

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BELDEN INC. and PPC BROADBAND, INC.

Petitioner,

v.

COMMSCOPE, INC. OF NORTH CAROLINA

Patent Owner.

IPR2025-00833
Patent 9,266,697

**PATENT OWNER'S BRIEF REQUESTING
DISCRETIONARY DENIAL**

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PATENT OWNER’S EXHIBIT LIST

Exhibit No.	Exhibit Description
2001	Screenshot of CommScope’s Product Patent website results for search term “bag”
2002	Complaint from <i>CommScope, Inc. of North Carolina v. Belden Inc. and PPC Broadband, Inc.</i> , C.A. No. 24-427-RGA (D. Del)
2003	Amended Answer from <i>CommScope, Inc. of North Carolina v. Belden Inc. and PPC Broadband, Inc.</i> , C.A. No. 24-427-RGA (D. Del)
2004	Scheduling Order from <i>CommScope, Inc. of North Carolina v. Belden Inc. and PPC Broadband, Inc.</i> , C.A. No. 24-427-RGA (D. Del)
2005	United States Patent No. 12,304,766 (Honsinger et al.)
2006	Screenshot from “CablePak Jr installation guide” (https://www.youtube.com/watch?v=3E8Eah60Oro)
2007	Defendants’ Initial Invalidity Contentions from <i>CommScope, Inc. of North Carolina v. Belden Inc. and PPC Broadband, Inc.</i> , C.A. No. 24-427-RGA (D. Del)
2008	Defendants’ Initial Reduction of Asserted Prior Art from <i>CommScope, Inc. of North Carolina v. Belden Inc. and PPC Broadband, Inc.</i> , C.A. No. 24-427-RGA (D. Del)

I. Introduction

Patent Owner respectfully requests that the Petition be denied. This case presents facts that would make institution a particularly inefficient use of Board resources.

First, the challenged patent has been in force for over 9 years, and during that time the Patent Owner has commercialized and used the '697 patent in the technology space where Patent Owner and Petitioner compete. Expectations are well settled as to the patent and the parties.

Second, during prosecution the Examiner's initial rejection of claims was appealed to the PTAB, and the PTAB reversed the rejections as to the claims now challenged by Petitioner. So the PTAB itself has *already* considered the challenged claims and found them patentable. What is more, the Petition's lead grounds (Grounds 1 and 2) rely on references that each lack the very feature that the PTAB found lacking in the prior art when it found the claims patentable: "*a main compartment constructed of a flexible material.*" This limitation is present in each of the independent claims challenged by the Petition.

Third, the Petition does not present any art that is truly new and does not show any material error by the Office. Discretionary denial is also merited under Section 325(d).

There are also yet more factors favoring discretionary denial—there is a

parallel district court action and Petitioner has not offered a *Sotera* stipulation, and the merits of the challenge are weak.

This is not a case that merits use of limited Board resources. This is a long-issued patent with claims that the PTAB itself has already looked at and found valid and that Patent Owner has successfully commercialized. The Petition should be denied.

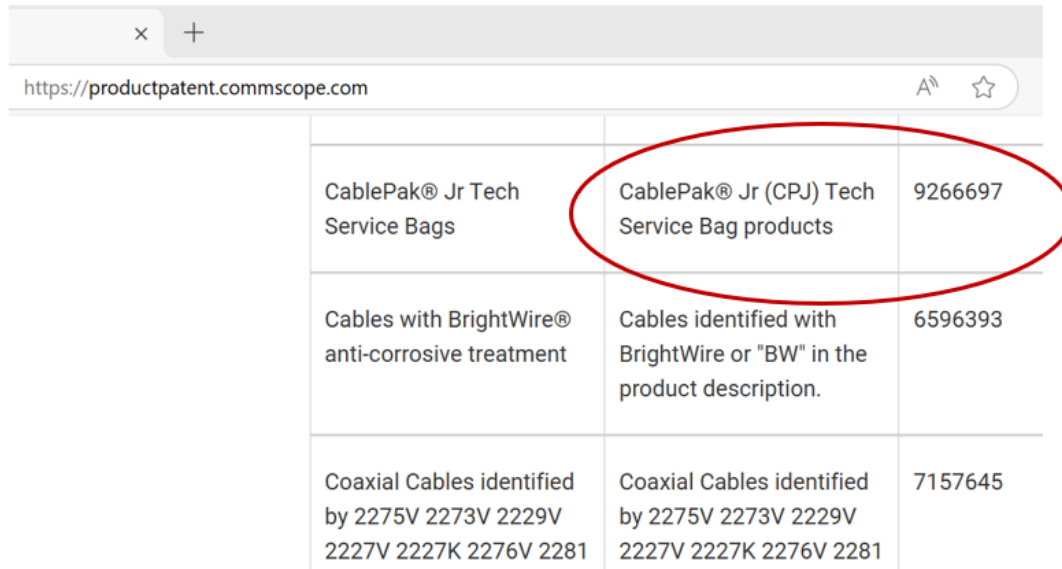
II. Discretionary Denial Is Appropriate Because the '697 Patent Has Been In Force Over 9 Years and There Are Settled Expectations

