

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

Case No. IPR2025-01304
U.S. Patent No. 7,885,243

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

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PETITIONER’S EXHIBIT LIST

Exhibit No.	DESCRIPTION
1001	U.S. Patent No. 7,885,243 (“’243 Patent”)
1002	Declaration of Dr. Christopher Hansen
1003	U.S. Patent Publication No. 2002/0062388 to <i>Ogier</i> et al. (“Ogier”)
1004	U.S. Patent Publication No. 2002/0161917 to <i>Shapiro</i> et al. (“Shapiro”)
1005	U.S. Patent Publication No. 2002/0016840 to <i>Herzog</i> et al. (“Herzog”)
1006	U.S. Patent Publication No. 2003/0051051 to <i>O’Neal</i> et al. (“O’Neal”)
1007	U.S. Patent Publication No. 2004/0001467 to <i>Cromer</i> et al. (“Cromer”)
1008	File History of U.S. Patent No. 7,885,243
1009	File History of U.S. Patent No. 7,420,952
1010	U.S. Patent No. 6,839,350 to <i>Inouchi</i> et al. (“Inouchi”)
1011	U.S. Patent No. 6,377,782 to <i>Bishop</i> et al. (“Bishop”)
1012	International Publication WO2000/035130 to <i>Rakoshitz</i> et al. (“Rakoshitz”)
1013	U.S. Patent No. 6,744,775 to <i>Beshai</i> et al. (“Beshai”)
1014	Infringement Contentions For ’243 Patent In Dynamic Mesh Networks, Inc. d/b/a/ MeshDynamics v. Cisco Systems, Inc., No. 2:25-cv-00472, (E.D. Tex.)
1015	Curriculum Vitae of Dr. Christopher Hansen
1016	<i>Sotera</i> Stipulation
1017	U.S. Patent No. 7,420,952
1018	U.S. Patent No. 8,514,852
1019	U.S. Patent No. 7,894,385
1020	U.S. Patent No. 8,477,762
1021	U.S. Patent No. 8,520,691
1022	FCMS NDCAL Case Management Statistics
1023	Judge Noël Wise’s Civil Standing Order
1024	FCMS EDTX Case Management Statistics
1025	Dynamic Mesh's List of Accused Products
1026	Cisco Blog 5508 Controller Launch Date

I. INTRODUCTION

Petitioner Cisco respectfully requests institution of this IPR. The balance of discretionary considerations weighs firmly in Petitioner’s favor: (1) the Examiner’s material error during prosecution; (2) Dynamic Mesh’s (“DM”) exceedingly broad accusations in the parallel district court litigation; (3) the lack of effort expended in the district court litigation, which is still in early stages; and (4) the strength of the Petition all overwhelmingly favor institution. Conversely, none of the factors DM relies on—primarily settled expectations—tips the balance for discretionary denial.

First, U.S. Patent No. 7,885,243 (the “’243 Patent”) would not have issued but for material examiner error. During prosecution, the Examiner rejected all independent claims over prior art but identified certain dependent claims as allowable, purportedly because they recited “highly detailed concepts not found in the prior art.” EX1008, 154–155. In response, the Applicant incorporated those alleged “highly detailed concepts” into each independent claim, and that led directly to the allowance of the ’243 Patent. EX1008, 164–169.

However, the Examiner’s own search records confirm that the Examiner never conducted any search for those very “highly detailed concepts” that formed the basis for allowance. *See* EX1008, 160–162, 182–183; EX1009, 147–150, 276–278. The complete absence of any prior art search for the allowable subject matter constitutes material error. Even the most basic search directed to the concepts the Examiner

believed to be allowable would have uncovered invalidating prior art—including the references relied upon in the Petition, which disclose these features verbatim. The failure to search was a material examination error, and correcting that error is an efficient and appropriate use of the Office’s resources. *See infra* Section II.

Second, although DM’s request for discretionary denial relies primarily on settled expectations based on the age of the ’243 Patent (DD Br., 4–9), any such expectations are misguided in view of the Examiner’s error. The Director has repeatedly instituted review of patents that would not have issued but for material error—regardless of the time they have been in force. Moreover, Cisco reasonably expected that it would not be sued on the ’243 Patent because the patent had long expired by the time DM first asserted it against Cisco. *See infra* Section III.

