

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CITADEL SECURITIES LLC,

Petitioner

v.

HFT SOLUTIONS, LLC,

Patent Owner

Case No. IPR2026-00151

Patent No. 11,575,381

**PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL OF
INSTITUTION**

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Ex. 2002	<i>HFT Solutions, LLC v Optiver US LLC et al</i> , Case No. 7:25-cv-00415, Dkt. 24 (W.D. Tex.) - Scheduling Order
Ex. 2003	<i>HFT Solutions, LLC v. Citadel Securities LLC</i> , 1:24-cv-13214, Dkt. 30 (N.D. Ill.) – Motion to Dismiss
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Ex. 2009	U.S. Patent No. 10,931,286
Ex. 2010	Email title “HFT v. Citadel – deadlines” from Meg Fasulo to Dale Chang dated May 2, 2025

I. INTRODUCTION

Pursuant to the Director’s March 26, 2025 memorandum regarding Interim Processes for PTAB Workload Management (“March 26, 2025 Memo”), Patent Owner HFT Solutions, LLC requests that the Director exercise discretion under 35 U.S.C. § 314(a) and issue a decision denying institution of the Petition.

Citadel does not offer this IPR as a true alternative to district court litigation, but rather as a parallel proceeding with its district court litigation, thereby allowing it to take multiple bites at the invalidity apple. Indeed, Citadel has already availed itself of the district court’s resources, attacking the claims under 35 U.S.C. § 101 in a Rule 12(b)(6) motion. After that failed, Citadel filed the instant petition. But Citadel has only sought *inter partes* review of two of the three asserted patents in the district court litigation, thus mandating that the district court case proceed regardless of any IPR proceedings. Nor does Citadel offer so much as a *Sotera* or even *Sand Revolution* stipulation. Without challenging all asserted patents or offering any stipulation, Citadel has virtually guaranteed that the issues it raises in this Petition will have to be relitigated in the district court.¹

¹ Beyond the *Citadel* district court action, HFT has asserted the same patents against Optiver and Jump Trading. See *HFT Solutions, LLC v Optiver US LLC et al*, Case No. 7:25-cv-00415 (WDTex); *HFT Solutions, LLC v. Jump Trading LLC*, 1:24-cv-13214 (N.D. Ill.). For the same reasons as explained herein and because trial in both actions is expected prior to or at the same time as any Final Written Decision here, Ex. 2001 (showing trial expected March 2027); Ex. 2002 (showing trial expected June 2027), this IPR will not replace any district court determination of invalidity.

Moreover, Citadel strategically delayed the district court proceeding by filing its meritless invalidity challenge under Rule 12(b)(b). Ex. 2003. After extensive briefing by the parties and long consideration by the court, the court soundly rejected Citadel's invalidity challenge. Ex. 2004. The district court found Citadel's description of the claims in its first invalidity challenge "reductive," oversimplifying the "distinctive systems and methods recited in HFT's claims" as merely "manipulation of data" with conventional components like "FPGAs, phase lock loops, phase control circuits, and phase detectors." Ex. 2004 at 9-11. Notably, two days after losing its first challenge, Citadel filed this Petition. And while Patent Owner will address the merits of Citadel's Petition in its Preliminary Response, Citadel is repeating its "reductive" characterization of the claims in this challenge to ignore their novelty.

Because of Citadel's gamesmanship, the instant IPR, even when considered together with IPR2026-00212 (covering just the second of three asserted patents), cannot serve as a true alternative to district court litigation. Citadel thus has no basis to ask the Office to expend its limited resources instituting the present petition. As such, Patent Owner requests institution be discretionarily denied.²

² Patent Owner reserves the right to file a Preliminary Response addressing the merits of the Petition pursuant to 37 C.F.R. § 42.107(a) on the schedule set forth by regulation and consistent with the March 26, 2025, Memorandum. *See* 37 C.F.R. § 42.107(b).

