

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CERAMTEC GMBH,
Petitioner,

v.

CERAMEDIC LLC,
Patent Owner.

IPR2015-01328
Patent 6,066,584

Before GRACE KARAFFA OBERMANN, KRISTINA M. KALAN, and
JEFFREY W. ABRAHAM, *Administrative Patent Judges*.

KALAN, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

Petitioner CeramTec GmbH filed a Petition (Paper 2, “Pet.”) to institute an *inter partes* review of claims 1–53 of U.S. Patent No. 6,066,584 (Ex. 1301, “the ’584 patent”) pursuant to 35 U.S.C. §§ 311–319. Patent Owner CeraMedic LLC filed a Preliminary Response (Paper 13, “Prelim. Resp.”). Petitioner, after obtaining Board authorization, filed a Reply (Paper 16, “Reply”). We have jurisdiction under 35 U.S.C. § 314. For the reasons that follow, the Board does not institute an *inter partes* review.

II. BACKGROUND

A. Related Matters

The parties indicate that the ’584 patent is the subject of the following district court proceeding, among others: *CeraMedic, LLC v. CeramTec GmbH*, Civil Action No. 3:14-cv-01969 (N.D. Ind.). Pet. 1; Paper 6, 1. The parties also indicate that the ’584 patent is the subject of an *inter partes* review in IPR2015-00398 (the “398 IPR”) and in IPR2015-00424 (the “424 IPR”). Pet. 2; Paper 6, 1.¹

¹ Petitioner filed Petitions in the 398 IPR and the 424 IPR on December 12, 2014. 398 IPR, Paper 2; 424 IPR, Paper 2. The 398 IPR and the 424 IPR involve the same Petitioner, Patent Owner, and patent, and relate to the same underlying district court proceeding as the present Petition. The Petition in the 398 IPR requested *inter partes* review of claims 1–5, 7–13, 15–17, 19–21, 23, 30–38, 52, and 53 of the ’584 patent. 398 IPR, Paper 2. The Petition in the 424 IPR requested *inter partes* review of claims 14 and 26–29 of the ’584 patent. 424 IPR, Paper 2. On July 8, 2015, the Board instituted *inter partes* review of claims 1–5, 7–13, 15–17, 19–21, 23, 30–38, 52, and 53 of the ’584 patent in the 398 IPR, and on July 7, 2015, the Board instituted *inter partes* review of claims 14 and 26–29 of the ’584 patent in the 424 IPR. 398 IPR, Paper 11; 424 IPR, Paper 9. The Board has not issued a final decision in the 398 IPR or the 424 IPR.

B. The '584 Patent

The '584 patent, titled “Sintered Al_2O_3 Material, Process for its Production and Use of the Material,” issued on May 23, 2000. The '584 patent describes “sintered Al_2O_3 compositions produced from corundum powder and also methods for the use of the invented compositions as medical implants or tool material.” Ex. 1301, Abstract. An initially unsintered precursor having a relative density of $\rho \cong 55\%$ is produced from $\alpha\text{-Al}_2\text{O}_3$ powder having defined properties using at least two different dispersing methods. *Id.* The precursor is shaped or “treated” to create a shaped unsintered body (*id.* at 5:61–62), and subsequently subjected to heat treatment and sintering (*id.* at Abstract).

C. Illustrative Claim

Claim 1 of the '584 patent is reproduced below:

1. A method, comprising the steps of:
 - a) dispersing $\alpha\text{-Al}_2\text{O}_3$ powder having a mean particle size d_{50} of $\leq 0.30 \mu\text{m}$ and a chemical purity of $\geq 99.9\%$ $\alpha\text{-Al}_2\text{O}_3$ in an aqueous solution to create a mixture, said mixture effected through the application of at least two different dispersing methods;
 - b) treating said mixture so as to create a shaped unsintered body having a relative density of $p \cong 55\%$;
 - c) heating said unsintered body; and
 - d) sintering said unsintered body so as to create a sintered material.

Ex. 1301, 15:4–14.

D. Evidence Relied Upon by Petitioner

Petitioner relies on the following reference: WIPO Publication No. WO 95/28364 to Krell and Blank (“the '364 publication”). Ex. 1304. A translation of the '364 publication is provided as Exhibit 1305; all references

in this Decision to the '364 publication are to Exhibit 1305. Petitioner also relies on the Declaration of David R. Clarke, Ph.D. Ex. 1316.

