

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.,
Petitioner

v.

DYNAMIC MESH NETWORKS, INC.
D/B/A MESH DYNAMICS,
Patent Owner

U.S. Patent No. 7,885,243
Issue Date: February 8, 2011

Title: HIGH PERFORMANCE WIRELESS NETWORKS USING
DISTRIBUTED CONTROL

Inter Partes Review No. IPR2025-01304

**PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL OF
INSTITUTION OF PETITION FOR *INTER PARTES* REVIEW OF
UNITED STATES PATENT NO. 7,885,243**

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PATENT OWNER’S EXHIBIT LIST

Exhibit No.	Description
2001	[Reserved]
2002	Cisco’s Answer to Dynamic Mesh Networks, Inc.’s Complaint for Patent Infringement, <i>Dynamic Mesh Networks, Inc. et al. v. Cisco Systems, Inc.</i> , No. 2:25-cv-00781 (EDTX), Dkt. 29 (September 18, 2025)
2003	Declaration of Mr. Francis daCosta in Support of Patent Owner’s Request for Discretionary Denial
2004	June 22, 2022 Letter to Chief Executive Officer of Cisco Systems, Inc., Charles H. Robbins, from Mr. Francis daCosta, founder of MeshDynamics
2005	August 2009 Presentation entitled “High Level Overview” provided to Cisco Systems, Inc.
2006	Cisco’s Amended Complaint, <i>Cisco Systems, Inc. v. Dynamic Mesh Networks, Inc. d/b/a MeshDynamics et al.</i> , No. 5-25-cv-06441 (NDCA), Dkt. 5 (July 31, 2025)
2007	MeshDynamics’ Notice of Readiness, <i>Dynamic Mesh Networks, Inc. et al. v. Cisco Systems, Inc.</i> , No. 2:25-cv-00781 (EDTX), Dkt. 32 (September 19, 2025)
2008	Judge Wise’s Civil Standing Order in Northern District of California, available at https://cand.uscourts.gov/sites/default/files/standing-orders/NW-CivilStandingOrder_05-06-25.pdf
2009	Docket, <i>Cisco Systems, Inc. v. Dynamic Mesh Networks, Inc. d/b/a MeshDynamics et al.</i> , No. 5-25-cv-06441 (NDCA)
2010	MeshDynamics’ Local Rule 3-1 and 3-2 Initial Disclosures, <i>Dynamic Mesh Networks, Inc. et al. v. Cisco Systems, Inc.</i> , No. 2:25-cv-00472 (EDTX) (July 18, 2025)
2011	Judge Gilstrap’s Order Setting Scheduling Conference, <i>Dynamic</i>

	<i>Mesh Networks, Inc. et al. v. Cisco Systems, Inc.</i> , No. 2:25-cv-00781 (EDTX), Dkt. 35 (October 29, 2025)
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Patent Owner Dynamic Mesh Networks, Inc. d/b/a MeshDynamics (“MeshDynamics”) respectfully requests that the Director deny institution of the Petition for *Inter Partes* Review (“Petition”) filed by Cisco Systems, Inc. (“Cisco”) challenging claims 1-7 and 9-13 of U.S. Patent No. 7,885,243 (“’243 patent,” Ex. 1001).

I. INTRODUCTION

The considerations outlined in the Director’s March 26, 2025 Memorandum entitled “Interim Processes for PTAB Workload Management” strongly weigh against institution of the Petition, and the facts here considerably exceed those presented in several recent discretionary denials.

The ’243 patent issued on February 8, 2011, more than *fourteen* years ago. Inventor Francis daCosta, on behalf of MeshDynamics, informed Cisco of the patent application and other challenged patents in 2009. On June 22, 2022, Mr. daCosta sent Cisco a letter providing actual notice of infringement of the ’243 patent and other MeshDynamics’ patents. Cisco thus had actual notice of the ’243 patent and other challenged patents for a significant period of time. Cisco had every opportunity to seek early validity challenges and *inter partes* review (“IPR”) but chose *not* to do so until MeshDynamics brought a district court challenge.

Further, the *Fintiv* factors weigh in favor of discretionary denial, especially because no stay has issued in the *multiple* parallel proceedings and is highly unlikely.

