

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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FORTINET, INC.,

Petitioner,

v.

NETSKOPE, INC.,

Patent Owner.

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U.S. Patent No. 8,397,282

Case No.: IPR2026-00041

**NETSKOPE, INC.'S BRIEF FOR DISCRETIONARY DENIAL**

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## EXHIBIT LIST

<b>No.</b>	<b>Exhibit Description</b>
<b>Ex. 2001</b>	Scheduling Order for <i>Netskope, Inc. v. Fortinet, Inc.</i> , Case No. 4:25-cv-02360-HSG, pending in the United States District Court for the Northern District of California.
<b>Ex. 2002</b>	Fortinet Inc.’s Preliminary Invalidity Contentions in <i>Netskope, Inc. v. Fortinet, Inc.</i> , Case No. 4:25-cv-02360-HSG, pending in the United States District Court for the Northern District of California.
<b>Ex. 2003</b>	Exhibit A-1 of Fortinet Inc.’s Preliminary Invalidity Contentions in <i>Netskope, Inc. v. Fortinet, Inc.</i> , Case No. 4:25-cv-02360-HSG, pending in the United States District Court for the Northern District of California.
<b>Ex. 2004</b>	Plot from Docket Navigator – Profile of Judge Haywood S. Gilliam Motion Success To Stay Pending IPR
<b>Ex. 2005</b>	Plots from Docket Navigator – Profile of Judge Haywood S. Gilliam Time to Milestones (annotated)
<b>Ex. 2006</b>	Website blog on Fortinet.com, titled: “Fortinet is Leading Innovation in the Security Industry with More Than 1,500 Patents” <a href="https://www.fortinet.com/blog/business-and-technology/fortinet-is-the-security-innovation-leader-more-than-1500-patents-either-awarded-or-pending">https://www.fortinet.com/blog/business-and-technology/fortinet-is-the-security-innovation-leader-more-than-1500-patents-either-awarded-or-pending</a>
<b>Ex. 2007</b>	Website article on Wikipedia.org, titled: “Fortinet” <a href="https://en.wikipedia.org/wiki/Fortinet">https://en.wikipedia.org/wiki/Fortinet</a>
<b>Ex. 2008</b>	U.S. Patent No. 9,894,100
<b>Ex. 2009</b>	File History of U.S. Patent Application No. 14/566,403

## I. Introduction

Under the October 17 *Open Letter* and *Memorandum* by the Director of the United States Patent and Trademark Office (the “October Memorandum”), the decision to institute an *inter partes* review is reclaimed by the Director who will decide, based on two briefings, whether (i) discretionary factors or (ii) merits and other non-discretionary issues warrant denial of the petition. Regarding the discretionary factors, the October Memorandum explained that “[t]he Office has issued more than 580 decisions under the Interim Processes, providing substantial guidance on how the Director will handle discretionary considerations.” October Memorandum at 5. Pursuant to the October Memorandum, Patent Owner, Netskope, Inc., requests that the Director discretionarily deny Petitioner’s, Fortinet Inc.’s, Petition for *Inter Partes* Review (“IPR”) of U.S. Patent No. 8,397,282 (the “’282 patent”) for the reasons below.

Discretionary denial is warranted here for several reasons. First, the ’282 patent was issued on March 12, 2013 and has been *in force for over twelve years*, creating strong settled expectations for Patent Owner. The Director’s office has made clear that “the longer the patent has been in force, the more settled expectations should be.” *Dabico Airport Sols. Inc. v. AXA Power ApS*, IPR2025-00408, Paper 21 at 2 (Director Decision, June 18, 2025).

Discretionary denial is also warranted because of Petitioner's inconsistent claim construction positions in the district court and IPR proceedings. While Petitioner argues that multiple claim limitations are indefinite in its district court preliminary invalidity contentions, Petitioner makes no assertions about indefiniteness of claim limitations in the instant IPR and alleges that all claim terms are taught or suggested by the Petition's references. These types of inconsistent positions have been clearly called out by the Director's recent presidential and informative decisions, and warrant discretionary denial of the Petition.

