

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMCAST CABLE COMMUNICATIONS, LLC,
Petitioner,

v.

ENTROPIC COMMUNICATIONS, LLC.,
Patent Owner.

Case IPR2025-00180
Patent 11,785,275

PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW

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2003	PTAB Multiple Petitions Study [Multiple-Petitions-Study]
2004	PTAB Multiple Petitions Study Executive Summary [Executive-Summary]
2005	FreeWheel About Webpage (www.freewheel.com/about)
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2008	Reserved
2009	Email Request For Director Review [PainTEQ-Email-Request]
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I. INTRODUCTION

Patent Owner respectfully requests Director review of the Board’s Institution Decision in IPR2025-00180, one of three parallel IPR petitions filed by Petitioner Comcast challenging the ’275 patent. This case presents a critical issue requiring Director intervention: the knowing, repeated and systematic filing of excessive parallel petition filings by a single petitioner—Comcast—despite clear USPTO guidance to Comcast that such conduct is improper. To deter such long running misconduct, Patent Owner respectfully requests that the Director deny institution.

Since July 2019, the Office has made clear that even two petitions against a single patent by a petitioner should be “rare” and three such petitions are “unlikely” to ever be “appropriate.” Consolidated Trial Practice Guide (“CTPG”), 59. Notably, it was abusive parallel petitions *by Comcast* that led to this guidance. The Office’s guidance, however, has not deterred Comcast in the slightest. Indeed, of the 87 IPR petitions Comcast filed since July 2019, 81 (93%) have been parallel petitions, and 75% of its parallel petition sets included three or more petitions.

The Board typically only institutes one of Comcast’s parallel petitions per set. And yet, Comcast continues to file unwarranted parallel petitions, burdening the Office and patent owners. In this regard, Comcast is exploiting a loophole. The Board has generally considered parallel petitions sets in isolation, ignoring the petitioner’s past conduct. This Institution Decision exemplifies this problem.

Here, Patent Owner argued at length in its preliminary response that all three of Comcast's petitions should be denied in view of Comcast's singularly abusive use of parallel petitions. *See* POPR, *generally*. Additionally, Patent Owner further demonstrated that Comcast knew that three petitions were not warranted here when it filed them, based upon the Board's recent rejection of six other Comcast parallel petitions attacking related patents and raising the same grounds. *Id.*, 2, 25-26. The Board erred by overlooking Comcast's well-documented and repeated pattern of abusive filings and its undeniable knowledge that three IPRs were unnecessary.

This blinkered approach has only emboldened Comcast. This case demands Director attention because Comcast's longstanding conduct makes a mockery of the Office's guidance that filing three IPR petitions against a single patent is "unlikely" to ever be appropriate. Comcast has done the inappropriate over and over again, facing no meaningful consequences because the Board gifts Comcast a blank slate each time. This defies common sense and directly undermines the AIA's goals of efficiency and fairness. Director intervention is essential to close the loophole Comcast exploits by serially filing frivolously parallel petitions in contravention of the Office's guidance and repeated statements to Comcast itself.

II. FACTUAL BACKGROUND

On February 15-16, 2024, Comcast filed nine IPR petitions challenging three related Entropic patents—the '362, '866, and '206. In each three-petition set,

Comcast relied upon the Zhang reference in the first ranked petition, and upon Petrovic-Eidson and Pugel-Crols in the second and third ranked petitions, respectively. In October 2024, the Board instituted the first ranked petitions, denying the other six, noting Comcast's failure to justify its excessive filings. *See, e.g.*, IPR2024-00433, Paper 13, 11; IPR2024-00434, Paper 13, 11.

The message was clear, but was ignored. Just two months after the six rejections, Comcast filed three more petitions challenging the related '275 patent using the exact same references.¹ As before, the first ranked petition (IPR2025-00180) was centered upon Zhang, while the second and third ranked petitions were based upon Petrovic-Eidson (IPR2025-00181) and Pugel-Crols (IPR2025-00182), respectively. Comcast did not present any meaningful new justification for three petitions. Comcast made no effort to address the Board's earlier denials.

