Director_Discretionary_Decision@uspto.gov
571-272-7822

Paper 15
Date: July 10, 2025

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

PHISON ELECTRONICS CORPORATION,
Petitioner,

v.

VERVAIN, LLC,
Patent Owner.

IPR2025-00213 (Patent 9,196,385 B2)
IPR2025-00214 (Patent 9,997,240 B2)
IPR2025-00215 (Patent 10,950,300 B2)
PGR2025-00010 (Patent 11,967,369 B2)
PGR2025-00011 (Patent 11,967,370 B1)

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 Institution of *Inter Partes* Review and Post-Grant Review

Vervain, LLC ("Patent Owner") filed a request for discretionary denial (Paper 9, "DD Req.") in the above-captioned cases, and Phison Electronics Corporation ("Petitioner") filed an opposition (Paper 12, "DD Opp.").[1] With authorization, Patent Owner filed a Reply (Paper 10), and Petitioner filed a Sur-reply (Paper 13).

After considering the parties' arguments and the record, and in view of all relevant considerations, discretionary denial of institution is appropriate in these proceedings. This determination is based on the totality of the evidence and arguments the parties have presented.

For IPR2025-00213 and IPR2025-00214, the projected final written decision due date in the Board proceedings is August 14, 2026. DD Req. 10. The district court's scheduled trial date is December 15, 2025. *Id*. As such, it is unlikely that a final written decision in these proceedings will issue before the district court trial occurs. Additionally, there is insufficient evidence that the district court is likely to stay its proceeding even if the Board were to institute trial. *Id*. at 8–9; DD Opp. 3–6. Furthermore, there has been meaningful investment in the parallel proceeding by the parties. DD Req. 8–10. For example, the district court has held a *Markman* hearing, and fact discovery is expected to be completed before a decision on institution issues. *Id.* at 11–12. On balance, the circumstances in these cases favor discretionary denial.

[1] Citations are to papers in IPR2025-00213. The parties filed similar papers in IPR2025-00214, IPR2025-00215, PGR2025-00010, and PGR2025-00011.

As to IPR2025-00215, PGR2025-00010, and PGR2025-00011, the challenged patents have not been in force for a significant period of time (issued in 2021, 2024, and 2024). Ordinarily this might favor referral to the Board; however, Petitioner has not offered a stipulation to address concerns of duplicative efforts and potentially conflicting decisions in view of a significantly earlier trial date in a co-pending case that is unlikely to be stayed. The absence of such a stipulation tips the balance in favor of discretionary denial.

Although certain arguments are highlighted above, the determination to exercise discretion to deny institution is based on a holistic assessment of all of the evidence and arguments presented. Accordingly, the Petitions are denied under 35 U.S.C. § 314(a).

In consideration of the foregoing, it is:

ORDERED that Patent Owner's request for discretionary denial is *granted*; and

FURTHER ORDERED that the Petitions are *denied*, and no trial is instituted.

IPR2025-00213 (Patent 9,196,385 B2)
IPR2025-00214 (Patent 9,997,240 B2)
IPR2025-00215 (Patent 10,950,300 B2)
PGR2025-00010 (Patent 11,967,369 B2)
PGR2025-00011 (Patent 11,967,370 B1)

FOR PETITIONER:

Hsuanyeh Chang
Stephen Chow
Douglas Chin
Peter Yi
HSUANYEH LAW GROUP, PC
hsuanyeh@hsuanyeh.com
stephen.y.chow@hsuanyeh.com
doug.chin@hsuanyeh.com
peter.yi@hsuanyeh.com

For PATENT OWNER:

Alan Whitehurst
Arvind Jairam
Christopher McNett
Christian Dorman
Christopher Leone
MCKOOL SMITH, P.C.
awhitehurst@mckoolsmith.com
ajairam@mckoolsmith.com
mcnett@gmail.com
cdorman@mckoolsmith.com
cleone@mckoolsmith.com