Furthermore, institution would waste the Patent Office's valuable resources in a duplicative effort with the district court. The '282 patent's validity is being adjudicated in a parallel proceeding, *Netskope, Inc. v. Fortinet, Inc.*, Case No. 4-25-cv-02360 (N.D.Cal., Mar. 7, 2025) (the "District Court Litigation"), which will require the district court to evaluate many of the same validity questions raised in the Petition, regardless of the Director's decision on whether to institute an IPR trial or not. Notably, the District Court Litigation is already moving at a steady pace, with preliminary invalidity contentions having been served back in August 2025 and the *Markman* hearing on claim construction to be held in less than two months. Petitioner wants it both ways, as no *Sotera* stipulation has been filed in this IPR matter.

The Petition is also substantively flawed and lacking in merit. Grounds 1-2 are amalgamated in a way that fails to distinguish between § 102 and § 103 challenges, and Petitioner impermissibly relies on the knowledge of a person of ordinary skill in the art (“POSITA”) for limitations that the Petition’s references fall short of disclosing or teaching.

Thus, the totality of circumstances strongly favors discretionary denial.

## **II. Strong Settled Expectations Favor Discretionary Denial**

Many prior decisions by the Office, in compliance with the Interim Process guidelines, have established that “[s]ettled expectations of the parties, such as the length of time the claims have been in force,” is a relevant factor when determining whether to deny institution. *See* Memorandum re: Interim Processes for PTAB Workload Management (Mar. 26, 2025) at 2. Here, this factor is not only relevant but compelling.

### **A. Patent Owner’s expectations of the ’282 patent are clearly well settled**

The ’282 patent was issued on March 12, 2013, which, by the time of Director’s review, will be nearly 13 years old. The Office has consistently denied IPRs challenging such longstanding patents, making the age of the ’282 patent reason enough to warrant discretionary denial. *See Google LLC v. Cellular South*,

*Inc.*, IPR2025-00875, Paper 10 at 2-3 (denying institution for a 7-year-old patent); *see also Amazon.com, Inc. et al. v. Soundclear Technologies LLC*, IPR2025-01067, Paper 15 at 2 (denying institution for a 10-year-old patent); *see also Intel Corp. et al. v. General Video, LLC*, IPR2025-01036, Paper 14 at 3 (denying institution for a 10-year-old patent); *see also TankLogix, LLC v. SitePro, Inc.*, IPR2025-00648, Paper 10 at 2-3 (denying institution for 11-year-old patent); *see also Microsoft Corp. v. TS-Optics Corp.*, IPR2025-00767, Paper 13 at 2 (denying institution for a 17-year-old patent despite having previously expired due to nonpayment of maintenance fee by prior owner and subsequent revival by the present patent owner TS-Optics Corporation<sup>1</sup>).

**B. Petitioner was aware of the '282 patent for at least eight years**

Discretionary denial due to a patent owner's settled expectations does not require a petitioner's prior knowledge or awareness of the patent. "Actual notice of a patent or of possible infringement is not necessary to create settled expectations." *Dabico*, Paper 21 at 3. However, in this case, Petitioner, Fortinet Inc., was aware of the '282 patent since at least 2017, when the Office discussed the contents of the '282 patent during the examination of one of Fortinet's patents.

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<sup>1</sup> *Microsoft Corp. v. TS-Optics Corp.*, IPR2025-00767, Paper 13 at 2-3.

Notably, on December 30, 2014, Fortinet filed U.S. Patent Application No. 14/566,403, titled "Dynamically Optimized Security Policy Management," which was issued on January 24, 2018. Ex. 2008 at front page. During prosecution of Fortinet's application, the examiner in an Office Action, dated May 30, 2017, duly noted that the '282 patent "is considered pertinent to applicant's disclosure." Ex. 2009 at 107-09. In fact, the '282 patent appears prominently on the face of Fortinet's issued patent as the first reference listed under "References Cited." Ex. 2008 at front page.