MeshDynamics respectfully submits that under the totality of circumstances, discretionary denial is strongly favored.

II. PARALLEL AND OTHER PROCEEDINGS

On May 5, 2025, MeshDynamics filed a complaint in the Eastern District of Texas against Cisco asserting infringement of the '243 patent and other challenged patents in *Dynamic Mesh Networks, Inc. et al. v. Cisco Systems, Inc.*, No. 2:25-cv-00472 (EDTX). On July 31, 2025, the parties stipulated to dismissal of the case without prejudice because MeshDynamics did not own the patents and lacked standing. On the same day, Cisco filed a complaint for declaratory judgment against MeshDynamics in California with respect to the same patents. *Cisco Systems, Inc. v. Dynamic Mesh Networks, Inc. d/b/a MeshDynamics et al.*, No. 5:25-cv-06441 (NDCA). MeshDynamics fixed the standing issue and re-filed its case in Texas on August 12, 2025, asserting the same patents as the earlier dismissed case. *Dynamic Mesh Networks, Inc. et al. v. Cisco Systems, Inc.*, No. 2:25-cv-00781 (EDTX).

Cisco also filed the following Petitions challenging patents from the same district court proceedings:

- IPR2025-01303 challenging the 11,368,537 patent (“’537 patent”).
- IPR2025-01523 challenging the 7,420,952 patent (“’952 patent”).
- IPR2025-01569 challenging the 7,894,385 patent (“’385 patent”).
- IPR2026-00008 challenging the 8,520,691 patent (“’691 patent”).

III. LEGAL STANDARDS

“The Director may not authorize an *inter partes* review to be instituted unless the Director determines that the information presented in the petition ... shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a).

The new discretionary denial framework goes beyond prior rules and guidance. *See* Interim Director Discretionary Process, October 3, 2025 (<https://www.uspto.gov/patents/ptab/interim-director-discretionary-process>); Interim Processes for PTAB Workload Management, March 26, 2025 (<https://www.uspto.gov/sites/default/files/documents/InterimProcesses-PTABWorkloadMgmt-20250326.pdf>) (“Memorandum”).

The Memorandum advises parties to address all relevant considerations in seeking discretionary denial of institution, which may include:

- Whether there have been changes in the law or new judicial precedent issued since issuance of the claims that may affect patentability;
- The strength of the unpatentability challenge;
- The extent of the petition’s reliance on expert testimony;
- Settled expectations of the parties, such as the length of time the claims have been in force; and
- Any other considerations bearing on the Director’s discretion.

Memorandum, 2-3.

When the patent owner raises an argument for discretionary denial due to a

co-pending litigation, the Director also weighs the following six factors:

1. Whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted;
2. Proximity of the court's trial date to the Board's projected statutory deadline for a final written decision;
3. Investment in the parallel proceeding by the court and the parties;
4. Overlap between issues raised in the petition and in the parallel proceeding;
5. Whether the petitioner and the defendant in the parallel proceeding are the same party; and
6. Other circumstances that impact the Board's exercise of discretion, including the merits.

Apple Inc. v. Fintiv, Inc., IPR2020-00019, Paper 11, 5-6 (PTAB Mar. 20, 2020) (precedential) (“*Fintiv*”).

IV. ARGUMENT

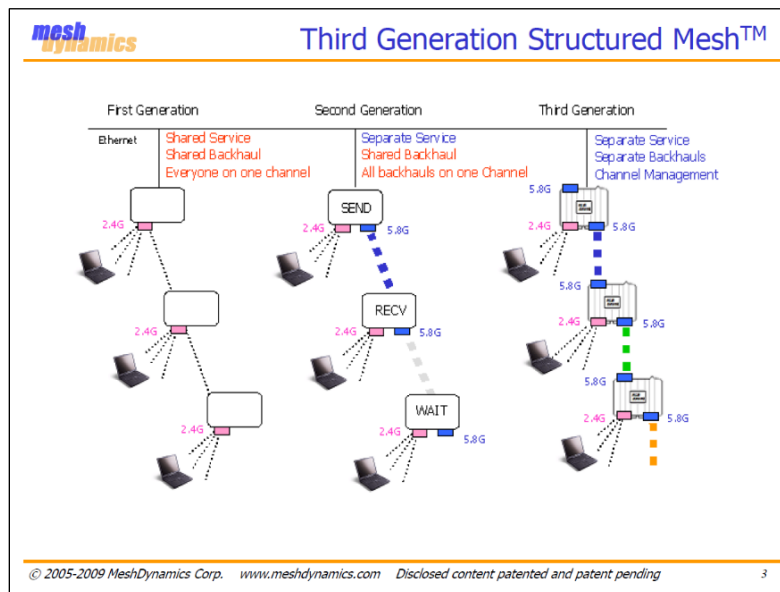
A. Settled Expectations Support Discretionary Denial.

