

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMCAST CABLE COMMUNICATIONS, LLC,
Petitioner,

v.

ROVI GUIDES, INC.,
Patent Owner.

IPR2020-00800 (Patent 7,779,445 B2)
IPR2020-00801 (Patent 7,779,445 B2)
IPR2020-00802 (Patent 7,779,445 B2)¹

Before KARL D. EASTHOM, ROBERT J. WEINSCHENK, and
KRISTI L. R. SAWERT, *Administrative Patent Judges*.

SAWERT, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

¹ These cases have not been joined or consolidated. Rather, this Decision governs each case based on common issues. The parties shall not employ this heading style.

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I. INTRODUCTION

Comcast Cable Communications, LLC (“Petitioner”) filed three petitions—designated IPR2020-00800, IPR2020-00801, and IPR2020-00802—requesting *inter partes* review of claims 1–28 of U.S. Patent No. 7,779,445 B2 (Ex. 1001, “the ’445 patent”). IPR2020-00800, Paper 2 (“Pet.”); IPR2020-00801, Paper 2; IPR2020-00802, Paper 2 (collectively, “Petitions”). In each proceeding, Petitioner also filed a separate paper, titled “Petitioner’s Petition Ranking and Explanation of Material Differences Between Petitions.” IPR2020-00800, Paper 3 (“Ranking Paper”); IPR2020-00801, Paper 3; IPR2020-00802, Paper 3 (collectively, “Ranking Papers”). Rovi Guides, Inc. (“Patent Owner”) timely filed Preliminary Responses to the Petitions. IPR2020-00800, Paper 8 (“Prelim. Resp.”); IPR2020-00801, Paper 8; IPR2020-00802, Paper 8 (collectively, “Preliminary Responses”).

We have authority under 35 U.S.C. § 314 to determine whether to institute an *inter partes* review. The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted unless “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” The Supreme Court has held that the Board, in a decision to institute under 35 U.S.C. § 314(b), may not institute review on fewer than all claims challenged in the petition. *SAS Inst. Inc. v. Iancu*, 138 S. Ct. 1348, 1355–56 (2018). Moreover, in accordance with USPTO Guidance, “if the PTAB institutes a trial, the PTAB will institute on all challenges raised in the petition.” *See Guidance on the Impact of SAS on AIA Trial Proceedings* (April 26, 2018) (available at <https://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/trials/guidance-impact-sas-aia-trial>)

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(“USPTO Guidance”); *see also PGS Geophysical AS v. Iancu*, 891 F.3d 1354, 1360 (Fed. Cir. 2018) (interpreting the statute to require “a simple yes-or-no institution choice respecting a petition, embracing all challenges included in the petition”).

Applying those standards, and upon consideration of the information presented in the Petitions, the Ranking Papers, and the Preliminary Responses, and for the reasons explained below, we exercise our discretion under § 314(a) and deny institution of *inter partes* review in IPR2020-00800, IPR2020-00801, and IPR2020-00802.

II. BACKGROUND

A. *Real Parties-in-Interest*

Petitioner identifies its real parties-in-interest as Comcast Corp., Comcast Business Communications, LLC, Comcast Cable Communications Management, LLC, Comcast Cable Communications, LLC, Comcast Holdings Corp., NBCUniversal Shared Services, LLC (formerly known as Comcast Shared Services, LLC), Comcast of Santa Maria, LLC, Comcast of Lompoc, LLC, Comcast Financial Agency Corporation, and Comcast STB Software I, LLC. Pet. ix.² Patent Owner identifies its real parties-in-interest as Rovi Guides, Inc. and Rovi Corp. Paper 6, 1.

B. *Related Matters*

In addition to IPR2020-00800, IPR2020-00801, and IPR2020-00802, the '445 patent is involved in the following proceedings: *Rovi Guides, Inc. v. Comcast Corp.*, Case No. 2-19-cv-03096 (C.D. Cal) (“the district court proceeding”), and *In the Matter of Certain Digital Video Receivers*,

² We cite to the record in IPR2020-00800, unless otherwise noted.

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Broadband Gateways, and Related Hardware and Software Components,
Inv. No. 337-TA-1158 (“the ITC investigation”). Pet. ix; Paper 6, 1.

According to Petitioner, the district court proceeding “is stayed until the determination of the ITC Investigation becomes final.” Pet. ix. An Initial Determination in the ITC investigation issued on July 28, 2020. Paper 9, 1. A public copy of the Initial Determination has been entered into the record as Exhibit 3001.