E. The Asserted Grounds

Petitioner challenges claims 1–53 of the '584 patent on the ground that claims 1–53 are anticipated by the '364 publication under § 102(b). Pet. 3.²

F. Claim Construction

The Board interprets claims in an unexpired patent using the “broadest reasonable construction in light of the specification of the patent in which [they] appear[.]” 37 C.F.R. § 42.100(b); *see In re Cuozzo Speed Techs., LLC*, 778 F.3d 1271, 1281 (Fed. Cir. 2015) (“We conclude that Congress implicitly adopted the broadest reasonable interpretation standard in enacting the AIA.”). Under the broadest reasonable interpretation standard, claim terms are given their ordinary and customary meaning in view of the specification, as would be understood by one of ordinary skill in the art at the time of the invention. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

Petitioner proposes that both the term “sintered Al₂O₃ material” in claims 25–29 and the term “sintered material” in claims 1–24 and 30–53 be construed to mean “sintered material with Al₂O₃ as a primary component.” Pet. 9–10. Petitioner also argues that the “scope of the claims covers

² Patent Owner represents that “[c]laims 1–5, 7–17, 19–21, 23, 26–38, 52, and 53 of the '584 Patent are the only claims still in force after CeraMedic’s disclaimer of Claims 6, 18, 22, 24, 25, and 39–51 of the '584 Patent.” Prelim. Resp. 41 (citing Ex. 2329 (Disclaimer of claims 6, 18, 22, 24, 25, and 39–51 of the '584 patent, filed September 18, 2015)). Patent Owner states: “In effect, the Petition only challenges claims on which the Board has previously instituted trial.” *Id.*

materials having less than 95% Al₂O₃,” but does not propose a specific construction. *Id.* at 11. Patent Owner does not advance an alternate construction, stating instead that “CeraMedic has not presented all of its claim construction and validity arguments in this preliminary response because CeraMedic cannot present arguments that require expert testimony at this stage of the proceeding.” Prelim. Resp. 43. At this stage in the proceeding, we conclude that no term needs express construction.

III. ANALYSIS

A. The '364 Publication

Petitioner argues that the '364 publication is prior art against claims 1–53 under 35 U.S.C. § 102(b). Pet. 14. The '364 publication is a publication of PCT/EP95/01474 (the “PCT application”) from which the '584 patent entered the U.S. national stage. Ex. 1301, 1. Petitioner argues that the claims of the '584 patent are unsupported by the specification of the PCT application. Pet. 14. Thus, Petitioner argues, the reference date for the § 102(b) statutory bar is September 29, 1998, the date of an amendment to the claims of the '584 patent (“the September 1998 Amendment”). *Id.* Patent Owner argues that the PCT application, which published as the '364 publication, provides adequate written description for the challenged claims, and, thus, the '364 publication is not prior art with respect to the challenged claims of the '584 patent. Prelim. Resp. 23–40. We have reviewed the parties’ assertions and supporting evidence, and, for the reasons discussed below, are not persuaded that Petitioner demonstrates a reasonable likelihood of prevailing in showing that the '364 publication is available as § 102(b) prior art.

The PCT application was filed on April 19, 1995. The '364 publication was published on October 26, 1995.³ The U.S. national stage application was filed on January 31, 1997, and was amended at various stages during prosecution. Ex. 1303 (the September 1998 Amendment); Ex. 1302, 241–72 (June 17, 1999 Amendment), 275–77 (Examiner's Amendment). The Non-Final Rejection mailed April 1, 1998 rejected claims 1–30 and 32 as indefinite, indicating that claims 1–30 and 32 would be allowable if amended and/or rewritten to overcome all of the indefiniteness rejections, and rejected claims 31, 33, 34, and 35 under 35 U.S.C. § 101. Ex. 1302, 203–16. The September 1998 Amendment cancelled claims 1–35 and proposed new claims 36–75. Ex. 1303, 4–8. Original claims 1 and 6 contained the language “[s]intered Al₂O₃ material having a content of from 95 to 100% by volume of Al₂O₃”; the proposed new claims did not contain the “95% to 100% by volume of Al₂O₃” language of original claims 1 and 6. *Id.*

