

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. 8,520,691
Issue Date: August 27, 2013

Title: PERSISTENT MESH FOR ISOLATED MOBILE AND TEMPORAL
NETWORKING

Inter Partes Review No. IPR2026-00008

**PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL OF
INSTITUTION OF PETITION FOR *INTER PARTES* REVIEW OF
UNITED STATES PATENT NO. 8,520,691**

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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	[Reserved]
2011	Judge Gilstrap’s Order Setting Scheduling Conference, <i>Dynamic Mesh Networks, Inc. et al. v. Cisco Systems, Inc.</i> , No. 2:25-cv-00781 (EDTX), Dkt. 35 (October 29, 2025)

2012	Judge Gilstrap’s Patent Model Docket Control Order, available at https://coop.txed.uscourts.gov/?q=judge/district-judge-rodney-gilstrap
2013	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-00781 (EDTX) (November 10, 2025)
2014	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-00783 (EDTX) (November 10, 2025)
2015	MeshDynamics’ Response to Cisco’s Motion to Transfer or Stay Pursuant to First-to-File Rule, <i>Dynamic Mesh Networks, Inc. et al. v. Cisco Systems, Inc.</i> , No. 2:25-cv-00781, Dkt. 34 (EDTX) (October 28, 2025)
2016	Docket Control Order, <i>Dynamic Mesh Networks, Inc. et al. v. Cisco Systems, Inc.</i> , No. 2:25-cv-00781, (EDTX) Dkt. 40 (December 11, 2025)
2017	Email chain between Michael Rhodes, counsel for Cisco, and Elizabeth Bernard, counsel for MeshDynamics, confirming dismissal with prejudice of U.S. Patent No. 11,368,537
2018	Disclaimer of U.S. Patent No. 11,368,537
2019	Stipulation of Voluntary Dismissal as to U.S. Patent No. 11,368,537, <i>Dynamic Mesh Networks, Inc. et al. v. Cisco Systems, Inc.</i> , No. 2:25-cv-00781, (EDTX) Dkt. 45 (December 18, 2025)
2020	Docket, <i>Zophonos Inc. v. Samsung Electronics America, Inc. et al.</i> , Case No. 2-25-cv-00752 (EDTX July 30, 2025)
2021	Docket, <i>Mingoe Consulting LLC v. ASUSTeK Computer, Inc.</i> , Case No. 2-25-cv-00770 (EDTX Aug. 6, 2025)

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, 9-11, 15-16, 18-19, and 35 of U.S. Patent No. 8,520,691 (“’691 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 ’691 patent issued on August 27, 2013, more than *twelve* years ago. In 2009, seeking a business partnership, MeshDynamics met with Cisco and discussed its patented commercial mesh technology, the ’691 patent application, and other challenged patents. MeshDynamics continued to commercialize its patented technology for years, while Cisco simply took its technology after that meeting. In 2022, MeshDynamics sent Cisco a letter providing actual notice of infringement of the ’691 patent. Cisco thus had actual notice of the ’691 patent for a significant period of time. Cisco had every opportunity to seek *inter partes* review but chose *not* to do so until MeshDynamics brought litigation to enforce its rights.

The *Fintiv* factors also weigh in favor of discretionary denial, especially

because trial is set in the Eastern District of Texas *before* the Final Written Decision (“FWD”) in this proceeding and that trial date (despite Cisco’s arguments otherwise) will *not* change.

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 ’691 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”).

- IPR2025-01304 challenging the 7,885,243 patent (“243 patent”).
- IPR2025-01523 challenging the 7,420,952 patent (“952 patent”).
- IPR2026-01569 challenging the 7,894,385 patent (“385 patent”).
- IPR2026-00127 challenging the 8,477,762 patent (“762 patent”).

On November 24, 2025, the Eastern District of Texas set a trial date of March 15, 2027. Ex. 2016. MeshDynamics served infringement contentions and significant document production on November 10. Ex. 2013; Ex. 2014. Fact discovery has begun and Cisco must serve its invalidity contentions and technical document production, including source code, by January 5, 2026. Ex. 2016.

