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Subject: RE: IPR2024-00150: Authorization for Preliminary Reply
Date: Wednesday, March 13, 2024 8:48:31 AM

Counsel,

From the Board -

1. Petitioner is free to provide Patent Owner with a *Sotera* stipulation and file it with the Board as a separate exhibit. If Petitioner serves and files a *Sotera* stipulation, the Board does not need further briefing on the *Fintiv* factors for discretionary denial. See Katherine K. Vidal, *Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation* (June 21, 2022); available at https://www.uspto.gov/sites/default/files/documents/interim_proc_discretionary_denials_at_a_parallel_district_court_litigation_memo_20220621_.pdf (“[T]he PTAB will not discretionarily deny institution of an IPR or PGR in view of parallel district court litigation where a petitioner stipulates not to pursue in a parallel district court proceeding the same grounds as in the petition or any grounds that could have reasonably been raised in the petition.”).
2. If Petitioner is unwilling to provide a *Sotera* stipulation, Petitioner is authorized to file a five-page preliminary reply by March 20, narrowly tailored to address the *Fintiv* factors for discretionary denial. In response, Patent Owner is authorized to file a five-page preliminary sur-reply by March 27, addressing the same.

Regards,

Esther Goldschlager
Supervisory Paralegal Specialist
Patent Trial & Appeal Board
U.S. Patent & Trademark Office

From: Kaiser, Jessica (Perkins Coie) <JKaiser@perkinscoie.com>
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Subject: IPR2024-00150: Authorization for Preliminary Reply

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Dear Honorable Board,

Petitioner requests authorization to file a preliminary reply in the above-referenced case, limited to the *Fintiv* issues raised in the preliminary response.

Good cause exists for a preliminary reply because, for example, Petitioner could not have addressed in the Petition the district court scheduling order that was recently entered on February 21, 2024. Petitioner seeks 5 pages for its preliminary reply and to file it within one week of receiving authorization. Petitioner does not oppose Patent Owner being authorized to file a preliminary sur-reply of equal length to be filed within one week of the preliminary reply being filed and limited to the issues raised in the preliminary reply.

Petitioner has conferred with Patent Owner, and Patent Owner opposes this request.

If the Board wishes to have a conference call, the parties can confer and propose times of mutual availability.

Best regards,

Jessica Kaiser | **Perkins Coie LLP**

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