

**Avation Medical, Inc.,
Petitioner v. EMMKinetics, Inc.,
Patent Owner**

IPR2024-01375,
U.S. Patent No. 11,224,742

IPR2024-01378,
U.S. Patent No. 9,002,477

Patent Owner EMMKinetics' Demonstratives

Summary

- IPR2024-01375:
 - Grounds 1 & 2 fail because Petitioner did not provide evidence regarding the public accessibility of non-patent references.
 - Grounds 1 & 2 further fail because Petitioner has not demonstrated the obviousness of the Challenged Claims.
- IPR2024-01378:
 - Grounds 1-5 fail because Petitioner did not provide evidence regarding the public accessibility of non-patent references.

Public Accessibility

- IPR2024-01375:
 - Grounds 1-2 (both/all grounds)
- IPR2024-01378:
 - Grounds 1-5 (all grounds)

Failure to Establish Prior Art Status

- Petitioner always bears the burden of proving unpatentability by a preponderance of the evidence, which extends to proving that each cited reference qualifies as prior art.
- "Information" sufficient for institution may not be enough to constitute "evidence" for cancellation of patent claims.
- Petitioner failed to establish the prior art status of numerous non-patent references relied upon in their argument.

Insufficient Evidence

- Petitions rely on many non-patent references, many grouped broadly under the "knowledge of a person of ordinary skill in the art" (POSITA) to avoid specific proof.
- Petitioner provided only copies of these references, lacking actual evidence of public accessibility at the relevant time.
- Key references lack hallmarks of publication (*e.g.*, copyright notice, known publisher name, publication date).
- No record evidence concerning publishers.

Lack of Corroborating Proof

- The petitioner's own cited case law (*Ericsson, Grünenthal, Parse Biosciences*) required strong corroborating evidence, such as librarian or expert declarations with personal knowledge, which is missing here.
- Untimely attempts to add new evidence and declarations in a reply brief are insufficient and should be disregarded.

Obviousness

- IPR2024-01375:
 - Grounds 1-2 (both/all grounds)

Petitioner failed to prove that the challenged claims are obvious

- Ground 1: Petitioner's argument relies on the alleged knowledge and motivation of a person of ordinary skill in the art (POSITA), but the cited references do not actually support these claims.
- Ground 2: It fails for the same reasons: Petitioner did not demonstrate that a POSITA would have the necessary knowledge or motivation to arrive at the claimed invention.

Grey (Ex. 1081)

- Grey Does Not Support Broad Efficacy Claims:
 - Grey focuses on treating stomach symptoms via electro-acupuncture, not urological conditions or the general efficacy of PTN branch stimulation.
- Irrelevant References to Traditional Chinese Medicine:
 - Grey relies on "Spleen" (SP) and "Bladder" (BL) acupuncture channels, which Petitioner failed to define or link to the posterior tibial nerve.
- Expert Testimony Undermines Argument:
 - Petitioner's own expert admitted they could not define the acupuncture points or channels in Grey and acknowledged that those in the field do not typically consult traditional Chinese medicine sources.
- Failure to Prove POSA Appreciation:
 - Petitioner lacks distinct evidence to show a person of ordinary skill in the art (POSA) would have known that PTN branches could be stimulated as an effective substitute for the main PTN.

Mann (Ex. 1084) & Boveja (Ex. 1080)

- Mann Focuses on Pudendal Nerve:
 - Mann discusses the pudendal nerve—a different anatomical structure—and identifies stimulation locations (knee and ankle) that correspond to the main PTN, not its branches.
- Boveja Restricted to Sacral Roots:
 - Boveja discloses neuromodulation of nerves at the sacral region of the spinal cord (S2–S4) rather than distal PTN branches outside the sacral region.
- Lack of Expert Foundation:
 - Petitioner's expert admitted a lack of expertise in perineal anatomy and could not confirm if the structures cited in the references qualified as nerve branches.
- Failure of Proof:
 - Neither the primary nor secondary references support the Petitioner's broad assertion that a POSA would have appreciated the efficacy of direct PTN branch stimulation.

Ponsford (Ex. 1085)

- Ponsford Does Not Establish Mechanism:
 - Ponsford relates to diagnosing peripheral neuropathy via foot stimulation; it does not teach that stimulating PTN branches sends signals upstream to treat urological conditions.
- Mischaracterization of Neural Lesions:
 - While Ponsford links foot sensory loss to spinal lesions, this diagnostic observation does not support Petitioner's claim that a POA would appreciate a therapeutic pathway from PTN branches to the sacral nerve roots.
- Expert Admission of Complexity:
 - Petitioner's own expert admitted that the relationship between sacral nerves and bladder control is a "hard question" and that the mechanism of neuromodulation remains a subject of ongoing scientific work.

Claim 4 Obviousness Argument Fails

- Petitioner failed to demonstrate by a preponderance of the evidence that Claim 4 would have been obvious.
- Evidence completely lacking to show that modifying an existing treatment to target a different nerve location would have a reasonable expectation of success.
- Moreover, expert testimony confirmed that distance and location are critical factors that impact treatment efficacy.

Thank You

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that, on January 5, 2026, a true and correct copy of the co-attached Patent Owner EMKinetics' Demonstratives was provided by electronic mail on Petitioner's lead and backup counsel at the following email addresses:

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