MeshDynamics' strong settled expectations weigh heavily in favor of discretionary denial because Cisco has long been aware of MeshDynamics' technology, patent portfolio, and the '243 patent but failed to seek early review of the patents.

MeshDynamics has strong settled expectations because the patent issued over *fourteen* years ago. *Dabico Airport Sols. Inc. v. AXA Power ApS*, IPR2025-00408, Paper 21, 3 (PTAB June 18, 2025) (“[T]he longer the patent has been in force, the

more settled expectations should be.”); *see also Samsung Elecs. Co. Ltd. v. GenghisComm Holdings LLC*, IPR2025-00780, Paper 11, 2 (PTAB Aug. 14, 2025) (finding patents in force for eight and six years created strong settled expectations); *iRhythm Techs., Inc. v. Welch Allyn, Inc.*, IPR2025-00363, Paper 10, 3 (PTAB June 6, 2025) (finding settled expectations when the petitioner knew of application in 2013).


MeshDynamics provided Cisco with actual notice of its commercial mesh technology and the challenged patent and others in 2009. In August 2009, Mesh Dynamics, Inc. (predecessor to MeshDynamics) gave a presentation to Cisco about the company, its Third Generation Structured Mesh technology, and the patent portfolio to discuss potential collaborations:



Ex. 2003, ¶¶ 4-5; Ex. 2005, 3.

MeshDynamics specifically informed Cisco of the '952 patent and then-

pending applications for the '243 patent (Application No. 12/154,155), the '385 patent (Application No. 11/818,889), and the '691 patent (Application No. 61/148,803) during the presentation:



Key Intellectual Property

- **US Patent 7,420,952**

"High Performance Wireless Networks Using Distributed Control"

- Awarded September 2008
- Essential mesh capabilities, including
 - Throughput and latency management
 - Dynamic backhaul load management
 - Dynamic network topology management
 - Dynamic channel management
 - Local interference management
 - Self-configuration
 - Fault tolerance
 - Traffic forwarding
- Not limited to Wi-Fi
 - UWB, WPANs, WiMAX, ...

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Additional Patents Filed and in Process

- AN **12/154,155 High Performance Wireless Networks Using Distributed Control**
 - Continuation of AN 10/434,948
 - Switch Stack Equivalence with Logical Radios (single and multiple)
- AN 11/084,330 **Multiple-radio Mission Critical Wireless Mesh Networks**
 - Scanning Radio for higher speed mobility, faster reconvergence
 - Enables mobility handoffs with no performance loss
 - Full duplex, multi-radio mesh
 - Hybrid Mesh
- AN 12/352,457 **Self-forming VoIP Network**
 - Enables persistent VoIP communication on isolated networks and transparent return to primary network
- AN **61/148803 Persistent Mesh for Isolated Mobile And Temporal Networking**
 - Enables structured mesh operation in isolated and reforming network clusters
- AN **11/818,889 Mobility Extensions for Wireless Multiple Radio Mesh**
 - Additional scanning methodologies for mobile mesh applications
- AN 61/117,502 **Real-time Video Packet Transforms to Avoid Retransmissions**

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Ex. 2003, ¶¶ 4-5; Ex. 2005, 4, 6 (annotated).¹

¹ Cisco has not denied that this presentation occurred. See Ex. 2002, ¶¶ 50-52.