C. The '445 patent

The '445 patent, titled “Interactive Television Systems With Digital Video Recording and Adjustable Reminders,” relates to an interactive television system comprising an “interactive television application . . . used to support network-based or local personal video recorder capabilities.” Ex. 1001, codes (54), (57). In particular, the interactive television application of the '445 patent allows a television user to view program listings and schedule a recording of an upcoming broadcast television program for later playback. *Id.* at 1:51–56, 1:59–62. The '445 patent states that the broadcast television programs may be recorded either on network equipment (e.g., a server at a cable system headend or other network location) or on local equipment (e.g., a local personal video recorder). *Id.* at 1:56–59.

The '445 patent also states that the interactive television application may automatically record and store television broadcast programs for later viewing. *Id.* at 1:63–64. These programs “may be retained for the same length of time or for different lengths of time.” *Id.* at 35:52–53. The '445 patent states that “[t]o use network or local storage efficiently, programs that are of less interest or that are particularly time-sensitive (e.g., nightly news

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reports) may be maintained on the network based or local personal video recorder for less time than programs that are of more interest or are less time-sensitive (e.g., a popular situation comedy).” *Id.* at 2:35–40.

According to the ’445 patent, “[t]his allows less desirable programming to be deleted, thereby freeing up storage space for other uses.” *Id.* at 2:40–42.

Figure 33, reproduced below, provides a flow chart of illustrative steps used to determine retention times for stored programs. *Id.* at 4:30–34.

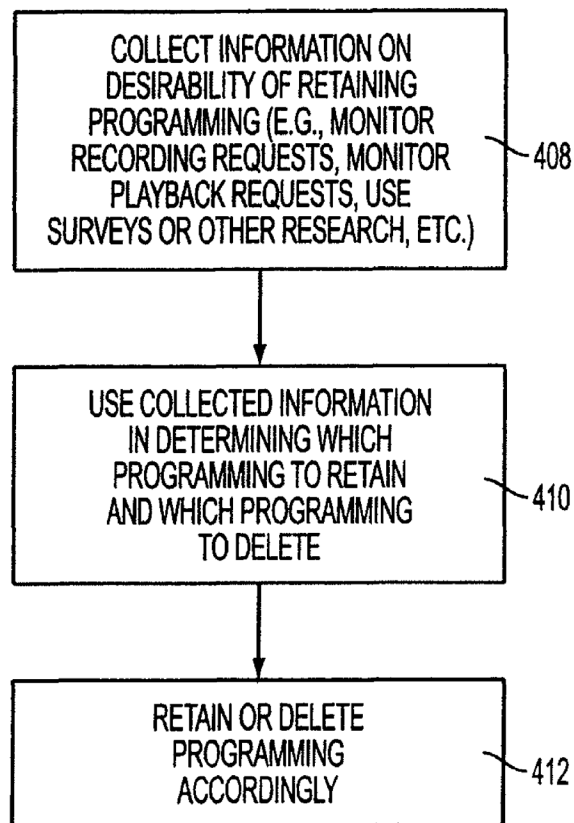


Figure 33 provides a flow chart of illustrative decisional steps for retaining or deleting programming according to the ’445 patent. Ex. 1001, 4:30–34.

At step 408 of Figure 33, the interactive television application “collect[s] information on program usage and popularity to determine how long to retain recorded programs.” *Id.* at 35:60–62. For example, the

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interactive television application may “monitor how often certain programs are recorded or played back by the users in the system.” *Id.* at 35:62–64.

Then, at step 410, the interactive television application uses the collected information “to determine which programming to retain and which programming to delete.” *Id.* at 36:2–4. The ’445 patent states that

“programs whose recording and playback request numbers fall below a predetermined threshold may be allowed to expire, whereas programs with high recording and request numbers may be retained.” *Id.* at 36:4–8.

Finally, at step 410, the interactive television application retains or deletes the programming as appropriate. *Id.* at 36:9–12.

D. Illustrative Claims

The ’445 patent contains 28 claims, of which claims 1 and 15 are independent. Claim 1 recites the following:

1. A method of providing a plurality of users access to recordings of a plurality of broadcast television programs having scheduled start-times and end-times, wherein the plurality of broadcast television programs are broadcast to the users, the method comprising:

selectively recording, based on retention criteria, a subset of the plurality of broadcast programs on storage of a server remote to the users;

providing a first user of the plurality of users at a first user device with access to at least a portion of a first recorded broadcast program during a retention-period; and

removing the recorded first broadcast program from the storage at the end of the retention-period.

