
Subject: FW: IPR2021-00168, -00177, -00191: Petitioners' Request to File Reply to Address Fintiv Factors

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Sent: Tuesday, March 30, 2021 7:24 PM

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To the Board,

Petitioners seek the opportunity to file a 5-page reply in each of the above-referenced IPR proceedings to address discretionary denial under the *Fintiv* factors. Petitioners believe a reply may be helpful as circumstances in the related district court proceeding have changed since the time the petitions were filed.

Petitioners have conferred with Patent Owner whose position is presented below.

Patent Owner's Position:

Petitioner has represented that it intends to address *Fintiv* factors 2, 3, 4 and 6 but **not** the merits of the challenges in the reply. With that understanding, Patent Owner does not object to Petitioner's request to file a reply in each proceeding to address how events that have occurred since the filing of the petition may affect the Board's decision on whether to exercise its discretion to institute trial when there is a related proceeding pending in district court. Lest Patent Owner misunderstood Petitioner's intention, however, Patent Owner respectfully requests that the Board explicitly state in its order that the parties may not use their replies or sur-replies to reargue the merits of the challenge, respond to the POPR on the merits, or seek to otherwise bolster, undermine or comment on the proposed grounds of unpatentability.

With the understanding that Petitioner is seeking a 5-page reply in each proceeding, Patent Owner also requests a 5-page sur-reply in each proceeding to address the *Fintiv* factors and to respond to arguments raised in Petitioner's reply. The sur-reply is to be filed within 5 business days of the filing of the reply.

Parties' Availability:

Should the Board deem a conference call necessary, the parties are available on Thursday 4/1 (except for 2pm-4:30pm) and all day Friday 4/2.

Best regards,

Brian C. Banner

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