The Petition should be denied because the challenged '697 patent has been in force for over nine years, and there are now settled expectations. In similar cases, where the challenged patents have been in force for seven, eight, and nine years, review has been denied, and the Acting Director should do the same here. *E.g., Cambridge Industries v. Applied Optoelectronics*, IPR2025-00433, Paper 12, 3 (P.T.A.B. June 27, 2025) (settled expectations merits discretionary denial where patents “have been in force for **nine and seven years**, respectively”); *Intel Corp. v. Proxense LLC*, IPR2025-00327, Paper 12 at 2–3 (P.T.A.B. June 26, 2025) (settled expectations merits discretionary denial where challenged patents had been in force **over 9 years**); *Dabico Airport Solutions Inc. v. Axa Power Aps*, IPR2025-00408, Paper 21 at 2–3 (P.T.A.B. June 18, 2025) (denying review, explaining that “the challenged patent has been in force almost **eight years**, creating settled expectations”).

Moreover, there are no persuasive reasons why *inter partes* review would be an appropriate use of Board resources, notwithstanding the settled expectations. For example, this is not a situation where the Patent Owner failed to commercialize the '697 patent. *See Intel*, Paper 12 at 2-3. To the contrary, the Patent Owner commercialized the patented technology with its CablePak® Jr. Tech Service Bag product:



Ex-2006 (<https://www.youtube.com/watch?v=3E8Eah60Oro>). Patent Owner also marks its CablePak® product with the '697 patent:



CablePak® Jr Tech Service Bags	CablePak® Jr (CPJ) Tech Service Bag products	9266697
Cables with BrightWire® anti-corrosive treatment	Cables identified with BrightWire or "BW" in the product description.	6596393
Coaxial Cables identified by 2275V 2273V 2229V 2227V 2227K 2276V 2281	Coaxial Cables identified by 2275V 2273V 2229V 2227V 2227K 2276V 2281	7157645

<https://productpatent.commscope.com/>; *see also* Ex-2001, 1-2 (same).

In addition, Patent Owner and Petitioners compete in the same technology space, and Petitioners have long known of the '697 patent. For example, in the ongoing district court lawsuit between Petitioners and Patent Owner concerning the '697 patent, Petitioners admitted knowing about the patent before the lawsuit was filed. Ex-2003, ¶19; *see also* Ex-2002, ¶19. And in April 2022, Petitioner PPC Broadband filed an IPR discussing the publication of the '697 patent application (US Pub No. 2010/0314484), even filing the publication as "Exhibit 1015" in that IPR. *PPC Broadband, Inc. v. Amphenol Corp.*, IPR2022-00831, Petition at 7-8 (P.T.A.B. April 21, 2022). Petitioner PPC Broadband also *cited* the published application of the '697 patent in its own patent application, filed in August 2022. Ex-2005 (citing 2010/0314484 to Houston).

The '697 patent has been in force for over 9 years, and during that time the

Patent Owner has commercialized the patented technology. At this point there are settled expectations, and review should be denied.