On June 22, 2022, MeshDynamics’ founder, Mr. daCosta, sent Cisco a letter specifically informing it of MeshDynamics’ mesh Wi-Fi network technology and its patent portfolio. Ex. 2003, ¶ 3; Ex. 2004.² MeshDynamics provided notice of Cisco’s infringement of MeshDynamics’ patents, including the ’243 patent:

Many of MeshDynamics’ implementation details are disclosed and claimed in its 19 patents and a pending application, which are listed in Exhibit A. Cisco is infringing at least U.S. Pat. No. 11,368,537 by, for example and without limitation, providing Cisco’s mesh Wi-Fi equipment and solutions to customers, including deploying, managing and enabling mesh Wi-Fi networks for its customers (as described in Cisco Wireless Mesh Access Points, Design and Deployment Guide). Therefore, I hereby put Cisco on notice of its infringement of MeshDynamics’ patents and request that Cisco take a license.

Exhibit A		
US Pat No	US Pat Appl No	Title
7,420,952	10/434,948	HIGH PERFORMANCE WIRELESS NETWORKS USING DISTRIBUTED CONTROL
7,583,648	11/266,884	MANAGING LATENCY AND JITTER ON WIRELESS LANS
7,894,385	11/818,899	MOBILITY EXTENSIONS FOR WIRELESS MULTIPLE RADIO MESH
8,514,852	12/625,365	REAL-TIME PACKET TRANSFORMS TO AVOID RE-TRANSMISSIONS
7,885,243	12/154,155	HIGH PERFORMANCE WIRELESS NETWORKS USING DISTRIBUTED CONTROL
8,477,762	12/352,457	SELF-FORMING VOIP NETWORK
8,520,691	12/696,947	PERSISTENT MESH FOR ISOLATED MOBILE & TEMPORAL NETWORKING

Ex. 2004, 1, Exhibit A (annotated).

Since Cisco had actual notice of the ’243 patent and MeshDynamics’ mesh technology since 2009, and actual notice of infringement since 2022, MeshDynamics has very strong settled expectations. *See Nvidia Corp. v. Neural AI, LLC*, IPR2025-00606, Paper 18, 2-3 (PTAB Jul. 31, 2025) (finding settled expectations when patent owner sent petitioner a presentation that included a

² Cisco admits receiving this letter. *See* Ex. 2002, ¶ 55.

discussion of the patent portfolio); *see also L'Oreal USA, Inc. v. Brightex Bio-Photonics, LLC*, IPR2025-00971, Paper 13, 2 (PTAB Sept. 26, 2025) (denying institution where evidence demonstrated that the patent owner sent a letter in 2022 identifying the patent); *Murata Mfg. Co., v. Ga. Tech Rsc. Corp.*, IPR2025-00383, Paper 14, 2 (PTAB July 29, 2025) (denying institution where the “Petitioner was aware that Patent Owner was involved in the same technology space for a significant amount of time before filing its Petition challenging Patent Owner’s patent.”).

Moreover, Cisco has filed at least four other petitions for patents asserted in the district court proceedings. *See supra* §II. Three of these patents issued more than six years ago—the ’952 patent issued in 2008, the ’385 patent issued in 2011, and the ’691 patent issued in 2013—and Cisco had actual knowledge of these patents for more than **16 years**. *See* Ex. 2005, 4, 6. Overall efficiency supports discretionary denial because of the strong settled expectations of the other challenged patents. *See Samsung*, IPR2025-00780, Paper 11, 2; *iRhythm*, IPR2025-00363, Paper 10, 3.

Discretionary denial is appropriate where a patent is asserted in a district court case with another patent having strong settled expectations. *See Cambridge Indus. USA, Inc. v. Applied Optoelects., Inc.*, IPR2025-00433, Paper 12 (PTAB June 27, 2025) (denying institution based on strong settled expectations as to other proceedings).

Cisco had every opportunity to seek an early review of the ’243 patent and

MeshDynamics' long-issued patents but chose not to until MeshDynamics brought a challenge in the district court. A holistic assessment shows that MeshDynamics has strong settled expectations with regard to *all* of the challenged patents, including the '243 patent, and overall efficiency supports discretionary denial. MeshDynamics requests the Director discretionarily deny institution of the Petition.

B. The *Fintiv* Factors Support Discretionary Denial.

1. Factor 1 weighs in favor of denial because a motion to stay has not been filed and is unlikely to be granted.

The district court proceedings have not been stayed, and a stay is unlikely in the Eastern District of Texas or the Northern District of California. A motion to stay pending IPR proceedings has not been filed by Cisco in either case. For that reason alone, a stay cannot be considered "likely."