Like in prior decisions, the Director should discretionarily deny this Petition at least because Petitioner has long been aware of the '282 patent. *See Qualcomm Incorporated v. Collabo Innovations, Inc.*, IPR2025-01015, paper 10 at 2 (explaining that petitioner's inclusion of the challenged patent's publication in an IDS filed during prosecution of Petitioner's own application established petitioner's knowledge of the 14-year-old patent, warranting denial of institution); *see also iRhythm, Inc. v. Welch Allyn, Inc.*, IPR2025-00374, Paper 13 at 3 (institution denied because petitioner was aware of the challenged patent having been in force since 2012, and having cited the then-pending application that issued as the challenged patent in an IDS).

Here, Petitioner was aware of the '282 patent since 2017 when the examiner not only informed Fortinet of the presence of this patent filing but also alerted

Fortinet of its pertinence. Further, the Petitioner is a sophisticated actor with more than 1500 patents in network communications and security (Ex. 2006 at 1), having acquired more than a dozen companies and their IP in the relevant technology space since 2009 (Ex. 2007 at 2-3), and likely aware of patent activity by its competitors in that technology area, all of which supports discretionary denial of the Petition.

### **III. Petitioner's Inconsistent Claim Construction Positions Favor Denial**

The Petition contends that three claim terms are to be construed under the plain and ordinary meaning: (1) “wherein the set of firewall rules is dynamically self-configurable during runtime”; (2) “chains of rules forming various paths through a hierarchical structure”; and (3) “defined places for dynamically updating the set of firewall rules during runtime.” Petition at 17-19. The Petition then provides Petitioner's proposed constructions for each of the above three terms based on support from the detailed description of the '282 patent. *Id.*

In contrast, Fortinet's preliminary invalidity contentions in the district court identify fifteen claim terms as allegedly indefinite; nine of those terms (highlighted in red boxes) do not even contain the claim terms Petitioner now insists require construction. Ex. 2002 at 64-66.

**Excerpts from Petitioner's District Court Preliminary Invalidity Contentions**

Patent	Claim(s)	Indefinite Term and/or Phrase
'282	1	"accepting or denying the packet based on the set of firewall rules, wherein the set of firewall rules is dynamically self-configurable during runtime without operator interaction, wherein the set of firewall rules comprises a plurality of chains of rules forming various paths through a hierarchical structure, and wherein the hierarchical structure comprises defined places for dynamically updating the set of firewall rules during runtime"
'282	2	"wherein dynamically updating the set of firewall rules during runtime further comprises, during runtime, adding a rule to the set of firewall rules, deleting a rule from the set of firewall rules, or modifying a rule in the set of firewall rules without operator interaction"
'282	3	"wherein associating the set of firewall rules with the at least one node further comprises associating a first subset of the set of firewall rules with the first node"
'282	4	"wherein the at least one node further comprises at least two nodes including a second node, further comprising associating a second subset of the set of firewall rules with the second node"

