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Paper No. 20
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIFESCAN, INC., SENSEONICS HOLDINGS, INC., and ASCENSIA DIABETES CARE HOLDINGS AG,
Petitioner,

v.

CELLSPIN SOFT, INC.,
Patent Owner.

IPR2025-00102 (Patent 11,234,121 B2)
IPR2025-00103 (Patent 9,900,766 B2)
IPR2025-00104 (Patent 8,904,030 B2)[1]

Before GREGG I. ANDERSON, CYNTHIA M. HARDMAN, and MICHAEL A. VALEK, *Administrative Patent Judges*.

VALEK, *Administrative Patent Judge*.

DECISION
Denying Patent Owner's Request for Rehearing of Institution Decision
37 C.F.R. § 42.71(d)

[1] This Order addresses issues common to the identified cases. The parties are not authorized to use this caption without express authorization.

I. INTRODUCTION

Cellspin Soft, Inc. ("Patent Owner") requests rehearing of our decisions instituting *inter partes* review (Paper 17, "Decision" or "Dec.") in these proceedings. Paper 18 ("Request" or "Req.").[2]

As we have explained, the Decision is based on our analysis of the existing pre-trial record in each case in view of the Director's Order[3] instructing us to determine whether these proceedings should be instituted on their own, i.e., separately from IPR2024-00768, IPR2024-00769, and IPR2024-00770 (collectively the "TikTok IPRs") with which they were previously joined. Paper 16, 2 (order following teleconference discussing these issues). On that record, we found that Lifescan, Inc., Senseonics Holdings, Inc., and Ascensia Diabetes Care Holding AG (collectively "Petitioners") have demonstrated a reasonable likelihood they will prevail in showing that the challenged claims are unpatentable. Dec. 33.

Patent Owner alleges that the Decision does not reflect "an independent evaluation of these petitions as standalone proceedings" and "grants institution without reassessing [them] in the posture the Director required." Req. 1.[4] Patent Owner further asserts the Decision does not address "*discretionary considerations*" arising after and outside of the pre-

[2] Herein, we cite to the paper numbers in IPR2025-00102. The same or similar papers are of record in the other proceedings. Patent Owner filed an identical Request in IPR2025-00103 and IPR2025-00104. This decision addresses the Request in all three proceedings.

[3] *See, e.g.*, IPR2024-00768, Paper 41 ("Director's Order").

[4] The Request lacks page numbers. Our pinpoint citations refer to the page with the "INTRODUCTION" as page 1 and count up from there. Req. 1.

trial record. *Id.* According to Patent Owner, "these omissions are material and warrant rehearing." *Id.*

As explained below, we disagree with Patent Owner and *deny* the Request.

II. STANDARD OF REVIEW

A party requesting rehearing of a Board decision has the burden to show that the decision should be modified. Pursuant to 37 C.F.R. § 42.71(d), a rehearing request must identify, specifically, all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply. When rehearing a decision on a petition, we review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). An abuse of discretion may arise if: (1) a decision is based on an erroneous interpretation of law, (2) a factual finding is not supported by substantial evidence, or (3) an unreasonable judgment is made in weighing relevant factors. *In re Gartside*, 203 F.3d 1305, 1315–16 (Fed. Cir. 2000).

III. ANALYSIS

At the outset, we note that the Request does not identify anything pertaining to the merits analysis in the Decision that the Board allegedly misapprehended or overlooked. In that analysis, and pursuant to the Director's Order, we again considered the arguments and evidence in the pre-trial record and determined that Petitioners had met their burden for institution. *See generally* Dec. 11–33. Patent Owner's assertion that the Board did not conduct an "independent evaluation" or reassess the evidence and argument in the pre-trial record is unfounded. *See* Request 1–2.

The true thrust of the Request is Patent Owner's argument that the Director's Order required us to reopen the pre-trial record so that it could raise new discretionary denial arguments (including a "fresh Fintiv analysis" and new argument regarding settled expectations). *See* Request 8–11. But the Director's Order does not contemplate reopening the pre-trial record. Instead, the Director instructed the Board to decide whether these IPRs "should be instituted on their own," i.e., separately from the TikTok IPRs with which they were previously joined. Director's Order 7. This is exactly what we did in the Decision where we determined—in view of the existing pre-trial record—that the present proceedings do stand on their own and therefore instituted review.

The reasoning above already provides sufficient basis to deny the Request. We write further to offer some additional observations and correct inaccuracies in Patent Owner's arguments.