Third, the Patent Office is uniquely suited to address the diverse range of subject matter of eight patents asserted across three litigations by DM. The asserted patents span a total of four families, with subject matter ranging from wireless network structure to forward error correction methods for data packets. The Director has repeatedly determined that the PTAB is the most efficient adjudicator of patent validity in such cases. *See infra* Section IV.

Lastly, the *Fintiv* factors overwhelmingly favor institution. The district court proceedings remain at an early stage, with neither the scheduling order nor trial date yet set in the California action, and the trial date set for March 2027 in the Texas

actions, after the expected Final Written Decision (“FWD”) in this IPR. Cisco filed the instant Petition only four months after receiving the original complaint, and has filed a *Sotera* stipulation to reduce risk of issue overlap. The Director has regularly referred petitions to the Board under such circumstances. *See infra* Section V.

II. THE '243 PATENT WOULD NOT HAVE ISSUED BUT FOR EXAMINER'S MATERIAL ERROR

The '243 Patent issued only because the Examiner failed to conduct any prior art search for the very subject matter the Examiner deemed allowable.

During prosecution, the Examiner rejected all then-pending independent claims over prior art. EX1008, 147–156. But the Examiner concluded that several dependent claims—including claims 7, 9, 12, and 13—recited “highly detailed concepts not found in the prior art of record.” EX1008, 154–155.

In response, the Applicant incorporated at least one of those allegedly “highly detailed concepts” into each independent claim. EX1008, 164–169. Specifically, claim 1 incorporated the purportedly allowable subject matter of dependent claim 7 (reciting “a *maximum capacity amount* of the AP node”); claim 9 was rewritten as an independent claim incorporating the purportedly allowable subject matter of original dependent claim 9 (reciting “a dataset of *child node identifiers*”), claim 12 was rewritten as an independent claim incorporating the purportedly allowable subject matter of original dependent claim 12 (reciting “*shortest route path* dataset”), and claim 13 incorporated purportedly allowable subject matter of dependent claim

14 (reciting “access server functioning parameter includ[ing] a *latency modifier*”).

These amendments led to allowance of the '243 Patent. EX1008, 180.

Despite treating those “highly detailed concepts” as dispositive allowable subject matter, the Examiner never performed any search directed to them. Specifically, the Examiner’s search records for the '243 Patent and its parent, U.S. 7,420,952, contain no search strings or terms relating to the “highly detailed concepts.” EX1008, 160–162, 182–183; EX1009, 147–150, 276–278. For example, the Examiner’s search strings fail to capture any of the alleged “highly detailed concepts,” such as: a “dataset[] ... comprises a *maximum capacity* amount of the AP node” (issued claim 1), “a dataset of *child node identifiers*” (issued claim 9), a “*shortest route path* dataset” (issued claim 12), or an “access server functioning parameter includ[ing] a *latency modifier*” (issued claim 13). EX1001, 23:64–65; 25:1–4; 26:4–5; 26:38–41.

The Examiner’s omission of any search targeting those concepts—while relying on them as the basis for allowance—constitutes material error. EX1008, 164–169. Had the Examiner performed even a cursory search for the alleged “highly detailed concepts,” the Examiner would have located the very prior art references relied on in the Petition—Cromer, Ogier, and Shapiro—each of which discloses the purportedly novel features. In several instances, these references describe these “highly detailed concepts” using substantially identical language, as shown below.

Claim	Purportedly Allowable Subject Matter	Prior Art Disclosure
1	“dataset[] ... comprises a <i>maximum capacity</i> amount of the AP node”	Cromer: “the [Access Point’s] extra capacity is determined by difference between the <i>Max. Capacity</i> and the aggregate capacity 512.” EX1007, [0050].
9	“a dataset of <i>child node identifiers</i> ”	Ogier: “[a] <i>list of children nodes</i> of node i, denoted children_i(u).” EX1003, [0065].
12	“the route path dataset of the parent node is the <i>shortest route path</i> dataset of all available parent nodes”	Ogier: “running a <i>shortest-path algorithm</i> .” EX1003, [0084].

