

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MEDTRONIC, INC.,
Petitioner

v.

MARK A. BARRY,
Patent Owner.

Case IPR2014-01210
Patent 7,670,358 B2

Before DONNA M. PRAISS, BRIAN J. McNAMARA, and
JEREMY M. PLENZLER, *Administrative Patent Judges*.

McNAMARA, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING
37C.F.R. § 42.71(d)

On March 6, 2015 Medtronic, Inc. (“Petitioner”) filed a Request for Rehearing (Paper 12, “Req. Reh’g.”) of our Decision Denying Institution (Paper 10). However, on February 20, 2015, Petitioner filed another Petition challenging the same claims of the same Patent, i.e. claims 1–5 of U.S. Patent 7,670,358 (“the ’358 Patent”), as those challenged in the present proceeding. *Medtronic, Inc. v. Mark A. Barry*, Case IPR2015-00780 (Paper 2, “Second Pet.”). Petitioner stated that the Second Petition responds to a noted deficiency with new arguments and supporting evidence and therefore, should not be subject to denial under 35 U.S.C. § 325(d). Second Pet. 2.

Upon consideration of the Second Petition, we instituted *inter partes* review of claims 1–5 of the ’358 Patent. *Medtronic, Inc. v. Mark A. Barry*, Case IPR2015-00780, slip op. (PTAB Sept. 9, 2015) (Paper 7, Decision to Institute)(“*Medtronic v. Barry IV*”).

In view of our institution of *inter partes* review in *Medtronics v. Barry IV* and the overlapping issues between this proceeding and IPR2015-00780, we exercise our discretion under 35 U.S.C. § 325(d) and deny Petitioner’s Request for Rehearing in this proceeding.

For the reasons discussed above, the Request for Rehearing is DENIED.

Case IPR2014-01210
Patent 7,670,358 B2

PETITIONER:

Jeff E. Schwartz
Seth A. Kramer
Fox Rothschild LLP
jeschartz@foxrothschild.com
skramer@foxrothschild.com

PATENT OWNER

David Henry
Michael Ellis
GRAY REED &McGRAW, P.C.
dhenry@grayreed.com
mellis@grayreed.com