The result was a reprise. The Board again denied institution on two of the three parallel petitions (IPR2025-00181 and -00182) but instituted the case-at-hand. Patent Owner argued that Comcast was a singularly egregious and abusive filer of parallel petitions who typically filed three or more petitions against a single patent and that the Board should deny institution of all three petitions to deter it

¹ That same day, Comcast filed three petitions challenging Entropic's '438 patent. *See* IPR2025-00183, -00184, -00185.

from similar such abuse. *See* POPR, *generally*. The Board acknowledged Patent Owner’s arguments concerning Comcast’s “long history of abusing the post-grant proceeding process by consistently filing multiple petitions directed to a single patent” but ultimately disregarded those arguments, stating that it did “not agree with Patent Owner that Petitioner’s filing of three parallel petitions is grounds to deny all three petitions *on that basis alone*” noting that Comcast had ostensibly complied with the Trial Practice Guide by filing a ranking of the petitions. ID, 10.

However, in instituting one petition without further comment, the Board did not grapple with (1) Comcast’s abusive pattern or (2) the fact that Comcast knew its parallel petitions were unjustified in view of the recent rejections. The Institution Decision contains no reasoned discussion of Comcast’s history of serial petitioning, nor any mention of the October 2024 denials raising the same grounds. Allowing even one of these petitions to go forward leaves opens a massive loophole that Comcast has (and others will) continue to exploit if not ended.

III. INSTITUTION SHOULD BE DENIED IN VIEW OF COMCAST’S UNPARALLELED ABUSIVE FILINGS OF PARALLEL PETITIONS.

A. Comcast’s Conduct Was The Direct Catalyst For The USPTO’s 2019 Parallel Petition Guidance.

The July 2019 TPG update was a direct response to Comcast’s abusive filings. In 2018, Comcast infamously filed six IPR petitions on the same day against a single patent, burdening both the Board and that patent owner with

overlapping challenges. That episode led the Office to make clear that even two petitions filed by a single petitioner against a single patent should be “rare” and that it is “unlikely” that “three or more petitions ... with respect to a particular patent will be appropriate.” CTPG, 59, 60 n.4 (citing Comcast cases); Ex. 2004, 6. The Office explained that excessive petitioning burdened both the Board and patent owners, and “raise[d] fairness, timing, and efficiency concerns.” CTPG, 59.

B. Comcast Has Filed Parallel Petitions In Nearly Every IPR And Is An Extreme Outlier Among Petitioners.

Despite the guidance its own conduct instigated, and despite the dozens of denied parallel petitions since, Comcast continues to engage in serial, parallel petitioning—on a scale far exceeding any other petitioner. Its conduct vis-à-vis Patent Owner, filing three IPR petitions each against five different patents, mirrors the misbehavior that led to the 2019 guidance. The fact that the guidance was needed because of Comcast’s actions, and that Comcast has since persisted in its waves of unwarranted parallel petitions, underscores the need for a firm response.

Indeed, since the 2019 guidance issued, no IPR filer has more flagrantly or persistently violated its letter and spirit than Comcast. The data are stark: of the 87 IPR petitions Comcast has filed since 2019, 81 (approximately 93%) have been filed as part of parallel sets against the same patent. Ex. 2002. To further increase the burden upon the Office and patent owners, Comcast often files its parallel

petitions in large waves and has, *e.g.*, filed a wave of 23 IPRs against 8 Rovi patents between July and August 2019 and filed another 21 IPRs against just 6 Rovi patents between April 17-22, 2020; an average of 3.14 IPR petitions per patent. *See* POPR, 16-17. In another 14-month period, Comcast filed another 35 IPR petitions against just 13 patents. *Id.*, 18-19.

Thus, the very thing the Office made clear was “unlikely” to ever be “appropriate”—filing three or more IPRs against a patent—is Comcast’s default *modus operandi*. Indeed, of 24 sets of parallel petitions since July 2019, 18 (*i.e.*, 75%) have involved three or more petitions against a single patent. *See* POPR, 21-22; Ex. 2006, ¶ 18. Even among the top filers of parallel petitions, Comcast’s misconduct is off the charts. Again, since that 2019 guidance, 93% of Comcast’s IPRs have been parallel petitions, a far higher percentage than any other frequent filer of parallel petitions. Of the top 10 parallel petitioners, Intel had the second highest rate of parallel petitions, at 43%. *See* POPR, 21; Ex. 2006, ¶ 17.