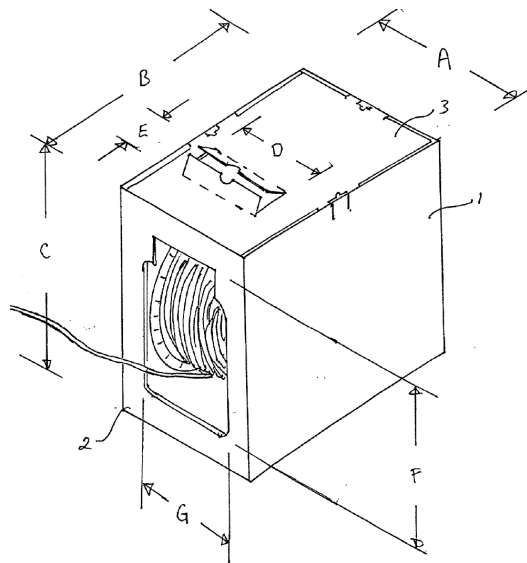
III. Discretionary Denial Is Appropriate Because PTAB Itself Has Already Adjudicated the Validity or Patentability of the Challenged Claims

The Petition should also be denied because “the PTAB ...has already adjudicated the validity or patentability of the challenged patent claims.” *See Interim Processes for PTAB Workload Management*, Memorandum of Acting Director Stewart, March 26, 2025 (“Interim Processes Memorandum”), at 2. During prosecution of the application leading to the ’697 patent, the applicant appealed the Examiner’s rejection of the then-pending claims to the PTAB. Importantly, as to the claims now challenged by the Petitioner¹, the PTAB *reversed* the Examiner’s rejections and found the claims patentable. Ex-1003, 24 and 29-30. Given that the PTAB itself has *already* considered the claims Petitioner now seeks to challenge and found them patentable, it would be an inefficient use of Board resources to institute review. This is particularly true because—as further explained in Section III below—Petitioner’s primary grounds (Grounds 1 and 2) rely on references (Cohn, Ex-1004 and Redzisz, Ex-1005) that have the *very same* deficiency the PTAB identified when reversing the Examiner’s rejections: no

¹ The Petition challenges claims 9-13 of the ’697 patent. Issued claims 9-13 correspond to application claims 20, 21, 23, 25, and 33, respectively.

teaching of “a main compartment constructed of a flexible material.” Ex-1003, 29-30.

Here is what happened during prosecution. The Examiner rejected application claim 20² as anticipated by Cote (Ex-1010), and application claims 1, 3, 7, 9, 10, 21³, 23, 25, 28, and 29 as obvious in view of Cote and Godshaw (Ex-1011). Ex-1003, 96-104. Cote disclosed a “box for storing, shipping and dispensing cable or wire from a spool contained within the box.” Ex-1010, Abstract. Cote taught that the box was “preferably formed of heavy duty corrugated cardboard or other *relatively stiff cardboard*” that was folded at perforated or creased lines to create panels forming a box. Ex-1010, [0023], [0027] (emphasis added). Cote’s box looked like this:



² Independent claim 9 in the issued patent, challenged in the Petition.

³ Independent claim 10 in the issued patent, challenged in the Petition.

Ex-1010, Fig. 2. The Examiner found that Cote taught the container was constructed of cardboard, “which is a flexible material,” and therefore concluded that Cote disclosed the claimed “*main compartment constructed of a flexible material.*” Ex-1003, 96-97. The Examiner then rejected the claims. *Id.*, 96-97. The Applicant appealed the Examiner’s rejection to the PTAB. Ex-1003, 59-80.

After full briefing, the PTAB reversed in part (as to the claims that thereafter issued as the ’697 patent) and affirmed in part (as to other claims in the then-pending application that were subsequently cancelled). Ex-1003, 24-35 (Decision on Appeal (P.T.A.B., Sept. 28, 2015)).

The PTAB first addressed the construction of the term “flexible material.” The PTAB explained that while the Examiner did not expressly apply a construction, the Examiner concluded that “the term flexible is a relative term and every material is flexible to some extent.” Ex-1003, 27-28. The PTAB rejected this overly broad view. Instead, the PTAB construed “flexible materials” as materials “capable of being bent, usually without breaking; easily bent.” Ex-1003, 28.