Ex. 1001, 37:54–67.

Independent claim 15 recites similar language, but is directed to the system itself. *Id.* at 38:52–67.

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E. Asserted Evidence

Petitioner submits the following evidence:

IPR2020-00800	
Evidence	Exhibit No.
Declaration of Dr. Gary Tjaden	1002
John J. Sie and John C. Beyler, US 2002/0095510 A1 (published July 18, 2002) (“Sie”)	1007
Roger Y. Kim and Bob M. Bernstein, US 2002/0133830 A1 (published Sept. 19, 2002) (“Kim”)	1008
Michael J. Swain et al., US 2001/0047516 A1 (published Nov. 29, 2001) (“Swain”)	1012

IPR2020-00801	
Evidence	Exhibit No.
Declaration of Dr. Gary Tjaden	1102
Michael D. Ellis et al., WO 00/04706 (published Jan. 27, 2000) (“Ellis ’706”)	1109
Hiroo Okamoto et al., US 2003/0077074 A1 (published Apr. 24, 2003) (“Okamoto”)	1110
Sorin Faibish et al., U.S. Patent No. 4,444,662 B2 (Oct. 28, 2008) (“Faibish”)	1111
Michael J. Swain et al., US 2001/0047516 A1 (published Nov. 29, 2001) (“Swain”)	1112

IPR2020-00802	
Evidence	Exhibit No.
Declaration of Dr. Gary Tjaden	1202
Hiroo Okamoto et al., US 2003/0077074 A1 (published Apr. 24, 2003) (“Okamoto”)	1210
Michael J. Swain et al., US 2001/0047516 A1 (published Nov. 29, 2001) (“Swain”)	1212
Richard W. Lowell, U.S. Patent No. 6,012,086 (Jan. 4, 2000) (“Lowell”)	1213

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IPR2020-00802	
Evidence	Exhibit No.
Michel Girard et al., U.S. Patent No. 5,751,282 (May 12, 1998) (“Girard”)	1214

F. Asserted Grounds of Unpatentability

Petitioner asserts that claims 1–28 would have been unpatentable on the following grounds:

IPR2020-00800		
Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–11, 15–25	103(a)	Sie
1–28	103(a)	Sie, Kim
12–14, 26–28	103(a)	Sie, Swain
12–14, 26–28	103(a)	Sie, Kim, Swain

IPR2020-00801		
Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1, 4–13, 15, 18–27	102(b)	Ellis ’706
2, 3, 16, 17	103(a)	Ellis ’706
1–13, 15–27	103(a)	Ellis ’706, Okamoto
12, 13, 26, 27	103(a)	Ellis ’706, Okamoto, Faibish
14, 28	103(a)	Ellis ’706, Faibish, Okamoto, Swain

IPR2020-00802		
Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–28	103(a)	Swain
1–28	103(a)	Swain, Okamoto
2, 3, 16, 17	103(a)	Swain, Okamoto, Girard
5, 6, 19, 20	103(a)	Swain, Okamoto, Lowell

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III. DISCRETION UNDER 35 U.S.C. § 314

Section 314(a) does not require the Director to institute an *inter partes* review. *See Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) (“[T]he PTO is permitted, but never compelled, to institute an IPR proceeding.”). Rather, a decision whether to institute is within the Director’s discretion, and that discretion has been delegated to the Board. *See* 37 C.F.R. § 42.4(a); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2140 (2016) (“[T]he agency’s decision to deny a petition is a matter committed to the Patent Office’s discretion.”).

Further, as the November 2019 Consolidated Trial Practice Guide³ (“CTPG”) noted, the Leahy-Smith America Invents Act (“AIA”) was “designed to establish a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs.” CTPG at 56 (quoting H.R. Rep. No. 112-98, pt. 1, at 40 (2011), 2011 U.S.C.C.A.N. 67, 69 (stating that post-grant reviews were meant to be “quick and cost effective alternatives to litigation”)); *see also* S. Rep. No. 110-259, at 20 (2008). The Board recognized these goals of the AIA, but also “recognize[d] the potential for abuse of the review process by repeated attacks on patents.” *Gen. Plastic Indus. Co. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 at 16–17 (PTAB Sept. 6, 2017) (precedential as to § II.B.4.i) (“*General Plastic*”).

