

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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INTEL CORPORATION,  
Petitioner,

v.

VLSI TECHNOLOGY LLC,  
Patent Owner.

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IPR2020-00141  
IPR2020-00142  
Patent 6,663,187 C1

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Before THU A. DANG, BART A. GERSTENBLITH, and  
KIMBERLY McGRAW, *Administrative Patent Judges*.

McGRAW, *Administrative Patent Judge*.

DECISION

Denying Petitioner's Requests on Rehearing of the  
Decisions Denying Institution of *Inter Partes* Review  
*37 C.F.R. § 42.71(d)*

## I. INTRODUCTION

Intel Corporation (“Petitioner”) filed a Request for Rehearing in IPR2020-00141 (Paper 17) and in IPR2020-00142 (Paper 18) (collectively “Rehearing Requests”) seeking “rehearing and Precedential Opinion Panel review” of our Decisions to deny institution (IPR2020-00141, Paper 16; IPR2020-00142, Paper 17, collectively “Decisions”) of two separate petitions challenging claims of U.S. Patent No. 6,663,187 C1. Petitioner also requested review by the Board’s Precedential Opinion Panel (“POP”) in each proceeding. *See* IPR2020-00141, Paper 18 (Notification of Receipt of POP Request); IPR2020-00142, Paper 19 (Notification of Receipt of POP Request). POP review was denied on October 26, 2020. IPR2020-00141, Paper 19 (Order); IPR2020-00142, Paper 20 (Order).

For the reasons provided below, Petitioner’s Rehearing Requests are *denied*.

## II. ANALYSIS

A party requesting rehearing bears the burden of showing that the decision should be modified. 37 C.F.R. § 42.71(d). “The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply.” *Id.* When rehearing a decision on a petition, we review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c).

Petitioner’s Rehearing Requests raise two primary arguments: (1) that the precedential Board decisions in *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential), and *NHK Spring Co. v. Intri-Plex Techs., Inc.*, IPR2018-00752, Paper 8 (PTAB Sept. 12, 2018) (precedential), were wrongly decided and should be reviewed by the POP;

and (2) that, even under the *Fintiv/NHK Spring* framework, the Board erred by failing to place sufficient weight on (a) the identity and prior conduct of VLSI Technology LLC (“Patent Owner”) and (b) Petitioner’s argument that only a subset of the claims challenged in the Petition will be presented and resolved in the related district court trial. *See, e.g.*, IPR2020-00141, Paper 17 at 1–2, 6–15.<sup>1</sup>

Petitioner’s Requests do not persuade us that our Decisions to exercise our discretion to deny institution should be modified.

With respect to Petitioner’s first argument, that *Fintiv* and *NHK Spring* were wrongly decided and should be reviewed by the POP, the POP has considered and denied Petitioner’s requests. *See* IPR2020-00141, Paper 19; IPR2020-00142, Paper 20.

With respect to Petitioner’s second argument, we disagree with Petitioner that we incorrectly weighed either the identity and prior conduct of Patent Owner or the potential difference in claims challenged in the Petition and asserted in the related litigation in deciding whether to exercise our discretion to deny institution pursuant to 35 U.S.C. § 314(a).

Our Decisions addressed Petitioner’s allegations regarding Patent Owner’s identity and conduct under *Fintiv* factor 6 (other circumstances that impact the Board’s exercise of discretion, including the merits), and we noted Patent Owner’s position that Petitioner was improperly attempting to re-litigate issues that were the subject of an antitrust suit pending in the Northern District of California. *See, e.g.*, IPR2020-00141, Paper 16 at 14–15. We further noted that, “[e]ven if Petitioner’s contentions are true,

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<sup>1</sup> For convenience, citations to the record are for papers filed in IPR2020-00141. Similar papers, however, may also be found in IPR2020-00142.

Petitioner has not shown these contentions will ‘avoid[] adjudication of Intel’s invalidity defenses” in the related Western District of Texas litigation. *Id.* at 15. In light of the record at the time, we found that Petitioner’s arguments in connection with *Fintiv* factor 6 did not weigh against exercising our discretion to deny institution. *Id.* at 16.

Additionally, we disagree with Petitioner’s assertions that we placed inadequate weight on Petitioner’s argument that only a portion of the claims challenged in the Petitions might be asserted at trial. *See, e.g.*, Paper 17, 2, 12–15. We considered Petitioner’s arguments, set forth in its Preliminary Replies, that “the limited duration of trial will inhibit Petitioner from presenting each invalidity ground to the jury” in addressing *Fintiv* factor 4 (overlap between issues raised in the petition and in the parallel proceeding). *See, e.g.*, IPR2020-00141, Paper 16 at 13 (citing IPR2020-00141, Paper 11 at 9). Petitioner’s contention that the claims challenged in the present proceedings may not be asserted at trial in the related litigation was not persuasive as it was based on speculation. We considered the overlap between the claims challenged in each Petition and those asserted in the related litigation on the record presented and determined that “there is a substantial overlap between the issues raised in the Petition and in the Western District of Texas litigation.” *Id.* Petitioner has not identified any differences among the claims that would warrant changing this analysis.

Accordingly, having considered Petitioner’s Rehearing Requests, Petitioner has not persuaded us, for the reasons discussed, that our Decisions should be modified.

III. ORDER

For the foregoing reasons, it is:

ORDERED that Petitioner's Rehearing Request in IPR2020-00141  
(Paper 17) is *denied*, and;

FURTHER ORDERED that Petitioner's Rehearing Request in  
IPR2020-00142 (Paper 18) is *denied*.

IPR2020-00141, IPR2020-00142  
Patent 6,663,187 C1

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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INTEL CORPORATION,  
Petitioner,

v.

VLSI TECHNOLOGY LLC,  
Patent Owner.

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IPR2020-00526  
IPR2020-00527  
Patent 6,663,187 C1

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Before THU A. DANG, BART A. GERSTENBLITH, and  
KIMBERLY McGRAW, *Administrative Patent Judges*.

McGRAW, *Administrative Patent Judge*.