The PTAB then addressed the Examiner’s finding that Cote disclosed the claimed “*main compartment constructed of a flexible material.*” Ex-1003, 28-29. The Examiner had found Cote to disclose material “capable of being bent,” pointing to Figure 5 of Cote, and concluded that Cote therefore disclosed the claimed “*main compartment constructed of a flexible material.*” Ex-1003, 29; *see*

also Ex-1010 (Cote), Fig. 5. The PTAB reversed, finding that the Examiner's reading of Cote was "not reasonable." Ex-1003, 29. The PTAB explained that the use of fold or perforation lines did not mean the compartment was constructed of "flexible material" and also noted that Cote described the box as formed of "*relatively stiff cardboard* or other material which is rugged..." *Id.* (emphasis added), quoting Ex-1010 (Cote), [0023]. The PTAB also reversed the obviousness rejections as to additional claims (application claims 1, 3, 7, 9, 10, 21, 23, 25, 28, and 29), because the obviousness rejections had relied on Cote for the "flexible material" limitation. *Id.*, 29-30. Following the PTAB's decision on appeal, the claims subject to affirmed rejections were cancelled, the claims subject to reversed rejections were allowed, and the '697 patent issued. Ex-1003, 34-35.

Plainly, the PTAB has already invested substantial resources in reviewing the issued claims of the '697 patent and finding them valid. As the Acting Director's Memorandum recognizes, it is not an efficient use of PTAB resources to conduct a second review of claims where "the PTAB...has already adjudicated [their] validity." Interim Processes Memorandum, at 2. For this reason also, the Petition should be denied.

IV. Discretionary Denial Is Appropriate Under 35 U.S.C. § 325(d) and the *Advanced Bionics* Framework

The Petition also does not raise any challenges that are truly new. Instead, it relies on lead references the Office already considered (Cohn and Young), in

combination with secondary references that are redundant of references already considered. Moreover, in the case of Grounds 1 and 2 both the lead and the secondary reference have *the very same deficiency the PTAB identified during prosecution* in reversing the Examiner’s rejections. The Petition also fails to show any material error made by the Office—the PTAB or the Examiner.

Advanced Bionics provides a two-part framework for evaluating whether a Section 325(d) denial is warranted: (1) whether the same or substantially the same prior art or argument previously was presented to the Office; and (2) if the first part 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 Gerate GmbH*, IPR2019-01469, Paper 6 at 8 (P.T.A.B. Feb. 13, 2020). The *Becton, Dickinson* factors provide useful guidance in applying the Section 325(d) framework. IPR2017-01586, Paper 8 (PTAB Dec. 15, 2017) (precedential as to § III.C.5, first paragraph). For Part 2 of *Advanced Bionics*, “a petitioner must explain, with reference to Becton Dickinson factors (c), (e), and (f), how the Examiner erred in overlooking the prior art,” even if “the Examiner did not apply the reference.” *Ecto World, LLC v. Rai Strategic Holdings, Inc.*, IPR2024-01280, Paper 13 (P.T.A.B. May 19, 2025) (precedential as to § A).

A. *Advanced Bionics* Part 1: The Same or Substantially the Same Prior Art or Argument Was Previously Presented to the Office

The Petition relies on eight Grounds. Each Ground is based on one of two lead references (green) and various secondary references:

Ground	Claims	Basis Under 35 U.S.C. § 103
1	9-12	Obvious over <i>Cohn</i> and <i>Redzisz</i>
2	13	Obvious over <i>Cohn</i> , <i>Redzisz</i> , and <i>Eastwood</i>
3	9-11	Obvious over <i>Young</i> and <i>Bass</i>
4	12	Obvious over <i>Young</i> , <i>Bass</i> , and <i>Redzisz</i>
5	13	Obvious over <i>Young</i> , <i>Bass</i> , and <i>Eastwood</i>
6	9-11	Obvious over <i>Young</i> and <i>Barnett</i>
7	12	Obvious over <i>Young</i> , <i>Barnett</i> , and <i>Redzisz</i>
8	13	Obvious over <i>Young</i> , <i>Barnett</i> , and <i>Eastwood</i>

Each of the two lead references, *Cohn* and *Young*, was before the Office during prosecution. Ex-1003, 246, 140-148. So was one of the secondary references, *Eastwood*. Ex-1003, 146, 126.

