

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

DABICO AIRPORT SOLUTIONS INC.,
Petitioner,

v.

AXA POWER APS,
Patent Owner.

IPR2025-00408
Patent 9,771,169 B2

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

ORDER

Dabico Airport Solutions Inc. (“Petitioner”) filed a request for Director Review of the Decision denying institution (“Decision,” see Paper 21) in the above-captioned case, and AXA Power ApS (“Patent Owner”) filed an authorized response to the request. See Paper 22 (“DR Request”); Paper 23. In the request, Petitioner argues that Director Review should be granted to correct abuses of discretion. Specifically, Petitioner argues the Decision denied institution based on considerations that Patent Owner did not raise without allowing Petitioner notice and an opportunity to be heard. DR Request 2–6. In support of its argument, Petitioner refers to statements in an informative “Boardside Chat” and the “FAQs for Interim Processes for PTAB Workload Management” (“FAQs”¹). *Id.* Petitioner also argues the Office has “declined to apply discretionary denial in other similarly-situated cases” and, therefore, finding “settled expectations” based on the facts of this case was an abuse of discretion. *Id.* at 6–8.

Petitioner does not demonstrate an abuse of discretion. Statements made during an informational Boardside Chat are not controlling authority or binding, and the Director retains broad authority to determine whether to institute an *inter partes* review (“IPR”). See 35 U.S.C. § 314(a); *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 273 (2016) (the Director’s “decision to deny a petition is a matter committed to the Patent Office’s discretion”). Further, at the time Petitioner filed its opposition, the FAQs did not state or imply that “unrequested issues will not be considered,” as

¹ *FAQs for Interim Processes for PTAB Workload Management*, available at <https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management>. On August 13, 2025, the FAQs were superseded by the Interim Director Discretionary Process webpage.

Petitioner argues. DR Request 3. Rather, the FAQs explained that the Director would not consider discretionarily denying a petition without a request from a patent owner.² FAQs 9, 23. And, contrary to Petitioner’s argument, the FAQs expressly stated that “[p]arties are encouraged to address any fact or circumstance they believe bears on whether the Office should or should not institute trial.” FAQs 20.

Petitioner also had notice that settled expectations was a relevant consideration, and an opportunity to brief its own settled expectations (or the absence of settled expectations for Patent Owner). The Interim Processes for PTAB Workload Management (“Process Memo”)³ explained that “[s]ettled expectations of *the parties*” was a consideration in determining whether to deny institution or refer a petition to the Board. *See* Process Memo 2 (emphasis added). The Process Memo also allowed parties to brief discretionary considerations, including settled expectations. *Id.* Thus, this case is not analogous to the *Ecto World* or *Fintiv* decisions that Petitioner cites. DR Request 5–6; *see Ecto World, LLC v. RAI Strategic Holdings, Inc.*, IPR2024-01280, Paper 13 at 7 (Director May 19, 2025) (precedential) (ordering the Board to permit additional briefing after clarifying how the Board applies its precedent under 35 U.S.C. § 325(d)); *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 2 (PTAB Mar. 20, 2020) (precedential) (allowing supplemental briefing to address new discretionary framework). That Petitioner failed to raise any arguments as to its own settled

² The FAQs were subsequently updated to clarify that the Director is not limited to the arguments the parties raise. *See* FAQ 10.

³ Available at <https://www.uspto.gov/sites/default/files/documents/InterimProcesses-PTABWorkloadMgmt-20250326.pdf>.

expectations or those of Patent Owner does not mean that Petitioner had inadequate notice or lacked an opportunity to be heard. Even now, Petitioner does not make any arguments as to its own settled expectations. *See generally* DR Request.

Petitioner's argument that the Decision was an abuse of discretion by finding settled expectations is also unavailing. Rather than make its own arguments about settled expectations, Petitioner cherry picks two IPRs challenging older patents from more than one hundred discretionary considerations decisions. Petitioner, however, fails to address that the determination of whether to exercise discretion to deny institution in each case is based on a holistic assessment of all the facts and circumstances. Nor does Petitioner attempt to distinguish its case from the decisions denying institution that highlight a patent owner's settled expectations arising from the length of time that the challenged patent has been in force.

Having considered the DR Request and response, it is:

ORDERED that the request for Director Review is denied.

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