DECISION

Denying Petitioner's Requests on Rehearing of the  
Decision Denying Institution of *Inter Partes* Review  
*37 C.F.R. § 42.71(d)*

## I. INTRODUCTION

Intel Corporation (“Petitioner”) filed a Request for Rehearing in IPR2020-00526 (Paper 17, “526-Req. Reh’g”) and in IPR2020-00527 (Paper 19, “527-Req. Reh’g”) (collectively, “Rehearing Requests”) seeking “rehearing and Precedential Opinion Panel review” of our Decision (“Dec. Inst.”) to deny institution (IPR2020-00526, Paper 16; IPR2020-00527, Paper 18<sup>1</sup>) of two separate petitions challenging claims of U.S. Patent No. 6,663,187 C1. Petitioner also requested review by the Board’s Precedential Opinion Panel (“POP”) in each proceeding. *See* IPR2020-00526, Paper 18 (Notification of Receipt of POP Request); IPR2020-00527, Paper 20 (Notification of Receipt of POP Request). POP review was denied. IPR2020-00526, Paper 19 (Order); IPR2020-00527, Paper 21 (Order).

For the reasons provided below, Petitioner’s Requests for Rehearing of our Decision to deny institution in IPR2020-00526 and IPR2020-00527 are *denied*.

## II. ANALYSIS

A party requesting rehearing bears the burden of showing that the decision should be modified. 37 C.F.R. § 42.71(d). “The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply.” *Id.* When rehearing a decision on a petition, we review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c).

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<sup>1</sup> A single Decision denying institution in both IPR2020-00526 and IPR2020-00527 was entered in each proceeding.



Petitioner's Rehearing Requests raise two primary arguments: (1) that the precedential Board decisions in *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential), and *NHK Spring Co. v. Intri-Plex Techs., Inc.*, IPR2018-00752, Paper 8 (PTAB Sept. 12, 2018) (precedential), were wrongly decided and should be reviewed by the POP; and (2) that, even under the *Fintiv/NHK Spring* framework, the Board erred by failing to place sufficient weight on (a) the identity and prior conduct of VLSI Technology LLC ("Patent Owner") and (b) Petitioner's argument that only a subset of the claims challenged in the Petition will be presented and resolved in the related district court trial. *See, e.g.*, 526-Req. Reh'g 1–3, 6–15.<sup>2</sup>

Petitioner's Requests do not persuade us that our Decision to exercise our discretion to deny institution should be modified.

With respect to Petitioner's first argument, that *Fintiv* and *NHK Spring* were wrongly decided and should be reviewed by the POP, the POP has considered and denied Petitioner's requests. *See* IPR2020-00526, Paper 19; IPR2020-00527, Paper 21.

With respect to Petitioner's second argument, we disagree with Petitioner that we incorrectly weighed either the identity and prior conduct of Patent Owner or the potential difference in claims challenged in the Petition and asserted in the related litigation in deciding whether to exercise our discretion to deny institution pursuant to 35 U.S.C. § 314(a).

Our Decision addressed Petitioner's allegations regarding Patent Owner's identity and conduct under *Fintiv* factor 6 (other circumstances that

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<sup>2</sup> For convenience, citations are to the Rehearing Request filed in IPR2020-00526. Similar arguments were made in the Rehearing Request filed in IPR2020-00527. *See* 527-Req. Reh'g.

impact the Board’s exercise of discretion, including the merits), and we noted that, “[e]ven if Petitioner’s contentions are true, Petitioner has not shown these contentions will avoid adjudication of Intel’s invalidity defenses” in the related Western District of Texas litigation. Dec. Inst. 13. In light of the record at the time, we found that Petitioner’s arguments in connection with *Fintiv* factor 6 did not weigh against exercising our discretion to deny institution. *Id.* at 13–15. Accordingly, we maintain our finding that Petitioner’s argument does not weigh against exercising our discretion to deny institution.

We also disagree with Petitioner’s assertions that we placed inadequate weight on Petitioner’s argument that not all of the challenged claims might be asserted at trial. *See, e.g.*, 526-Req. Reh’g 2–3, 9–10, 13–15. We considered this argument in addressing *Fintiv* factor 4 (overlap between issues raised in the petition and in the parallel proceeding) and determined that, based on the record as it existed at that time, Petitioner’s contention that the claims challenged in the present proceedings may not be asserted at trial in the related litigation was not persuasive as it was based on speculation and that Petitioner did not provide sufficient evidentiary support that any of the claims asserted in IPR2020-00526 or IPR2020-00527 would not be adjudicated at trial. Dec. Inst. 12. In its Rehearing Requests, Petitioner contends that after the Board issued its discretionary denial decision, Patent Owner has since narrowed its asserted claims in the parallel proceeding, such that only three of the nine claims challenged in IPR2020-00526 and only two of the five claims challenged in IPR2020-00527 remain at issue in the litigation. 526-Req. Reh’g 14; 527-Req. Reh’g 14. Petitioner asserts “[i]f the Board does not revisit its denial of institution decision” the dropped claims “will be insulated from validity challenges, as [Petitioner]

will be barred from challenging them in future petitions.” 526-Req. Reh’g 14; 527-Req. Reh’g 14.

Petitioner has not shown that this change in circumstance warrants modifying (1) the determination that *Fintiv* factor 4 weighs in favor of exercising discretion to deny institution or (2) the determination, after weighing all factors and taking a holistic view of the relevant circumstances, to exercise discretion to deny institution. Several of the claims challenged in each Petition are still at issue in the parallel proceeding, and the combinations of references asserted by Petitioner in the district court largely overlap with the combinations of references asserted in the Petitions. Petitioner has not identified any differences among the claims that have been dropped and the claims that remain as a reason to modify our Decision. *See Fintiv*, Paper 11 at 13 (“if a petition involves the same prior art challenges but challenges claims in addition to those that are challenged in the district court, it may still be inefficient to proceed because the district court may resolve validity of enough overlapping claims to resolve key issues in the petition”).

