James L. Day
Registration No. 72,681