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 several factors such as settled expectations of the parties, the length of time the claims have been in force, strength of the unpatentability challenge, and the extent of the petition’s reliance on expert testimony. Memorandum, 2-3.

When the patent owner raises an argument for discretionary denial due to a co-pending litigation, the Director also weighs the six *Fintiv* factors. *See Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11, 5-6 (PTAB Mar. 20, 2020) (precedential) (“*Fintiv*”).

IV. ARGUMENT

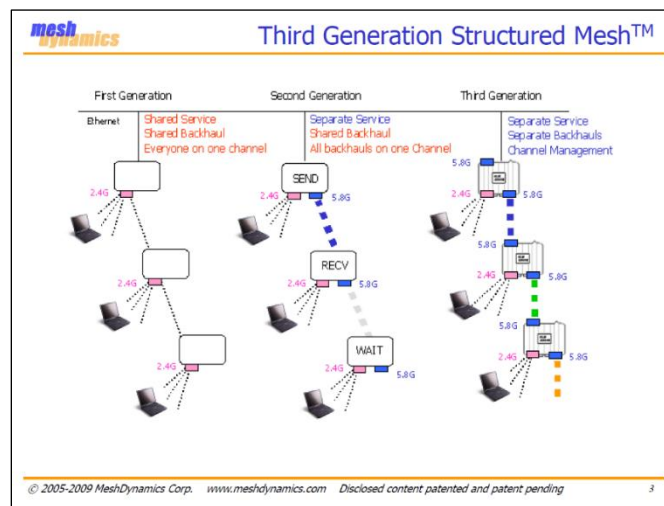
A. Settled Expectations Support Discretionary Denial.

MeshDynamics’ strong settled expectations weigh heavily in favor of discretionary denial because Cisco has long been aware of MeshDynamics’ mesh network technology, patent portfolio, and the ’691 patent—in force now for more than *twelve* years—but failed to seek early review of any patent.

First, MeshDynamics has strong settled expectations because the patent issued over *twelve* 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 NXP USA, Inc. v. Redstone Logics LLC*, IPR2025-00485, Paper 11, 2 (PTAB July 10, 2025) (finding settled

expectations where a patent in force for twelve years); *United Microelectronics Corp. v. Advanced Integrated Circuit Process*, IPR2025-01053, Paper 11, 2-3 (PTAB Oct. 10, 2025) (same); *BOE Tech. Group Co., Ltd. v. Optron Science LLC*, IPR2025-00238, Paper 11, 2-3 (PTAB July 29, 2025) (same).

Second, MeshDynamics provided Cisco with actual notice of its commercial mesh technology and the challenged patent (and others) 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 business collaborations:



Ex. 2003, ¶¶ 3-4; Ex. 2005, 3. MeshDynamics informed Cisco of the '952 patent and then-pending applications for the '762 patent (Application No. 12/352,457), '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:

mesh dynamics 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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mesh dynamics 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, ¶¶ 3-4; Ex. 2005, 4, 6 (annotated).¹ When Cisco did not agree to a business partnership, instead of letting the patented technology sit idle, MeshDynamics continued to commercialize its mesh networks for years. *See* Ex. 2003, ¶ 5.

Third, on June 22, 2022, after discovering Cisco was using its technology, MeshDynamics’ founder, Mr. Francis daCosta, sent Cisco a letter reminding Cisco of MeshDynamics’ mesh network technology and its patent portfolio:

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

Since 2002, MeshDynamics has invented the very ways in which mesh Wi-Fi networks are commercially deployed and implemented nowadays. In fact, some of today’s largest mesh Wi-Fi suppliers (including Cisco) had learned MeshDynamics’ implementation details during their early development efforts. In particular, Cisco’s Bob Friday (Senior Director and CTO) interacted with MeshDynamics during late 2000s and learned a great deal of MeshDynamics’ implementation details and patent filings. **Years later, such implementation details have become integral components in Cisco’s mesh Wi-Fi devices and solutions of today.** However, Cisco has never taken a license.