Nor are we persuaded by Petitioner’s argument that if “the Board does not revisit its denial of institution decision, the [already dropped claims (and any other claims VLSI may drop before trial)] will be insulated from validity challenges, as Intel will be barred from challenging those claims in future petitions.” 526-Req. Reh’g 14–15 (citing 35 U.S.C. § 315(b)); *see also id.* at 14 (stating that “VLSI can assert those shielded claims against others in future cases”). Although Petitioner may be barred from challenging the dropped claims in future petitions, there is no indication that Petitioner would be precluded from challenging those claims in district court litigation if Patent Owner ultimately decides to pursue them against Petitioner or that a

IPR2020-00526, IPR2020-00527  
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third party would be precluded from challenging those claims via petition if asserted against that party by Patent Owner.

We also note that on February 4, 2021, the district court issued an Order setting a trial date of April 12, 2021 for the '187 patent. Ex. 3002 (Order Setting Jury Trial). This change in circumstances regarding the trial date does not persuade us to change our decision to exercise our discretion to deny institution. Even if we were to institute an *inter partes* review proceeding, the deadline for issuing a final written decision could be no earlier than February 2022. Thus, at this time, it appears likely that trial will occur many months before any final written decision would likely issue in this proceeding.

Accordingly, having considered Petitioner's Rehearing Requests, Petitioner has not persuaded us, for the reasons discussed, that our Decision denying institution of IPR2020-00526 and IPR2020-00527 should be modified.

### III. ORDER

For the foregoing reasons, it is:

ORDERED that Petitioner's Rehearing Request in IPR2020-00526 (Paper 17) is *denied*, and

FURTHER ORDERED that Petitioner's Rehearing Request in IPR2020-00527 (Paper 19) is *denied*.

IPR2020-00526, IPR2020-00527  
Patent 6,663,187 C1

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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INTEL CORPORATION,  
Petitioner,

v.

VLSI TECHNOLOGY LLC,  
Patent Owner.

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IPR2020-00106  
Patent 7,725,759 B2

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Before THU A. DANG, BART A. GERSTENBLITH, and  
KIMBERLY McGRAW, *Administrative Patent Judges*.

GERSTENBLITH, *Administrative Patent Judge*.

DECISION

Denying Petitioner's Request on Rehearing of the  
Decision Denying Institution of *Inter Partes* Review  
*37 C.F.R. § 42.71(d)*

## I. INTRODUCTION

Intel Corporation (“Petitioner”) filed a Request for Rehearing (Paper 18, “Rehearing Request” or “Req. Reh’g”) of the Decision Denying Institution of *Inter Partes* Review (Paper 17, “Decision” or “Inst. Dec.”). Petitioner also filed a request for the Precedential Opinion Panel (“POP”) to review the Decision (Paper 19 (Notification of Receipt of POP Request)), which the POP denied (Paper 20 (Order)).

For the reasons provided below, Petitioner’s Rehearing Request is *denied*.

## II. ANALYSIS

A party requesting rehearing bears the burden of showing that the decision should be modified. 37 C.F.R. § 42.71(d). “The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply.” *Id.* When rehearing a decision on a petition, we review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c).

Petitioner’s Rehearing Request raises two primary arguments: (1) that the precedential Board decisions in *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential), and *NHK Spring Co. v. Intri-Plex Techs., Inc.*, IPR2018-00752, Paper 8 (PTAB Sept. 12, 2018) (precedential), were wrongly decided and should be reviewed by the POP; and (2) that, even under the *Fintiv/NHK Spring* framework, the Board erred by failing to place sufficient weight on (a) the identity and prior conduct of VLSI Technology LLC (“Patent Owner”) and (b) Petitioner’s argument that only a subset of the claims challenged in the Petition (Paper 3) will be

presented and resolved in the related district court trial. *See, e.g.*, Req. Reh’g 1–2.

First, with respect to whether *Fintiv* and *NHK Spring* were decided correctly, that issue was raised in Petitioner’s POP request, which was denied. *See* Paper 20.

Second, on the record before us, we do not believe that we incorrectly weighed the identity and prior conduct of Patent Owner or the potential difference in claims challenged in the Petition and asserted in the related litigation in deciding whether to exercise our discretion to deny institution pursuant to 35 U.S.C. § 314(a). In our Decision, we considered Petitioner’s allegations regarding Patent Owner’s identity and conduct under *Fintiv* factor 6 (other circumstances that impact the Board’s exercise of discretion, including the merits), and we noted Patent Owner’s position that Petitioner was improperly attempting to re-litigate issues that were the subject of an antitrust suit pending in the Northern District of California. *See* Dec. 12. We further noted that, “[e]ven if Petitioner’s contentions are true, Petitioner has not shown these contentions will ‘avoid[] adjudication of Intel’s validity defenses’ in the related Western District of Texas litigation, in which trial was scheduled to occur well before the deadline for a final written decision in this proceeding. *Id.* at 12–13. In light of the record at the time, we found that Petitioner’s arguments did not weigh against exercising discretion to deny institution. *Id.* at 13.

Additionally, contrary to Petitioner’s assertion, we did not ignore Petitioner’s argument that only a portion of the claims challenged in the Petition might be asserted at trial even if we did not expressly indicate our consideration of Petitioner’s position. *See* Req. Reh’g 6, 13–15. In the Preliminary Reply, Petitioner asserted that Patent Owner could not litigate



“every currently asserted claim in a time-limited trial” and that it is “likely” that Patent Owner would drop claims before trial in the Western District of Texas. Pet. Prelim. Reply 7. This argument, however, was not persuasive because it was based on speculation. Specifically, the record did not show when, if at all, Patent Owner would narrow the claims asserted in the related litigation. Based on the record presented, we considered the overlap between the claims challenged in the Petition and those asserted in the related litigation in addressing *Fintiv* factor 4 (overlap between issues raised in the petition and in the parallel proceeding). Dec. 9–11. In particular, at the time of our Decision, we found that “[o]n the record before us, each of the claims challenged via petition (whether in this proceeding or [related] IPR2020-00498) also is included in Petitioner’s Final Invalidity Contentions, with the exception of claim 13.” *Id.* at 11. And, we noted that Petitioner did not argue that difference as a reason not to exercise our § 314(a) discretion to deny institution. *Id.*

Accordingly, having considered Petitioner’s Rehearing Request, Petitioner has not persuaded us, for the reasons discussed, that our Decision should be modified.