First, much of the argument in the Request contradicts the mandate in the Director's Order because instead of focusing on whether the present proceedings should be instituted *on their own*, Patent Owner's arguments center on the actions of third parties, mostly TikTok,[5] who are not involved in these proceedings. *See* Req. 3–6 (alleging that TikTok relies on the present proceedings "to oppose lifting the stay" and that TikTok asserts "*the*

[5] Patent Owner also refers to Autel Robotics and SZ DJI Tech—who are defendants in two newly-identified district court cases in Patent Owner's updated mandatory notices. Req. 4; Paper 15, 2–3 (updated April 13, 2026). There is no evidence, nor does Patent Owner allege, that these defendants have any relationship to the present Petitioners or that these much later-filed cases have any relevance other than they apparently involve the same patents.

same prior art references and substantially *identical combinations*" in *Cellspin Soft, Inc. v. ByteDance Ltd.*, No. 2:23-cv-00496-JRG-RSP (E.D. Tex.) (the "TikTok case")).

During the April 8 teleconference, Patent Owner suggested TikTok is involved and a real party in interest ("RPI") here because it was the original author of the petitions that Petitioners filed in these proceedings. But the mere fact that Petitioners copied TikTok's publicly-available papers does not make TikTok a RPI, nor does it show involvement or coordination between them. To the contrary, on the April 8 teleconference lawyers for each of the Petitioners represented that Petitioners have no relationship to and have had no substantive contact with TikTok or TikTok's counsel in the related proceedings. The Request does not challenge those representations, nor otherwise allege facts that call into doubt Petitioners' representations that they filed and are litigating these proceedings independently from TikTok.[6]

This independence is significant because Patent Owner makes no allegation that Petitioners (as opposed to TikTok in the TikTok case—a case to which Petitioners are not parties) have advanced inconsistent claim construction or overlapping invalidity positions. Moreover, even if, as Patent Owner asserts, TikTok independently seeks to advance the same art and grounds, we are likely to reach final decisions in these IPRs well before

[6] The Request conflates RPI with Patent Owner's discretionary denial arguments. *See* Req. 8 ("questions regarding the true real parties in interest here"). Patent Owner has not sought authorization to challenge Petitioners' RPI identification, nor pointed to facts sufficient to put that issue in dispute.

those arguments are adjudicated in the TikTok case.[7] This is especially true given that both sides here have agreed to adopt the post-institution record from the TikTok IPRs and proceed to oral hearing with a hearing date already scheduled for June 30, 2026. Paper 16, 3–5.

Second, Patent Owner attempts to support its Request by asserting that "the Board's procedural approach *changed* between" the time of our April 2 order (Paper 12) indicating our intent to institute review and setting the April 8 teleconference to discuss whether these cases could "'move directly to Oral Argument,'" and our April 15 order (Paper 16) following that teleconference. *See* Req. 8–9 (quoting Paper 12, 4). Patent Owner is wrong. Both orders state that pursuant to the Director's Order, we intended to issue decisions instituting review based on our assessment of the pre-trial record. Paper 12, 3; Paper 16, 2–3. That is exactly what was done.

Regarding the separate issue of whether these IPRs could proceed directly to the oral hearing based the trial record in the TikTok IPRs, our approach has likewise not changed. At the teleconference, both sides agreed they would adopt and rely upon the "record that had been previously developed in" the TikTok IPRs and proceed directly to the oral hearing.

[7] The Request offers no detail regarding the current schedule in the TikTok case, but speculates that it "is *likely* to proceed on a schedule that *may* reach key validity issues within approximately 7-8 months." Req. 3–4 (emphasis changed). Based on what can be discerned from the Request, our understanding is that TikTok and Patent Owner have submitted conflicting proposals regarding how the TikTok case should proceed and the TikTok case remains stayed at present. *See id.* at 4 (citing "Joint Statement Related to Stay").

Paper 16, 3. This is the same approach suggested in our April 2 order. Paper 12, 3.

The only difference in our April 15 order is that we obliged a request Patent Owner made during the teleconference to file a short supplemental brief on the merits of Petitioners' grounds. Paper 16, 3–4. This was done over Petitioners' objections based on Patent Owner's representation that there was new case law, and possibly also issues specific to the present Petitioners, it wanted to brief and that Patent Owner did not seek to offer any new evidence. *Id.* We authorized Patent Owner's request out of an abundance of caution to ensure fulsome argument on the merits. That adjustment to the post-institution record—made at Patent Owner's insistence—does not demonstrate a change in our procedural approach, nor otherwise support Patent Owner's Request for rehearing of the institution decision.

IV. CONCLUSION

Upon review, we see no error in our findings or conclusions, nor any unreasonable judgment in either our Decision to institute review or our refusal to authorize Patent Owner to supplement the pre-trial record with new arguments. For the reasons stated, Patent Owner has not met its burden to show that the Decision should be modified.

V. ORDER

Accordingly, it is

ORDERED that Patent Owner's Request for Rehearing is *denied.*

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