

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
Petitioner

v.

SANDPIPER CDN, LLC,
Patent Owner

Case IPR2026-00095
U.S. Patent No. 8,478,903

PATENT OWNER'S BRIEF ON DISCRETIONARY DENIAL

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Patent Trial and Appeal Board
U.S. Patent & Trademark Office
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PATENT OWNER'S EXHIBIT LIST

Exhibit No.	Description
2001	Infringement Contentions, <i>Sandpiper CDN, LLC v. Microsoft Corp.</i> , Case No. 2:25-cv-00664 (E.D. Tex. Sept. 16, 2025)
2002	Sotera Stipulation, <i>Sandpiper CDN, LLC v. Microsoft Corp.</i> , Case No. 2:25-cv-00664 (E.D. Tex. Sept. 16, 2025)
2003	FAQs for Interim Processes for PTAB Workload Management, accessed at https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management
2004	Interim Processes for PTAB Workload Management Memorandum (March 26, 2025)

I. INTRODUCTION

Inter partes review of U.S. Patent No. 8,478,903 (“the ’903 patent”) would be a waste of the Board’s limited resources. First, trial in the parallel litigation is scheduled for one month *before* the projected Final Written Decision date for this Petition. *See Sandpiper CDN, LLC v. Microsoft Corp.*, No. 2:25-cv-00664 (E.D. Tex. Jun. 26, 2025). The ’903 patent is also asserted against Comcast—who is also litigating validity—with trial set for nearly a *year* before the Final Written Decision date for this Petition. *See Sandpiper CDN, LLC v. Comcast Cable Communications, LLC d/b/a Xfinity*, No. 2:24-cv-00886-JRG-RSP Dkt. 31 (E.D. Tex. Feb. 6, 2025). The *Fintiv* factors strongly favor denial. Petitioner also relies entirely on an expert declaration from a different IPR filed by Google, without any indication that it has actually retained this expert or could produce him for cross-examination in this proceeding. The Board has made clear that such a deficiency precludes institution.

Moreover, the ’903 patent has been in force for 20 years and is expired. The Office has clearly and repeatedly stated that reviewing expired patents is not an efficient use of Board resources. Indeed, the Office already expended substantial resources on this patent during its initial prosecution, which was thorough and identified the same novel features of the invention that distinguish the prior art cited in the Petition. The merits therefore support denial of institution as well.

II. BACKGROUND

The challenged patent arises from pioneering technology directed to delivering content across a network. Content delivery networks (CDNs) provide the critical services that enable content providers to quickly deliver online content to millions of consumers simultaneously over the Internet. The technology underlying these CDNs was made possible through a series of inventions developed by a California start-up called Sandpiper Software Consulting, LLC, a predecessor of Patent Owner Sandpiper CDN, LLC.

In the early 1990s, the internet became a household staple. This mass adoption led to data congestion issues from the ever-growing number of users seeking to simultaneously access Internet content. Sandpiper's solution was to deploy CDN servers around the world, replicate appropriate content from origin servers to appropriate CDN servers, and transparently rendezvous end users requesting that content to the "best" CDN server to deliver that content, all while providing their customers with control over their content and user experience. This architecture was quickly imitated by many others in the industry.

Distributing content across a network of servers alleviated data congestion issues, allowing consumers to connect to edge servers located near them, which reduced latency. The inventors developed and built systems and methods for propagating data from origin servers to edge servers (known as "caching") based

on network demand and for seamlessly routing users to the optimal edge server with the correct content. Using caching to perform the replication process within the CDN framework flew in the face of conventional wisdom.

Recognizing that its invention could revolutionize content delivery worldwide, Sandpiper Networks (and its successor companies, including Patent Owner) filed numerous patent applications directed to its foundational CDN technology, including the patent challenged in the Petition. In fact, Petitioner Microsoft Corp. competed with a company called “Level 3” in a bidding war to acquire Sandpiper’s patent portfolio, including the application that went on to issue as the ’903 patent. Level 3 won the bid, and created Patent Owner Sandpiper CDN, LLC. Other businesses also entered the market by misappropriating Sandpiper’s innovations and directly competing with Sandpiper for market share.

