

From: [Johnson, Karen L.](#)
To: [Director PTABDecision Review](#)
Cc: [RFMPTABDocket](#); [2JAPTABDocket](#); [PTABDocketG1P6](#); [Austin, Benjamin](#); [Lklapp@rshc-law.com](#); [MFleck@rshc-law.com](#)
Subject: IPR2023-00381; Vital Connect, Inc. v. Bardy Diagnostics, Inc.; Petitioner's Request for Director Review
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Director Vidal,

Petitioner Vital Connect, Inc. ("VitalConnect") respectfully submits this notification of **Request for Director Review** of the Decision Denying Institution of *inter partes* review ("IPR") of Patent No. 11,051,743 ("the '743 patent"), issued July 11, 2023. Paper 7 ("Decision"), pursuant to the Revised Interim Director Review Process, available at <https://www.uspto.gov/patents/ptab/decisions/revised-interim-director-review-process>. Pursuant to the Revised Interim Process, Petitioner is concurrently filing a Request for Rehearing by the Director in the Patent Trial and Appeal Case Tracking System (P-TACTS).

The Director should grant review because the Decision is based on legal error and reflects an abuse of discretion. An express identification and brief explanation thereof is below.

Legal Error/Abuse of Discretion

The Board here committed legal error and abused its discretion by misapplying the factual analysis required by *Advanced Bionics* and *Becton, Dickinson* in granting discretionary denial under 35 USC § 325(d). It is undisputed that the patent at issue faced no substantive prior art rejections during prosecution and the Office provided no prior art analysis or reasons for allowance, which was detailed in the Petition. Of course, where ***there is no prior art patentability analysis during prosecution***, there is nothing upon which to base a § 325(d) denial and there is nothing for the Petition to analyze. Indeed, *Becton, Dickinson* expressly noted in exercising discretionary denial that "[t]his is not a case where the prior art was simply listed in an IDS during prosecution." To require that the Petitioner needed to request leave to remind the Board of this fact or use magic words that "the Office erred by performing no analysis" improperly adds requirements not found in § 325(d) and is contrary to the relevant caselaw.

Director Review is respectfully requested for the reasons set forth in detail in the Request for Director Review.

Best,

Richard Martinelli

Partner

[Orrick](#)

New York 

T +1-212-506-3702

rmartinelli@orrick.com

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