

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS INC.,
Petitioner

v.

WSOU INVESTMENTS, LLC D/B/A BRAZOS LICENSING AND
DEVELOPMENT
Patent Owner

IPR2021-00961
U.S. PATENT NO. 9,357,014

PATENT OWNER PRELIMINARY RESPONSE TO PETITION

Table of Contents

EXHIBIT LIST	iv
I. INTRODUCTION	1
II. THE '014 PATENT	1
A. Effective Filing Date of the '014 patent.....	1
B. Overview of the '014 patent.....	1
III. RELATED PROCEEDINGS	2
IV. GIVEN THE UPCOMING TRIAL IN PARALLEL LITIGATION, THE BOARD SHOULD EXERCISE DISCRETION UNDER 35 U.S.C. § 314(A), <i>NHK SPRING</i> , AND <i>APPLE V. FINTIV</i> TO DENY INSTITUTION	3
1. <i>whether a stay exists or evidence exists that one is likely to be granted if a proceeding is instituted</i>	5
2. <i>proximity of the court's trial date to the Board's projected statutory deadline</i>	5
3. <i>investment in the parallel proceeding by the court and parties</i>	7
4. <i>overlap between issues raised in the petition and in the parallel proceeding</i>	8
5. <i>whether the petitioner and the defendant in the parallel proceeding are the same party</i>	11
6. <i>other circumstances that impact the Board's exercise of discretion, including the merits</i>	11
V. LEVEL OF ORDINARY SKILL IN THE ART.....	12
VI. PETITIONER DOES NOT PROVE THAT ANY CHALLENGED CLAIM IS UNPATENTABLE	12
A. Claim Construction	13

B.	Traversat does not disclose “wherein the connected services layer is configured to support <u>establishment of the service connection based on</u> a service name of the connected services layer, a service name of the remote connected services layer, and a service connection identifier for the service connection” (Claims 1, 18, and 19) (Grounds 1 and 2).....	13
C.	Traversat does not disclose “wherein the connected services layer is configured to: send, toward a server, <u>a service connection request message</u> comprising the service name of the connected services layer <u>and the service name of the remote connected services layer of the remote endpoint</u> ” (Claims 1, 18, and 19) (Grounds 1 and 2)	17
D.	The Petition fails to establish <i>prima facie</i> obviousness of the challenged dependent claims.....	18
VII.	CONCLUSION	19
	CERTIFICATE OF COMPLIANCE	20
	CERTIFICATE OF SERVICE.....	21

EXHIBIT LIST

2001	[Proposed] Scheduling Order jointly filed in 6:21-CV-00128-ADA
2002	Defendant Cisco Systems, Inc.'s Initial Invalidity Contentions

I. INTRODUCTION

WSOU Investments, LLC d/b/a/ Brazos Licensing and Development (the “Patent Owner” or “Brazos”) submits this Preliminary Response to the Petition for *Inter Partes* Review (“Pet.” or “Petition”) of United States Patent No. 9,357,014 (“the ’014 patent” or “Ex. 1001”) filed by Cisco Systems, Inc. (“Petitioner”) in IPR2021-00961. In view of the reasons presented herein, the Petition should be denied in its entirety as failing to meet the threshold burden of proving there is a reasonable likelihood that at least one challenged claim is unpatentable.

BRAZOS addresses each ground raised in the Petition and provides specific examples of how Petitioner failed to establish that it is more likely than not that it would prevail with respect to at least one of the challenged ’014 patent claims.

Accordingly, BRAZOS respectfully requests that the Board decline institution of trial on the challenged claims of the ’014 patent.

II. THE ’014 PATENT

A. Effective Filing Date of the ’014 patent

The ’014 patent is entitled “Service-Based Networking” The ’014 patent issued on May 31, 2016, from U.S. Patent Application No. 14/264,538 filed on April 29, 2014.

B. Overview of the ’014 patent

The ’014 patent is generally directed to techniques for a service-based networking capability to replace traditional networking connections between

endpoints with service-based networking connections between endpoints. The '014 patent summarizes certain technical problems in the field that existed at the time. At the time of the invention, networking connections were identified by IP address and port number, but with the advent of mobility and cloud-based computing, the IP address of a host of a networking connection may change. And in order to maintain that networking connection and hide the change from the application, either the IP address is forced to remain the same while rerouting packets or the networking connection is closed and a new networking connection is opened. '014 patent, 1:11–24.