III. OVERVIEW OF THE ’903 PATENT AND EXTENSIVE PROSECUTION HISTORY

The ’903 patent is entitled “Shared Content Delivery Infrastructure,” and was filed as U.S. Application No. 11/065,412 on February 23, 2005. The ’903 patent is directed to CDN technology and to solving issues related to delivering resources from more than one content provider. This involves replicating content from a source associated with a client of a CDN network onto CDN servers. End user requests are then directed to the CDN servers instead of to the client’s source servers (generally referred to as “origin” servers) in some cases. Embodiments of

the '903 patent address issues such as load balancing and reducing traffic to client origin servers. When an origin server receives and must reply to multiple requests, delivery of content from a content provider can be slow. Methods of using CDN servers to deliver content, as described in the '903 patent, help to solve this issue.

The '903 patent was given a thorough examination, which included multiple rejections that were overcome by amendments. EX1002, 319-328, 505-29, 584-92, 687-96, 899-914, 1024. For instance, the Examiner rejected multiple claims under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 5,867,706 (“Martin”) and other claims under 35 U.S.C. §103 as unpatentable over Martin in view of U.S. Patent No. 6,052,718 (“Gifford”). EX1002, 536-45. The Examiner also issued 35 U.S.C. § 101 and 35 U.S.C. § 112 rejections. EX1002, 538-39.

Patent Owner responded with amendments and remarks overcoming these rejections. EX1002, 505-29. For example, claims were amended and added to recite “‘at least one repeater server’ that replicates at least some of the resources associated with a first content provider and a second content provider,” and Patent Owner argued that “Martin pertains to a server that serves resources only from and on behalf of a single content source (or content provider).” EX1002, 520, 512-13.

The Examiner issued two more office actions with various procedural and substantive rejections, as well as a restriction requirement. EX1002, 303-08, 332-

34. Patent Owner again responded by amending the claims and electing a restricted group. EX1002, 297, 319-28.

After another prior-art search, the examiner issued a new rejection of some claims as obvious over U.S. Patent No. 6,085,193 (“Malkin”) in view of Martin and of other claims as obvious over Malkin in view of Martin and Gifford. EX1002, 241-50. The Examiner noted that two claims contained allowable subject matter. EX1002, 249. Patent Owner amended the independent claims to incorporate the subject matter deemed allowable. EX1002, 210-22. Even then, the Examiner remained vigilant.

The notice of allowance contained an Examiner’s amendment adding “wherein the second content provider is distinct from the first content provider” to the independent claims, noting the closest prior art (Armbruster) “teaches [] a table listing aliases associated with content providers . . . [but] the cache servers in Armbruster do not perform the claimed analysis using the table.” EX1002, 82, 94. Patent Owner paid the issue fee. EX1002, 76. Patent Owner remained vigilant.

Patent Owner filed a petition to withdraw the application from issue after paying the issue fee in order to submit an IDS containing a European search report. EX1002, 60-64. The examiner’s evaluation of the prior art was, therefore, the product of multiple searches by multiple parties. The examiner then issued a second notice of allowance, maintaining the Examiner’s amendment. EX1002, 22-

34. Patent Owner then paid the issue fee and the patent issued. The Office has therefore already expended extensive resources and attention on confirming the patentability of the challenged claims.

IV. LEGAL STANDARDS

For joinder petitions, “discretionary considerations are first reviewed for the Petition on its own, and then reviewed if joinder were to be granted.” *Elong Int’l USA Inc. v. Feit Electric Co., Inc.*, IPR2025-00258, Paper 16 at 2 (PTAB Jun 25, 2025). Based on this analysis, institution of a copycat joinder petition should be denied where, “absent joinder, it is unlikely that a final written decision [would] issue before the district court trial occurs.” *Id.* It is Petitioner’s burden to demonstrate unpatentability by a preponderance of the evidence. The Petition must establish, with particularity, the grounds and evidence that support invalidating the patented claims. 35 U.S.C. § 312(a)(3). Petitioner “must ‘specify where each element of the claim is found in the [relied upon] prior art patents.’” *In-Depth Geophysical, Inc. v. ConocoPhillips Co.*, IPR2019-00850, Paper 56 at 27 (PTAB Sept. 3, 2020) (quoting 37 C.F.R. § 42.104(b)(4)).