Comcast’s filings reflect a deliberate strategy of flooding the Board and overwhelming patent owners. Comcast treats the near certainty of discretionary denial not as a deterrent, but as a calculated risk—one that it can offset by filing as many petitions as possible, increasing the probability that one will get through. In effect, Comcast has decided that a barrage of petitions is a viable tactic: two are denied but one will be instituted, which for Comcast is a success. Indeed, Comcast

recognizes that filing parallel petitions creates a disincentive for patent owners to challenge the petitions on the merits lest the challenge itself lead to a relatively stronger petition in the set being instituted. This volume-driven approach creates a profound imbalance: a petitioner with deep resources can frivolously force a patent owner to defend on multiple fronts, leveraging the PTAB's institutional fatigue and resource constraints to increase the odds that one petition will be instituted.

Comcast's approach imposes real costs on the system. It diverts Board resources from meritorious petitions by forcing the Board to focus upon unwarranted petitions, consuming time the Board could spend on individual challenges or *ex parte* appeals, thereby exacerbating backlog and delay for other cases. Similarly, it imposes unnecessary financial and logistical burdens on patent owners who must respond to multiple petitions in parallel, particularly when filed in massive waves of parallel petitions sets, as when Comcast filed 21 IPR petitions against six patents in a six-day period.

Notably, this is precisely the sort of repeated and harassing attack Congress sought to avoid. "Congress recognized the importance of protecting patent owners from patent challengers who could use the new administrative review procedures as 'tools for harassment'" via "'repeated litigation and administrative attacks on the validity of a patent.'" *WesternGeco LLC v. ION Geophysical Corp.*, 889 F.3d 1308, 1317 (Fed Cir. 2018) (quoting H. REP. NO. 112-98, 40). In accord, the AIA

required the Director to “prescribe regulations ... prescribing sanctions for ... any ... improper use of the proceeding, such as to harass or to cause unnecessary delay or an unnecessary increase in the cost of the proceeding.” 35 U.S.C. § 316(a)(6).

The 2019 guidance and the Board’s discretionary-denial framework were designed to prevent exactly this kind of abuse. But without meaningful consequences, Comcast’s misconduct will continue. And if Comcast’s strategy is allowed to persist, it will become a blueprint for other large entities: file as many petitions as possible, knowing that the worst outcome is a few denials, while all but ensuring the one institution that makes it all worthwhile. Only a decisive correction can halt this race to the bottom.

C. Comcast Knew That Three IPRs Against The ’275 Patent Were Unwarranted Before It Filed.

This case is particularly suited for Director review because Comcast indisputably knew that three petitions were unjustified *when it filed the petitions*. As noted, Comcast previously filed nine petitions, three each against three related Entropic patents, and in October 2024, the Board instituted the first ranked petition in each set (based upon Zhang) and denied the second and third ranked petitions (based upon Petrovic-Eidson and Pugel-Crols). Those denials expressly found that Comcast had failed to justify filing more than one petition. *See, e.g.*, IPR2024-00433, Paper 13, 11; IPR2024-00434, Paper 13, 11. Thus, Comcast was told

clearly and recently that three simultaneous petitions per patent using these same references was not justified.

Yet just a few months later, Comcast proceeded to do exactly the same thing. It filed three more IPRs against the '275 patent, again using Zhang, Petrovic-Eidson, and Pugel-Crols as the primary references, and again without any meaningful new rationale. Comcast did not address the Board's prior rejections at all. It made no claim that the '275 patent involved an unusually large number of claims or particularly difficult claim constructions that would justify multiple petitions. In short, Comcast well knew that its three petitions were not warranted.

D. The Board Failed To Address Comcast's Pattern Of Abuse And Its Own Prior Denials Based Upon Identical Grounds.

The Board's Institution Decision in IPR2025-00180 fails to meaningfully engage with Comcast's lengthy, egregious serial petitioning conduct. What is more, despite the striking similarity between Comcast's latest wave of filings and the previously rejected petitions from 2024, the Board did not acknowledge—let alone analyze—Comcast's decision to again file three petitions when it knew only one, at most, might be justified.