II. **FINTIV FACTORS DEMONSTRATE CITADEL'S GAMESMANSHIP**

35 U.S.C. § 314 (a) gives the Director discretion to deny institution of IPR due to inefficiency from overlapping or identical issues being decided in parallel proceedings. *See NHK Spring Co. v. Intri-Plex Techs., Inc.*, IPR2018-00752, Paper 8 at 19-21 (PTAB Sept. 12, 2018) (precedential) (“*NHK*”). The Board has set forth six factors for determining whether discretionary denial in light of such inefficiency is appropriate:

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

Apple Inc. v. Fintiv, Inc., IPR2020-00019, Paper 11 at 5-6 (PTAB Mar. 20, 2020) (precedential) (“*Fintiv I*”). In evaluating these factors, the Board “takes a holistic view of whether efficiency and integrity of the system are best served by denying or instituting review.” *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 15 at 7-17 (PTAB May 13, 2020) (informative) (“*Fintiv II*”). As explained below, all *Fintiv*

factors weigh in favor of discretionary denial in light of the related district court litigation of *HFT Solutions, LLC v. Citadel Securities LLC*, 1:24-cv-13213 (N.D. Ill.).

1. *Fintiv* Factor 1: The likelihood of a stay favors denial.

Fintiv Factor 1 looks to “whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted.” *Fintiv I* at 5-6.

While the Board ordinarily “will not attempt to predict” how a district court will proceed if a stay has not been granted. *See Sand Revolution II, LLC v. Continental Intermodal Group-Trucking LLC*, IPR2019-01393, Paper 24 at 7 (Jun.16, 2020) (informative). Here, even if Citadel requests a stay, and it has not yet done so, a stay would not offer significant efficiency.

As noted above, Patent Owner has accused Citadel of infringing three related patents, but Citadel has only challenged two via IPR. ***Even if*** a stay were granted as to the two patents submitted for IPR ***and*** the Board finds all claims unpatentable, the district court would still have to adjudicate the remaining related patent. Indeed, Citadel specifically asserts the same Altera and Lockwood references against the unchallenged patent as in the instant petition, requiring duplicative consideration of the same references. Ex. 2005 at 15-19.

Moreover, should the Board consider if a requested stay would be granted, Judge Coleman’s (the presiding district court judge) precedent suggests it would not

be. In *RR Donnelley & Sons Co. v. Xerox Corp.*, Judge Coleman denied a motion to stay in part because not all patents were subject to an IPR. *RR Donnelley & Sons Co. v. Xerox Corp.*, No. 12–CV–6198, 2013 WL 6645472, at *3 (N.D. Ill. Dec. 16, 2013). That is, and will continue to be, the situation here. Citadel has only challenged two of the three asserted patents, and the 1-year bar has lapsed. No stay is likely to be granted.

Because a stay is unlikely and would not simplify any issues even if granted, this factor strongly favors denial.

2. *Fintiv* Factors 2-3: Time to trial and amount of work already completed, together, favor denial.

Fintiv Factor 2 looks to “proximity of the court's trial date to the Board's projected statutory deadline for a final written decision.” *Fintiv I* at 5-6. *Fintiv* Factor 3 looks to “amount and type of work already completed in the parallel litigation by the court and the parties at the time of the institution decision.” *Fintiv I* at 9.

As in the co-pending district court litigation, trial would have been scheduled for March 2027, but for Citadel’s intentional delay and refusal to allow the case to move forward. *See* Ex. 2001 (showing the schedule agreed in the *HFT Solutions, LLC v. Jump Trading LLC*, 1:24-cv-13214 (N.D. Ill.), action filed the same day as the *Citadel* action). This would have put a Final Written Decision well after trial on

a normal schedule.³

Citadel, however, opted to file its strategic motion⁴ to dismiss under 35 U.S.C. § 101, which delayed proceedings. Ex. 2003. Citadel then delayed discovery by eight months, pointing to its pending motion, although the parties still exchanged contentions. *See* Ex. 2010 (Email from Meg Fasulo stating deadlines under the local patent rules for contentions would go forward but discovery was stayed pending Citadel's motion to dismiss). All of this delay results in an anticipated trial date of October 2027. Ex. 2006.