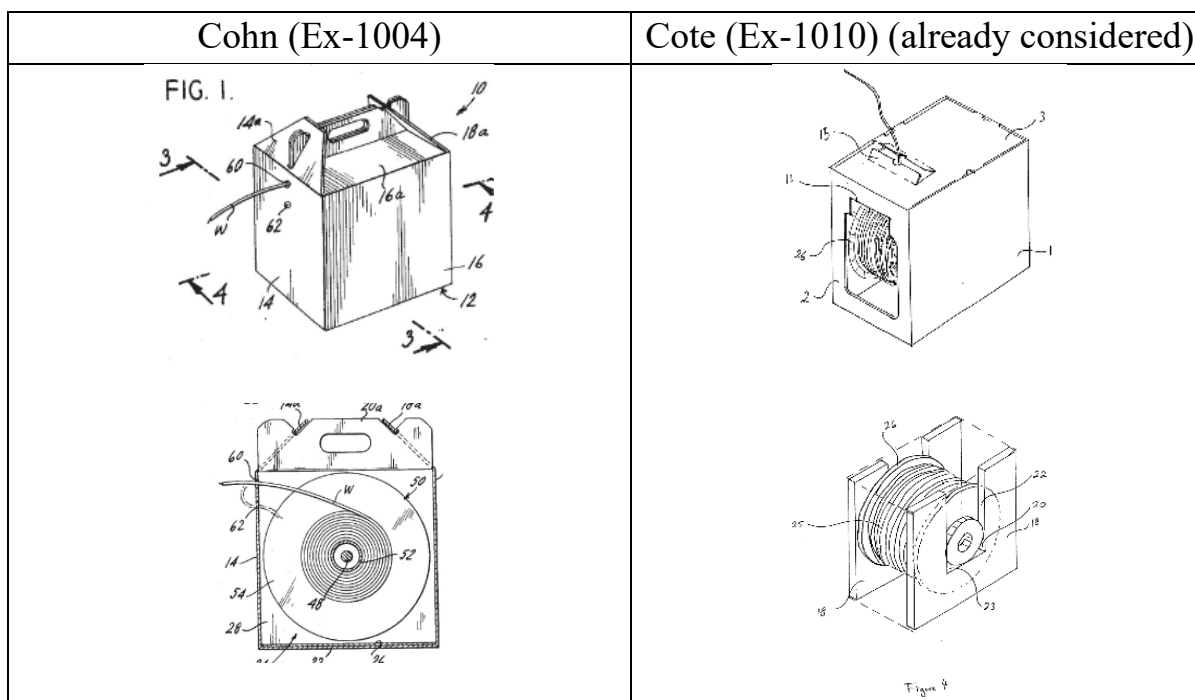
Each of the remaining three secondary references—*Bass*, *Barnett*, and *Redzisz*— is cumulative of other prior art references that were already presented to the Office, such as *Cote*. Each of *Bass*, *Barnett*, and *Redzisz*, discloses a relatively stiff/generally rigid box or case, just like the already-considered *Cote* reference.

Compare Ex-1009 (Bass, e.g. Figs. 5, 6, 3:59-60) and Ex-1008 (Barnett, e.g. Fig. 1, 3:43-44) and Ex-1005 (Redzisz, [0011], [0026]-[0027) with Ex-1010 (Cote, e.g., Fig. 3 and [0023]).

The same or substantially the same art or arguments were previously presented to the Office, and *Advanced Bionics* Part 1 is satisfied.

References of Grounds 1 and 2: Cohn, the lead reference, was cited in an IDS and is listed on the face of the '697 patent. Ex-1003, 246; *see also* Ex-1001, 1 (citing US 3,150,769 to Cohn).

Cohn is also cumulative of Cote (Ex-1010), which was cited by the Examiner as the basis for an obviousness rejection. *See* Ex-1003, 97-98 (initially rejecting claims, including application claim 21, in view of Cote and another reference). Cohn and Cote each disclose similar rigid boxes containing a cable reel:



The Petition contends that while Cohn was before the Office during prosecution, the specific combination of Cohn and Redzisz was not. Petition, 91. While that specific combination may not have been before the Office, that combination *still* lacks the very element that the PTAB found missing when reversing the Examiner’s claim rejections: a reference having a “*main compartment constructed of a flexible material.*” In this respect, the Cohn/Redzisz combination is no different than the art and arguments that were already before the Office.