In a preferred embodiment, the '014 patent provides an apparatus configured to run a connected services stack. The connected services stack includes a connected services layer below an application layer and above a transport layer, where the connected services layer is configured to support establishment of a service connection between the connected services layer and a remote connected services layer of a remote endpoint. *Id.*, 1:28–47.

III. RELATED PROCEEDINGS

The '014 patent is involved in the following proceedings:

Filing Date	Case Name	Case Number	Court
Feb. 05, 2021	<i>WSOU Investments LLC d/b/a Brazos Licensing and Development v. Cisco Systems, Inc.</i>	6-21-cv-00128	WDTX

IV. GIVEN THE UPCOMING TRIAL IN PARALLEL LITIGATION, THE BOARD SHOULD EXERCISE DISCRETION UNDER 35 U.S.C. § 314(A), *NHK SPRING*, AND *APPLE V. FINTIV* TO DENY INSTITUTION

As a threshold and dispositive issue, discretionary denial is warranted under 35 U.S.C. § 314(a) because institution would be an inefficient duplication of pending litigation. Under § 314(a), the Director has discretion to deny institution. *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2140 (2016). As shown in the table above, the '014 patent is asserted in Case No. 6-21-cv-00128, pending in the Western District of Texas.

The Board considers the presence and status of parallel district court litigation in determining institution. *NHK Spring Co., Ltd. v. Intri-plex Techs.*, IPR2018-00752, Paper 8 (PTAB Sept. 12, 2018) (precedential) (“*NHK*”) and *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential) (“*Fintiv*”); *see also General Plastic Industrial Co., Ltd. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 at 16–17 (PTAB Sept. 6, 2017) (“[W]e recognize that an objective of the AIA is to provide an effective and efficient alternative to district court litigation.”).

The precedential *Fintiv* opinion sets forth a non-exhaustive list of factors that balance considerations of system efficiency and fairness when a patent owner raises

an argument for discretionary denial due to the advanced state of a parallel proceeding(s). *Fintiv*, IPR2020-00019, Paper 11 at 5–6. The factors are:

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; and
6. other circumstances that impact the Board’s exercise of discretion, including the merits.

Id.

These factors relate to whether efficiency, fairness, and the merits support the exercise of authority to deny institution in view of an earlier trial date in the parallel proceeding. As explained below, there is some overlap among these factors. Some facts may be relevant to more than one factor. Therefore, in evaluating the factors, the Board takes a holistic view of whether efficiency and integrity of the system are best served by denying or instituting review. *See Consolidated Trial Practice Guide*

November 2019 (“TPG”) at 58 (quoting 35 U.S.C. § 316(b)). A holistic view of the factors set forth in *Fintiv* reveal the present circumstances favor discretionary denial.

1. *whether a stay exists or evidence exists that one is likely to be granted if a proceeding is instituted*

The first factor favors denial. Factor 1 asks whether “evidence exists that [a stay] may be granted if a proceeding is instituted.” *Fintiv*, Slip. Op. 6. The district court case is not stayed and there is no evidence a stay would be granted in this case. *See* Pet. 58. Further, the parallel litigation is pending before Judge Albright in the Western District of Texas, who has publicly stated that he generally does not stay trial for a pending IPR, even if instituted. For example, Judge Albright has declined to even consider a stay request brought after IPR institution and shortly before the claim construction hearing, explaining, “I’m not going to stay the case based on the IPR institution and we are set for trial.” *MV3 Partners, LLC v. Roku, Inc.*, No. 6:18-cv-00308-ADA, Dkt. 83 at 53 (W.D. Tex. July 22, 2019). This factor weighs in favor of denial.

2. *proximity of the court’s trial date to the Board’s projected statutory deadline*

The second factor favors denial because trial in the district court would occur proximal to a final written decision if an IPR trial is instituted here. The parties have *jointly* submitted to the Court a proposed scheduling order with a trial date of December 19, 2022. Ex. 2001, at 5. And the parties in the co-pending district court

litigation have been adhering to the proposed schedule. Petitioner argues that “the current average time-to-trial for the district court hearing the co-pending litigation is over two years.” Pet. 59. However, Petitioner’s reliance on its Exhibit 1013 is puzzling and misleading. Petitioner’s Exhibit 1013 purports to show data for all of the Western District of Texas, but Petitioner knows that the co-pending litigation is before Judge Albright in Waco, Texas. Despite that, Petitioner chose to present aggregate data for all of W.D. Texas rather than, as is more likely to be determinative, for Judge Albright’s court. In fact, Petitioner fails to reference Judge Albright’s court *at all*. More importantly, the parties have now *jointly* moved the Court for a trial date of December 19, 2022. Ex. 2001, at 5.