Such one-to-one correspondence between the “highly detailed concepts” and the disclosures in the Petition’s prior art confirms that the Examiner’s failure to search was outcome-determinative. Had a proper search been conducted, the Examiner, too, would have rejected the amended independent claims as obvious.

III. THE PARTIES’ SETTLED EXPECTATIONS WEIGH IN FAVOR OF INSTITUTION

Contrary to DM’s assertions, it is Cisco—not DM—who possesses the stronger settled expectations. The ’243 Patent was already expired at the time DM asserted it against Cisco. And the Examiner’s material error during prosecution dwarfs any settled expectations asserted by DM.

A. Cisco Had Reasonable Expectations Of Non-Enforcement.

Under DM’s priority claim to the ’952 Patent as a continuation-in-part and accounting for the patent term adjustment under 35 U.S.C. § 154(b), the ’243 Patent expired on May 24, 2024—well before it was first asserted against Cisco on June 6,

2025. *Dynamic Mesh Networks v. Cisco Sys. Inc. et al.*, No. 2:25-cv-00606 (E.D. Tex., Jun. 6, 2025), Dkt. 1. Because the patent had already expired by the time DM brought suit, Cisco had strong settled expectations of non-enforcement. *Google v. Sandpiper CDN, LLC*, IPR2025-00806, Paper 13, 2 (Dir. Sep. 12, 2025) (“Petitioner, on the other hand, persuasively argues that the challenged patent in IPR2025-00806 expired in 2023, and the challenged patent in IPR2025-00826 expired in 2021, and, accordingly, it expected non-enforcement of the challenged patents.”). In the related litigation, DM accuses, for example, Cisco’s 5508 controller (EX1025 at 6), which launched in **2009**. *See* EX1026. The time this product has spent on the market without being accused of infringement supports Cisco’s settled expectations of non-enforcement. Additionally, because the ’243 Patent expired in 2024, no additional damages can accrue. Therefore, DM would not be prejudiced from resolving the validity of the ’243 Patent before the PTAB first.

Conversely, DM’s settled expectations are negligible. DM contends that the age of the ’243 Patent gives rise to settled expectations that should weigh against institution. DD Br., 1. But DM’s argument ignores cases holding that material examiner error overrides any settled expectations based on the patent’s age—including for patents that have been in force far longer than the ’243 Patent. *See Anthony Inc. v. ControlTec, LLC*, IPR2025-00559, Paper 12, 3 (Dir. Jul. 16, 2025) (“Although the challenged patents have been in force for approximately eighteen

and seventeen years, Petitioner appears to show a material error by the Office, and it is an appropriate use of Office resources to review the potential error.”); *see also Taiwan Semiconductor Mfg. Co. Ltd. & Apple Inc. v. Marlin Semiconductor Ltd.*, IPR2025-00847, Paper 11, 4 (Dir. Sep. 3, 2025).

DM also alleges settled expectations on the basis of prior notice. DD Br., 1, 5–9. Specifically, DM alleges that it gave Cisco notice of the ’243 Patent twice—once in a letter sent in 2022 and once in an oral presentation in 2009. *Id.* But neither “notice” supports settled expectations:

2022 letter: DM alleges that it gave Cisco notice of the ’243 Patent in a letter sent June 22, 2022. DD Br., 7. But that merely reinforces Cisco’s point—even under DM’s theory, notice only accrued three years ago which does not create settled expectations—particularly where the Examiner committed material error. *Padagis US v. Neurelis, Inc.*, IPR2025-00464, Papers 9 & 12 (Dir. Jul. 16, 2025) (finding concerns of material error weighed in favor of institution, despite Patent Owner’s allegation that Petitioner “almost certainly has known of the patent for years.”).