Ex. 2003, ¶ 6; Ex. 2004 (annotated).² MeshDynamics provided notice of Cisco’s infringement of MeshDynamics’ patents, including the ’691 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). Yet Cisco neither reached out to obtain a license nor did it file any validity challenge until MeshDynamics filed litigation. Despite knowing of the ’691 patent for more than 16 years, and being directed to its infringement in 2022, Cisco did nothing, thereby creating an expectation between the parties regarding the patent’s validity. *See iRhythm Techs., Inc. v. Welch Allyn,*

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

Inc., IPR2025-00363, Paper 10, 3 (PTAB June 6, 2025) (granting discretionary denial due to settled expectations of the parties, stemming from petitioner’s awareness of the challenged patent(s) since at least 2013).

Because Cisco had actual notice of the ’691 patent and MeshDynamics’ commercial 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 July 31, 2025) (finding settled expectations when patent owner sent petitioner a presentation that included a 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 patentee sent a letter in 2022 about 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.”); *iRhythm*, IPR2025-00363, Paper 10, 3.

The facts here are even stronger than *iRhythm* and *Nvidia*. In *iRhythm*, the Director denied institution of five IPR petitions where the petitioner cited just one application in an IDS in 2013 but did not file an IPR until 2024. *Id.* In *Nvidia*, in 2017, the patentee sent petitioner a presentation that included a discussion of its patent portfolio, including the patent challenged. IPR2025-00606, Paper 18, 3. Here,

Cisco was made *expressly* aware of the '691 patent application in 2009 and *again* in 2022, but did not file any validity challenge until months after litigation was filed in 2025. Instead of acting promptly, Cisco waited many years to challenge the '691 patent, only raising a challenge after MeshDynamics relied on the issued claims in its complaint for patent infringement. As in *iRhythm*, this extended delay in challenging the claims strongly favors discretionary denial.

Moreover, Cisco has filed five other petitions for patents asserted in the district court proceedings. *See supra* §II.³ Four of these patents, too, issued *more* than six years ago—the '243 patent issued in 2011, the '952 patent issued in 2008, the '762 patent issued in 2013, and the '385 patent issued in 2011—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. Discretionary denial is appropriate where a patent is asserted in a district court case with other patents having strong settled expectations. *See Cambridge Indus. USA, Inc. v. Applied Optoelects., Inc.*, IPR2025-00433, Paper

³ The parties agreed to dismiss the '537 patent with prejudice from the Texas case. Ex. 2017. To further streamline the proceedings, MeshDynamics thereafter filed a disclaimer of the '537 patent. Ex. 2018. No other patents asserted in the Texas cases are impacted by this dismissal or disclaimer. *See* Ex. 2019.

12, 2-3 (PTAB June 27, 2025) (denying institution based on strong settled expectations as to other proceedings). Here, *all* patents were made known to Cisco in 2022 *and* in 2009 (and in force for more than (at least) *twelve* years).

To the extent Cisco argues that it had “reasonable expectations of non-enforcement,” that argument should be rejected. Cisco cannot argue that its mesh technology is fundamentally different from the claimed inventions or in an unrelated technological space. Even if it could, that argument is overshadowed by Texas having a trial set before FWD and the patent being more than *twelve* years old. *See BOE Tech. Group*, IPR2025-00238, Paper 11, 2-3; *see also Transcend Info. Inc. v. Truesight Commc’n LLC*, IPR2025-00723, Paper 10, 2 (PTAB Aug. 4, 2025). And Cisco decided to take MeshDynamics’ technology instead of a license and cannot claim any expectation of non-enforcement as MeshDynamics gave *actual notice* of infringement years before it filed its district court litigation. Ex. 2003; Ex. 2004.

To the extent that Petitioner argues that it has settled expectations in view of *Ford Motor Co. v. Autoconnect Holdings LLC*, it does not. *See* IPR2025-01342, Paper 11, 2-3 (PTAB Dec. 4, 2025). That decision involved a specific customer/supplier relationship that is not present here. *See id.*, 3 (“It is eminently reasonable for a customer to expect its supplier, especially one that previously owned patents, to provide it with products that have all necessary licenses.”). As explained above, MeshDynamics approached Cisco in 2009 to form a business partnership, but

Cisco refused at that time and instead just took MeshDynamics' technology. When it realized Cisco had done so, MeshDynamics provided *actual notice* of infringement. Petitioner has no settled expectations of non-enforcement.