### III. ORDER

For the foregoing reasons, it is:

ORDERED that Petitioner’s Rehearing Request (Paper 18) is *denied*.

IPR2020-00106  
Patent 7,725,759 B2

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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INTEL CORPORATION,  
Petitioner,

v.

VLSI TECHNOLOGY LLC,  
Patent Owner.

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IPR2020-00158  
Patent 7,523,373 B2

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Before THU A. DANG, BART A. GERSTENBLITH, and  
KIMBERLY McGRAW, *Administrative Patent Judges*.

GERSTENBLITH, *Administrative Patent Judge*.

DECISION

Denying Petitioner's Request on Rehearing of the  
Decision Denying Institution of *Inter Partes* Review  
*37 C.F.R. § 42.71(d)*

## I. INTRODUCTION

Intel Corporation (“Petitioner”) filed a Request for Rehearing (Paper 17, “Rehearing Request” or “Req. Reh’g”) of the Decision Denying Institution of *Inter Partes* Review (Paper 16, “Decision” or “Inst. Dec.”). Petitioner also filed a request for the Precedential Opinion Panel (“POP”) to review the Decision (Paper 18 (Notification of Receipt of POP Request)), which the POP denied (Paper 19 (Order)).

For the reasons provided below, Petitioner’s Rehearing Request is *denied*.

## II. ANALYSIS

A party requesting rehearing bears the burden of showing that the decision should be modified. 37 C.F.R. § 42.71(d). “The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply.” *Id.* When rehearing a decision on a petition, we review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c).

Petitioner’s Rehearing Request raises two primary arguments: (1) that the precedential Board decisions in *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential), and *NHK Spring Co. v. Intri-Plex Techs., Inc.*, IPR2018-00752, Paper 8 (PTAB Sept. 12, 2018) (precedential), were wrongly decided and should be reviewed by the POP; and (2) that, even under the *Fintiv/NHK Spring* framework, the Board erred by failing to place sufficient weight on (a) the identity and prior conduct of VLSI Technology LLC (“Patent Owner”) and (b) Petitioner’s argument that only a subset of the claims challenged in the Petition (Paper 3) will be

presented and resolved in the related district court trial. *See, e.g.*, Req. Reh’g 1–2.

First, with respect to whether *Fintiv* and *NHK Spring* were decided correctly, that issue was raised in Petitioner’s POP request, which was denied. *See* Paper 19.

Second, on the record before us, we do not believe that we incorrectly weighed the identity and prior conduct of Patent Owner or the potential difference in claims challenged in the Petition and asserted in the related litigation in deciding whether to exercise our discretion to deny institution pursuant to 35 U.S.C. § 314(a). In our Decision, we considered Petitioner’s allegations regarding Patent Owner’s identity and conduct under *Fintiv* factor 6 (other circumstances that impact the Board’s exercise of discretion, including the merits), and we noted Patent Owner’s position that Petitioner was improperly attempting to re-litigate issues that were the subject of an antitrust suit pending in the Northern District of California. *See* Dec. 13. We further noted that, “[e]ven if Petitioner’s contentions are true, Petitioner has not shown these contentions will ‘avoid[] adjudication of Intel’s validity defenses’ in the related Western District of Texas litigation, in which trial was scheduled to occur well before the deadline for a final written decision in this proceeding. *Id.* at 13–14. In light of the record at the time, we found that Petitioner’s arguments did not weigh against exercising discretion to deny institution. *Id.* at 14.

Additionally, contrary to Petitioner’s assertion, we did not ignore Petitioner’s argument that only a portion of the claims challenged in the Petition might be asserted at trial even if we did not expressly indicate our consideration of Petitioner’s position. *See* Req. Reh’g 6, 13–15. In the Preliminary Reply, Petitioner asserted that Patent Owner could not litigate

“every currently asserted claim in a time-limited trial” and that it is “likely” that Patent Owner would drop claims before trial in the Western District of Texas. Pet. Prelim. Reply 7. This argument, however, was not persuasive because it was based on speculation. Specifically, the record did not show when, if at all, Patent Owner would narrow the claims asserted in the related litigation. Based on the record presented, we considered the overlap between the claims challenged in the Petition and those asserted in the related litigation in addressing *Fintiv* factor 4 (overlap between issues raised in the petition and in the parallel proceeding). Dec. 10–12. In particular, at the time of our Decision, we found that “on the record before us, each of the claims challenged via petition also is included in Petitioner’s Final Invalidity Contentions, with the exception of dependent claims 7, 10, and 15.” *Id.* at 12. And, we noted that Petitioner did not argue that difference as a reason not to exercise our § 314(a) discretion to deny institution. *Id.*

Accordingly, having considered Petitioner’s Rehearing Request, Petitioner has not persuaded us, for the reasons discussed, that our Decision should be modified.

### III. ORDER

For the foregoing reasons, it is:

ORDERED that Petitioner’s Rehearing Request (Paper 17) is *denied*.

IPR2020-00158  
Patent 7,523,373 B2

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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INTEL CORPORATION,  
Petitioner,

v.

VLSI TECHNOLOGY LLC,  
Patent Owner.

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IPR2020-00498  
Patent 7,725,759 B2

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Before THU A. DANG, BART A. GERSTENBLITH, and  
KIMBERLY McGRAW, *Administrative Patent Judges*.

GERSTENBLITH, *Administrative Patent Judge*.

DECISION

Denying Petitioner's Request on Rehearing of the  
Decision Denying Institution of *Inter Partes* Review  
*37 C.F.R. § 42.71(d)*



## I. INTRODUCTION

Intel Corporation (“Petitioner”) filed a Request for Rehearing (Paper 17, “Rehearing Request” or “Req. Reh’g”) of the Decision Denying Institution of *Inter Partes* Review (Paper 16, “Decision” or “Inst. Dec.”). Petitioner also filed a request for the Precedential Opinion Panel (“POP”) to review the Decision (Paper 19 (Notification of Receipt of POP Request)), which the POP denied (Paper 20 (Order)).