2009 presentation: DM’s allegations regarding notice in 2009 are even weaker. DM alleges that it gave Cisco notice of applications related to the ’243 Patent in an oral presentation in 2009. DD Br., 6. But the slides DM includes in its brief as evidence do not list the ’243 Patent itself: they only show the ’952 Patent and the ’243 patent *application*. *Id.* Any such presentation could not have actually

given Cisco notice of the '243 **Patent**: for example, “[a] ‘patent pending’ notice gives one no knowledge whatsoever,” at least in the willful infringement context. *State Indus., Inc. v. A.O. Smith Corp.*, 751 F.2d 1226, 1236 (Fed. Cir. 1985). And even if the 2009 presentation provided Cisco knowledge of the '243 Patent **application**, rather than the '243 Patent itself, such knowledge is insufficient to create any settled expectations to overcome the clear material error described above. *See FreightCar America Inc. v. National Steel Car Limited*, IPR2025-01046, Papers 7 & 20 (Dir. Oct. 10, 2025) (referral to the Board because of material error during prosecution, despite Petitioner’s citation to the challenged patent in an IDS in 2014).

DM does not have any “settled expectations” for its other patents either. Besides the alleged 2009 meeting and 2022 letter, DM identifies no other attempt at implementing/licensing its technology. The patents merely sat in a drawer for over a decade, forgotten, with some expiring for years due to unpaid maintenance fees.

IV. THE PTAB IS THE PREFERRED AND MOST EFFICIENT FORUM TO REVIEW THE INVALIDITY OF THE '243 PATENT

The PTAB—not the district courts—is the best and most efficient forum to adjudicate the validity of the large and complex group of patents asserted by DM. The dispute spans numerous patents from multiple families that cover a diverse range of technologies, and is now being litigated across *two* different district courts and *three* unique pending cases, summarized below. Only the PTAB can efficiently ensure uniform, technically informed resolution of these invalidity disputes.

Case No.	Patents	Status
<i>Dynamic Mesh Networks, Inc. d/b/a MeshDynamics v. Cisco Systems, Inc. et al.</i> , 2-25-cv-00472, (E.D. Tex. May 5, 2025) (“ <i>Dynamic Mesh I</i> ”)	11,368,537; 7,420,952; 7,885,243; 7,894,385; 8,520,691;	DM voluntarily dismissed the case
<i>Dynamic Mesh Networks, Inc. d/b/a MeshDynamics v. Cisco Systems, Inc. et al.</i> , 2-25-cv-00606, (E.D. Tex. Jun. 6, 2025) (“ <i>Dynamic Mesh II</i> ”)	8,477,762; 9,049,000; 8,514,852	DM voluntarily dismissed the case
<i>Cisco Systems Inc. v. Dynamic Mesh Networks, Inc. d/b/a MeshDynamics et al.</i> , 5-25-cv-06441, (N.D. Cal. Jul. 31, 2025) (“ <i>Dynamic Mesh III</i> ”)	11,368,537; 7,420,952; 7,885,243; 7,894,385; 8,477,762; 8,514,852; 8,520,691; 9,049,000	Case Management Conference set for January 13, 2026. Hearing on Motion to Dismiss set for January 14, 2026.
<i>Dynamic Mesh Networks, Inc. d/b/a MeshDynamics v. Cisco Systems, Inc. et al.</i> , 2-25-cv-00781, (E.D. Tex. Aug. 12, 2025) (“ <i>Dynamic Mesh IV</i> ”)	11,368,537; 7,420,952; 7,885,243; 7,894,385; 8,520,691;	Markman hearing set for September 29, 2026; Trial set for March 15, 2027. ¹
<i>Dynamic Mesh Networks, Inc. d/b/a MeshDynamics v. Cisco Systems, Inc. et al.</i> , 2-25-cv-00783, (E.D. Tex. Aug. 12, 2025) (“ <i>Dynamic Mesh V</i> ”)	8,477,762; 9,049,000; 8,514,852	Consolidated with <i>Dynamic Mesh IV</i> for pretrial issues; Trial set for March 15, 2027.