V. THE BOARD SHOULD EXERCISE DISCRETION TO DENY INSTITUTION UNDER 35 U.S.C. § 314(a).

In addition to the underlying failures of the Petition, the Board should deny institution under *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential) and other discretionary factors committed to the Board’s

discretion under § 314(b), including the factors identified by the Acting Director in the March 26, 2025 Memorandum (EX2003, “Director Memo”) and the Board’s latest guidance (EX2004, “FAQs”).

A. The *Fintiv* Factors weigh in favor of denial.

On March 24, 2025, the Office clarified the applicability of *Fintiv* and *Sotera* to parallel proceedings (“*Fintiv* Guidance”). *See also Apple*, IPR2020-00019, Paper 11 (articulating six non-exclusive factors for determining whether to institute an AIA post-grant proceeding where there is parallel litigation). On balance, the *Fintiv* Factors favor denial of institution here.

***Fintiv* Factor 1 favors denial.** There is no stay of proceedings in the parallel district court case, and no evidence that a stay would be likely. Trial is set for April 5, 2027. Factor 1 therefore favors denial.

***Fintiv* Factor 2 favors denial.** The projected statutory deadline for a Final Written Decision in this IPR, without granting joinder, is May 3, 2027. *See* 35 U.S.C. § 316(a)(11); *Elong*, IPR2025-00258, Paper 16 (precedential). That is one month *after* the jury trial will be completed in the parallel litigation. It is also nearly a year after trial will be completed in *Sandpiper v. Comcast*, No. 2:24-cv-00886-JRG-RSP, in which the validity of the challenged patent is also being litigated. This factor weighs strongly in favor of discretionary denial. *See, e.g., EClinicalWorks, LLC v. Decapolis LLC*, IPR2022-00229, Paper 10 at 9 (PTAB

Apr. 13, 2022) (denying institution where jury trial was scheduled prior to projected FWD); *Resmed Corp. v. Cleveland Med. Devices Inc.*, IPR2023-00565, Paper 13 at 11 (PTAB September 25, 2023) (same). Even with joinder, the deadline for dispositive motions falls in the same month as the projected FWD, meaning that multiple tribunals will be adjudicating validity and other dispositive issues at the same time.

***Fintiv* Factor 3 favors denial.** Significant work has already been done in the parallel district court litigation. Patent Owner served its infringement contentions on September 16, 2025, and Petitioner served its invalidity contentions November 12, 2025. *See* EX2001. Fact discovery is underway and the parties have propounded extensive written discovery.

***Fintiv* Factor 4 favors denial.** The parallel litigation involves the same claims and defenses as those at issue in the Petition. *See Fintiv* Memo, 7–8 (emphasis added). Petitioner has nominally executed a *Sotera* stipulation. *See* EX2002; *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 at 18–19 (PTAB Dec. 1, 2020) (precedential as to § II.A). The effect of this stipulation, however, is mitigated because it does not include terms consistent with the “*Sotera plus*” stipulations that the Office has recently favored in its discretionary denial analysis. Petitioner may still assert obviousness combinations of unpublished system prior art in the district court proceeding together with prior-art references

relied on in its Petition, and several other invalidity theories. *Compare* EX2002 (*Sotera* stipulation), *with* EX2003, Q.14 (“The Director will take into account whether the stipulation materially reduces overlap between the proceedings. Where the petitioner is relying on corresponding system art in a copending proceeding and/or several other invalidity theories, a stipulation may not be particularly meaningful because the efficiency gained by any AIA proceeding will be limited.”). Such stipulations do not ensure that the IPR proceedings would be a “true alternative” to the district court proceeding. *Motorola Sol’ns, Inc. v. Stellar, LLC*, IPR2024-01205, Paper 19 at 3-4 (PTAB March 28, 2025) (finding that a *Sotera* stipulation was unlikely to moot the petitioner’s combination of IPR art with unpublished system prior art in district court proceedings, and therefore could not outweigh other factors favoring denial). Factor 4 favors denial.

***Fintiv* Factor 5 favors denial.** The parties are the same in both proceedings. *Apple*, IPR2020-00019, Paper 15 at 15 (PTAB May 13, 2020) (“Because the petitioner and the defendant in the parallel proceeding are the same party, this factor weighs in favor of discretionary denial.”).