For the reasons provided below, Petitioner’s Rehearing Request is *denied*.

## II. ANALYSIS

A party requesting rehearing bears the burden of showing that the decision should be modified. 37 C.F.R. § 42.71(d). “The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply.” *Id.* When rehearing a decision on a petition, we review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c).

Petitioner’s Rehearing Request raises two primary arguments: (1) that the precedential Board decisions in *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential), and *NHK Spring Co. v. Intri-Plex Techs., Inc.*, IPR2018-00752, Paper 8 (PTAB Sept. 12, 2018) (precedential), were wrongly decided and should be reviewed by the POP; and (2) that, even under the *Fintiv/NHK Spring* framework, the Board erred by failing to place sufficient weight on (a) the identity and prior conduct of VLSI Technology LLC (“Patent Owner”) and (b) Petitioner’s argument that only a subset of the claims challenged in the Petition (Paper 4) will be

presented and resolved in the related district court trial. *See, e.g.*, Req. Reh’g 1–2.

First, with respect to whether *Fintiv* and *NHK Spring* were decided correctly, that issue was raised in Petitioner’s POP request, which was denied. *See* Paper 20.

Second, on the record before us, we do not believe that we incorrectly weighed the identity and prior conduct of Patent Owner or the potential difference in claims challenged in the Petition and asserted in the related litigation in deciding whether to exercise our discretion to deny institution pursuant to 35 U.S.C. § 314(a). In our Decision, we considered Petitioner’s allegations regarding Patent Owner’s identity and conduct under *Fintiv* factor 6 (other circumstances that impact the Board’s exercise of discretion, including the merits), and we noted that, “[e]ven if Petitioner’s contentions are true, Petitioner has not shown these contentions will avoid adjudication of Intel’s validity defenses” in the related Western District of Texas litigation, in which trial was scheduled to occur well before the deadline for a final written decision in this proceeding. Dec. 9. In light of the record at the time, we found that a consideration of all of the circumstances identified by the parties in connection with *Fintiv* factor 6 did not weigh in favor of or against exercising discretion to deny institution. *Id.* at 8–10.

Additionally, we disagree with Petitioner’s assertion that we placed inadequate weight on Petitioner’s argument that only a portion of the claims challenged in the Petition might be asserted at trial. *See* Req. Reh’g 2–3, 12–15. In the Preliminary Reply, Petitioner asserted that “[a]lthough it is clear that not all patents and claims will be tried at the same time, the scope of trial is uncertain due to [Patent Owner’s] consistent refusal to discuss claim narrowing.” Pet. Prelim. Reply 10. This argument, however, was not

persuasive because it was based on speculation. Dec. 9. Specifically, the record did not show when, if at all, Patent Owner would narrow the claims asserted in the related litigation. Based on the record presented, we considered the overlap between the claims challenged in the Petition and those asserted in the related litigation in addressing *Fintiv* factor 4 (overlap between issues raised in the petition and in the parallel proceeding). *Id.* at 7–8. In particular, at the time of our Decision, we found that “on the record before us, each of the claims challenged via petition also is included in Petitioner’s Final Invalidation Contentions, with the exception of dependent claims 22 and 27.” *Id.* at 8. And, we noted that Petitioner did not argue that difference as a reason not to exercise our § 314(a) discretion to deny institution. *Id.*

In its Rehearing Request, Petitioner contends Patent Owner “recently narrowed its asserted claims—only *after* the Board issued its discretionary denial decision—such that five out of the nine claims challenged in this petition are no longer asserted in the co-pending litigation.” Req. Reh’g 14 (citing Ex. 1151 (Sept. 11, 2020, Identification of Claims)). Petitioner asserts “[i]f the Board does not revisit its denial of institution decision, these five claims (and any other claims [Patent Owner] may drop before trial) will be insulated from validity challenges, as [Petitioner] will be barred from challenging those claims in future petitions.” *Id.* (citing 35 U.S.C. § 315(b)).

Petitioner has not shown that this change in circumstance warrants modifying (1) the determination that *Fintiv* factor four weighs in favor of exercising discretion to deny institution or (2) the determination, after weighing all factors and taking a holistic view of the relevant circumstances, to exercise discretion to deny institution. Several of the claims challenged in the Petition are still at issue in the parallel proceeding, and the combinations

of references asserted by Petitioner in the district court largely overlap with the combinations of references asserted in the Petition. *See Fintiv*, Paper 11 at 13 (“if a petition involves the same prior art challenges but challenges claims in addition to those that are challenged in the district court, it may still be inefficient to proceed because the district court may resolve validity of enough overlapping claims to resolve key issues in the petition”).

Nor are we persuaded by Petitioner’s argument that if “the Board does not revisit its denial of institution decision, these five claims (and any other claims VLSI may drop before trial) will be insulated from validity challenges, as Intel will be barred from challenging those claims in future petitions.” Req. Reh’g 14 (citing 35 U.S.C. § 315(b)); *see also id.* (stating that “VLSI can assert those shielded claims against others in future cases”). Although Petitioner may be barred from challenging the dropped claims in future petitions, there is no indication that Petitioner would be precluded from challenging those claims in district court litigation if Patent Owner ultimately decides to pursue them against Petitioner or that a third party would be precluded from challenging those claims via petition if asserted against that party by Patent Owner.

Accordingly, having considered Petitioner’s Rehearing Request, Petitioner has not persuaded us, for the reasons discussed, that our Decision should be modified.

### III. ORDER

For the foregoing reasons, it is:

ORDERED that Petitioner’s Rehearing Request (Paper 17) is *denied*.

IPR2020-00498  
Patent 7,725,759 B2

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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INTEL CORPORATION,  
Petitioner,

v.

VLSI TECHNOLOGY LLC,  
Patent Owner.

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IPR2020-00582  
Patent 7,292,485 B1

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Before THU A. DANG, BART A. GERSTENBLITH, and  
KIMBERLY McGRAW, *Administrative Patent Judges*.