More specifically, DM’s assertions span *eight* patents from *four* patent families encompassing a wide range of technologies—for example, from distributed control of wireless networks (U.S. 7,420,952, EX1017), real time network packet transforms (U.S. 8,514,852, EX1018), mobility extensions for wireless multiple

¹ The Court announced the schedule at the scheduling conference on November 24, 2025; the Court is expected to issue a written order soon.

radio mesh (U.S. 7,894,385, EX1019), self-forming VOIP networks (U.S. 8,477,762, EX1020), to persistent mesh for isolated networking (U.S. 8,520,691, EX1021). “The large number and wide scope of the patents asserted in the district court litigation weighs against discretionary denial, as the Board is better suited to review a large number of patents involving diverse subject matter.” *Samsung v. Wilus Institute*, IPR2025-00933, Paper 11, 3 (Dir. Oct. 10, 2025); *see also Shenzhen Tuozhu Technology Co., Ltd. v. Stratasy, Inc.*, IPR2025-00438, Paper 10, 3 (Dir. Jul. 17, 2025). And the Board’s unique ability to effectively address broad, diverse assertions overcomes any of DM’s alleged expectations. *See American Airlines Inc. et al. v. Intellectual Ventures I LLC*, IPR2025-00785, Paper 11, 3 (Dir. Aug. 29, 2025) (finding “large number and wide scope of the patents asserted in the district court litigation weighs against discretionary denial” even though challenged patents were in effect for 14 and 18 years).

Moreover, as shown above, each of the asserted patents is at issue in two separate district court cases. *See supra Dynamic Mesh III, IV, and V*. Accordingly, there is a real risk of conflicting validity results should those cases move forward independently; institution here would rectify that problem. *See Harbor Freight Tools USA Inc., Generac Power Systems, Inc. & MWE Investments, LLC v. Champion Power Equipment, Inc.*, IPR2025-00805, Paper 20, 2 (Dir. Sep. 19, 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.”); *see also Samsung Elecs. Co. v. CM HK Limited*, IPR2025-01023, Paper, 12, 2 (Dir. Oct. 17, 2025) (referring decision to the Board when challenged patents were involved in multiple co-pending litigations).

Accordingly, and contrary to DM’s allegations (DD Br., 8-9), the PTAB is the more efficient and appropriate forum to resolve invalidity issues arising from the sprawling and overlapping district court actions.

V. THE FINTIV FACTORS FAVOR INSTITUTION

As explained further below, all six Fintiv factors weigh in favor of institution, because the FWD in this IPR will likely issue well before any trials in the district court proceedings.

A. Fintiv Factor 1 Slightly Favors Institution: Stays In The District Court Cases Are Likely Once Institution Is Granted.

Factor 1 slightly favors institution, because contrary to DM’s allegations, stays in the district court cases are likely once institution is granted.

Contrary to DM’s assertions (DD Br., 9–10), the absence of a stay motion to date reflects only that the district court cases are still in nascent stages, not that a stay would be denied on the merits. In fact, courts in both districts routinely grant stays in analogous circumstances, particularly when multiple asserted patents are challenged before the Patent Office.

For example, the courts in N.D. Cal. have repeatedly stayed entire cases even

where only some of the asserted patents were under review. *See Finjan, Inc. v. FireEye, Inc.*, 2014 WL 2465267, *4 (N.D. Cal. June 2, 2014) (“When there are overlapping issues between the reexamined patents and other non-reexamined patents-in-suit, courts have found that staying the entire case is warranted.”); *see also PersonalWeb Techs., LLC v. Apple Inc.*, 69 F. Supp. 3d 1022, 1028 (N.D. Cal. 2014) (granting stay of entire case when only 15 of 34 claims at issue were challenged in IPR). Accordingly, *Dynamic Mesh III* will likely be stayed.

Similarly, the courts in E.D. Tex. have stayed cases when all asserted patents are subject to review before the Patent Office—as in *Dynamic Mesh IV* where substantial portions of discovery remained, and a *Markman* hearing had not yet been held. *See, e.g., Cobblestone Wireless v. Cisco Sys., Inc.*, No. 2:23-cv-00454-JRG-RSP, 2024 WL 5047854, at *2 (E.D. Tex. Dec. 9, 2024) (granting stay motion where “case ha[d] been pending for nearly 10 months, with many documents produced and interrogatories answered,” but “large parts of discovery and many other important deadlines were still left”); *Vill. Green Techs. v. Samsung*, No. 2:22-cv-00099-JRG, 2023 WL 416419, at *3 (E.D. Tex. Jan. 25, 2023) (granting stay motion where “the close of discovery, the claim construction hearing, and the trial setting” remained). Here, the likelihood of a stay is even greater. In *Dynamic Mesh IV*—in which the ’243 Patent is asserted—all Asserted Patents are subject to IPRs, and DM itself has acknowledged that a stay is appropriate in the alternative to a transfer: “The current

actions at most *should be stayed* and not transferred.” *Dynamic Mesh IV*, Dkt. 34 at 15 (E.D. Tex. Oct. 28, 2025). Thus, *Dynamic Mesh IV* will also likely be stayed upon institution of the IPRs.