Petitioner argues that the original disclosure “unequivocally” limits the scope of the invention to materials having at least 95% Al₂O₃ and methods of making such materials.⁴ Pet. 16–30. Specifically, Petitioner argues that “the

³ Certain dates from the prosecution history are below:

EP Application filing date	April 19, 1994
PCT/EP95/01474 filing date	April 19, 1995
Pub. date of the '364 publication	October 26, 1995
§ 371 date	January 31, 1997
September 1998 Amendment date	September 29, 1998
Issue date of '584 patent	May 23, 2000

⁴ Certain claims of the '584 patent (e.g., claims 1, 19, and 52) include a limitation directed to the chemical purity, by percentage, of the α -Al₂O₃ starting materials; the primary dispute between the parties here relates to the volume of Al₂O₃ in the sintered Al₂O₃ materials, not the purity of the starting materials.

specification [of the PCT application] *disclaims* a composite material with less than 95% Al_2O_3 .” *Id.* at 19. Petitioner argues that the originally disclosed materials of the invention have at least 95% Al_2O_3 , that the PCT application specification “expressly” limits the scope of the invention to sintered materials having at least 95% Al_2O_3 , and that the specification excludes from the scope of the invention composite materials having less than 95% Al_2O_3 . *Id.* at 16–20. By way of support for that allegation of express disclaimer, however, Petitioner points to the specific embodiments in the PCT application and the language of the original product claims. *Id.* at 20–22. Petitioner alleges that the specification’s “exclusive” focus on Al_2O_3 powder raw materials supports its arguments, and that the prior art materials discussed in the specification were exclusively pure or almost pure Al_2O_3 . *Id.* at 22–26. Petitioner also argues that the originally disclosed processes of the invention result in sintered Al_2O_3 materials having at least 95% Al_2O_3 . *Id.* at 26–30.

Patent Owner counters that the PCT application provides adequate support for the challenged claims because it describes the materials based on their mechanical properties, instead of their Al_2O_3 content percentage. Prelim. Resp. 24. Specifically, Patent Owner argues that “[t]he entirety of the specification of PCT/EP95/01474 includes portions that fully and directly set forth ‘sintered materials’ and ‘sintered Al_2O_3 materials’ not characterized by their percentage by volume of Al_2O_3 content, and processes for producing those materials.” *Id.* at 25. Patent Owner presents charts correlating the claims with the portions of the PCT application that support them. *Id.* at 25–33. Patent Owner argues that the “inventors did not identify any particular Al_2O_3 content by volume as an ‘essential’ feature of either the processes or

the materials disclosed,” thereby distinguishing the present case from *Gentry Gallery, Inc. v. Berkline Corp.*, 134 F.3d 1473, 1479 (Fed. Cir. 1998). *Id.* at 34. Patent Owner challenges Petitioner’s reliance on specific embodiments and examples from the specification, as well as on any purported disclaimers. *Id.* at 35–39. Patent Owner summarizes: “Absent a clear and unambiguous disclaimer—and there is no clear and unambiguous disclaimer in PCT/EP95/01474—Petitioner’s argument that PCT/EP95/01474 disclaims and does not provide written description for ‘sintered materials’ and ‘sintered Al₂O₃ materials’ not characterized by volume Al₂O₃ content must fail.” *Id.* at 39.

Petitioner’s argument is not persuasive because the challenged claims of the ’584 patent do not recite a specific volume Al₂O₃ content—and neither the specification nor the prosecution history are shown to limit the plain language of the claims, for example, by disclaimer of subject matter. *See Microsoft Corp. v. Proxyconn, Inc.*, 789 F.3d 1292, 1298 (Fed. Cir. 2015) (in arriving at the broadest reasonable interpretation, the Board reads the claim language in light of the specification and the prosecution history); *see also Ariad Pharm., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (“[T]he test for sufficiency is whether the disclosure . . . reasonably conveys to those skilled in the art that the inventor had possession of the *claimed* subject matter.” (emphasis added)). Patent Owner has presented claim charts showing where every element of the disputed product and method claims is supported by the specification. Prelim. Resp. 25–33. Together with Patent Owner’s arguments, the claim charts showing where every element of the claims finds support in the specification is persuasive.