***Fintiv* Factor 6 favors denial.** The petition suffers from numerous flaws, and the merits of the arguments presented are weak for the reasons discussed in Sections V.C. and V.D. below.

B. Microsoft’s reliance on Google’s declarant results in a defective Petition.

Instead of retaining Dr. Mowry or retaining its own expert, Microsoft wholesale filed Dr. Mowry’s declaration from the Google IPR. EX1003, 1 (case caption identifying *Google LLC v. Sandpiper CDN, LLC*), 12 (Dr. Mowry was “retained by Google LLC.”). Microsoft provides no indication that it has retained Dr. Mowry or that Dr. Mowry would testify on Microsoft’s behalf should the Google IPR be terminated. Accordingly, Microsoft submits a deficient Petition that is inappropriate for joinder. *See OpenSky Industries, LLC v. VLSI Tech. LLC*, IPR2021-01056, Paper 18 (PTAB Dec. 23, 2021) (denying institution of a copycat petition where the petitioner relied exclusively on expert declarations from another proceeding without retaining the declarant); *OpenSky*, Paper 22 (PTAB Mar. 28, 2022) (rehearing decision confirming the same).

In *OpenSky v. VLSI*, the Board denied institution of a petition that attempted to use the same tactic that Microsoft uses here. Specifically, petitioner OpenSky filed a declaration by Dr. Singh from a related Intel IPR but failed to retain Dr. Singh or “its own expert for a new declaration.” *OpenSky*, IPR2021-01056, Paper 18 at 7. The Board admonished such a tactic, noting that “[t]here is no indication that Petitioner ever spoke to Dr. Singh or attempted to retain him for this proceeding or secure his availability for cross examination before filing his

declaration.” *Id.* at 8; *see also id.* at 7 (“[W]e have no evidence from Dr. Singh that he would be willing to testify here.”).

Further, the Board denied OpenSky’s suggestion that it could engage Dr. Singh later or provide a substitute expert. *Id.* at 7-8. The Board determined that institution was not justified “with the mere expectation that Petitioner will find an acceptable substitute declarant once trial is instituted.” *Id.* at 9. Ultimately, the Board determined that OpenSky’s tactic resulted in a deficient petition and denied institution. *Id.* (“It is Petitioner’s burden to show unpatentability, and in support of its case Petitioner has brought forth the testimony of an expert that Petitioner likely cannot produce for cross-examination and would likely be excluded.”).¹

Microsoft’s petition is similarly deficient. Microsoft has not submitted any evidence or indication that Dr. Mowry would be willing to testify on Microsoft’s behalf or in the Microsoft IPR proceeding. Rather than providing such assurances, Microsoft simply filed an exact copy of Dr. Mowry’s declaration from the Google IPR. In view of the Board’s admonition of this tactic in *OpenSky*, Microsoft has failed to meet its burden and responsibility to properly secure a declarant for its

¹ While *OpenSky* involved an exclusive arrangement between another party and the expert, the Board’s rationale equally applies here because Microsoft has failed to provide evidence that Dr. Mowry would be a willing participant to this proceeding.

Petition, which extensively cites Dr. Mowry's declaration throughout. Because Microsoft failed to resolve this issue before filing the Petition, Microsoft submitted a Petition that is inappropriate for joinder. *Id.*

In the absence of any evidence that Dr. Mowry would be available for cross-examination, Patent Owner is left to speculate as to Dr. Mowry's availability should Google withdraw from its IPR challenge. The proceedings cannot properly be joined absent any evidence of how Microsoft would produce Dr. Mowry for cross-examination. Doing so would result in a pending IPR with no expert available to resume the Google IPR proceeding on Microsoft's behalf. Microsoft's choice to file Dr. Mowry's declaration without affirmatively retaining Dr. Mowry thus weighs against institution.