B. Fintiv Factor 2 Strongly Favors Institution: Only Texas Has A Trial Date And The Final Written Decision Will Issue First.

Factor 2 strongly favors institution. The Board’s FWD is expected in February 2027. But trials in the district court proceedings will likely be held well after February 2027. The N.D. Cal. Court for *Dynamic Mesh III* has not held a scheduling conference, issued a scheduling order, or set a trial date. Furthermore, the E.D. Tex. Court for *Dynamic Mesh IV and V* has set the trial for March 2027.

Specifically, in *Dynamic Mesh III* in N.D. Cal., the median time to trial is 37.6 months, yielding an expected trial date of August 31, 2028—more than 18 months after the projected FWD. EX1022. As DM concedes (DD Br., 10–11), Judge Wise typically schedules trial 12-20 months after the initial case management conference, which itself has already been postponed. Even under DM’s own timeline, any trial would occur up to eight months after the Board’s decision. *See* EX1023.

In *Dynamic Mesh IV* and *Dynamic Mesh V* in E.D. Tex., the Court set a trial date of March 15, 2027, meaning the FWD in this IPR would issue before the currently scheduled trial date. Furthermore, the median time to trial is 25.1 months, giving *Dynamic Mesh IV* and *Dynamic Mesh V* an expected trial date of September 12, 2027—roughly *eight months after* the Final Written Decision. EX1024.

The Director has consistently declined to exercise discretion where, as here, the PTAB's Final Written Decision will precede any district court trial. *Light & Wonder, Inc. v. Evolution Malta Limited*, IPR2025-01072, Paper 11, 2 (Dir. Oct. 17, 2025) (denying discretionary denial where FWD would issue first); *Amazon.com, Inc. v. NL Giken Inc.*, IPR2025-00250, Paper 14, 2 (Dir. May 16, 2025).

C. Fintiv Factor 3 Strongly Favors Institution: The Parties And Court Have Minimal Investment In The Parallel Proceedings And Cisco Filed Expeditiously.

Fintiv Factor 3 weighs strongly against discretionary denial. Both the NDCA and EDTX cases are in their earliest stages, and Cisco filed this Petition promptly after DM's initial complaint.

As described above, neither the parties nor the courts have made any meaningful investment in *Dynamic Mesh III, IV, or V*. As of this filing, discovery has barely begun—DM has made only a single, limited document production; no third-party subpoenas have been served; and no depositions have been noticed or taken. Although DM has served preliminary infringement contentions, Cisco has not yet served invalidity contentions, and the court has not addressed any substantive issues related to the patents-in-suit. In fact, *Dynamic Mesh III* does not even have a scheduling order, and in *Dynamic Mesh IV, V*, the Markman hearing is set for September 29, 2026, well-after the institution decision of this IPR in February 2026.

These facts stand in sharp contrast to the record in *Int'l Business Machines*

Corp. v. Digital Doors, Inc., IPR2023-00968, Paper 7 at 10–11 (PTAB Dec. 1, 2023), cited by DM, where over 11,000 pages of contentions had been exchanged, multiple depositions completed, and several discovery rounds concluded. Here, there has been no comparable effort or investment.

Where investment in parallel litigations is minimal, as here, the Board regularly denies discretionary denial requests. *See Cambridge Indus. USA, Inc. v. Applied Optoelectronics, Inc.*, IPR2025-00434, Paper 11, 2 (Dir. Jun. 26, 2025) (referring decision to Board where no trial date was set and Markman was vacated); *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11, 10 (PTAB Mar. 20, 2020).