GERSTENBLITH, *Administrative Patent Judge*.

DECISION

Denying Petitioner's Request on Rehearing of the  
Decision Denying Institution of *Inter Partes* Review  
*37 C.F.R. § 42.71(d)*

## I. INTRODUCTION

Intel Corporation (“Petitioner”) filed a Request for Rehearing (Paper 21, “Rehearing Request” or “Req. Reh’g”) of the Decision Denying Institution of *Inter Partes* Review (Paper 19, “Decision” or “Inst. Dec.”). Petitioner also filed a request for the Precedential Opinion Panel (“POP”) to review the Decision (Paper 22 (Notification of Receipt of POP Request)), which the POP denied (Paper 23 (Order)).

For the reasons provided below, Petitioner’s Rehearing Request is *denied*.

## II. ANALYSIS

A party requesting rehearing bears the burden of showing that the decision should be modified. 37 C.F.R. § 42.71(d). “The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply.” *Id.* When rehearing a decision on a petition, we review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c).

Petitioner’s Rehearing Request raises two primary arguments: (1) that the precedential Board decisions in *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential), and *NHK Spring Co. v. Intri-Plex Techs., Inc.*, IPR2018-00752, Paper 8 (PTAB Sept. 12, 2018) (precedential), were wrongly decided and should be reviewed by the POP; and (2) that, even under the *Fintiv/NHK Spring* framework, the Board erred by (a) improperly surmising that the related district court trial will likely occur months before any final written decision; (b) relying upon Patent Owner’s antedating evidence without affording Petitioner an opportunity to cross-examine it; (c) failing to place appropriate weight on Patent Owner’s

litigation conduct; and (d) ignoring that the district court trial will not address the validity of each challenged claim. *See, e.g.*, Req. Reh’g 1–2.

With respect to whether *Fintiv* and *NHK Spring* were decided correctly, that issue was raised in Petitioner’s POP request, which was denied. *See* Paper 23. With respect to our consideration of the facts under the *Fintiv/NHK Spring* framework, we address each of Petitioner’s arguments.

First, Petitioner contends that we should not have relied upon the circumstances surrounding a potential trial date because there was “no indication of when the third trial (involving the ’485 patent) would actually occur.” Req. Reh’g 13. In short, only the trial date for the first of three related district court cases was set by the district court and that trial does not involve the ’485 patent, which is at issue only in the third trial. *See id.* at 12. Additionally, the 112-day spread between the first and third trials was based on a proposal by Patent Owner and was not agreed to by Intel or endorsed by the district court. *Id.* at 13. Further, Petitioner contends that after we issued our Decision, the district court rescheduled the first trial due to the closing of the Austin courthouse for civil jury trials because of COVID-19 and that there is no indication when the third trial involving the ’485 patent actually will occur. *Id.* at 12–13.

In our Decision, we found that, although there was no set trial date for the ’485 patent, the facts available at the time supported the determination that trial would likely occur months before any final written decision. Inst. Dec. 6–7. Even though we agreed with Petitioner that a firm trial date had not been set, the information available at the time of our Decision supported Patent Owner’s argument that trial would occur before a final written decision would have issued, if not months before. *See id.*



A conference call was held on January 28, 2021, between counsel for the parties and Judges Dang, Gerstenblith, and McGraw to discuss the current state of the related district court litigation. A transcript of the conference is of record as Exhibit 1028 (“Tr.”). During the conference, Patent Owner explained that, although a firm trial date had not been set by court order, the parties received an email from Mr. Pearson, one of Judge Albright’s law clerks, in which Mr. Pearson acknowledges the urgency of setting trial dates and indicates that the parties have priority to a trial date of June 7, 2021, for the ’485 patent. Ex. 1029<sup>1</sup> (Email from Evan Pearson, sent Nov. 17, 2020), 1 (Mr. Pearson states, “I will get them on the calendar and hold them as a priority – please keep us posted with adjustments.”); Tr. 11:17–12:9. Petitioner contends that the June 2021 date held for the third trial involving the ’485 patent is based on holding the trial in Austin, Texas, where the courthouse is closed currently, and that the first trial was moved to Waco, where the courthouse is open currently. Tr. 14:9–16. On February 4, 2021, the district court issued an order setting a trial date of June 7, 2021, for the ’485 patent. Ex. 2054 (Order Setting Jury Trial).

The change in circumstances regarding the trial date does not persuade us to change our decision to exercise our discretion to deny institution. Even if we were to institute an *inter partes* review proceeding, the deadline for issuing a final written decision could be no earlier than February 2022. Thus, at this time, it appears likely that trial will occur many months before any final written decision would likely issue in this proceeding. Therefore, we maintain our finding that *Fintiv* Factor 2

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<sup>1</sup> Exhibit 1029 consists of a thread of emails, with the most current being the email referenced above from Mr. Pearson. See Ex. 1029.

(proximity of the court’s trial date to the Board’s projected statutory deadline for a final written decision) weighs in favor of exercising our discretion to deny institution pursuant to 35 U.S.C. § 314(a).

Second, Petitioner argues that we should not have relied on Patent Owner’s antedating evidence under *Fintiv* Factor 6 (other circumstances that impact the Board’s exercise of discretion, including the merits) without affording Petitioner an opportunity to cross-examine it. Req. Reh’g 2, 13–14. Although Petitioner did not request an opportunity to cross-examine or otherwise respond to Patent Owner’s antedating evidence, we agree that under the circumstances presented, we should not have weighed Patent Owner’s evidence strongly in favor of exercising our discretion to deny institution.<sup>2</sup> Thus, we determine that *Fintiv* Factor 6 weighs neutrally. However, as discussed below, this change does not alter the outcome of our balancing of the factors.