**Excerpts from Petitioner's District Court Preliminary Invalidity Contentions (cont.)**

Patent	Claim(s)	Indefinite Term and/or Phrase
'282	5	"wherein the first subset of firewall rules is the same as or at least partially different from the second subset of firewall rules"
'282	6, 17, 30	"wherein [one of /either] the first subset of firewall rules or second subset of firewall rules equals the entire set of firewall rules"
'282	12	"a first computer readable storage medium storing a set of firewall rules, wherein the set of firewall rules is dynamically self-configurable during runtime without operator interaction, wherein the set of firewall rules comprises a plurality of chains of rules forming various paths through a hierarchical structure, and wherein the hierarchical structure comprises defined places for dynamically updating the set of firewall rules during runtime without operator interaction"
'282	12	"when a packet is received at one of the two or more network interfaces associated with the at least one node, accept or deny the packet based on a review of the set of firewall rules"
'282	14, 27	"wherein the [data controlling computer program code /computer instructions] [is/are] further executable to: associate a first subset of the set of firewall rules with the first node; and if the packet is received at the first node, apply the first subset of the set of firewall rules associated with the first node"
'282	15, 28	"wherein the at least one node further comprises at least two nodes including a second node, and wherein the data controlling computer program code is further executable to: associate a second subset of the set of firewall rules with the second node; and if the packet is received at the second node, apply the second subset of the set of firewall rules associated with the second node"
'282	16, 29	"wherein the first subset of the set of firewall rules is the same as or different from the second subset of the set of firewall rules"
'282	22, 35	"wherein each of the plurality of network interfaces is physically connected to every other network interface of the plurality of network interfaces and wherein physical connection between the plurality of network interfaces comprises indirect physical connection between the plurality of network interfaces"
'282	23	"wherein the data controlling computer program code is further executable to dynamically update the set of firewall rules during runtime without operator interaction"
'282	24	"wherein the data controlling computer program code is further executable to dynamically update the set of firewall rules during runtime without operator interaction."
'282	24	"accept or deny the packet based on a review of the set of firewall rules, wherein the set of firewall rules is dynamically self-configurable during runtime without operator interaction"

Petitioner's district court position states:

[v]arious Asserted Claims identified below do not comply with the requirements pre-AIA 35 U.S.C. § 112, ¶ 2, for failing to particularly point out and distinctly claim "the subject matter which the applicant regards as his invention" for the following reasons.... The following chart identifies the claims in which the identified terms and phrases explicitly appear, although those identified terms and phrases are also incorporated into additional dependent Asserted Claims.

*Id.* at 60.

The Petitioner, however, fails to mention any such assertions of indefiniteness for any claim terms or limitations in its IPR filing and instead explains how the various prior art references teach or suggest all of the terms that Petitioner deemed indefinite in district court. *See* Petition at 27-51.

Petitioner's inconsistent claim constructions are yet another reason for denying the Petition. The Office has made its position regarding this issue clear in both *Revvo Technologies v. Cerebrum*, IPR2025-00632, Paper 20 (Precedential) and *Tesla v. Intellectual Ventures II LLC*, Paper 18 (Informative). Similar to *Revvo Technologies* and *Tesla*, Petitioner, Fortinet Inc., has decided to pursue differing claim construction positions without any explanations whatsoever in the Petition about the reasons for such divergent constructions. Therefore, the Petition should be discretionarily denied.

#### **IV. The *Fintiv* Factors Favor Denial**

As established in the precedential case of *Apple v. Fintiv*, the Director considers six factors when exercising discretion whether to deny an *inter partes* review in view of a parallel proceeding. *Apple v. Fintiv*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential). Those factors are: (1) whether the district 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 projected statutory deadline for a final written decision; (3) investment in the parallel proceeding by the district 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 exercise of discretion, including the merits. *Id.*

The majority of these *Fintiv* factors, i.e., factors 3-6, weigh in favor of the Director denying institution of this IPR in view of the ongoing District Court Litigation.

##### **A. *Fintiv* Factors 1-2**

Factors 1 and 2 are either neutral or favor Petitioner. The district court case has been assigned to District Court Judge, Haywood S. Gilliam, who has demonstrated propensity to stay the litigation pending IPR institution. *See Ex. 2004*. Here, Petitioner's motion to stay the litigation is opposed by Patent Owner, with a

hearing scheduled on this issue, *inter alia*, on January 8, 2026. Ex. 2001 at 2. Yet, in prior decisions, even for IPR cases in which the parallel district court case has already been stayed, the Office has denied institution due to Patent Owner's strong settled expectations, as is the case here for the '282 patent. *See again Amazon*, IPR2025-01067, Paper 15 at 2-3 (discretionarily denying institution based on holistic assessment of all arguments and evidence, including a stay in parallel district court proceeding and the patent owner's "strong settled expectations" of three patents in force for ten, eight, and ten years).