Cisco's expeditious filing of the Petition further weighs against denial. DM filed its initial (now-dismissed) complaint in *Dynamic Mesh I* on May 5, 2025, and Cisco filed the instant Petition within less than four months, on August 27, 2025. Paper 2. The Board has found even longer filing delays to demonstrate diligence. *Samsung Elecs. Co. v. Mullen Industries LLC*, IPR2024-01472, Paper 9, 10 (PTAB Mar. 31, 2025) ("Petitioner's diligence in filing its Petition (a) less than five months after receiving Patent Owner's infringement contentions and (b) prior to the parties briefing claim construction issues weighs against exercising discretionary denial.").

D. Fintiv Factor 4 Slightly Favors Institution: Petitioner's Sotera Stipulation Reduces Risk Of Overlap And Duplicative Efforts

Factor 4 weighs against discretionary denial because Cisco has filed a Sotera stipulation (EX1016) to reduce both overlap and duplicative efforts between the IPR

and the district court proceedings. The Board and the Director have held that such stipulations weigh in favor of institution because they “mitigate concerns of duplicative efforts between the district court and the Board, as well as concerns of potentially conflicting decisions.” *HP Inc. v. Universal Connectivity Tech., Inc.*, IPR2024-01428, Paper 12, 8 (PTAB Apr. 8, 2025); *Nikon v. Optimum Imaging*, IPR2024-01373, Paper 17, 23 (PTAB Apr. 23, 2025). Even DM admits that a “timely-filed *Sotera* stipulation ... is highly relevant.” DD Br., 13-14 (*citing* “Memorandum” regarding, “Guidance on USPTO’s rescission of ‘Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings’”, 2-3 (Mar. 24, 2025)). This factor weighs in Cisco’s favor particularly given the strength of the Petition’s merits. *Mediatek Inc. v. Daedalus Prime LLC*, IPR2025-00100, Paper 10, 34 (PTAB May 19, 2025) (“The particularly strong merits of Petitioner’s case and the *Sotera* stipulation ... lead us to conclude that the trial date and other factors favoring denial are outweighed.”).

DM’s cited decisions do not support denial. In *Cisco Sys., Inc. v. Estech Sys., Inc.*, IPR2021-00333, Paper 12 at 6, 13 (PTAB July 7, 2021), the Board found that the *Sotera* stipulation was outweighed only because two district court trials were scheduled eleven and seven months before the expected FWD. Here, by contrast, the FWD will issue well before any district court trial, and discovery has scarcely begun. Similarly, in *Motorola Sols. v. Stellar, LLC*, IPR2024-01205, Paper 11 at 11

(PTAB Feb. 13, 2025), the Board denied institution only after the district court had already appointed a technical advisor, conducted a Markman hearing, and ruled on sixteen claim terms—none of which has occurred here.

Lastly, DM’s arguments regarding the availability of *ex parte* reexamination are similarly unavailing. DD Br., 14. In *Apotex Inc. v. Alkermes Pharma Ireland Ltd.*, the Director denied institution of an IPR because an EPR of the same patent *was already pending*. IPR2025-00514, Paper 10, 2 (Dir. Jul. 2, 2025). No such co-pending proceeding exists here.

E. *Fintiv* Factor 5 Favors Institution: Any District Court Trial Will Highly Likely Occur After The Final Written Decision.

“[F]actor 5 generally follows factor 2, such that this factor ‘favors denial if trial precedes the Board’s Final Written Decision and favors institution if the opposite is true.’” *Nikon v. Optimum Imaging*, IPR2024-01374, Paper 19, 23–24 (PTAB Apr. 29, 2025). As discussed in Section V.B, the Board’s FWD is expected to issue before any trial in the district court cases, which remain in their earliest stages. Accordingly, like Factor 2, Factor 5 weighs strongly in favor of institution.

DM’s citation to *Comcast Cable Communications, LLC v. Entropic Communications, LLC*, IPR2025-00183, Paper 11, 2-3 (Dir. Jun. 25, 2025), is inapposite. In *Comcast*, the Board had already denied two earlier petitions related to a patent with similar claims on the merits, and the district court defendant had filed a notice disclaiming any intent to be bound by IPR estoppel—significantly

limiting the potential for simplification. *See* IPR2025-00183, EX2015. Here, by contrast, no prior IPRs have been filed, Cisco is the sole petitioner, and Cisco will be bound by the *Sotera* stipulation. Thus, adjudicating invalidity in this forum would greatly simplify the district court cases and avoid potential inconsistencies.