By focusing solely on Comcast's formal compliance (the submission of a ranking paper) and the merits of one petition, the Board effectively gave no weight to Comcast's pattern of abuse. It "did not agree" that three parallel filings alone

warranted denying all petitions, but that misses the crux of the issue: it is not the filing of three petitions **alone** in the abstract, but the number in context of Comcast’s persistent, unjustified, and unparalleled use of parallel petitions. The Board’s Institution Decision treated the multiple-petition problem as resolved simply because the petitioner followed a procedural step (ranking), rather than grappling with the substantive problem that Comcast systematically abuses the IPR process by **routinely** filing three petitions against patents, with the same rationales for doing so, even when, as here, Comcast **knew** three petitions were inappropriate.

Blindly viewing each parallel petition set in isolation, without regard to Comcast’s manifest broader strategy defies common sense and is a clear invitation to further abuse. It suggests that a determined petitioner can sidestep the intent of the rules by paying lip service to them—filing a ranking paper while still pursuing unwarranted petitions—and face no real consequence beyond the non-institution of the weakest petitions. That is precisely the loophole Comcast has exploited: so long as one petition is instituted, the strategy of over-filing has “worked,” and wasting the Board’s and patent owners’ resources will carry no penalty.

The AIA does not mandate this “head in the sand” approach. The decision to not institute an IPR is solely within the Director’s discretion and that decision is final and non-appealable. *See* 35 U.S.C. § 314(a), (d); *St. Regis Mohawk Tribe v. Mylan Pharms., Inc.*, 896 F.3d 1322, 1327 (Fed. Cir. 2018) (“the Director has

complete discretion to decide not to institute review.”). The Director and the Board are charged with preserving the integrity of the system, which includes guarding against misuse of the process. The Director has emphasized that the Board must be mindful of its resource constraints and protect patent owners from harassment. Indeed, far from the blinkered approach the Board has adopted, the AIA and the Office’s regulations require the Director to ensure IPRs are not being used for “any ... improper use of the proceeding, such as to harass or to cause ... an unnecessary increase in the cost of the proceeding.” 35 U.S.C. § 316(a)(6); 37 C.F.R. § 42.12(a)(7); *see also id.* § 42.12(b)(8).

Nor is there anything unusual about a court (or other adjudicative body) looking beyond the particular case in front of it to a litigant’s conduct across cases where the litigant has exhibited a pattern and practice of harassment or of filing frivolous cases. *See, e.g., Neptune Generics, LLC v. Aventis Pharma S.A.*, IPR2019-00136, Paper 15, 35 (May 6, 2019) (“[w]e do not see how [AIA’s goal of efficiency] is served by ignoring or declaring irrelevant the related and ongoing litigation history of the [challenged] patent”); *see also Mankaruse v. Raytheon Co.*, 855 F. App’x 728, 731 (Fed. Cir. 2021) (a court’s determination whether a party is a vexatious litigant includes “the litigant’s history of litigation and in particular whether it entailed vexatious, harassing or duplicative lawsuits”); *Carroll v. Abide (In re Carroll)*, 850 F.3d 811, 815 (5th Cir. 2017) (same). The Board is not limited

to only considering the instant case or set of parallel petitions in front of it when assessing whether discretionary denial is appropriate.

The Board's failure to apply that principle in this instance—despite the overwhelming signals from past cases and Office guidance—warrants correction by the Director. The Board overlooked Comcast's misconduct and focused only on the superficial merits of one petition. Director review is needed to realign the outcome with the established policy: that abusive parallel petitioning should result in denial of *all* petitions in the set when the petitioner has so clearly abused the IPR process and has systematically filed parallel petitions, not for any legitimate purpose, but to harass.

