

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALIVECOR, INC.,
Petitioner,

v.

APPLE INC.,
Patent Owner.

IPR2024-00169
Patent 10,076,257

Before KEN B. BARRETT, JOSIAH C. COCKS, and
ROBERT L. KINDER, *Administrative Patent Judges*.

KINDER, *Administrative Patent Judge*.

DECISION
Dismissal Prior to Institution of Trial
35 U.S.C. § 314

On January 26, 2024, with Board authorization, Petitioner filed a Motion to Dismiss this proceeding. Paper 8. In the Motion to Dismiss, Petitioner represents that Patent Owner does not oppose the motion or intend to file any response. *Id.* at 1, 3.

The Petition in this proceeding was filed on November 15, 2023. Paper 1. Petitioner concurrently filed a Conditional Motion for Joinder that requested joinder to IPR2023-00745¹ if, and only if, institution of Petitioner's IPR2023-00950² was denied. Paper 3; *see also* Paper 8, 1. On December 15, 2023, Patent Owner responded by requesting the Board deny institution of IPR2023-00950 and thus grant Petitioner's Motion for Joinder to IPR2023-00745. Paper 7. On January 9, 2024, the Board granted institution of IPR2023-00950. IPR2023-00950, Paper 12.

In the Motion to Dismiss, Petitioner contends that dismissal is justified because this proceeding is in its early stages, institution of IPR2023-00950 makes it “appropriate to grant Petitioner's unopposed motion to dismiss the instant petition and terminate IPR2024-00169 to preserve the Board's and parties' resources and promote a speedy and inexpensive resolution to this dispute,” and Petitioner is time barred from filing another petition with respect to the '257 patent. Mot. 2–3.

Under the foregoing circumstances, we are persuaded that it is appropriate to dismiss the Petition and terminate the proceeding to promote efficiency and minimize unnecessary costs. *See* 37 C.F.R. §§ 42.5(a);

¹ *Masimo Corp. v. Apple Inc.*, IPR2023-00745 (filed Mar. 22, 2023) (granting institution of trial for challenges to claims 1–4 and 8–22 of U.S. Patent No. 10,076,257 (the '257 patent) on Oct. 16, 2023).

² *AliveCor, Inc. v. Apple Inc.*, IPR2023-00950 (filed Jun. 7, 2023) (granting institution of trial for challenges to claims 1–22 of the '257 patent).

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37 C.F.R. § 42.71(a), “[t]he Board may take up petitions or motions for decisions in any order, [and] may grant, deny, or dismiss any petition or motion.” *See also* 35 U.S.C. § 317(a); 37 C.F.R. § 42.72.

This paper does not constitute a final written decision pursuant to 35 U.S.C. § 318(a) or a judgment pursuant to 37 C.F.R. § 42.73.

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ORDER

Accordingly, it is
ORDERED that the Motion to Dismiss IPR2024-00169 is *granted*;
and
FURTHER ORDERED that the above case is hereby *terminated* as to
all parties, including Petitioner and Patent Owner.

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For PETITIONER:

Christopher Douglas
Scott Stevens
J. Ravindra Fernando
Erin Beaton
Alston & Bird LLP
christopher.douglas@alston.com
scott.stevens@alston.com
ravi.fernando@alston.com
erin.beaton@alston.com

For PATENT OWNER:

W. Karl Renner
Jeremy Monaldo
Grace Kim
Andrew Patrick
Patrick Bisenius
Fish & Richardson P.C.
axf-ptab@fr.com
monaldo@fr.com
gkim@fr.com
patrick@fr.com
bisenius@fr.com