As noted above, Petitioner filed three petitions challenging the same claims of the ’445 patent: IPR2020-00800, IPR2020-00801, and IPR2020-

³ Available at <https://www.uspto.gov/sites/default/files/documents/tpgnov.pdf>.

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00802. Ranking Paper, 1; *supra* § II.B. Petitioner requests that we consider the Petition in IPR2020-00800 first. *See* Ranking Paper, 1 (ranking, in order of preference, the petitions in IPR2020-00800, IPR2020-00801, and IPR2020-00802). Patent Owner argues that we should exercise our discretion under 35 U.S.C. § 314(a) to deny institution of all three petitions. Prelim. Resp. 3–23. In particular, Patent Owner argues that, given “the advanced stage of the co-pending ITC investigation,” the Board should deny the petitions for reasons that go to fundamental issues of efficiency and fairness as well as abuse of process. *Id.* at 3–11, 15–23. Patent Owner also argues that Petitioner has engaged in improper gamesmanship, and that this “represents an additional reason for denial of [Petitioner’s] Petitions.” *Id.* at 11–15. Petitioner does not address § 314(a) in its Petition.

A. Parallel ITC Investigation

As noted above, the ITC investigation involving the ’445 patent and the same parties is currently pending. *Supra* § II.B. An Initial Determination in the ITC investigation issued on July 28, 2020. Paper 9, 1, *see also* Ex. 3001. Pointing to this ITC investigation, Patent Owner argues that institution in this proceeding would allow Petitioner to “re-litigate an issue that will have already been decided by the ITC well before a final written decision would be entered here” and “unfairly benefit from gamesmanship and drive up costs for [Patent Owner] by using the ITC as a testing ground for undisclosed art.” Prelim. Resp. 1–2.

In determining whether to exercise discretion to deny institution under § 314(a) on behalf of the Director for reason of parallel court proceeding(s), we are guided by the Board’s precedential decisions in *NHK Spring Co. v. Intri-Plex Techs., Inc.*, IPR2018-00752, Paper 8 (PTAB Sept. 12, 2018)

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(“*NHK*”) and *Apple Inc. v. Fintiv Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (“*Fintiv*”). In *NHK*, the Board found that the “advanced state of the district court proceeding” was a “factor that weighs in favor of denying” the petition under § 314(a). *NHK*, Paper 8 at 20. The Board determined that “[i]nstitution of an *inter partes* review under these circumstances would not be consistent with ‘an objective of the AIA . . . to provide an effective and efficient alternative to district court litigation.’” *Id.* (quoting *General Plastic*, Paper 19 at 16–17).

In *Fintiv*, the Board explained that “cases addressing earlier trial dates as a basis for denial under *NHK* have sought to balance considerations such as system efficiency, fairness, and patent quality.” *Fintiv*, Paper 11 at 5. *Fintiv* sets forth six non-exclusive factors for determining “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.” *Id.* at 6. These factors consider:

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.

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Id. at 5–6. We discuss the parties’ arguments in the context of considering the above factors. In evaluating the factors, we take a holistic view of whether efficiency and integrity of the system are best served by denying or instituting review. *Id.* at 6.

B. Factors 1–3

Patent Owner argues that factors 1–3 weigh in favor of denying institution. Prelim. Resp. 5–6. As to factor 1, Patent Owner argues that the “Initial Determination in the ITC investigation is expected less than six days from the filing of [the Preliminary Response]” and “therefore too far along for a stay.” *Id.* at 5–6. As to factor 2, Patent Owner argues that “the ITC trial is complete” and “the Commission’s final determination is also expected about 11 months before a final written decision [would be] issued here.” *Id.* at 6. And, as to factor 3, Patent Owner argues that the parties “have already invested heavily in the co-pending ITC investigation.” *Id.*

After considering Patent Owner’s arguments and the evidence of record, we determine that *Fintiv* factors 1–3 weigh in favor of exercising our discretion to deny institution. Factors 1–3 relate generally to efficiency concerns and ask whether, by instituting trial, the Board would be duplicating the efforts of another tribunal and/or imposing unfair costs onto the Patent Owner. *Fintiv*, Paper 11 at 6–12. For the reasons articulated below, we agree with Patent Owner that instituting trial in these proceedings would raise concerns about inefficiency and duplicative costs.