C. Settled expectations and efficiency favor discretionary denial.

Microsoft has known about the '903 patent, and its relevance to Microsoft's potential business, since it was a pending application over 20 years ago. Specifically, Microsoft attempted to acquire Sandpiper's patent portfolio, but was outbid by a competitor. *See Sandpiper CDN, LLC v. Microsoft Corp.*, No. 2:25-cv-00664, Dkt. 1 (Complaint), ¶¶44-63 (E.D. Tex. Jun. 26, 2025). The Office has found that this kind of longstanding pre-suit knowledge of the challenged patent gives rise to settled expectations that favor patent owner. *See Murata v. Georgia Tech*, IPR2025-00383, -00384, Paper 14 (PTAB July 29, 2025)

(finding that settled expectations outweighed *Fintiv* where Petitioner had discussions in 2007 regarding the challenged patent); *Google v. SoundClear Tech*, IPR2025-00344, -00345, Paper 15 (PTAB Aug. 4, 2025) (denying institution despite district court stay where patent was over 10 years old and Petitioner had prior knowledge of patent).

Additionally, the Office has indicated that it is not a good use of resources and upsets the settled expectations of patent owners and the marketplace to review patentability challenges for patents that have been in force for many years. *See, e.g., Dabico Airport Solutions Inc., v. AXA Power ApS*, IPR2025-00408, Paper 21 at 2 (PTAB June 18, 2025) (discretionarily denying review for a patent that had been in force for “almost eight years”). The patent challenged here has been in force far longer—20 years. This factor thus weighs in favor of discretionary denial.

Moreover, the '903 patent expired September 24, 2023. Proceeding with an IPR on an expired patent is an inefficient use of the Board's and the parties' resources. The Office has unequivocally established that when a patent has been in force for a long time, the settled expectations of the parties and the public favor discretionarily denying institution of *inter partes* review. *See OmniVision Techs., Inc. v. RE Secured Networks, LLC*, IPR2025-01019, Paper 14 (PTAB Oct. 10, 2025); *SAP America, Inc. v. Valtrus Innovations Ltd.*, IPR2025-00415 (Paper 10), IPR2025-00417 (Paper 9), IPR2025-00418 (Paper 10), IPR2025-00420 (Paper 11)

(PTAB July 10, 2025). Since *SAP America*, the Office has consistently found that the “settled expectations” of the parties favors discretionary denial due to the age of the patent *where the patent is expired*. See, e.g., *Samsung Elecs. Co. Ltd. v. Mobile Data Techs., LLC*, IPR2025-00535 (Paper 16), IPR2025-00536 (Paper 13) (denying review of U.S. Patent No. 9,032,039, which expired June 18, 2023, based on settled expectations) (PTAB July 10, 2025); *Carvana, LLC v. Int’l Business Machines Corp.*, IPR2025-00564, Paper 11 (PTAB July 10, 2025) (denying review of U.S. Patent No. 7,702,719, which expired July 10, 2022, based on settled expectations); *Samsung Elecs. Co., Ltd. v. Keyless Licensing LLC*, IPR2025-00528 (Paper 13), IPR2025-00529 (Paper 13) (PTAB July 17, 2025) (denying review of U.S. Patent No. 11,503,144, which expired May 19, 2025, based on settled expectations); *Murata Manufacturing Co., Ltd. v. Georgia Tech Research Corp.*, IPR2025-00383 (Paper 14), IPR2025-00384 (Paper 13) (PTAB July 29, 2025) (denying review of U.S. Patent No. 7,489,914, which expired July 27, 2024, based on settled expectations); *T-Mobile USA, Inc. v. Smart RF Inc.*, IPR2025-00727, Paper 13 (PTAB July 29, 2025) (denying review of U.S. Patent No. 7,035,345, which expired August 14, 2023, based on settled expectations); *Vertiv Corp. v. Valtrus Innovations Ltd.*, IPR2025-00667 (Paper 11) (denying review of U.S. Patent No. 6,854,287, which expired August 2, 2022, based on settled expectations), IPR2025-00668 (Paper 10) (denying review of U.S. Patent No.