Also, it is possible—albeit not certain—that the district court trial would begin after a final written decision (“FWD”) by the PTAB if an IPR trial was instituted. *See Ex. 2005*, showing Judge Gilliam's average time to trial of 2 years, 10.6 months. Regardless of that potential outcome, the Director's office has shown this factor is not weighted as heavily when there are strong settled expectations. *See again TS-Optics*, IPR2025-00767, Paper 13 at 2 (where Director discretionarily denied IPR based primarily on “strong settled expectations” despite the petitioner's arguments on the anticipated trial date in the parallel district court proceeding being “nearly 8-10 months after the anticipated final written decision” (*id.*, Paper 12 at 28-29)).

**B. *Fintiv* Factors 3-5**

Factors 3-5 strongly favor Patent Owner because the two parallel proceedings deal with the same parties, substantial investment by both, and multiple overlapping issues.

The parties are the same (factor 5). Patent Owner is the plaintiff that brought an action for patent infringement of nine patents, including the '282 patent, in the district court against the defendant, Petitioner.

There has already been significant investment by the parties in the parallel district court proceeding to date with significantly more investment by the time of the institution decision in April 2026 (factor 3). For instance, both parties have served their initial claim constructions on the opposing party months ago, and the *Markman* hearing will be concluded by February 6, 2026. *See* Ex. 2001 at 2. Moreover, Petitioner already challenged the validity of all claims of the '282 patent in the District Court Litigation (see e.g., Ex. 2003) and served their preliminary invalidity contentions on Patent Owner on August 15, 2025 (Ex. 2002 at 2, 80), nearly two months before filing the Petition for *inter partes* review at the PTAB on October 10, 2025. Critically, Petitioner did not file any stipulations per *Sand Revolution* or *Sotera* for this IPR matter and continues the pursuit of the same and additional invalidity challenges in the District Court Litigation. Therefore, the institution of this IPR proceeding would result in duplicative adjudication of the

same issues, risks divergent results, and waste of judicial resources and the parties' investments in both the district court and at the PTAB.

With respect to factor 4, the Petition's invalidity grounds substantially overlap with Petitioner's preliminary invalidity contentions served on Patent Owner. Petition at 3; Ex. 2002 at 36-37; *see also* Ex. 2003. In the District Court Litigation, Petitioner contends that the same claims challenged in the IPR (Claims 1-35) are invalid based on the same grounds in the Petition. *Compare* Petition at 4 (table listing "Grounds of Rejection") *with* Exhibit G-2 claim chart (Ex. 2003 at 1)<sup>2</sup> of Petitioner's preliminary invalidity contentions.

Because Petitioner is asserting substantially the same grounds (anticipation and obviousness based on Coss against all claims) in both proceedings, Petitioner

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<sup>2</sup> Petitioner's Exhibit G-2 asserts on pg. 1: "[a]s illustrated in the chart below, Coss anticipates the asserted claims of the '710 [sic] Patent. To the extent Coss is found not to expressly disclose certain limitations in the asserted claims, such limitations are inherent. To the extent the Coss is found not to anticipate any asserted claims or claim elements of the '710 [sic] Patent, the reference nevertheless renders those claims or claim elements obvious under 35 U.S.C. § 103, either alone or in combination with other art identified in the cover pleading or herein."

has created redundancy that risk divergent results and amount to a waste of resources—avoidable through discretionary denial.

**C. *Fintiv* Factor 6**

Finally, for factor 6, there are other circumstances that should impact the Director's exercise of discretion to deny the IPR. The Petition's three invalidity grounds lack merit even under a cursory review, and close examination reveals significant flaws that cause each ground to fail. While those shortcomings will be described in detail in the forthcoming Patent Owner Preliminary Response ("POPR"), the following provides a few highlights that illustrate significant deficiencies of the Petition.