First, as noted above, the Administrative Law Judge issued an Initial Determination in the ITC investigation on July 28, 2020. Paper 9, 1, Ex. 3001. The full Commission’s final determination is set for November 20, 2020. *See* Ex. 3002 (“Notice of Commission Decision Not to Review an

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Initial Determination Extending the Target Date for Completion of the Investigation”). The record does not reflect that Petitioner requested a stay of the ITC investigation pending a decision on institution in these proceedings. Thus, we agree with Patent Owner that the ITC is unlikely to stay its investigation, and the ITC’s final determination is likely to issue before a projected final written decision in these proceedings. Prelim. Resp. 5–6.

Second, the parties and the ITC have invested (and will continue to invest) substantial time and resources in the ITC investigation. Patent Owner argues, and Petitioner does not dispute, that the ITC investigation has involved “extensive discovery, exchanged contentions, expert reports, opening and rebuttal Markman briefs, and pre-hearing and post-hearing briefs,” and “a multiday trial where the parties presented live expert testimony and had full opportunity to cross-examine the other’s expert witnesses on the validity of the ’445 patent.” Prelim. Resp. 6. We note that, following trial, the Administrative Law Judge issued a lengthy Initial Determination. Ex. 3001. And, upon the parties’ respective petitions for review, the full Commission has agreed to review the Initial Determination in part. *See* Ex. 3003, 1 (“Notice of Commission Decision to Review in Part an Initial Determination Finding a Violation of Section 337; Request for Written Submissions on the Issues Under Review and Remedy, the Public Interest, and Bonding”); *see also id.* at 3 (stating that the Commission has determined to review “the [Initial Determination’s] finding that claims 5 and 15 of the ’445 patent are invalid as anticipated under 35 U.S.C. 102(g)(2) by Comcast’s VOD Vision System”). The full Commission’s notice of review requires the parties to expend additional substantial effort on briefing several

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questions related to the Initial Determination. *See id.* at 3–5 (setting forth nine questions for the parties to address “with reference to the applicable law and the evidentiary record” in subsequent briefs).

Finally, we observe that Petitioner filed its Petitions on April 17, 2020—more than ten months after the ITC instituted its investigation and more than 11 months after Petitioner was served with a complaint alleging infringement. *See* Pet. ix (stating that the ITC investigation was instituted on May 22, 2019, and “[t]he earliest date of service on any of the Comcast entities named in these proceedings was April 25, 2019”). At this time, Petitioner was already aware of the claims asserted against it in the ITC investigation, *see, e.g.*, Ex. 1017, the Administrative Law Judge had issued an oral *Markman* order construing certain disputed claim terms, *see* Ex. 1020, 55–57 (setting forth the constructions of “retention criteria” and “retention period”), and trial was completed, *see* Ex. 3001, 8 (stating that “[t]he Hearing was held from January 21–24, 27–28, 2020”). Petitioner provides no explanation as to why it waited to file the Petitions until nearly the end of the statutory one-year window under 35 U.S.C. § 315(b) under these circumstances.

On balance, the ITC’s advanced investigation, the considerable and ongoing resources allocated to that investigation by the parties, the Administrative Law Judge, and the full Commission, as well as the Petitioner’s unexplained delay in filing its Petitions, all favor exercising our discretion to deny institution. *Fintiv*, Paper 11 at 11–12. Thus, we determine that *Fintiv* factors 1–3 weigh in favor of exercising our discretion to deny institution.

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C. Factors 4–6

Patent Owner argues that factors 4 and 5 weigh in favor of denying institution “because of the overlap between the issues raised in the Petitions and in the ITC investigation, and because all of the proceedings involve the same parties.” Prelim. Resp. 7–11. As to factor 4, Patent Owner argues that the primary prior-art reference Petitioner asserts in IPR2020-00800 (i.e., Sie) discloses a substantially similar system to that disclosed in the prior-art references Petitioner relied on in the ITC investigation. *Id.* at 7, 9–10. Patent Owner makes similar arguments with respect to the primary prior-art references in IPR2020-00801 (i.e., Ellis ’706) and IPR2020-00802 (i.e., Swain). *Id.* at 7. Patent Owner also argues that factor 6 weighs in favor of denying institution, because the Petitions are “nothing more than an attempt to gain an improper advantage” and “recycle[] the same theories of unpatentability that [Petitioner] presented before the ITC, but in this iteration with the benefit of having learned [Patent Owner’s] rebuttal.” *Id.* at 8, 10.

