EXHIBIT C

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Paper 11
Date: January 4, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

AIRE TECHNOLOGY LIMITED,
Patent Owner.

IPR2022-01136
Patent 8,174,360 B2

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

McNAMARA, *Administrative Patent Judge*.

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

I. INTRODUCTION

Apple, Inc. ("Petitioner") filed a petition, Paper 2 ("Petition" or "Pet."), to institute an *inter partes* review ("IPR") of claims 1–3, 8–11, and 15 (the "challenged claims") of U.S. Patent No. 8,174,360 B2 ("the '360 patent"). 35 U.S.C. § 311; *see* Pet. 16. Aire Technology Limited ("Patent Owner") filed a Preliminary Response, Paper 6 ("Prelim. Resp."), contending that the Petition should be denied. As we authorized, Petitioner filed a Reply (Paper 9, "Reply") and Patent Owner filed a Sur-reply (Paper 10, "Sur-reply"). We have jurisdiction under 35 U.S.C. § 314, which provides that an *inter partes* review may not be instituted unless the information presented in the Petition "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."

A decision to institute under § 314 may not institute on fewer than all claims challenged in the petition. *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1359–60 (2018). In addition, per Board practice, if the Board institutes trial, it will institute "on all of the challenged claims and on all grounds of unpatentability asserted for each claim." *See* 37 C.F.R. § 42.108(a).

Having considered the arguments and the associated evidence in the record before us, for the reasons described below, we institute *inter partes* review.

II. REAL PARTIES-IN-INTEREST

Petitioner identifies itself (Apple, Inc.) as its sole real party-in-interest. Pet. 86. 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 '360 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.*, IPR2022-00876 (PTAB, May 2, 2022)
>
> *Aire Technology Ltd. v. Garmin International, Inc.*, No. 8-22-cv-01027 C.D. Cal., filed May 20, 2022

Pet. 86. Patent Owner identifies the following additional proceedings as "related current and/or former proceedings involving the patent at issue." *Id.* at 2–3.

> *Samsung Electronics Co., Ltd. v. Aire Technology Ltd.*, IPR2022-00874 (PTAB Apr. 22, 2022)
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> *Samsung Electronics Co., Ltd. v. Aire Technology Ltd.*, IPR2022-00875 (PTAB Apr. 22, 2022;
>
> *Samsung Electronics Co., Ltd. v. Aire Technology Ltd.*, IPR2022-00877 (PTAB May 2, 2022);
>
> *Apple Inc. v. Aire Technology Ltd.*, IPR2022-01135 (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 (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.

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