Third, Petitioner contends that we incorrectly weighed the identity and behavior of Patent Owner. *See* Req. Reh’g 15. We disagree. In our Decision, we considered Petitioner’s allegations regarding Patent Owner’s identity and conduct under *Fintiv* Factor 6 (other circumstances that impact the Board’s exercise of discretion, including the merits), and we noted that, “[e]ven if Petitioner’s contentions are true, the validity of the ’485 patent is

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<sup>2</sup> Petitioner contended, without elaboration, that it “expects to show that Nii is prior art to the ’485 patent if given the opportunity to respond” to Patent Owner’s antedating evidence. Paper 12 (Petitioner’s Reply to Patent Owner’s Preliminary Response), 10. In our Decision, we remarked that “we make no determination on the ultimate question whether Patent Owner has antedated Nii” (Inst. Dec. 11 n.6), but we weighed Patent Owner’s evidence and argument in favor of exercising our discretion to deny institution (*id.* at 11).

at issue in the co-pending litigation, which is likely to go to trial well before the deadline for a final written decision in this proceeding.” Inst. Dec. 10. Accordingly, we maintain our finding that Petitioner’s “argument does not weigh against exercising our discretion to deny institution.” *Id.*

Fourth, Petitioner contends that we erred in analyzing the overlap between the related litigation and this proceeding (*Fintiv* Factor 4) because we focused on the ’485 patent generally rather than the specific claims. Req. Reh’g 14–15. We disagree. Although we mentioned the validity of the ’485 patent, we did so in the context of addressing Petitioner’s arguments regarding Patent Owner’s identity and behavior under *Fintiv* Factor 6. In the context of *Fintiv* Factor 4 (overlap between issues raised in the petition and in the parallel proceeding), we found that “Petitioner’s representation that it does not intend to include Nii as an invalidating reference when it reduces the number of invalidity grounds advanced in the district court,” left no overlapping ground. Inst. Dec. 8–9. Thus, we weighed *Fintiv* Factor 4 in Petitioner’s favor, finding that it weighs in favor of not exercising our discretion to deny institution. *Id.* at 9. Accordingly, the difference in claims asserted in the related litigation and this proceeding does not change the weighing of this factor.

Even though we now weigh *Fintiv* Factor 6 neutrally, the weighing of the other factors remains unchanged. In particular, Factor 1 also weighs neutrally. The related litigation involves the same parties as this proceeding. Fact and expert discovery has concluded and substantially all, if not all, motions have been briefed. Tr. 18:13–21. The trial date, even if not June 7, 2021, is still likely to be months before any final written decision could issue in this case; thus, Factors 2, 3, and 5 weigh in favor of exercising discretion to deny institution. Although Factor 4 weighs in favor of not exercising

discretion to deny institution, after weighing all of the factors and taking a holistic view of the relevant circumstances, we maintain our finding that “instituting an *inter partes* review would be an inefficient use of the Board’s and parties’ resources.” Inst. Dec. 11.

Accordingly, having considered Petitioner’s Rehearing Request, Petitioner has not persuaded us, for the reasons discussed, that the outcome of our Decision should be modified.

### III. ORDER

For the foregoing reasons, it is:

ORDERED that Petitioner’s Rehearing Request (Paper 21) is *denied*.

IPR2020-00582  
Patent 7,292,485 B1

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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INTEL CORPORATION,  
Petitioner,

v.

VLSI TECHNOLOGY LLC,  
Patent Owner.

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IPR2020-00583  
Patent 7,606,983 B2

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Before THU A. DANG, BART A. GERSTENBLITH, and  
KIMBERLY McGRAW, *Administrative Patent Judges*.

GERSTENBLITH, *Administrative Patent Judge*.

DECISION

Denying Petitioner's Request on Rehearing of the  
Decision Denying Institution of *Inter Partes* Review  
*37 C.F.R. § 42.71(d)*

## I. INTRODUCTION

Intel Corporation (“Petitioner”) filed a Request for Rehearing (Paper 24, “Rehearing Request” or “Req. Reh’g”) of the Decision Denying Institution of *Inter Partes* Review (Paper 22, “Decision” or “Inst. Dec.”). Petitioner also filed a request for the Precedential Opinion Panel (“POP”) to review the Decision (Paper 25 (Notification of Receipt of POP Request)), which the POP denied (Paper 26 (Order)).

For the reasons provided below, Petitioner’s Rehearing Request is *denied*.

## II. ANALYSIS

A party requesting rehearing bears the burden of showing that the decision should be modified. 37 C.F.R. § 42.71(d). “The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply.” *Id.* When rehearing a decision on a petition, we review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c).

Petitioner’s Rehearing Request raises two primary arguments: (1) that the precedential Board decisions in *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential), and *NHK Spring Co. v. Intri-Plex Techs., Inc.*, IPR2018-00752, Paper 8 (PTAB Sept. 12, 2018) (precedential), were wrongly decided and should be reviewed by the POP; and (2) that, even under the *Fintiv/NHK Spring* framework, the Board erred by (a) speculating that the related district court trial will likely occur months before any final written decision; (b) failing to place appropriate weight on Patent Owner’s litigation conduct; and (c) ignoring that the district court trial

will likely not address the validity of most challenged claims. *See, e.g.*, Req. Reh’g 1–2.

With respect to whether *Fintiv* and *NHK Spring* were decided correctly, that issue was raised in Petitioner’s POP request, which was denied. *See* Paper 26. With respect to our consideration of the facts under the *Fintiv/NHK Spring* framework, we address each of Petitioner’s arguments.

First, Petitioner contends that we should not have relied upon the circumstances surrounding a potential trial date because “the facts do not support an estimation that the third trial will occur by *any* particular date in 2021.” Req. Reh’g 12. In short, only the trial date for the first of three related district court cases was set by the district court and that trial does not involve the ’983 patent, which is at issue only in the third trial. *See id.* at 12–14. Additionally, the 112-day spread between the first and third trials was based on a proposal by Patent Owner and was not agreed to by Intel or endorsed by the district court. *Id.* at 13. Further, Petitioner contends that after we issued our Decision, the district court rescheduled the first trial due to the closing of the Austin courthouse for civil jury trials because of COVID-19 and that there is no indication when the third trial involving the ’983 patent actually will occur. *Id.* at 12–13.