E. Without Director Intervention, Abusive Parallel Petitioning Will Persist.

The consequences of failing to enforce the Office's discretionary denial framework are already evident. Despite years of discretionary denials and explicit policy statements, Comcast has persisted in filing unnecessary waves of parallel petitions. As long as it achieves institution on one petition per set, Comcast is clearly content to continue this pattern—disregarding the cost to the Office, to patent owners, and to the integrity of the AIA process. In Comcast's calculus, increasing the probability of getting an IPR instituted outweighs the downsides.

The data confirm that piecemeal denials alone have not deterred Comcast's

strategy. As discussed, over 93% of Comcast's IPR filings in recent years are part of parallel sets and 75% of those sets included three or more petitions. The company continues to inundate the Board with multiple petitions against the same patent, often filed on the same day, often recycling the same prior art and expert testimony, often against patents from the same portfolio. This behavior has not been curbed by the Board denying some of its petitions; Comcast simply keeps coming. Indeed, Comcast filed 35 parallel petitions between December 2023 to December 2024, even after numerous prior denials. POPR, 18-19. Clearly, the message has been received, again and again, but ignored.

If this approach is allowed to persist, other petitioners will take note. The incentive structure would be clear: there is little to lose from filing multiple redundant petitions, beyond the filing fees and drafting costs, and potentially much to gain if filing the parallel petitions deters the patent owner from engaging the merits. Well-funded parties could routinely fire off three or more petitions per target patent, secure in the knowledge that the "worst" outcome is that the Board pares them down to one. Meanwhile, the patent owner bears the burden of addressing all of them, and the Board must invest time to sort through them. The net effect will be a shift toward an increasingly crowded PTAB docket and a higher burden on patent owners, especially smaller entities who may lack the resources to fight on multiple fronts at once.

Such a scenario is antithetical to the AIA's intent. Congress intended IPR to be an efficient alternative to litigation for resolving patent validity challenges—not a mechanism for harassing patent owners or multiplying proceedings. The PTO has repeatedly affirmed its goal of streamlining AIA trials, avoiding undue harassment, and preserving confidence in the patent system. If a party like Comcast can undermine those goals through sheer volume of filings, it undermines the very purpose of the PTAB's discretionary powers.

In short, this is about more than a single patent or a single petitioner. It is about the credibility of the Office's guidance and the health of the PTAB process. If the Director does not intervene in a case as clear-cut as this, the signal to future petitioners will be that aggressive, redundant petition strategies are effectively tolerated as long as one petition in the set appears facially sufficient. That would encourage exactly the behavior the Office has tried to discourage since 2019. The time for incremental denials has passed; a stronger corrective is now needed.

F. Director Review Is Warranted To Reinforce USPTO Guidance And Conserve Board Resources.

Director review in this case is particularly appropriate in view of recent USPTO guidance and the pressing workload concerns facing the PTAB. The need for the Director's intervention is acute given the Office's ongoing efforts to increase efficiency, reduce backlogs, and apply discretionary-denial tools more

consistently at the institution stage.

Most notably, just weeks before the Board’s Institution Decision here, the Office implemented new Interim Procedures for PTAB workload management (announced March 26, 2025) which reflect a clear policy choice: the Office is elevating the importance of discretionary reviews to ensure that PTAB resources are not expended on cases that undermine statutory objectives or Office policy (such as cases involving abusive multiple petitions or advanced parallel litigation).

Denying institution here would require no new rule or departure from established practice. The Office long ago made clear that three petitions against one patent are “unlikely” to ever be appropriate. CTPG, 59. When a petitioner repeatedly does the very thing that is “unlikely” to ever be appropriate, the Office should curb that misconduct. By granting review and denying institution, the Director will reinforce the policies set forth in the Trial Practice Guide, the precedential decisions (*General Plastic*, *Valve*, *Fintiv*, etc.), and the Acting Director’s March 26, 2025 memorandum. Such decisive action will demonstrate the Office’s commitment to curbing abusive practices and maintaining the integrity and efficiency of the IPR process. This case is a clear-cut case for Director review.

IV. CONCLUSION

For the foregoing reasons, Patent Owner respectfully requests that the Director grant review and deny institution of the petition in IPR2025-00180.

Respectfully submitted,

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Date: May 13, 2025

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the following document was served by electronic service, by agreement between the parties, on the date below:

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