

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
Petitioner,

v.

DAEDALUS BLUE, LLC,
Patent Owner.

Case IPR2021-00832
Patent No. 8,381,209

PATENT OWNER'S PRELIMINARY SUR-REPLY

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EX2005	Microsoft Corporation's Notice of Filing Petitions for <i>Inter Partes</i> Review, <i>Daedalus Blue, LLC v. Microsoft Corporation</i> , Case No. 6:20-cv-1152-ADA, Dkt. No. 19 (W.D. Tex. May 7, 2021)
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EX2010	Defendant's Revised Proposed Claim Constructions, <i>Daedalus Blue, LLC v. Microsoft Corporation</i> , Case No. 6:20-cv-1152-ADA, dated August 11, 2021

I. The *Fintiv* Factors Strongly Support Discretionary Denial

Denial under §314(a) is warranted: a stay is very unlikely, trial is set before the projected statutory deadline for a final written decision, *Markman* briefing and hearing will be complete prior to statutory institution date, there is complete overlap parties and issues (uncured by Petitioner’s proposed stipulation), and the merits, efficiency, and consistency also favor denial.

First, a stay is very unlikely. Unlike *Juniper*, Petitioner challenges only three of five asserted patents, and told the court it does not intend to challenge others. EX2005. Petitioner’s characterizing the lack of a stay as speculative is belied by those facts. Nor is this case like *Juniper*, where Petitioner stated that it *would* seek a stay, a motion to transfer to the Northern District of California was pending, and neither party had identified any statements or other evidence that addressed a stay for the parallel litigation. *Juniper Networks v. WSOU Invest., LLC*, IPR2021-00538, Paper 9 (PTAB Aug. 18, 2021) (“*Juniper*”), at 8. Here, Patent Owner identified Petitioner’s statement to the court that it would not challenge two of the five asserted patents. POPR, 44; EX2005. Petitioner has not stated that it will request a stay, and there is no pending motion to transfer that could affect stay likelihood or timing.

Second, trial is scheduled to occur before the projected final written decision date. The November 14, 2022 trial date is not “estimated” and Petitioner’s

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