

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

TESLA, INC.,
Petitioner,

v.

CHARGE FUSION TECHNOLOGIES, LLC,
Patent Owner.

IPR2025-00152 (Patent 11,990,788 B2)
IPR2025-00153 (Patent 11,631,987 B2)

Before COKE MORGAN STEWART, *Acting Under Secretary of
Commerce for Intellectual Property and Acting Director of the United States
Patent and Trademark Office.*

DECISION
Denying Patent Owner's Request for Discretionary Denial

Charge Fusion Technologies, LLC (“Patent Owner”) filed a request for discretionary denial of institution (Paper 7, “DD Req.”) in the above-captioned cases, and Tesla, Inc. (“Petitioner”) filed an opposition (Paper 8, “DD Opp.”).¹

After considering the parties’ arguments and the record, and in view of all relevant considerations, discretionary denial of institution is not appropriate in this proceeding. This determination is based on the totality of the evidence and arguments the parties have presented.

In particular, Petitioner provides persuasive reasoning, supported by evidence, that discretionary denial under 35 U.S.C. § 325(d) is not appropriate. In determining whether to discretionarily deny a petition under § 325(d), Office policy requires a determination of “(1) whether the same or substantially the same art previously was presented to the Office or whether the same or substantially the same arguments previously were presented to the Office; and (2) if either condition of first part of the framework is satisfied, whether the petitioner has demonstrated that the Office erred in a manner material to the patentability of challenged claims.” *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 8 (PTAB Feb. 13, 2020) (precedential) (“*Advanced Bionics*”).

Petitioner provides persuasive evidence that the Office erred in a manner material to the patentability of the challenged claims by overlooking the teachings of Letendre.² Patent Owner asserts that the patent examiner

¹ Citations are to papers in IPR2025-00152. The parties filed similar papers in IPR2025-00153.

² Letendre et al., *The V2G Concept, A New Model for Power*, Public Utilities Fortnightly, Vol. 140, No. 4 (Feb. 2002) (Ex. 1007).

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allowed the claims because the prior art the examiner relied on failed to disclose a “slider” as claimed. DD Req. 4–5 (citing Ex. 2005). Petitioner relies on Letendre to teach a “slider,” and Patent Owner does not dispute that Letendre teaches a “slider.” DD Req. 9–11. Petitioner persuasively argues that the patent examiner overlooked Letendre’s teachings, thus demonstrating that the Office erred in a manner material to the patentability of the claims. DD Opp. 10; *Ecto World LLC v. Rai Strategic Holdings Inc.*, IPR2024-01280, Paper 13 at 5 (PTAB May 19, 2025) (precedential) (citing *Advanced Bionics* at 10). In addition, the challenged patents issued recently, in 2023 and 2024. Early challenges to patents favor robust, predictable patent rights and weigh against discretionary denial.

Although certain arguments are highlighted above, the determination not to exercise discretion to deny institution is based on a holistic assessment of all of the evidence and arguments presented. Accordingly, the Petition is referred to the Board to handle the case in the normal course, including by issuing a decision on institution addressing the merits and other non-discretionary considerations, as appropriate.

In consideration of the foregoing, it is:

ORDERED that Patent Owner’s request for discretionary denial is *denied*;

FURTHER ORDERED that the Petition is referred to the Board; and

FURTHER ORDERED that neither party shall file a request for rehearing or Director Review of this decision until the Board issues a decision on institution.

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