While this places trial after the expected final written decision,⁵ the delay is attributable to Citadel. The Court and parties have invested significant work already, with the Court ruling on Citadel's invalidity motion and the parties exchanging contentions and engaging in discovery. First, Patent Owner asks that the Director take special notice of Citadel's strategic delay and not reward it by weighing this factor in Citadel's favor. Second, even without considering Citadel's behavior, the fact of the matter is that more than a year has elapsed in the district court action and

³ Indeed, trial in the co-pending Jump and Optiver actions are expected prior to or at the same time as the Final Written Decision, and thus will go forward regardless of how the Board rules, risking conflicting decisions. Ex. 2001; Ex. 2002.

⁴ Notably, Jump did not join Citadel's motion, instead proceeding with its case while Citadel delayed. Likewise, Optiver never raised a similar motion.

⁵ If a final written decision is delayed, such as based on joinder by two other sets of defendants, *see HFT Solutions, LLC v Optiver US LLC et al*, Case No. 7:25-cv-00415 (WDTex); *HFT Solutions, LLC v. Jump Trading LLC*, 1:24-cv-13214 (N.D. Ill.), final written decision will be expected after trial.

far from Citadel's contention that this case is "in its infancy," by the time institution is decided the parties will have exchanged all final contentions, begun claim construction briefing, and addressed validity under §101. Ex. 2006. Taken together, Patent Owner requests that the Director weigh these factors against Citadel, but even in rewarding Citadel's dilatory behavior these factors together weigh no more than neutrally.

3. *Fintiv* Factor 4: There is likely to be substantial overlap between this IPR and the district court proceeding.

Fintiv Factor 4 evaluates "concerns of inefficiency and the possibility of conflicting decisions" when substantially identical prior art is submitted in both the district court and the IPR proceeding. *Fintiv I* at 12. Here, Citadel makes the same challenge against the same claims⁶ in both the district court and herein. In its Final Invalidity Contentions, Citadel identifies the exact same prior art in the exact same combination. Ex. 2005 at 21-22; Ex. 2007. Critically, Citadel has not filed a *Sotera* stipulation, indicating its intention to pursue these duplicative contentions in both proceedings.

Not only does this implicate overlapping decisions on the teachings of the references, but because each of the cited references is a printed publication rather

⁶ Based on the progression of the district court action, only claims 1-4 and 10-12 are currently at issue, as noted above this advanced stage of the case, already reaching claim narrowing, weighs against institution.

than a patent, the question of public availability too must be answered by both the Board and the district court. For each reference, both the Board and the court must determine if each was “disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence, can locate it.” *Kyocera Wireless Corp. v. Int'l Trade Comm'n*, 545 F.3d 1340, 1350 (Fed.Cir.2008). This can be a fact-intensive investigation, requiring the testimony of prior artists and the production of corroborating evidence. As witness credibility is better evaluated by a district court than by the PTAB (which typically does not consider live witness testimony), this overlap should weigh particularly heavily against institution.

While the above alone weighs heavily against institution, the Director should further consider this factor in light of Citadel’s litigation behavior. Citadel’s apparent strategy makes it even more likely that there will be inefficiency and conflicting decisions. Again, Citadel has offered no stipulation that it will not pursue overlapping art in the district court action if this petition is instituted. With no such stipulation, this IPR will not be a “true alternative” to the district court action and may invite a deluge of identical or near identical challenges and EPRs. Second, it is unlikely Citadel will act in a way to allow this Petition to efficiently adjudicate the validity of the ’381 Patent. Indeed, even as to the already decided §101 issue, Citadel maintains a counterclaim expressly upon this issue, which it has already lost. Ex.

2008 (Citadel’s Answer and Counterclaims). Thus, this factor weighs heavily against institution.

4. *Fintiv* Factor 5: Petitioner is a defendant in the district court litigation.

Fintiv Factor 5 looks to “whether the petitioner and the defendant in the parallel proceeding are the same party.” *Fintiv I* at 5-6. Specifically, when “the petitioner and the defendant in the parallel proceeding are the same party, this factor weighs in favor of discretionary denial.” *Fintiv II* at 15. Here, the Petitioner is a defendant in the parallel litigation.

Thus, *Fintiv* Factor 5 weighs in favor of discretionary denial.

5. *Fintiv* Factor 6: Other considerations support discretionary denial.