In our Decision, we found that, although there was no set trial date for the ’983 patent, the facts available at the time supported the determination that trial would likely occur months before any final written decision. Inst. Dec. 6–7. Even though we agreed with Petitioner that a firm trial date had not been set, the information available at the time of our Decision supported Patent Owner’s argument that trial would occur before a final written decision would have issued, if not months before. *See id.*



A conference call was held on January 28, 2021, between counsel for the parties and Judges Dang, Gerstenblith, and McGraw to discuss the current state of the related district court litigation. A transcript of the conference is of record as Exhibit 1026 (“Tr.”). During the conference, Patent Owner explained that, although a firm trial date had not been set by court order, the parties received an email from Mr. Pearson, one of Judge Albright’s law clerks, in which Mr. Pearson acknowledges the urgency of setting trial dates and indicates that the parties have priority to a trial date of June 7, 2021, for the ’983 patent. Ex. 1027<sup>1</sup> (Email from Evan Pearson, sent Nov. 17, 2020), 1 (Mr. Pearson states, “I will get them on the calendar and hold them as a priority – please keep us posted with adjustments.”); Tr. 11:17–12:9. Petitioner contends that the June 2021 date held for the third trial involving the ’485 patent is based on holding the trial in Austin, Texas, where the courthouse is closed currently, and that the first trial was moved to Waco, where the courthouse is open currently. Tr. 14:9–16. On February 4, 2021, the district court issued an order setting a trial date of June 7, 2021, for the ’983 patent. Ex. 2045 (Order Setting Jury Trial).

The change in circumstances regarding the trial date does not persuade us to change our decision to exercise our discretion to deny institution. Even if we were to institute an *inter partes* review proceeding, the deadline for issuing a final written decision could be no earlier than February 2022. Thus, at this time, it appears likely that trial will occur many months before any final written decision would likely issue in this proceeding. Therefore, we maintain our finding that *Fintiv* Factor 2

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<sup>1</sup> Exhibit 1027 consists of a thread of emails, with the most current being the email referenced above from Mr. Pearson. See Ex. 1027.

(proximity of the court’s trial date to the Board’s projected statutory deadline for a final written decision) weighs in favor of exercising our discretion to deny institution pursuant to 35 U.S.C. § 314(a).

Second, Petitioner contends that we incorrectly weighed the identity and behavior of Patent Owner. *See* Req. Reh’g 14–15. We disagree. In our Decision, we considered Petitioner’s allegations regarding Patent Owner’s identity and conduct under *Fintiv* Factor 6 (other circumstances that impact the Board’s exercise of discretion, including the merits), and we noted that, “[e]ven if Petitioner’s contentions are true, the validity of the ’983 patent is at issue in the co-pending litigation, which is likely to go to trial well before the deadline for a final written decision in this proceeding.” Inst. Dec. 10. Accordingly, we maintain our finding that Petitioner’s “argument does not weigh against exercising our discretion to deny institution.” *Id.*

Third, Petitioner contends that we erred in analyzing the overlap between the related district court litigation and this proceeding (*Fintiv* Factor 4) because we focused on the ’983 patent generally rather than the specific claims. Req. Reh’g 14. We disagree. Although we mentioned the validity of the ’983 patent, we did so in the context of addressing Petitioner’s arguments regarding Patent Owner’s identity and behavior under *Fintiv* Factor 6. In the context of *Fintiv* Factor 4 (overlap between issues raised in the petition and in the parallel proceeding), we found that, at the time of the Decision, the grounds and claims had a complete overlap between the related litigation and this proceeding. Inst. Dec. 8. Petitioner’s argument that Patent Owner would drop claims was too speculative at the time to result in weighing the factor differently. *Id.* at 8–9 (“the potential for claim differences alone does not negate that the same combinations of

references asserted in the Petition also are asserted in the Western District of Texas litigation”).

After our Decision, Patent Owner narrowed the claims asserted in the related litigation such that only six of the twelve claims challenged in the Petition remain in the related litigation. Req. Reh’g 14 (citing Ex. 1025 (Plaintiff VLSI Technology LLC’s Identification of Narrowed Claims Pursuant to the Court’s August 7, 2020 Order), 2). Thus, at present, claims 1, 4, 5, 9, 11, and 13 remain in the related litigation. Ex. 1025, 2. In contrast, Petitioner challenges claims 1–5, 7, 9, 11–14, and 16 in the Petition. Petition 3. Claims 1, 9, and 11 are the independent claims of the ’983 patent. *See* Ex. 1001, 11:27–14:9 (claims listing). Each independent claim remains asserted in the related litigation. Ex. 1025, 2. The dependent claims no longer asserted in the related litigation (claims 2, 3, 7, 12, 14, and 16) are substantially similar to the claims remaining in the related litigation such that the difference in claims does not result in tilting the scale in favor of not exercising our discretion to deny institution under Factor 4. Even if we weigh the new difference in claims in favor of Petitioner, the overlapping grounds and insubstantial differences between the claims no longer overlapping each weigh in favor of Patent Owner. Accordingly, on balance, we find that Factor 4 weighs neutrally, neither in favor of nor against exercising our discretion to deny institution.

Considering all of the factors, the outcome of our balancing remains unchanged. In particular, Factors 1, 4, and 6 weigh neutrally. The related litigation involves the same parties as this proceeding. Fact and expert discovery has concluded and substantially all, if not all, motions have been briefed. Tr. 18:13–21. The trial date, even if not June 7, 2021, is still likely to be months before any final written decision could issue in this case; thus,

Factors 2, 3, and 5 weigh in favor of exercising discretion. After weighing all of the factors and taking a holistic view of the relevant circumstances, we maintain our finding that “instituting an *inter partes* review would be an inefficient use of the Board’s and parties’ resources.” Inst. Dec. 11.

Accordingly, having considered Petitioner’s Rehearing Request, Petitioner has not persuaded us, for the reasons discussed, that the outcome of our Decision should be modified.

### III. ORDER

For the foregoing reasons, it is:

ORDERED that Petitioner’s Rehearing Request (Paper 24) is *denied*.

IPR2020-00583  
Patent 7,606,983 B2

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