Moreover, the facts of this case make it highly unlikely for a stay to be granted in either jurisdiction where the parallel litigation is pending. *Eight* patents are pending in the California action and across two litigations in Texas. *See* Ex. 2006; *see also* Ex. 2003, ¶ 1. Cisco only has *five* pending petitions. District courts have a consistent practice of denying motions to stay when the PTAB has yet to institute post-grant proceedings. *See Force Mos Tech., Co. v. Asustek Comput., Inc.*, 2024 U.S. Dist. LEXIS 66423, at *9 (E.D. Tex. Apr. 10, 2024); *Capella Photonics, Inc. v. Cisco Sys., Inc.*, 2014 U.S. Dist. LEXIS 147258, at *6-7 (N.D. Cal. Oct. 14, 2014).

And district court routinely deny motions to stay pending IPR proceeding

when the PTAB instituted review on less than all asserted claims of all asserted patents. *See, e.g., AGIS Software Dev. LLC v. Google LLC*, 2021 U.S. Dist. LEXIS 24195, at *9 (E.D. Tex. Feb. 9, 2021); *see also Arthrex, Inc. v. Medshape, Inc.*, IPR2025-00053, Paper 11, 9 (PTAB Apr. 25, 2025) (agreeing stay less likely when parallel proceedings involve patents not the subject of a petition).

At best, the likelihood of a stay is speculative, and this factor should not weigh against discretionary denial. *See Samsung Elecs. Co. Ltd. v. Vasu Holdings, LLC*, IPR2025-00446, Paper 12, 2 (PTAB July 10, 2025) (granting discretionary denial where *inter alia* “there is insufficient evidence that the district court is likely to stay its proceeding even if the Board were to institute trial”).

Thus, factor one weighs in favor of discretionary denial.

2. Factor 2 weighs in favor of denial as the case is likely to go to trial before the Final Written Decision.

The Board is projected to issue a Final Written Decision by February 2027. At this time, a trial date has not been set for either of the district court proceedings. However, a scheduling conference is scheduled for November 24, 2025 in the Eastern District of Texas case, and MeshDynamics will receive a trial date during the conference. Ex. 2011. February 16, 2027 was the scheduled trial date in the originally-filed Eastern District of Texas case and MeshDynamics has requested the district court again schedule trial for this date in Texas. Ex. 2007, 2. Judge Wise in the California litigation schedules trial for 12-20 months from the Initial Case

Management Conference, currently scheduled for January 2026. Ex. 2008, 3; Ex. 2009 (Docket Entry No. 60). Therefore, trial is likely to be scheduled before or around the time of the Final Written Decision by the Board.

To the extent Cisco argues otherwise, strong settled expectations outweigh this factor. *See L'Oreal USA*, IPR2025-00971, Paper 13, 2 (finding settled expectations outweighed the final written decision issuing before the district court trial date); *iRhythm*, IPR2025-00363, Paper 10, 3 (denying institution when settled expectations outweigh the final written decision issuing before the trial date).

Thus, factor two weighs in favor of discretionary denial or is neutral.

3. Factor 3 also weighs in favor of discretionary denial.

Factor 3 relates to the “investment in the parallel proceeding by the court and the parties” at the time of the institution decision. *Fintiv*, 5-6, 9. This factor weighs in favor of discretionary denial because of the significant investment the parties have already made, as well as the work that will be done before the institution decision. As recognized in *Fintiv*, significant investment by the parties undermines the likelihood of a stay and increases the risk of duplicative costs.

The Board’s deadline for resolving the institution decision in this IPR will be months after the parties have already fully briefed a substantive motion to dismiss. Ex. 2009 (Docket Entry Nos. 39, 47, 49). Further, MeshDynamics already served infringement contentions and significant document production in Texas. Ex. 2010.

Additional infringement contentions are being served today, November 10, 2025, in the Eastern District of Texas case as well. *See* Ex. 2011. By the time the institution decision arrives, parties will have already invested considerable resources into the district court proceedings. *See id.* The investment made by the parties in discovery and motions practice supports a finding that Factor 3 favors discretionary denial. *See Arthrex*, IPR2025-00053, Paper 11, 10-11 (denying institution where parties have invested significant time in the district court proceedings).