Petitioner then, in an attempt to flip this factor on its head, speculates that the Court’s trial date (the trial date *jointly* proposed by the parties) may not hold. Pet. 59. The Board has previously settled this issue. The Board “generally take[s] courts’ trial schedules at face value absent some strong evidence to the contrary.” *Fintiv II*, IPR2020-00019, Paper 15, Slip. Op. at 13 (informative). Because the parties here have *jointly* moved the Court to set a trial date of December 19, 2022, the Board should accept this will of the parties at face value. Thus, the proximity of the court’s, and the parties’, trial date to the Board’s projected statutory deadline favors denial.

3. *investment in the parallel proceeding by the court and parties*

The third factor favors denial because, at the time of the anticipated decision on institution, the investment in the co-pending litigation will already have been significant. Under the parties’ jointly proposed schedule for the parallel litigation, by the time of the anticipated decision on institution, the Court will have already held the *Markman* hearing. *See* Ex. 2001, at 3. Indeed, it is Judge Albright’s practice to issue preliminary claim constructions in advance of the *Markman* hearing and enter his final claim construction order shortly thereafter. Each one of these circumstances weigh in favor of denial under this factor—collectively, they make a compelling case for exercising statutory discretion under Section 314(a).

Petitioner errs in asking the Board to consider the factual circumstances *as of the filing date of the Petition*, without regard to the instruction in *Fintiv* that this factor requires consideration “at the time of the institution decision.” *Fintiv*, Slip Op. 9. Petitioner argues that “the co-pending litigation is in its early stages.” Pet. 59. The proposed schedule in district court, jointly proposed and currently adhered to by the parties establishes that significant investment by the Court and the parties will have occurred “at the time of the institution decision.” *Fintiv*, Slip Op. 9.

Further, in *Fintiv II*, the Board found *Fintiv* factor three “weighs somewhat *in favor* of discretionary denial” due to facts that are also present here. *Fintiv II*, Slip Op. 13–14. Specifically, as of the decision on institution, the parties had completed

claim construction briefing, the District Court had held a *Markman* hearing and issued a claim construction order, and the parties had exchanged respective contentions on issues of infringement and validity. *Id.* As discussed above, the same set of circumstances will be before the Board here as early as the filing of the Preliminary Response (and hence months before the anticipated decision on institution).

Applying the *Fintiv* and *Fintiv II* opinions, and when this factor is properly considered in view of “the time of the institution decision” (*Fintiv*, Slip Op. 9), factor three weighs in favor of denial due to the significant investment by the Court and the parties that will have occurred by the time the Board considers this factor.

4. *overlap between issues raised in the petition and in the parallel proceeding*

The fourth factor also favors denial. *Fintiv* states, “if 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.” Slip. Op. 12. First, Petitioner presents no evidence of any stipulation according to *Sand Revolution II, LLC v. Continental Intermodal Group*, IPR2019-01393, Paper 24, at 11 (PTAB June 16, 2020), in the parallel litigation. Instead, Petitioner merely asserts that “Petitioner will cease asserting in the co-pending litigation **the combination of references on which trial is instituted for the claims on which trial is instituted**, to the extent Petitioner even asserts the same combination in the district court.” Pet. 60 (emphasis

added). It is telling that Petitioner will not (and has not) made any *actual* stipulation, even under the condition it specifies here, despite the fact that it could have (and should have) done so before filing its Petition. In other words, Petitioner's proposed stipulation is a gratuitous promise and does not bind Petitioner to anything in the parallel district court litigation, thus allowing for complete overlap of the issues. This is especially so given that Petitioner has since served its initial invalidity contentions (Ex. 2002) which asserts the same references, Traversat and Gou, in the Petition. Ex. 2002, at 21.

In other words, even the hypothetical "stipulation" (which Petitioner has not committed to) will have no teeth because it is only limited to the specific **"combination of references on which trial is instituted for the claims on which trial is instituted."** Pet. 60 (emphasis added). Petitioner expressly contemplates the ability to run an end-around its so-called "stipulation" by merely making minor adjustments to the "instituted" "combination of references" in the Petition. Thus, if trial is instituted, Petitioner can use this proceeding as a guide to improperly present completely overlapping issues in the district court litigation.