Cisco had every opportunity to seek an early review of the '691 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 '691 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" and is speculative.

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. *Seven* 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 routinely deny stay motions pending IPR proceedings involving less than 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, 8-9 (PTAB Apr. 25, 2025) (agreeing stay less likely when parallel proceedings involve patents not the subject of a petition).

District courts also regularly deny stay motions 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 courts (including Judge Gilstrap’s in the Texas cases) deny a stay when the trial date is scheduled before the FWD, like here. *See Croga Innovations Ltd. v. Cisco Sys.*, 2025 U.S. Dist. LEXIS 71092, at *7-8 (E.D. Tex. Apr. 14, 2025).⁴ The last of the five institution decisions will be in May 2026—less than a year before the

⁴ Any claim by Cisco that a likelihood of stay in the Texas case is “even greater” (*see* IPR2025-01303, Paper No. 9, 12) grossly mischaracterizes the record. MeshDynamics *never* acknowledged that any stay pending IPR is appropriate. Cisco has *not* sought a stay pending any Patent Office proceeding. Cisco moved to transfer or stay the Texas cases *in favor of* the pending California case. MeshDynamics argued that the cases should go forward in Texas, but at most should be stayed pending *the outcome of the California motion to dismiss* in January. Ex. 2015, 15.

Texas trial (and likely California). Even if all are granted, courts are likely to deny any stay motion as the parties will be deep into fact discovery and claim construction. *See, e.g., id.*, at *8; Ex. 2012; Ex. 2016.

Cisco may cherry-pick cases, but, unlike here, those cases involved: no pre-trial or trial deadlines set (*see Finjan, Inc. v. Fireeye, Inc.*, 2014 U.S. Dist. LEXIS 75456, at *4-5 (N.D. Cal. May 30, 2014)); all patents already under review and no trial date set (*see PersonalWeb Techs., LLC v. Apple Inc.*, 69 F. Supp. 3d 1022, 1026-27 (N.D. Cal. 2014)); plaintiff engaged in dilatory actions and the FWD was before trial (*Vill. Green Techs., LLC v. Samsung Elecs. Co.*, 2023 U.S. Dist. LEXIS 12794, at *9 (E.D. Tex. Jan. 25, 2023)); and a single patent already instituted (*Cobblestone Wireless, LLC v. Cisco Sys.*, 2024 U.S. Dist. LEXIS 222176, at *5 (E.D. Tex. Dec. 9, 2024)). *None* of the facts underlying any of these cases are applicable here.

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).

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

The Board is projected to issue a FWD by April 20, 2027. The trial date in the Eastern District of Texas is scheduled for March 15, 2027. Ex.2016. 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 the district court in the Eastern District of Texas will go to trial (and likely California) before the FWD will issue.

Any attempt by Cisco to argue Texas time-to-trial statistics give a later trial date should be rejected. MeshDynamics *specifically requested* Judge Gilstrap provide an early trial date, and Judge Gilstrap granted that request. *See* Ex. 2007 (requesting to maintain original February 26, 2027 trial date).⁵ The Docket Control Order clearly indicates that the trial date “cannot be changed without an acceptable showing of good cause.” Ex. 2016. The trial date will *not* change. Factor two weighs in favor of discretionary denial. *See Nvidia*, IPR2025-00606, Paper 18, 2 (granting discretionary denial when FWD after trial date).

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.

⁵ Judge Gilstrap gave cases filed *before* MeshDynamics’ second Texas cases a trial date *months after* MeshDynamics’ trial date, further demonstrating that Judge Gilstrap granted MeshDynamics’ request for an early trial date and the trial date will not change. *See* Ex. 2020 (Dkt. 1, 30); Ex. 2021 (Dkt. 1, 13).