MeshDynamics' infringement contentions alone span **550 pages** of detailed claim charts. Ex. 2010. The investment in developing the contentions would, on its own, make Factor 3 at least neutral. *See Int'l Business Machines Corp. v. Digital Doors, Inc.*, IPR2023-00968, Paper 7, 10–11 (PTAB Dec. 1, 2023). But the parties have already invested more much than that and will invest even more before the date of any institution decision in this proceeding.

Thus, factor three weighs in favor of discretionary denial or is neutral.

4. Factor 4 weighs in favor of discretionary denial due to significant overlap of issues.

“[I]f the petition includes the same or substantially the same claims, grounds, arguments, and evidence as presented in the parallel proceeding, this fact has favored denial.” *Fintiv*, 12. Cisco has not provided invalidity contentions yet in the parallel proceedings, but MeshDynamics anticipates Cisco will provide the same prior art positions as presented in the Petition and there will be significant overlap.

Cisco has provided a *Sotera* stipulation. Ex. 1016. But even though a “timely-filed *Sotera* stipulation ... is highly relevant, [it] but will not be dispositive by itself.” Memorandum, Guidance on USPTO’s rescission of “Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation,” 2-3 (Mar. 24, 2025).³ Cisco’s stipulation is not dispositive and does not overcome the overwhelming weight of other factors favoring discretionary denial. *See, e.g., Cisco Sys., Inc. v. Estech Sys., Inc.*, IPR2021-00333, Paper 12, 12-13 (PTAB July 7, 2021) (denying institution even with *Sotera* stipulation); *see also Motorola Sols. v. Stellar, LLC*, IPR2024-01205, Paper 19, 3-4 (PTAB Mar. 28, 2025) (“[A]lthough Petitioner’s *Sotera* stipulation may mitigate some concern of duplication between the parallel proceeding and this proceeding, the stipulation does not outweigh the substantial investment in the district court proceeding....”).

Further, because the stipulation limits Cisco from raising any grounds that are raised or could have reasonably been raised in this proceeding in only ***the parallel district court case***, it will not, if institution is granted, prevent Petitioner from subsequently filing requests for *ex parte* reexamination of the ’243 Patent based on such grounds. Thus, the stipulation still allows for repeated challenges to the same patent by the same parties in multiple venues (including two within the Patent Office

³ Available at https://www.uspto.gov/sites/default/files/documents/guidance_memo_on_interim_procedure_rescission_20250324.pdf.

itself—the PTAB and the Central Reexamination Unit), obviating the very purpose of the IPR process, which is to streamline the patent system and reduce litigation costs. *See Apotex Inc. v. Alkermes Pharma Ireland Ltd.*, IPR2025-00514, Paper 10, 2 (PTAB July 2, 2025) (“It is not an appropriate use of Office resources to review a patent in two separate, concurrent Office proceedings, especially when the issues and evidence in those proceedings has substantial overlap.”).

Thus, factor four weighs in favor of discretionary denial or is neutral.

5. Factor 5 weighs in favor of denial as the district court litigation and the petition involve the same parties.

Fintiv factor five weighs in favor of denying institution because the parties in the parallel litigation are the same. *Fintiv*, 15; *see also HP Inc. v. Universal Connectivity Techs. Inc.*, IPR2024-01428, Paper 12, 9-10 (factor weighs in favor of denial where all parties are involved in the parallel district court litigations).

And there are *multiple* parallel district court litigations regarding the ’243 patent. *See supra* §II. “[T]he presence of multiple parallel proceedings and the avoidance of inconsistent outcomes favors discretionary denial.” *See Comcast Cable Commn’cs, LLC v. Entropic Commn’cs, LLC*, IPR2025-00183, Paper 11, 2-3 (PTAB June 25, 2025) (denying institution in light of multiple district court proceedings). As the Director found in *Comcast*, “[i]t is not an efficient use of Board resources to consider the Petitions ... [b]ecause there are multiple ongoing district court proceedings, [and] discretionary denial of the Petitions reduces the chances of

duplicative workloads and inconsistent outcomes.” *Id.*, 3.

Thus, factor five weighs in favor of discretionary denial.