6,718,277, which expired April 17, 2022, based on settled expectations), IPR2025-00669 (Paper 11) (denying review of U.S. Patent No. 6,862,179, which expired April 15, 2023, based on settled expectations) (PTAB July 31, 2025); *Dentsply Sirona Inc. v. Osseo Imaging, LLC*, IPR2025-00771 (Paper 8) (denying review of U.S. Patent No. 6,381,301, which expired 2019, based on settled expectations), IPR2025-00772 (Paper 8) (denying review of U.S. Patent No. 6,944,262, which expired August 9, 2020, based on settled expectations), IPR2025-00787 (Paper 8) (denying review of U.S. Patent No. 8,498,374, which expired December 1, 2019, based on settled expectations) (PTAB July 31, 2025); *Samsung Elecs. Co., Ltd. v. Mobile Data Techs., LLC*, IPR2025-00537 (Paper 15), IPR2025-00538 (Paper 15) (denying review of U.S. Patent No. 8,825,801, which expired June 18, 2023, based on settled expectations), IPR2025-00539 (Paper 15), IPR2025-00540 (Paper 15) (denying review of U.S. Patent No. 8,793,336, which expired August 12, 2024, based on settled expectations), IPR2025-00541 (Paper 15), IPR2025-00542 (Paper 15) (denying review of U.S. Patent No. 9,922,348, which expired August 12, 2024, based on settled expectations), IPR2025-00543 (Paper 15), IPR2025-00544 (Paper 15) (denying review of U.S. Patent No. 9,619,578, which expired April 28, 2024, based on settled expectations) (PTAB August 14, 2025); *Samsung Elecs. Co., Ltd. v. iCashe, Inc.*, IPR2025-00642 (Paper 11) (denying review of U.S. Patent No. 8,403,219, which expired February 22, 2025, based on settled expectations),

IPR2025-00643 (Paper 11) (denying review of U.S. Patent No. 9,202,156, which expired February 22, 2025, based on settled expectations) (PTAB August 14, 2025); *Microsoft Corp. v. Dialect, LLC*, IPR2025-00657, Paper 12 (PTAB August 14, 2025) (denying review of U.S. Patent No. 9,263,039, which expired August 5, 2025, based on settled expectations); *Datadome S.A. v. Arkose Labs Holdings, Inc.*, IPR2025-00693, Paper 13 (PTAB August 14, 2025) (denying review of U.S. Patent No. 7,373,510, which expired September 23, 2024, based on settled expectations). Accordingly, settled expectations here favor discretionary denial.

The Office has even found settled expectations to be one of the most heavily weighted factors *against* institution, outweighing other factors that may favor referral to a merits panel. *See See iRhythm Techs., Inc. v Welch Allyn, Inc.*, IPR2025-00363, Paper 10 (PTAB June 6, 2025) (denying institution based on “settled expectations” despite other factors weighing in favor of institution); *Amgen Inc. v. Bristol-Meyers Squibb Co.*, IPR2025-00601, Paper 9 (PTAB July 24, 2025) (denying institution based on “settled expectations” for patent in force six years without parallel litigation); *Oneplus Tech. Co., Ltd. v. Pantech Corp.*, IPR2025-00783, Paper 12 (PTAB Sept. 12, 2025) (finding that the lack of a trial date in co-pending litigation was outweighed by settled expectations for a nine-year-old patent); *Belden Inc. v. Commscope, Inc.*, IPR2025-00833, Paper 13 (PTAB Sept. 12, 2025) (finding that settled expectations for a nine-year-old patent

outweighed *Fintiv* where the Final Written Decision was projected six months before the scheduled trial date); *Samsung Elecs. Co. Ltd. v. VB Assets, LLC*, IPR2025-00866 (Paper 13), IPR2025-00867 (Paper 13), IPR2025-00868 (Paper 13), IPR2025-00869 (Paper 13) (PTAB Sept. 12, 2025) (finding settled expectations for a ten-year-old patent justified denial where *Fintiv* factors were neutral); *Volkswagon Group of America, Inc. v. Longhorn Automotive Group LLC*, IPR2025-00925, Paper 9 (PTAB Sept. 12, 2025) (finding settled expectations for a 13-year-old patent outweighed neutral *Fintiv* factors and allegations of examiner error). Prior to the Google Petition that Petitioner Microsoft seeks to join, the Office has never found settled expectations to be the deciding factor favoring institution, especially where the patent was expired. Institution should be denied.

D. The Petition is fundamentally flawed on the merits.

As a preliminary matter, the Petition fails to support its arguments with competent evidence because it fails to submit a proper expert declaration. *See* Section V.B., *supra*. That alone is a failure on the merits that supports discretionary denial under *Fintiv* factor 6. Additionally, the substance of the arguments raised in the petition suffer from the same flaws as those presented in the Google Petition that Petitioner Microsoft seeks to join.