We are not persuaded that the specification or the prosecution history limits, by disclaimer, the plain language of the claims—which include no express limitation on the Al_2O_3 content by volume of the sintered product. The standard for disclaimer or disavowal is exacting. *See Thorner v. Sony Comput. Entm't Am. LLC*, 669 F.3d 1362, 1366 (Fed. Cir. 2012). Petitioner relies on *Gentry Gallery* for the proposition that when the specification expressly states that the invention is of a particular scope, claims broader than the indicated scope lack written description support. Pet. 15. We are not persuaded by Petitioner's argument that the specification sections it cites—including the two instances in which the 95–100% range is mentioned⁵ and the data recited in Examples 1–7—limit the content by volume of Al_2O_3 . Pet. 16–32. We have reviewed the Examples and the cited portions of the specification and are not persuaded that they disavow composites containing less than 95% by volume of Al_2O_3 . The specification describes a number of embodiments by their variables, and describes exemplary ranges associated with the variables, but includes no clear language disclaiming other ranges for those variables. Embodiments

⁵ The '584 patent specification mentions the 95–100% range twice. Ex. 1301, 3:45–51; 4:25–28. The first instance is: “The sintered Al_2O_3 materials of the invention having an Al_2O_3 content of from 95 to 100% by volume and a Vickers low-load hardness of ≥ 2000 at a test load of from 10 N to 100 N (HV1 to HV10) have a relative sintered density of $\rho \geq 98.5\%$, microstructures having mean grain sizes of $\leq 1.5 \mu\text{m}$ and a frequency of inhomogeneities of $< 50 \times 10^{+9} \text{ m}^{-2}$.” *Id.* at 3:45–51. The second instance is: “The further embodiment of the invention is characterized by a content of from 95 to 100% by volume of Al_2O_3 and a Vickers low-load hardness of ≥ 1750 at a test load of from 10 N to 100 N (HV1 to HV10)” *Id.* at 4:25–28. The '364 publication contains similar disclosures. Ex. 1305, 5:13–16, 6:19–20.

appearing in a patent's written description may not be imported as limitations into the claims unless the specification makes clear that the patentee intends for the claims and the embodiments in the specification to be strictly coextensive. *See JVW Enters., Inc. v. Interact Accessories, Inc.*, 424 F.3d 1324, 1335 (Fed. Cir. 2005). If the specification reveals "an intentional disclaimer, or disavowal, of claim scope by the inventor," the scope of the claim, "as expressed in the specification, is regarded as dispositive." *Phillips v. AWH Corp.*, 415 F. 3d 1303, 1316 (Fed. Cir. 2005) (citing *SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.*, 242 F.3d 1337, 1343–44 (Fed. Cir. 2001)). The *Phillips* court, however, reminds us that persons of ordinary skill in the art rarely confine their definitions of terms to the exact representations depicted in the embodiments. *Id.* at 1323. In sum, the specification does not unambiguously and expressly exclude composites containing less than 95% by volume of Al₂O₃, as urged by Petitioner.

We are not persuaded by Petitioner's argument that "the September 1998 Amendment broadening the claims beyond the scope of the invention introduced new matter." Pet. 31–32. Similarly, we are not persuaded by Petitioner's argument that the introduction of "new matter" by amendment of the claims means necessarily that the '584 patent claims only are entitled to a September 29, 1998 filing date. Pet. 30. Although the MPEP is not binding authority, we note that the MPEP states, "[i]f the originally filed disclosure does not provide support for each claim limitation, or if an element which applicant describes as essential or critical is not claimed, a new or amended claim *must be rejected* under . . . 35 U.S.C. 112, para. 1, as lacking adequate written description, or in the case of a priority or benefit claim under 35 U.S.C. 119, 120, 365, or 386, the priority or benefit claim must be

denied.” MPEP § 2163(II)(A)(3)(b) (emphasis added). The Examiner considered the PCT application during prosecution of the application leading to the issued patent. Petitioner argues that the Examiner “failed to appreciate the significant expansion in scope of the claims and did not object to the new matter submitted in the September 1998 Amendment, perhaps because the examination focused on other claim amendments made by the applicant at the same time.” Pet. 8. Petitioner concludes: “Thus, the arguments presented below regarding the lack of written description support in the PCT Application for the Challenged Claims have not been previously considered by the Patent Office.” *Id.*

The Examiner, however, did make a 35 U.S.C. § 112, first paragraph objection during prosecution, after the September 1998 Amendment, directed to a shortcoming in the specification. Ex. 1302, 230. We have no reason to believe that the Examiner focused on some claim amendments to the exclusion of others, or failed to appreciate 35 U.S.C. § 112, first paragraph issues. Because the PCT application, and specifically the question of whether the PCT application provides written description support for the claim amendments made in the September 1998 Amendment, previously was considered by the Patent Office, we are not persuaded by Petitioner’s arguments that the Examiner failed to appreciate the “new matter” issue.