**1. The Grounds fail to delineate between § 102 and § 103 arguments or properly assert either category.**

Grounds 1 and 2 of the Petition assert unpatentability under the anticipation standard of § 102 and the obviousness standard of § 103, respectively, but are presented together in a manner that fails to fully or clearly articulate either theory, particularly for at least Claims 1 and 5 of the '282 patent. *See* Petition at 10 ("A. Grounds 1 and 2: Claims 1-35 Are Anticipated by And At Minimum Obvious Over Coss"). Due to this lack of clarity, the grounds of the Petition are substantively

deficient and noncompliant with 35 U.S.C. § 312(a)(3),<sup>3</sup> thereby favoring discretionary denial.

First, it is unclear whether the Petition intends to raise both § 102 and § 103 arguments. Within this combined hetero-ground, the Petition impermissibly conflates anticipation and obviousness, shifting theories across the same parsed claim elements without coherent analysis. The Petition’s treatment of Claim limitation [1A] is a textbook attempt to obscure Coss’s fatal gap by blurring anticipation and obviousness into a single, unsupported narrative. It claims a POSITA “would have understood and at minimum found obvious” that applying access rules to packets “based on the domains necessarily requires” associating distinct rule sets with the corresponding domains. Petition at 18. That is not anticipation; it is conjecture masquerading as obviousness, and it fails to show Coss discloses—let alone compels—the claimed rule-to-domain association. The Petition

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<sup>3</sup> 35 U.S. Code § 312(a) Requirements of Petition.—A petition filed under section 311 *may be considered only if*— . . . (3) the petition identifies, in writing *and with particularity*, each claim challenged, *the grounds on which the challenge to each claim is based*, and the evidence that supports the grounds for the challenge to each claim, . . . . (emphasis added)

cannot replace absent disclosure with a POSITA gloss or ipse dixit about what is “necessary.”

Claim 5 is yet another example of Petitioner's overreach. Challenging Claim 5 on the basis of both anticipation and obviousness (Petition at 3), Petitioner provides no element-by-element mapping to Coss and cites no objective disclosure in Coss; instead, it rests entirely on what a POSITA supposedly “would have understood” and provides nothing more. Petition at 30.

Petitioner cannot have it both ways. If it proceeds on anticipation, it must identify where Coss discloses **each and every element and limitation** of the challenged claim. It does not. That failure is dispositive under § 102, and the anticipation theory collapses at the threshold. If instead Petitioner proceeds on obviousness, it must do far more than gesture at the prior art. It must demonstrate a clear teaching, suggestion, or motivation in the art for every claimed feature and supply a coherent rationale explaining why a POSITA would have combined those teachings to arrive at the claimed invention with a reasonable expectation of success. Petitioner does neither. Its obviousness case is devoid of a feature-by-feature showing and untethered to the factors articulated in *Graham v. John Deere Co.*, 383 U.S. 1 (1966) and reiterated in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398 (2007). The court has “repeatedly emphasized that an obviousness inquiry requires examination of all four *Graham* factors and that an obviousness determination can

be made only after consideration of each factor.” *Nike, Inc. v. Adidas AG*, 812 F.3d 1326, 1335 (Fed. Cir. 2016). Here, for every claim element of the challenged claims, the Petition lacks any articulation of the second *Graham* factor (ascertaining the differences between the claimed invention and the prior art). While arguing such differences risks undercutting one’s anticipation arguments, Petitioner in this case chose to avoid taking the risk at the expense of ignoring the legal standard of obviousness.

