

# EXHIBIT B

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571-272-7822

Paper: 11  
Date: January 4, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC.,  
Petitioner,

v.

AIRE TECHNOLOGY LIMITED,  
Patent Owner.

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IPR2022-01135  
Patent 8,205,249 B2

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Before JEFFREY S. SMITH, BRIAN J. McNAMARA, and  
MIRIAM L. QUINN, *Administrative Patent Judges*.

SMITH, *Administrative Patent Judge*.

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

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## I. INTRODUCTION

### A. Background and Summary

Petitioner, Apple Inc., filed a Petition (Paper 2, “Pet.”) requesting *inter partes* review of claims 1–12 of U.S. Patent No. 8,205,249 B2 (Ex. 1001, “the ’249 patent”) pursuant to 35 U.S.C. § 311(a). Patent Owner, Aire Technology Ltd., filed a Preliminary Response (Paper 6, “Prelim. Resp.”) pursuant to 35 U.S.C. § 313. With our email authorization of October 13, 2022 (Ex. 1024), Petitioner filed a Reply (Paper 9, “Reply”) and Patent Owner filed a Sur-Reply (Paper 10, “Sur-Reply”) directed solely to an issue regarding whether we should exercise our discretion to deny the Petition under 35 U.S.C. § 314(a).

Pursuant to 35 U.S.C. § 314(a), the Director may not authorize an *inter partes* review unless the information in the petition and preliminary response “shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” For the reasons that follow, we institute an *inter partes* review as to claims 1–12 of the ’249 patent on the ground of unpatentability asserted in the Petition.

## II. REAL PARTIES-IN-INTEREST

Petitioner identifies itself (Apple, Inc.) as its sole real party-in-interest. Pet. 68. Patent Owner identifies itself (Aire Technology Ltd.) as its sole real party-in-interest. Paper 4, 2.

## III. RELATED MATTERS

The Petition states that the ’249 patent is the subject of the following proceedings:

*Aire Technology Ltd. v. Google LLC*, No. 6-21-01104, W.D. Tex., filed Oct. 25, 2021;

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*Aire Technology Ltd. v. Apple, Inc.*, No. 6-21-01101, W.D. Tex., filed Oct. 22, 2021 (“the Apple litigation”);

*Aire Technology Ltd. v. Samsung Electronics co, Ltd. et al.*, No. 6-21-00955 W. D. Tex., filed Sep. 15, 2021;

*Samsung Electronics Co., Ltd. v. Aire Technology Ltd.*,  
IPR2022-00875 (PTAB, Apr. 22, 2022)

Pet. 68. Patent Owner identifies the following additional proceedings as “related current and/or former proceedings involving the patent at issue.”  
Paper 4, 2–3.

*Samsung Electronics Co., Ltd. v. Aire Technology Ltd.*,  
IPR2022-00874 (PTAB April 22, 2022)

*Samsung Electronics Co., Ltd. v. Aire Technology Ltd.*,  
IPR2022-00876 (PTAB May 2, 2022);

*Samsung Electronics Co., Ltd. v. Aire Technology Ltd.*,  
IPR2022-00877 (PTAB May 2, 2022);

*Apple Inc. v. Aire Technology Ltd.*, IPR2022-01136 (PTAB June 15, 2022);

*Apple Inc. v. Aire Technology Ltd.*, IPR2022-01137 (PTAB June 15, 2022).

#### IV. EXERCISE OF DISCRETION

In the Preliminary Response, Patent Owner contends that we should exercise our discretion to deny the Petition in favor of the parallel Apple litigation identified above taking place in the U.S District Court for the Western District of Texas (“the Texas court”). Prelim. Resp. 1–10. The Board has held that the advanced state of a parallel district court action is a factor that may weigh in favor of denying a petition under § 314(a). See *NHK Spring Co. v. Intri-Plex Techs., Inc.*, IPR2018-00752, Paper 8 at 20

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(PTAB Sept. 12, 2018) (precedential); Trial Practice Guide, 58 & n.2. We consider the following factors to assess “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”:

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.

*Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 5–6 (PTAB Mar. 20, 2020) (precedential) (“*Fintiv*”). In evaluating these 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. We consider each of these factors below.

On June 21, 2022, the Director of the USPTO issued several clarifications concerning the application of the *Fintiv* Factors. *See Interim Procedure For Discretionary Denials In AIA Post-Grant Proceedings With Parallel District Court Litigation*, issued June 21, 2022 (“Guidance Memo”)<sup>1</sup>. The Director’s memo states that “the precedential impact of *Fintiv* is limited to the facts of that case.” Guidance Memo 2. Under the Guidance Memo

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<sup>1</sup> Available at [https://www.uspto.gov/sites/default/files/documents/interim\\_proc\\_discretionary\\_denials\\_aia\\_parallel\\_district\\_court\\_litigation\\_memo\\_20220621.pdf](https://www.uspto.gov/sites/default/files/documents/interim_proc_discretionary_denials_aia_parallel_district_court_litigation_memo_20220621.pdf).

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