On this record, Petitioner fails to show sufficiently that the claims of the ’584 patent are not entitled to a priority date earlier than September 28, 1999. Pet. 6, 14. The ’364 publication is not available as § 102(b) prior art, and Petitioner is not reasonably likely to prevail at trial on a ground based on that reference.

B. Real Party-In-Interest

The statute governing *inter partes* review proceedings sets forth requirements for a petition for *inter partes* review, including that “the petition identif[y] all real parties in interest.” 35 U.S.C. § 312(a)(2); *see also* 37 C.F.R. § 42.8(b)(1) (requirement to identify real parties in interest in mandatory notices). The Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,759 (Aug. 14, 2012) explains that at a general level, the real party-in-interest is the party that desires review of the patent. Thus, the real party-in-interest may be the petitioner itself, and/or it may be the real party or parties at whose behest the petition has been filed. *Id.* As set forth below, we find that Petitioner’s naming of itself as real party-in-interest allows us to consider the merits of the present Petition.

Petitioner initially identified as real parties-in-interest itself as well as the following: Biomet, Inc., Zimmer Holdings, Inc., Zimmer, Inc., Smith & Nephew, Inc., and DePuy Orthopaedics, Inc. (“Petitioner’s Customers”). Pet. 1. Subsequently, after obtaining leave from the Board, Petitioner filed amended Mandatory Notices removing all named real parties-in-interest except the Petitioner. Paper 7.⁶

⁶ By way of background, the Petitions in the 398 IPR and the 424 IPR initially identified only Petitioner as a real party-in-interest. 398 IPR, Paper 2, 1; 424 IPR, Paper 2, 1. Patent Owner’s Preliminary Responses in those cases argued that Petitioner’s Customers should have been named as real parties-in-interest. 398 IPR, Paper 7, 14–18; 424 IPR, Paper 6, 17–21. Petitioner sought authorization from the Board to file amended Mandatory Notices. 398 IPR, Paper 8; 424 IPR, Paper 7. Upon receiving permission from the Board to update its Mandatory Notices, Petitioner added Petitioner’s Customers as real parties-in-interest in the 398 IPR and the 424 IPR. 398 IPR, Paper 10; 424 IPR, Paper 8. Thus, the 398 IPR and the 424 IPR, on

Patent Owner argues that the Board should deny institution for Petitioner's failure to name all real parties-in-interest. Prelim. Resp. 7–23. Patent Owner argues that judicial estoppel precludes Petitioner from asserting that Petitioner's Customers are not real parties-in-interest. *Id.* at 8–14. Specifically, Patent Owner argues that (1) Petitioner's identification of itself is clearly inconsistent with Petitioner's real party-in-interest identification in the 398 IPR and the 424 IPR (*id.* at 10–12); (2) the Board previously accepted that both Petitioner and Petitioner's Customers are the correct real parties-in-interest in the 398 IPR and the 424 IPR (*id.* at 12–13); and (3) Patent Owner would suffer prejudice if the Board did not hold Petitioner to its real party-in-interest identifications in the 398 IPR and the 424 IPR (*id.* at 13). Patent Owner also discusses the factors set forth in *Taylor v. Sturgell*, 553 U.S. 880 (2008), in arguing that Petitioner's customers are real parties-in-interest, particularly the first factor (“whether the third party agrees to be bound by the determination of issues in the proceeding”), third factor (“whether the third party is adequately represented by someone with the same interests”), and fifth factor (“whether the third party is bound by a prior decision and is attempting to rehear the matter through a proxy”). Prelim. Resp. 14–18 (citing *Atlanta Gas Light Co. v. Bennett Regulator Guards, Inc.*, Case IPR2013-00453, slip op. at 9 (PTAB Jan. 6, 2015) (Paper 88)). Finally, Patent Owner argues that Petitioner's alleged failure to identify all real parties-in-interest is incurable because Petitioner's Customers are time-barred under 35 U.S.C. § 315(b). *Id.* at 21–23.

which we have instituted *inter partes* review, name six real parties-in-interest.