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 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 extensive infringement contentions and significant document production (and source code) in Texas. Ex. 2013; Ex. 2014. By the time the institution decision arrives, parties will have already invested considerable resources into the district court proceedings. *See* Ex. 2011; Ex. 2012. This includes completion of significant document production (including source code), fact discovery and contentions. Ex. 2016.

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 span more than **700 pages** of detailed claim charts. Ex. 2013; Ex. 2014. MeshDynamics' document production is already more than 50,000 pages with the remainder to come this week, far from limited. The investment in developing the contentions and document production 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).

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. 1021. 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).⁶ Cisco’s stipulation 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

⁶ Available at https://www.uspto.gov/sites/default/files/documents/guidance_memo_on_interim_procedure_rescission_20250324.pdf.

substantial investment in the district court proceeding....”).

Further, the stipulation does not prevent Petitioner from subsequently filing requests for *ex parte* reexamination. 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 itself), 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.”).

To the extent that Cisco argues that the asserted patents cover a large number of diverse patents, the patents are *all* related to mesh networking and collectively span only a few families. Moreover, in instances where the Board held that the number and scope of patents asserted in the district court weighed against discretionary denial, the petitioner filed stipulations that alleviated the concern of inconsistent outcomes or significant duplication of efforts, most of the patents were issued more recently, there was no trial date before FWD, and/or the patents had not been commercialized. *See, e.g., Samsung v. Wilus Institute*, IPR2025-00933, Paper 11, 3 (PTAB Oct. 10, 2025). None of those facts are applicable in this case, and factor four weighs in favor of discretionary denial.

5. Factor 5 weighs in favor of denial as the district court litigation and the Petition involves 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 (PTAB Apr. 8, 2025) (factor weighs in favor of denial where all parties are involved in the parallel district court litigations). Denial is also favored because trial will precede the FWD. *See Nikon v. Optimum Imaging*, IPR2024-01374, Paper 19, 23-24 (PTAB Apr. 29, 2025).

And there are **multiple** parallel district court litigations regarding the '691 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 (emphasis added).

Cisco may argue that there is a risk of conflicting validity results; however, MeshDynamics has only brought an action against Cisco and there is a trial date. *Cf. Harbor Freight Tools USA Inc., Generac Power Sys., Inc. & MWE Investments, LLC v. Champion Power Equip., Inc.*, IPR2025-00805, Paper 20, 2 (PTAB Sep. 19, 2025)

(patent owner sued multiple defendants in multiple districts with no trial date). 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 '691 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' strong settled expectations and Cisco's failure to timely file a validity challenge after receiving actual notice of the patent in 2009.

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

While MeshDynamics will provide a comprehensive analysis in its forthcoming Preliminary Response, the strength of the unpatentability challenge is weak. For the independent claims, the Petition relies on a *three*-way combination. Pet., 11. But even all three references combined do not disclose every limitation of the independent claims. For example, in order to more closely align the prior art with the challenged claims, Petitioner modifies Castagnoli's (Ex. 1005) Figure 1 (the foundation of its invalidity analyses) by deleting half of Figure 1's mesh network. Petitioner then relies on the modified Figure 1 to argue invalidity. By doing so, Petitioner ignores the express teachings of the prior art. For this and other reasons that will be explained in more detail in Patent Owner's forthcoming preliminary response, the Petition fails to demonstrate a reasonable likelihood that any

challenged claim is unpatentable.

Petitioner's excessive reliance on a voluminous expert declaration as its sole evidentiary support for claim limitations further strengthens the case for denial. Memorandum, 2; *see also* FAQs for Interim Processes for PTAB Workload Management, FAQ No. 22. Cisco's expert declaration is *119* pages long. *See* Ex. 1003. Cisco cites to the expert declaration at least *142* times. The Petition relies extensively on the expert declaration to fill in gaps and support all of its conclusions of obviousness. *See, e.g., compare* Pet. 23-24 *with* Ex. 1003, ¶¶ 60-62. 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: December 22, 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: December 22, 2025

Respectfully Submitted,

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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. 8,520,691 was served electronically via email on December 22, 2025, on the following counsel of record for Petitioner:

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