Specifically, the Petition relies on Redzisz only for disclosure of the claimed “*main compartment constructed of a flexible material.*” Petition, 23. But Redzisz does not disclose this. The Petition purports to quote Redzisz: “Redzisz’s bag is constructed of a ‘flexible material such as canvas, plastic or the like.’ Redzisz, [0028], [0037]; Section V.A.2.” *Id.* But Petitioner misleadingly truncates the quotation. Redzisz does not, as the Petition implies, disclose a *bag* that is constructed of a “flexible material. Rather, Redzisz clearly and repeatedly discloses a tool carrying “case” constructed of integral “***generally rigid***” panels and reinforcing bars:

- An “object of the invention” is “to provide a storage and carrying case which includes **generally rigid, spaced, end panels** and generally flexible, but **reinforced, front and back panels** all sewn together.” Ex-1005, [0011]

(emphasis added).

- The tool “case which includes congruently shaped, **relatively rigid or semi-rigid**, spaced and opposed **end panels** connected by a **relatively rigid bottom panel**”. *Id.*, [0005] (emphasis added).
- The case including end panels 10 and 12 each comprised of “an interior **generally semi-rigid or rigid member**, for example, a **polyethylene board or sheet**,” and a “**generally rigid bottom panel 24**,” covered in fabric and all sewn together. *Id.*, [0026]-[0027] (emphasis added)

Redzisz thus teaches that each of the two end panels (10, 12) and the bottom panel (24) of Redzisz’s case are intentionally reinforced to be *rigid*. In addition, even the remaining front and back panels (28, 30) which include “flexible fabric” also include “[a] reinforcing element or rod 36” that is “fitted into the channel or passageway 32 that extends between the end panels 10 and 12 thereby **providing an enhanced stiffening** and form retention function.” *Id.*, [0029] (emphasis added). Therefore, the tool cases disclosed in Redzisz include rigid or semi-rigid rods, board, or panels integrally sewn into the case that stiffen the walls defining the case and its compartments. *See, e.g., id.*, Fig. 3 (rod 36), Fig. 4 (rigid bottom board or panel 24), Fig. 8 (board 101, slats 103, 107), Fig. 11.

Tellingly, the Petition does not even acknowledge or address Redzisz’s disclosure of the main compartment being constructed of “generally rigid,”

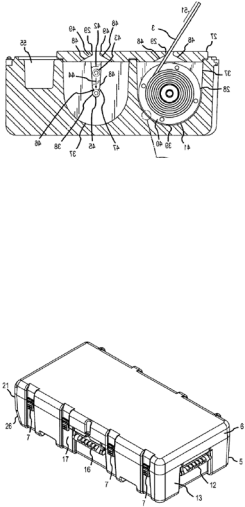
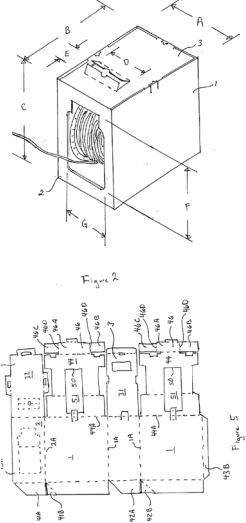
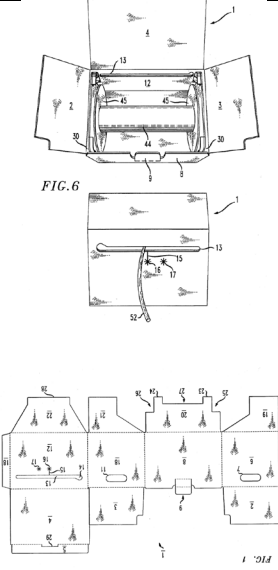
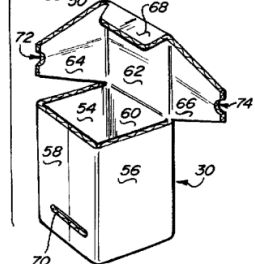
encapsulated, reinforced, and stitched together panels. Redzisz’s “generally rigid,” reinforced cable case is just like the “relatively stiff” cable case of Cote that the Office (the PTAB itself) already considered and found the claims patentable over.

References of Grounds 3 to 8: *Young*, the lead reference, was cited by the Examiner as the basis for an obviousness rejection, including for application claim 21 (issued claim 10). Ex-1003, 140-148.

The Petition relies on *Young* in various combinations with Bass, Barnett, Redzisz, and/or Eastwood. *Young* in combination with Eastwood was already considered during prosecution. Ex-1003, 146 (Examiner rejection of application claims 21-23 in view of *Young* and Eastwood); *id.* at 126 (Applicant distinguishing the *Young* + Eastwood combination).

