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Paper 16
Date: April 28, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CHARTER COMMUNICATIONS, INC.,
Petitioner,

v.

ADAPTIVE SPECTRUM AND SIGNAL ALIGNMENT, INC.,
Patent Owner.

IPR2025-00012
Patent 10,848,398 B2

Before KEVIN F. TURNER, KEVIN C. TROCK, and SCOTT RAEVSKY, *Administrative Patent Judges.*

RAEVSKY, *Administrative Patent Judge*.

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

I. INTRODUCTION

Charter Communications, Inc. ("Petitioner") filed a Petition, Paper 1 ("Pet." or "Petition"), to institute an *inter partes* review of claims 1–25 (the "challenged claims") of U.S. Patent No. 10,848,398 B2 (Ex. 1001, "the '398 patent"). Adaptive Spectrum and Signal Alignment, Inc. ("Patent Owner") timely filed a Preliminary Response, Paper 6 ("Prelim. Resp.").

On March 26, 2025, we issued an Order (Paper 11) authorizing each of the parties to file a supplemental brief limited to addressing what effect, if any, the USPTO's recent recission of the *Fintiv* Memorandum[1] may have on the parties' briefing in the Petition and the Preliminary Response. In response, each party filed a supplemental brief. *See* Papers 12, 14.

An *inter partes* review may not be instituted "unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." 35 U.S.C. § 314(a). Institution of *inter partes* review, however, is discretionary. *See Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) ("[T]he PTO is permitted, but never compelled, to institute an IPR proceeding."). For the reasons discussed below, we exercise discretion under 35 U.S.C. § 314(a) not to institute *inter partes* review.

[1] On February 28, 2025, the USPTO rescinded the June 21, 2022, "Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation" (the "*Fintiv* Memorandum"), available at https://www.uspto.gov/about-us/news-updates/uspto-rescinds-memorandum-addressing-discretionary-denial-procedures.

II. BACKGROUND

A. Real Party in Interest

Petitioner identifies itself as the only real party in interest. Pet. 1. Patent Owner identifies itself as the only real party in interest. Paper 4, 1.

B. Related Proceedings

According to the parties, the '398 patent is the subject of the following action: *Adaptive Spectrum and Signal Alignment, Inc. v. Charter Communications, Inc., et al.*, No. 2:24-cv-00124 (E.D. Tex.), filed February 22, 2024. Pet. 1; Paper 4, 1.

C. The '398 patent

The '398 patent generally relates to optimizing performance of a communication unit by a remote server. Ex. 1001, code (54). The performance of a communication unit may be dependent on the assumptions made by the designer of a communication system. *Id.* at 4:45–47. For example, the performance of a WiFi rate adaptation algorithm is dependent on the assumptions made by the designer of the WiFi communication system. *Id.* at 4:47–51. The designer's assumptions, however, may be quite different from an actual operational environment, and the WiFi communication system might suffer from low performance due to non-ideal design of the adaptation algorithm. *Id.* at 4:52–56.

To overcome this problem, disclosed embodiments analyze real-time and history of operational data related to a communication system and provide rules and conditions for the communication system to improve its performance. *Id.* at 4:57–61. Using these rules and conditions, a communication unit can select and use the most desired adaptation algorithm. *Id.* at 4:61–65.

D. Challenged Claims

Claim 1 is illustrative of the challenged claims:

> 1. A method for improving performance of one or more communication units, the method comprising:
>
> receiving, by a server, from network monitoring devices that monitor, in real-time, data associated with an operation of two or more communication units located in different geographical areas, the data comprising a parameter;
>
> processing, by the server, at least one of the data and historical data;
>
> based on the processed data, determining a policy for at least one of the two or more communication units; and
>
> in response to the server detecting interference or noise from nearby wireless channels, determining that packets will be lost regardless of rate selection and, otherwise, communicating the policy to at least one or more communication units that implement one or more algorithms that use the parameter and at least a rule or a condition for the one or more communication units to improve a performance of the one or more communication units.

Ex. 1001, 18:20–39.

E. Asserted Challenges to Patentability

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–25	103	Diener[2]
1–25	103	Diener, Shaffer[3]

[2] U.S. Pat. No. 7,408,907 B2, issued Aug. 5, 2008 (Ex. 1003).

[3] U.S. Pub. No. 2012/0320768 A1, published Dec. 20, 2012 (Ex. 1004).

III. ANALYSIS

Patent Owner contends that we should exercise our discretion to deny the Petition under *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential) ("*Fintiv*"). Prelim. Resp. 36–43. *Fintiv* identifies a non-exclusive list of factors we consider when addressing whether a related, parallel district court action provides a basis for discretionary denial under 35 U.S.C. § 314(a). *Fintiv*, Paper 11 at 5–16. These factors include:

> 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.

Id. at 5–6. We take "a holistic view of whether efficiency and integrity of the system are best served by denying or instituting review" when evaluating these factors. *Id.* at 6.

Patent Owner asserts that "the Board should exercise its discretion to deny the Petition because (1) *Fintiv* factors two through five support discretionary denial; and (2) the Petition does not provide a compelling, meritorious challenge (*Fintiv* factor six)." Prelim. Resp. 37. Petitioner

asserts that when "[t]aken as a whole, [the *Fintiv*] factors weigh against exercising discretion to deny institution." Pet. 5.

After considering the parties' arguments and the record, and in view of all relevant considerations, discretionary denial of institution is appropriate in this proceeding. This determination is based on the totality of the evidence and arguments the parties have presented.[4] In particular, we find persuasive the scheduling of the parallel proceeding's trial date months prior to the Board's projected statutory deadline for a final written decision, the substantial investment by the parties and the District Court in the parallel proceeding, the recommended denial of the motion to transfer by the District Court, and that the merits of the Petition are not particularly strong. *See* Paper 14, 1–2; Prelim. Resp. 16–21 (arguing, for example, that Diener does not disclose "receiving . . . data associated with an operation of two or more communication units located in different geographical areas"). In our view, these factors outweigh Petitioner's offer of a stipulation to limit the overlap between the issues raised in the Petition and the parallel proceeding. *See* Paper 12, 3–4.

Although these circumstances are persuasive as highlighted above, the determination to exercise discretion to deny institution is based on a holistic

[4] We provide a more detailed analysis in a closely related case between the same parties, IPR2024-01379, Paper 16. The analysis there is equally applicable here, apart from the specific merits discussed there. We also note that due to the later filing date of the Petition here, the proximity of the court's trial date to our projected statutory deadline for a final written decision is even greater here.

assessment of all of the evidence and arguments presented. Accordingly, the petition is denied under 35 U.S.C. § 314(a).

IV. ORDER

In consideration of the foregoing, it is:

ORDERED that the Petition is *denied*, and no trial is instituted.

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