Petitioner's alleged "stipulation" bears no resemblance to the stipulation at issue in *Sand Revolution*. Moreover, *Sand Revolution* recognized a distinction between a stipulation tethered only to the specific IPR references with a stipulation that broadly relinquishes the right (on condition of IPR institution) to "pursue any

ground raised or that could have been reasonably raised in an IPR, *i.e.*, any ground that could be raised under §§ 102 or 103 on the basis of prior art patents or printed publications.” *Sand Revolution*, Slip. Op. 12 n.5. The Board explained that “[a] broader stipulation of that nature, not at issue here, might better address concerns regarding duplicative efforts and potentially conflicting decisions in a much more substantial way.” *Id.* This instruction in *Sand Revolution* is consistent with the precedential decision in *Sotera Wireless, Inc. v. Masimo Corporation* (§ II.A), IPR2020-01019, Paper 12 (Dec. 1, 2020) (designated Dec. 17, 2020) (“*Sotera*”). There, the Board considered a stipulation—*filed in District Court*—which broadly stated “if IPR is instituted, [petitioner] will not pursue in the District Court Litigation any ground raised or that could have been reasonably raised in an IPR.” *Sotera*, Slip. Op. 18. Favorably citing *Sand Revolution*, *Sotera* states that “such a broad stipulation better addresses concerns of duplicative efforts and potentially conflicting decisions in a much more substantial way.” *Id.* (citing *Sand Revolution*, Slip. Op. 12 n.5).

That is not what Petitioner did here. Petitioner could have filed a stipulation in the District Court precisely matching either the stipulation at issue in *Sand Revolution*, or the noted instructive criteria in *Sand Revolution* (and repeated in *Sotera*) for a more *broadly worded* stipulation that could have meaningfully addressed concerns of duplicative efforts and potentially conflicting decisions.

Petitioner did not do so. Rather, Petitioner only makes a hollow promise as to its “stipulation” in its Petition. It is significant that Petitioner opted to not file *any* stipulation in District Court. Further to the hollowness of Petitioner’s “stipulation,” Petitioners have inserted an escape clause that *erases* any obligations by merely making minor adjustments to the “instituted” “combination of references” in the Petition.

This factor favors denial, therefore, because the Petition includes the same or substantially the same claims, grounds, arguments, and evidence as presented in the parallel proceeding.

5. whether the petitioner and the defendant in the parallel proceeding are the same party

The fifth factor considers “whether the petitioner and the defendant in the parallel proceeding are the same party.” *Fintiv*, Slip. Op. 5–6, 13–14. Here, the parties are the same. Accordingly, this factor favors denial.

6. other circumstances that impact the Board’s exercise of discretion, including the merits

The sixth factor favors denial. *Fintiv* states, “if the merits of the grounds raised in the petition are a closer call, then that fact has favored denying institution when other factors favoring denial are present.” Slip. Op. 15 (citations omitted). As will be further discussed below, the Petition is deficient, and institution would be an inefficient use of the Board’s resources. As provided in the second factor of the

Fintiv analysis, *supra*, the District Court trial will occur proximal to a final written decision if an IPR trial is instituted here.

V. LEVEL OF ORDINARY SKILL IN THE ART

The Petition proposes a person of ordinary skill in the art at the time of the '014 patent (a "POSITA") would possess a bachelor's degree in electrical engineering, computer engineering, computer science, or a related field (or its equivalent), plus at least two years of experience working in networking environments. Pet. 18. Patent Owner does not offer a competing definition because, even if it were appropriate to apply Petitioner's amorphous and varying definition for a POSITA, Petitioner would still not meet its burden to prove unpatentability of any challenged claim.

VI. PETITIONER DOES NOT PROVE THAT ANY CHALLENGED CLAIM IS UNPATENTABLE

Petitioner has the burden of proof to establish entitlement to relief. 37 C.F.R. § 42.108(c) ("review shall not be instituted for a ground of unpatentability unless . . . there is a reasonable likelihood that at least one of the claims challenged . . . is unpatentable"). The Petition should be denied as failing to meet this burden. The Petition presents the following grounds of purported anticipation and obviousness:

Ground	References	Challenged Claims
1	35 U.S.C. § 103 (AIA) over Traversat	1–11 and 18–19

Ground	References	Challenged Claims
2	35 U.S.C. § 103 (AIA) over Traversat in view of Guo	12–17

A. Claim Construction

The standard for claim construction applicable here is the “ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.” 37 C.F.R. §42.100(b) (effective November 13, 2018); 83 Fed. Reg. No. 197, 51340 (Oct. 11, 2018). This is the same standard applied by Article III courts. *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005). The proper standard primarily focuses on intrinsic evidence, such as the patent specification and prosecution history, to interpret the claim terms. *Id.* at 1317; *see* 37 C.F.R. § 42.100(b). For all claims, Patent Owner requests that the Board adopt the ordinary and customary meaning of the claim term as understood by one of ordinary skill in the art.