The improper ground not only requires Patent Owner to respond to multiple incomplete arguments but also would impel the Board, if the Petition is instituted, to analyze multiple unarticulated invalidity grounds under multiple legal standards. Furthermore, gaps in Petitioner’s claim mapping (discussed briefly below) raise doubts that any § 102 argument was made in good faith. Yet Patent Owner is forced to respond to both anticipation and obviousness arguments within the limited word count requirements, despite neither theory being sufficiently explained for Patent Owner to appropriately rebut. Petitioner has improperly shifted the burden to the Board and to Patent Owner, which warrants dismissal of the Petition based on discretionary considerations.

**2. Petitioner improperly relies on POSITA's knowledge instead of disclosure or teaching in the prior art reference.**

On July 31, 2025, the Director's office issued a memorandum (the "July Memorandum") putting all practitioners on notice that the Office "will enforce and no longer waive the requirement of 37 C.F.R. § 42.104(b)(4) (Rule 104(b)(4)) that a petition for inter partes review (IPR) "must specify where each element of the claim is found in the prior art patents or printed publications relied upon"" and prohibiting reliance on "applicant admitted prior art (AAPA), expert testimony, common sense, and other evidence that is not "prior art consisting of patents or printed publications" ... to supply a missing claim limitation." July Memorandum at 1. The July Memorandum makes clear that reliance on a "general knowledge," such as by a POSITA, to fill in missing claim limitations from prior art reference(s) was impermissible and is limited to supporting motivation to combine and demonstrating the knowledge of a POSITA. *Id.* at 1-2. This change applies to any petition filed on or after September 1, 2025 (*id.* at 3) and, thus, applies to the instant Petition.

Petitioner disregarded the Director's instructions. The Petition impermissibly relies on the knowledge of a POSITA to substitute for missing '282 patent claim limitations in the cited references, namely Coss. Particularly, the Petition fails to show that Coss discloses, teaches, or suggests multiple claim elements and limitations.

In Claim limitation [1C], Petitioner cherry-picks language from Coss about an IP packet “received by the firewall” that “supports multiple domains,” and then impermissibly maps “firewall” to “domain” to meet the claim’s requirement of “receiving a packet at a first node of the at least one node.” Confronted with the obvious disconnect between a firewall and a domain, Petitioner attempts to paper over the gap with a generic POSITA gloss—asserting that a POSITA “would have understood” this “necessarily requires receiving the packet at the domain.” Petition at 18–19 (citing Ex. 1003 ¶ 74). But the cited declaration completely omits any discussion on such POSITA “understanding,” and offers no citation to Coss—or any other evidence—supporting this argument. *Id.*

Returning to Claim 5, Petitioner’s arguments rest solely on POSITA’s knowledge by arguing that “POSITA would have understood that two sets of rules are necessarily either the same, or at least partially (if not completely) different” and based on that unsupported logic, concludes that Coss’s first and second sets of firewall rules are “at least partially different.” Petition at 30. The Petition provides no disclosure in Coss, no contemporaneous technical teaching, and no expert analysis tethered to the record demonstrating any actual differences between the purported “first” and “second” rule sets. The expert’s declaration is near-verbatim recitation of the Petition, offering no independent analysis or substantive expertise. *Compare* Petition at 30, *with* Ex. 1003, ¶¶84-85.

The July Memorandum was clear that failures like this cannot be covered up by reliance on a POSITA knowledge. Petitioner's disregard for Rule 104(b)(4) provides a compelling reason for the Director to exercise discretion by denying the Petition.

## **V. Conclusion**

Patent Owner's settled expectations alone warrant discretionary denial of instituting *inter partes* review of the '282 patent. Yet, this taken together with the *Fintiv* factors and other considerations discussed herein further weigh in favor of the Director exercising discretion to deny this IPR.

Dated: December 22, 2025

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of December, 2025, true and correct copies of the foregoing NETSKOPE, INC.'S BRIEF FOR DISCRETIONARY DENIAL and EXHIBITS were served via electronic mail on Petitioner's counsel at the following address:

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Dated: December 22, 2025

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