Fintiv factors 4 and 5 address concerns about efficiency and the possibility of conflicting decisions. *Fintiv*, Paper 11 at 12, 14. In particular, where a petition “includes the same or substantially the same claims, grounds, arguments, and evidence as presented in the parallel proceeding,” “concerns of inefficiency and the possibility of conflicting decisions [are] particularly strong.” *Id.* at 12. The Petitions here challenge more claims than those remaining in the ITC investigation. Specifically, the Petitions challenge all 28 claims of the ’445 patent, whereas the ITC investigation involves only one claim—i.e., claim 5. *Compare, e.g., Ex. 2002, 5* (explaining, as part of the *Markman* Order, that “[a]s a result of a series of Initial Determinations certain asserted claims . . . were terminated from this

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Investigation” and that “claim 5 of the ’445 patent” remains), *with* Pet. 9 (requesting *inter partes* review of claims 1–28 of the ’445 patent). In addition, Petitioner relies on prior-art references in its Petitions that did not form the basis of the invalidity contentions addressed in the ITC’s Initial Determination. *Compare* IPR2020-00800 (relying on Sie as the primary prior-art reference), IPR2020-00801 (relying on Ellis ’706 as the primary prior-art reference), and IPR2020-00802 (relying on Swain as the primary prior-art reference), *with* Ex. 3001, 140–168 (Initial Determination addressing anticipation by prior art “VOD Vision”), *id.* at 169–182 (addressing anticipation and obviousness over U.S. Patent No. 7,873,978⁴). Thus, although *Fintiv* factor 5 (same parties) weighs in favor of exercising our discretion to deny institution, *Fintiv* factor 4 (overlap between issues) weighs against exercising our discretion.

Even so, considering the totality of the evidence before us, we determine that instituting *inter partes* review in these proceedings would not be an efficient use of the Board’s limited resources. Specifically, in the Initial Determination, the Administrative Law Judge found claim 5 of the ’445 patent invalid for anticipation under 35 U.S.C. § 102(g)(2). Ex. 3001, 274 (stating that “[c]laim 5 of U.S. Patent No. 7,779,445 is not valid”). In doing so, the Administrative Law Judge made several factual findings that the prior art taught the limitations of independent claims 1 and 15, from which all claims of the ’445 patent depend. *See id.* at 155–160 (finding that the prior art practiced all limitations of claims 1, 4, 5, and 15). We determine that these findings as to the anticipation of claims 1 and 15—even

⁴ Michael D. Ellis et al., U.S. Patent No. 7,873,978 (Jan. 18, 2011).

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though arguably not at issue in the ITC investigation—would “as a practical matter, . . . make it difficult for Patent Owner to maintain a district court proceeding on [those] patent claims.” *Fintiv*, Paper 11 at 9.

Coupled with the full Commission’s notice of review and Petitioner’s lack of diligence in filing its Petitions, we find that concerns about inefficiency and the possibility of conflicting decisions to be particularly strong in these proceedings. Indeed, institution of a trial testing patentability of claims 1 and 15 of the ’445 patent (from which all remaining claims depend) in this forum may duplicate the ITC’s investigation, and thus would not “serve the interest of overall system efficiency and integrity”—a concern that factor 6 addresses. *Fintiv*, Paper 11 at 15. For these reasons, we determine that factor 6 weighs in favor of exercising our discretion to deny institution.

D. Summary

We determine that, in these proceedings, most *Fintiv* factors (i.e., factors 1–3, 5, and 6) weigh in favor of exercising our discretion to deny institution under § 314(a). Only the fourth factor weighs against discretionary denial, but, in our holistic review of all the *Fintiv* factors, does not sufficiently tip the balance in favor of declining our discretion to deny under § 314(a). For these reasons, we exercise our discretion to deny institution under § 314(a) for reason of the parallel ITC investigation. Because we exercise our discretion to deny institution under the *Fintiv* factors, we decline to address Patent Owner’s arguments about gamesmanship and multiple petitions. *See* Prelim. Resp. 11–23.

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IV. CONCLUSION

For the reasons provided above, considering all the circumstances in these cases, we exercise our discretion under § 314(a) to deny the Petitions in IPR2020-00800, IPR2020-00801, and IPR2020-00802.

V. ORDER

In consideration of the foregoing, it is hereby

ORDERED that the Petitions are *denied*, and no trial is instituted.

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