F. Fintiv Factor 6 Favors Institution: The Merits And Other Circumstances Favor Institution.

Factor 6 weighs firmly in favor of institution. The Petition presents strong merits, addresses clear material error during prosecution, and was filed diligently. DM nevertheless argues that factor 6 favors discretionary denial, primarily attacking the strength of the combination and number of references used. DD Br., 15–17.

First, DM’s assertion that “Ogier nowhere discloses, and its ‘mobile ad hoc network’ does not require, the claimed ‘access server’” (DD Br., 15) is a red herring, because Cisco is not relying on Ogier to show the claimed access server. Cisco relies on a different reference—Herzog—for that limitation. Pet., 28–29.

DM is also technically incorrect. DM contends that Ogier operates “without the use of servers,” but that assertion is flatly contradicted by the very sentence immediately preceding the one DM cites. *Cf.* DD Br., 15 *with* EX1003, [0002] (“Some LANs *employ* one or more network servers”). Because Ogier’s network is expressly compatible with implementations using servers, the Petition properly identifies Herzog’s policy server as the claimed access server when Ogier and Herzog are combined. Pet., 28–29. The Petition further provides detailed reasoning

explaining why a POSITA would have combined Ogier and Herzog, including that Herzog’s policy server would enforce the “network policies” that Ogier contemplates an “authority” applying. Pet. 23–26.

Second, DM argues that Petitioner’s “extensive reliance on expert testimony,” merits denial. DD Br., 16. But that argument fails both factually and legally. DM identifies no instance where Cisco’s expert “fill[s] gaps” in the prior art; indeed, DM identifies no “gap” in the prior art in the first place. As in *Cambridge Indus. USA, Inc. v. Applied Optoelectronics, Inc.*, IPR2025-00433, Paper 12, 2 (Dir. Jun. 27, 2025), where the Director referred the institution decision to the Board because the patent owner “does not identify any portion of the expert testimony that suggests Petitioner is using its expert to *fill gaps* in the prior art,” DM’s assertions fall flat.

DM falsely claims that portions of the Petition rely solely on expert testimony. DD Br., 16–17. But each section of the Petition DM identifies is thoroughly supported with citations to the prior art itself. And Cisco’s expert’s testimony does not “substitute” prior art citation; the declaration itself is replete with evidentiary citations. *See, e.g., iRhythm Technologies, Inc. v. Welch Allyn, Inc.*, IPR2025-00363, Paper 10, 2–3 (Dir. Jun. 6, 2025) (finding that Petitioner’s reliance on expert testimony to explain background knowledge of a POSITA with citations to supporting evidence weighed *against* discretionary denial).

Merely tallying the length of the accompanying declaration and the number

of citations to said declaration is insufficient to indicate excessive reliance on an expert testimony. *Twitch Interactive, Inc. v. Razdog Holdings LLC*, IPR2025-00307, Paper 18, 3 (Dir. May 16, 2025). The length of the declaration—131 pages—simply reflects the regulatory requirement that expert opinions be supported by “underlying facts or data.” 37 C.F.R. § 42.65(a); *see also GD Energy Products, LLC v. Kerr Machine Company*, PGR2025-00031, Paper 12, 2 (Dir. Jun. 25, 2025) (rejecting argument that Petitioner improperly relied on expert testimony because “the testimony is merely complying with regulations requiring disclosure of ‘underlying facts or data’” under 37 C.F.R. § 42.65(a)).

Third, DM attacks the number of references used in the Petition’s combination. DD Br., 17. But the ’243 Patent is directed towards an amalgamation of methods that were well-known at the time. It is well established that “reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of a claimed invention.” MPEP 707.07(f); *see also In re Gorman*, 933 F.2d 982 (Fed. Cir. 1991).

VI. CONCLUSION

For the foregoing reasons, Cisco requests institution of *inter partes* review.

Dated: December 10, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on December 10, 2025, a complete copy of the foregoing **Petitioner's Opposition to Patent Owner's Discretionary Denial Brief and corresponding exhibits** were served on counsel of record for the Patent Owner by filing the documents through P-TACTS and by sending via electronic mail to the following addresses:

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