Specifically, Petitioner relies on a single reference—Kenner—that fails to disclose, teach, or suggest the claim elements. Claim limitations absent from

Kenner include: (1) associating a *first alias name* and a *second alias name* with a *first resource* and a *second resource*, respectively, and *at least one shared repeater server* ([1.c]-[1.f]); and (2) *the at least one shared repeater server is further constructed and adapted to analyze, using the table, an alias name received with a client request for a particular resource to determine a content provider associated with the particular resource* ([1.g]). The Examiner recognized the novelty of these features during original prosecution. See EX1002, 249.

Petitioner relies on Kenner's video ID to teach an *alias name* and Kenner's index manager ("IM") for a *shared repeater server*. But Kenner's video ID is not an *alias name* associated with a *resource* and *at least one shared repeater server* used to direct requests from a client machine to a repeater server. Nor is Kenner's video ID stored in a table that is used to analyze *an alias name received with a client request for a particular resource to determine a content provider associated with the particular resource*.

Kenner's video ID is not associated with both a *resource associated with a content provider* and *at least one shared repeater server*. Specifically, Kenner's "clip database" teaches an association between video ID (*alias name*) and PIM (*at least one repeater server*). *Google LLC v. Sandpiper CDN, LLC*, IPR2025-00969, Paper 14 (Institution Decision) at 11 (PTAB Nov. 28, 2025) ("Petitioner does not assert that Kenner's ID identifies a repeater server, relying instead on Kenner's clip

database.”). Kenner’s “clip database” does not identify a repeater server or otherwise associate the video ID with an IM. Instead, “the clip database” indicates which “extended SRUs 66” store videos, not which IMs store the videos. EX1005, 34:3-6, 34:10-11. These “extended SRUs” are not IMs (the purported *repeater server*), and instead are “Storage and Retrieval Unit[s]” that “store audio-visual data in a plurality of audio-visual storage.” *See id.*, 17:29-32.

Furthermore, Kenner’s “content coordinate data” does not identify a particular repeater server to which user requests may be *directed*. Nor does the video ID itself (i.e., the *alias name*) specify a repeater server. As the Board noted, Kenner’s video ID includes only “‘a multidimensional set of content-characterization coordinates plus a unique file name’ as well as ‘the content provider’s account number, . . . a time stamp, and a time period over which the file is relevant.’” *Google v. Sandpiper*, IPR2025-00969, Paper 14 at 13 (*citing* EX1005, 36:28-29, 36:32-37:5). This differs from the ’903 patent where the alias name itself identifies both the resource and the repeater server. EX1001, 9:44-55 (“[I]f www.example.com is the origin server, names for three repeaters might be created: wr1.example.com[,] wr2.example.com[, and] wr3.example.com.”).

For limitation [1.g], Kenner’s “clip database” does not teach *the table* used to *analyze . . . an alias name received with a client request for a particular resource to determine a content provider associated with the particular resource.*

But Kenner's use of the "clip database" does not teach any actual analysis of an *alias name* (i.e., the video ID) with respect to the *table* (i.e. the clip database).

Instead, Kenner describes a scenario in which, when neighboring IMs do not have the desired clip, a PIM "will then contact the source IM 90, where the content provider first uploaded the file." EX1005, 41:13-15, 41:15-16 ("The Internet address of the source IM 90 is provided in the clip database of the PIM 64.").

Presumably, this would involve looking up the address of the source IM in the clip database using the video ID. But such a lookup does not teach any analysis of the video ID, let alone analyzing the video ID using the table. This function differs from the '903 patent where a repeater can (1) use the table of alias names to identify the origin server for the resource within the *alias name received with a client request* and (2) assess whether a corresponding content provider is authorized to use that particular repeater. EX1001, 9:56-59. These fundamental flaws in the merits of the petition further weigh in favor of institution.

VI. CONCLUSION

The Director should discretionarily deny institution of the Petition.

Respectfully submitted,

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CERTIFICATION OF SERVICE

I certify that the above-captioned **PATENT OWNER'S DISCRETIONARY DENIAL BRIEF** and Exhibits 2001-2004 were served in their entireties on January 13, 2026, upon the following parties via electronic mail:

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