Petitioner argues that Petitioner is the only real party-in-interest. Reply 1–3. Specifically, Petitioner argues that none of Petitioner’s Customers directed, funded, or controlled any aspect of the present IPR. *Id.* at 1. Petitioner alleges that the “failure of Patent Owner to cite any evidence of funding, direction, or control by the Customers is glaring,” as is Patent Owner’s avoidance of the second and fourth *Taylor* factors. *Id.* at 2. Petitioner argues that the first *Taylor* factor does not apply, because Petitioner’s Customers have agreed to be bound in a different proceeding, and that the fifth *Taylor* factor does not apply because Petitioner’s Customers, who are time-barred, likely would be estopped as privies of Petitioner. *Id.* at 2–3. Regarding the third *Taylor* factor, Petitioner argues that Petitioner’s Customers are at most passive beneficiaries of Petitioner’s efforts. *Id.* at 3. Finally, Petitioner argues that equitable considerations do not favor application of judicial estoppel in this case. *Id.* at 5.

Petitioner, in support of its arguments, provides a declaration by Dr. Franz Uppena, Ph.D., Head of Patents and Trademarks for CeramTec GmbH. Ex. 1317; Reply 1. Dr. Uppena asserts that Petitioner pays all legal fees and expenses relating to the present IPR, that Petitioner’s Customers have not participated in the present IPR at all, and that Petitioner has the exclusive right to control its conduct in this IPR. Ex. 1317 ¶¶ 5–9.

Based on the information presented, we are not persuaded that the first, third, and fifth *Taylor* factors require that both Petitioner and Petitioner’s Customers must be named as real parties-in-interest. We do not find that totality of evidence, presented at this stage in the proceeding, tips the balance of the *Taylor* factors in Patent Owner’s favor. In particular, having considered the information presented by both parties at this stage of the

proceeding, the record is insufficient to support a finding that the second *Taylor* factor (“whether a pre-existing substantive legal relationship with the party named in the proceeding justifies binding the third party”) or fourth *Taylor* factor (“whether the third party exercised or could have exercised control over the proceeding”) are met in this case. *Atlanta Gas Light Co.*, slip op. at 9.

Furthermore, Patent Owner directs us to no statutory provision establishing the Board’s authority to apply an equitable defense, such as judicial estoppel. Regarding the Board’s authority to act, we are mindful that “[a]n agency is but a creature of statute” and “[a]ny and all authority pursuant to which an agency may act ultimately must be grounded in an express grant from Congress.” *Killip v. Office of Personnel Mgmt.*, 991 F.2d 1564, 1569 (Fed. Cir. 1991); *see also Esselte Corp. v. Dymo*, Case IPR2015-00779, slip op. at 4–7 (PTAB Aug. 28, 2015) (Paper 13) (determining that 35 U.S.C. §§ 311, 314–316 do not provide assignor estoppel as a defense to *inter partes* review). In any event, in *inter partes* review proceedings, the Office generally will not look beyond the required statement identifying the real party in interest. *Atlanta Gas Light Co.*, slip op. at 7. We have not made any determination about the identification of real parties-in-interest in the 398 IPR and the 424 IPR.

After consideration of the specific arguments presented to us, and on the record before us, we conclude that our consideration of the Petition is not barred by 35 U.S.C. § 312(a)(2) under these facts.

C. Conclusion

Based on the totality of circumstances before us in this case, we conclude that we are able to consider the Petition under 35 U.S.C.

§ 312(a)(2), but that Petitioner has not presented considerations that sufficiently support its request for *inter partes* review of claims 1–53 of the '584 patent.

III. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that *inter partes* review is denied as to all challenged claims of the '584 patent.

IPR2015-01328
Patent 6,066,584

FOR PETITIONER:

Gina N. Shishima
gina.shishima@nortonrosefulbright.com

Thomas Owens
tom.owens@nortonrosefulbright.com

Mark T. Garrett
mark.garrett@nortonrosefulbright.com

FOR PATENT OWNER:

Kevin K. McNish
kmcnish@desmaraisllp.com

John M. Desmarais
jdesmarais@desmaraisllp.com

Andrew G. Heinz
aheinz@desmaraisllp.com