Fintiv Factor 6 looks to “other circumstances that impact the Board's exercise of discretion, including the merits.” *Fintiv I* at 5-6. This factor also weighs heavily against institution for at least two reasons.

First, contrary to Petitioner’s assertions, the Petition fails to present any compelling merits of unpatentability. As will be shown in Patent Owner’s Preliminary Response, the Petition’s merits are weak and it fails to make requisite showings.

Second, as discussed below, the factors discussed in the Director’s March 26, 2025 Memorandum regarding Interim Processes for PTAB Workload Management

weigh in favor of discretionary denial.

Together these factors weigh against institution. Considering all six *Fintiv* factors, only one arguably weighs in favor of institution and that weight should be disregarded on account of Citadel's strategic delay.

III. DENIAL OF INSTITUTION UNDER §314 IS WARRANTED.

The March 26, 2025 Memorandum regarding Interim Processes for PTAB Workload Management sets forth various relevant considerations may weigh in favor of discretionary denial, including:

- Whether the PTAB or another forum has already adjudicated the validity or patentability of the challenged patent claims;
- Whether there have been changes in the law or new judicial precedent issued since issuance of the claims that may affect patentability;
- The strength of the unpatentability challenge;
- The extent of the petition's reliance on expert testimony;
- Settled expectations of the parties, such as the length of time the claims have been in force;
- Compelling economic, public health, or national security interests; and
- Any other considerations bearing on the Director's discretion.

Each of these factors weighs against institution.

First, the district court has already adjudicated Citadel's §101 challenge. As noted above, the Court rejected this challenge as particularly weak and "reductive."

While a prior §101 ruling may have only so much weight normally, here, the Petition repeats its failed characterization of the claims. *Compare* Ex. 2003 (asserting the '381 Patent is a mere collection of “a field programmable gate array and a phase lock loop, a phase control circuit, or a phase detector.”) at 11 *with* Paper 1 (“Pet.” or “Petition”) at 1 (asserting no aspect of the '381 Patent is new, contending that “PLLs have been around since the 1930s, and FPGAs have been commercially available since the 1980s.”). As Citadel has already received a ruling on this simplified narrative, this factor weighs against institution.

Second, Citadel is wrong when it contends “[t]here is no basis for any settled expectation[s].” Pet. at 6. While the '381 Patent has only been in force since early 2023, considering settled expectations on this data point alone is improper. For example, U.S. Patent No. 10,931,286, a parent named on the face of the '381 Patent, claims much the same subject matter. *Compare* Ex. 2009 (the '286 Patent) with Ex. 1001. While the claims of the '286 Patent go into greater detail regarding particular hardware used, e.g. clock pins and data pins, there is some overlap in the claims. *Id.* Indeed, Citadel recognized this overlap in its §101 motion. Ex. 2003 at 3 (“’286 and ’381 patents claim methods of processing data using such FPGAs”); 6 (arguing claim 1 of the '286 Patent and of the '381 Patent are representative for the same reasons); 14 (similar). The '286 Patent, with largely the same scope of claims as the '381 Patent, has been in force since July 2020. Ex. 2009. As neither of these patents have been

challenged before now, it is a settled expectation that Patent Owner has valid claims on this subject matter since 2020. That will be just three (3) months shy of six (6) years when discretionary denial factors are expected to be decided, and one month shy at the expected time of the merits institution decision. Given the six years of settled expectations of overlapping subject matter and limitations, settled expectations weigh against institution.

Last, the remaining factors also favor denial. No change in the law or precedent impacts the challenged claims. Citadel's supporting expert declaration is one-and-a-half times the length of the Petition's merits sections. And, as noted above, efficiency is a strong economic reason that the director should consider in denying institution.

Because both the workload factors and the *Fintiv* factors favor denial, Patent owner respectfully request that the Director exercise discretion under Section 314(a) to deny institution.

IV. CONCLUSION

Patent Owner respectfully requests that the Director exercise discretion under Section 314(a) to deny institution.

Date: February 5, 2026

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))

The undersigned hereby certifies that the above document was served on February 5, 2026 by filing this document through the Patent Trial and Appeal Case Tracking System (PTACTS) as well as delivering a copy via electronic mail upon the following attorneys of record for Petitioner:

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