6. Factor 6 weighs in favor of discretionary denial.

Cisco had every opportunity to seek an early review of the ’243 patent and the other challenged patents, but chose not to until MeshDynamics brought a challenge in the district court. The Petition was not a priority for Cisco, and this factor favors denial in light of MeshDynamics’ settled expectations and Cisco’s failure to timely file this Petition after receiving actual notice in 2009.

C. The Weakness of the Petition’s Invalidity Grounds and Petitioner’s Overreliance on Expert Testimony Further Supports Discretionary Denial.

The apparent weakness of the Petition’s invalidity grounds, fueled by hindsight and misplaced expert testimony, further supports discretionary denial.

The Petition’s obviousness combinations, which include up to five alleged prior art references, are patchwork reconstruction of the ’243 patent’s claimed invention. To begin, the primary reference in each of the Petition’s invalidity grounds, Ogier, is directed towards “mobile ad hoc network,” wherein each router in the network locally determines its own routing path “without the use of servers.” Ex. 1003, Title, Abstract, [0002], [0018], [0043]. Ogier nowhere discloses, and its “mobile ad hoc network” does not require, the claimed “access server.” *Id.* Nevertheless, Petitioner alleges that a POSITA would have been motivated to modify

Ogier to include Herzog’s policy server, apparently because Shapiro (not Ogier) discloses a “network manager,” but does not explain how this “network manager provides parameters for the Ogier-Shapiro link cost calculation.” Pet., 22-23. And Petitioner’s motivation to combine Herzog with Ogier and Shapiro is based entirely on hindsight and conclusory expert testimony.

Petitioner’s excessive reliance on a voluminous and unfocused expert declaration as its sole evidentiary support for numerous claim limitations further strengthens the case for denial. Memorandum, 2 (identifying “[t]he strength of the unpatentability challenge” and “[t]he extent of the petition’s reliance on expert testimony” as considerations for discretionary denial). As the Office has made clear, “extensive reliance on expert testimony” may indicate that the issues are “better resolved in an Article III court,” as IPR proceedings must be based on patents and printed publication, not expert opinion. *See* FAQs for Interim Processes for PTAB Workload Management, FAQ No. 22.⁴ Here, Petitioner extensively relies on expert testimony to fill the gaps between the asserted prior art references and the patented claims. The expert declaration Cisco filed in support of its Petition is **131** pages long. *See* Ex. 1002. Cisco cites to the expert declaration at least **169** times in the Petition.

⁴ Available at <https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management>.

Cisco's extensive reliance on its expert declaration is unsurprising, given that its expert's testimony is the sole evidentiary basis for the alleged obviousness of numerous claim limitations. Cisco relies entirely on the expert's testimony as the basis for why a POSITA would have been motivated to combine multiple, sometimes up to *five* references for their prior art combinations. *See, e.g.*, Pet., 15-16 (combining Ogier, Shapiro, and Herzog for additional cost features to enable more context-sensitive routing decisions); Pet., 20 (combining Shapiro's goodness factor with Ogier's computing link cost); Pet., 22 (combining Ogier, Shapiro, and Herzdog to incorporate a policy server); Pet., 55 (combining Ogier, Shapiro, Herzog, and Inouchi in Ground II to teach a processor and storage medium.); Pet., 58-59 (combining Ogier, Shapiro, Herzog, Inouchi, and O'Neal in Ground III to teach a localized failover). In Ground V, Cisco solely relies on the expert declaration to support a combination of five references without citing to any other exhibits or evidence. *See* Pet., 81.

Per the guidance of the Office, however, the role of an expert is to provide focused support (*e.g.*, explaining terms of art or relevant context), ***not*** to substitute and/or provide for limitations and the obviousness rationale from the prior art.

V. CONCLUSION

For all of the foregoing reasons, MeshDynamics respectfully requests the Director exercise its discretion and deny the Petition.

Dated: November 10, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d) and the Interim Director Discretionary Process § II.C.iii, the undersigned certifies that this Brief in Support of Discretionary Denial complies with the type-volume limitations of those sections because it contains no more than 20 pages.

Dated: November 10, 2025

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL OF INSTITUTION OF PETITION FOR *INTER PARTES* REVIEW OF UNITED STATES PATENT NO. 7,885,243 was served electronically via email on November 10, 2025, on the following counsel of record for Petitioner:

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