B. Traversat does not disclose “wherein the connected services layer is configured to support establishment of the service connection based on a service name of the connected services layer, a service name of the remote connected services layer, and a service connection identifier for the service connection” (Claims 1, 18, and 19) (Grounds 1 and 2)

The Petition relies on the same discussion of independent claim 1 for independent claims 18 and 19. *See* Pet. 40. Therefore, the Petition’s deficiency here as to claim 1 applies equally to all independent claims, and because the Petition’s

Ground 2 does not challenge any of the independent claims (*see* Pet. 43–56), the Petition’s deficiency here as to claim 1 also defeats all grounds of the Petition.

This claim limitation requires the connected services layer to be configured to support establishment of the service connection ***based on*** a service name of the connected services layer, a service name of the remote connected services layer, and a service connection identifier for the service connection. The Petition alleges that Traversat discloses the three items of “a service name of the connected services layer, a service name of the remote connected services layer, and a service connection identifier for the service connection” (Pet. 17–19), however, the Petition completely overlooks (and Traversat does not disclose) the requirement of “establishment of the service connection ***based on***” those three items.

Instead, the Petition points to Traversat’s “pipe” as being the required “service connection.” Pet. 18. And the Petition argues that Traversat’s pipes have a “pipe identifier” and that a “peer identifier” of an originating and endpoint peer is “bound” to a pipe. *Id.* 18–19. This does not meet the claim limitation. It only shows that certain information is associated with a “pipe”, but that does not disclose the “pipe” being ***established based on*** those three items. Furthermore, the citations to Traversat relied upon by the Petition for this contention do not support or disclose any identifier (or “service name”) of the “originating” peer being “bound” to a pipe. In

fact, the term “originating peer” and the word “originating” does not appear *anywhere* in the disclosure of Traversat.

Moreover, Traversat itself discloses that a pipe is ***not*** established according to the requirements of this limitation. Specifically, Traversat discloses that:

to connect a pipe, a peer may send a discovery request for a pipe advertisement containing specific keywords. The peer may then receive the requested pipe advertisement. The peer may then send a pipe resolver request for a peer matching **the pipe identifier** and may then **receive the peer advertisement**, for example from a pipe service that handles the request. The peer may then send data down the pipe, **for example using a URL addressing scheme**.

Ex. 1005, 20:42–49 (emphasis added).

As shown above, only two items are used to connect the pipe in Traversat, a “pipe identifier” and arguably a “URL” from a “peer advertisement”. However, this limitation requires three items: (1) a service name of the connected services layer, (2) a service name of the remote connected services layer, and (3) a service connection identifier for the service connection. Traversat only includes “a service connection identifier” (allegedly the pipe identifier) and “a service name of the remote connected services layer” (allegedly a URL or the peer identifier for the remote peer from the “peer advertisement”). However, Traversat’s disclosure fails

to disclose a “service name of the connected services layer”—what Petitioner alleges as the “peer identifier” of the “originating peer.”

The Petition points to Traversat’s description of a “**peer’s UUID or unique name**” as allegedly being a “service name of a connected service layer.” Pet. 17–18. Even assuming this to be correct, the Petition’s own argument shows that there is no “service name of the connected services layer” or “peer identifier” (UUID or unique name) for the “originating peer” disclosed by Traversat in connecting a “pipe.” The Petition argues:

a pipe is a “mechanism for establishing communication between peers” and abstract network service “using a pipe identifier which is bound to a peer identifier via a pipe advertisement, which in turn is bound to an endpoint address via a peer advertisement and an endpoint advertisement.”

Pet. 18.

The Petition implicitly argues that the “peer advertisement” and “endpoint advertisement” are directed to different things, but they are not. First, Traversat only discloses that connecting a pipe requires a pipe identifier and a URL from a peer advertisement. Ex. 1005, 20:42–49. And that a URL from the peer advertisement is for the remote peer. Second, there is only one “peer” disclosed by Traversat: the “endpoint.” Thus, the peer advertisement and endpoint advertisement describe the same thing. Finally, there is nothing in the Petition (or Traversat) that shows that the

“peer identifier” of the “originating peer” has anything to do with, or is used in any way, in connecting a “pipe” in Traversat.

C. Traversat does not disclose “wherein the connected services layer is configured to: send, toward a server, a service connection request message comprising the service name of the connected services layer and the service name of the remote connected services layer of the remote endpoint” (Claims 1, 18, and 19) (Grounds 1 and 2)

The Petition relies on the same discussion of independent claim 1 for independent claims 18 and 19. *See* Pet. 40. Therefore, the Petition’s deficiency here as to claim 1 applies equally to all independent claims, and because the Petition’s Ground 2 does not challenge any of the independent claims (*see* Pet. 43–56), the Petition’s deficiency here as to claim 1 also defeats all grounds of the Petition.

The Petition itself shows that Traversat does not disclose the connected services layer configured to sending, toward a server, a service connection message that comprises “the service name of the remote connected services layer of the remote endpoint.” Specifically, the Petition relies upon Traversat’s requesting peer sending a discovery query message. Pet. 19–21. However, as shown by the reproduction of Traversat’s discovery query message in the Petition, the service name of the remote connected services layer is not included in Traversat’s discovery query message. Pet. 20. Instead, the Petition argues that Traversat discloses “Named peers may also be located using the peer discovery protocol.” *Id.* But this disclosure fails to show the requirements of the claim limitation. First, Traversat does not define

a “named peer,” and second, that a “named peer” may be located using the peer discovery process does not require or guarantee that “the service name of the remote connected services layer of the remote endpoint” is included in Traversat’s discovery query message. Traversat fails to disclose the remote peer’s UUID or unique “name” as being included in a discovery query message that is sent from a “requesting peer.”

Traversat *only* discloses that using the peer discovery protocol, a requesting peer, after receiving any and all reachable advertisements, may look for, and find a specific “named peer” within those returned advertisements. This is further shown by Traversat’s requirement that a “name of the peer” field be included with the *peer advertisement* message. *See* Pet. 20–21 (*citing* Ex. 1005, 35:50–36:15).

Therefore, there is nothing in the Petition or Traversat that discloses wherein the connected services layer is configured to: send, toward a server, a service connection request message comprising the service name of the connected services layer and the service name of the remote connected services layer of the remote endpoint,” as required by the claim limitation.

D. The Petition fails to establish *prima facie* obviousness of the challenged dependent claims.

Because Petitioner has failed to meet its burden to prove unpatentability of independent claims 1, 18, and 19 upon any grounds, the challenged dependent claims likewise have not been shown to be unpatentable.

VII. CONCLUSION

For the foregoing reasons, BRAZOS respectfully requests that the Petition be denied in its entirety.¹

Date: September 17, 2021

Respectfully submitted,

By: /Ryan Loveless/
Ryan Loveless
Reg. No. 51,970

Jeffrey Huang
Reg. No. 68,639
Attorneys for Patent Owner

¹ Patent Owner does not concede, and specifically denies, that there is any legitimacy to any arguments in the Petition that are not specifically addressed herein.

CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d), we certify that this Preliminary Response to Petition complies with the type-volume limitation of 37 C.F.R. § 42.24(b)(1) because it contains fewer than the limit of 14,000 words, as determined by the word-processing program used to prepare the brief, excluding the parts of the brief exempted by 37 C.F.R. § 42.24(a)(1).

Date: September 17, 2021

By: /Ryan Loveless/
Ryan Loveless
Reg. No. 51,970

Jeffrey Huang
Reg. No. 68,639
Attorney for Patent Owner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e), we certify that we served an electronic copy of the foregoing PATENT OWNER'S PRELIMINARY RESPONSE, along with any accompanying exhibits filed via the PTAB E2E system, to Petitioner's counsel at the following addresses identified in the Petition's consent to electronic service:

Lead Counsel

Theodore M. Foster (Reg. No. 57,456)
ipr.theo.foster@haynesboone.com

Back-Up Counsel

David L. McCombs (Reg. No. 32,271)
david.mccombs.ipr@haynesboone.com

Eugene Goryunov (Reg. No. 61,579)
eugene.goryunov.ipr@haynesboone.com

Gregory P. Huh (Reg. No. 70,480)
gregory.huh.ipr@haynesboone.com

Date: September 17, 2021

Respectfully submitted,

By: /Ryan Loveless/
Ryan Loveless
Reg. No. 51,970

Jeffrey Huang
Reg. No. 68,639

Attorneys for Patent Owner