The Petition contends that *Young* in combination with Bass or Barnett was never considered by the Office. Petition, 92. However, each of Bass and Barnett is cumulative of the Cote reference, which was already presented to the Office. Cote, like Bass and Barnett, discloses a cable reel in a relatively stiff box, with a similarly-configured cable payout. *Compare* Bass (*e.g.*, Ex-1009, Figs. 6, 1 and 3:58-60) and Barnett (*e.g.*, Ex-1008, Fig. 1 and 3:42-44) *with* Cote (*e.g.*, Ex-1010, Figs. 2, 5 and [0023]). In addition, as explained above, the combination of *Young* in view of Eastwood was previously considered by the Office. Ex-1003, 146, 126. While the Examiner cited Eastwood specifically with respect to the cable lock

mechanism element now recited by issued claim 13, Eastwood is cumulative of Bass and Barnett in that each similarly discloses generally rigid cable reel boxes/cases, with similarly-configured cable payout. The table below provides examples:

Eastwood (Ex-1017) (already considered)	Cote (Ex-1010) (already considered)	Bass (Ex-1009)	Barnett (Ex-1008)
	 “box preferably formed of heavy duty corrugated cardboard or other relatively stiff cardboard” (Ex-1010, [0023])	 “box...made from corrugated fiberboard or the like” (Ex-1009, 3:58-60)	 “Container 30 is preferably formed from a unitary blank of boxboard of an appropriate crush-resistance” (Ex-1008, 3:42-44)

B. *Advanced Bionics* Part 2: Petitioner Has Not Demonstrated that the Office Materially Erred

The Petitioner did not demonstrate, and cannot demonstrate, that the Office erred during prosecution in a way that is material to the patentability of the

challenged claims. In fact, the Petition's discussion of Section 325(d) does not even attempt to show any material error with the Office's determination that a bag constructed of "relatively stiff" material does not meet the claim limitations. *See* Petition, 91-92. For this reason alone, the Petition should be denied.

Grounds 1 and 2: As explained above, during prosecution the Office (specifically, the PTAB in an appeal from an Examiner rejection) already found that a reference teaching a cable reel box constructed of "relatively stiff" cardboard (Cote) did not disclose the claimed "*main compartment constructed of a flexible material.*" *See* Ex-1003, 28-29 (quoting Ex-1010 (Cote), [0023]). Petitioner's Ground 1 and 2 challenges rely only on the Redzisz reference (Ex-1005) for purported disclosure of this claim element. Petition, 23. But as also explained above, Redzisz discloses a case that is constructed of integral "***generally rigid***" panels and reinforcing bars and is therefore (at least) "relatively stiff" like Cote's box. The Office (specifically the PTAB) already found that a relatively stiff box or case like that of Cote does not disclose a "*main compartment constructed of a flexible material*" as recited by the challenged claims. Therefore a "generally rigid" and reinforced case like Redzisz would not either. Petitioner has not shown any error with this determination by the Office, and cannot.

The *Becton* factors (c), (e), and (f) only confirm that Petitioner cannot show any material error.

Becton factor (c)—“the extent to which the asserted art was evaluated during examination, including whether the prior art was the basis for rejection”: While Redzisz itself was not the basis for a rejection, Cote was. And the already-considered Cote reference—like Cohn and Redzisz of the Petition’s Grounds 1 and 2—discloses a case constructed of stiff (not flexible) material. So the Office has already extensively evaluated this issue.

Becton factor (e)—“whether Petitioner has pointed out sufficiently how the Examiner erred in its evaluation of the asserted prior art”: Petitioner has not even addressed how the examiner purportedly erred in evaluating the prior art such as Cote.

Becton factor (f)—“the extent to which additional evidence and facts presented in the Petition warrant reconsideration of the prior art or arguments”: As explained above, Redzisz is no different than Cote, with respect to purported disclosure of the claimed “*main compartment constructed of a flexible material.*” And the Petition relies only on Redzisz for purported disclosure of this element. Petition, 23, 40. In fact, the Petition contains only a single sentence contending that Redzisz discloses this element, and supports that sentence only with a misleadingly cropped quotation. *Id.*, 23. Thus there are no additional evidence or facts presented in the Petition that would warrant reconsideration of the issue of whether a “relatively stiff” or generally rigid and reinforced case can be a

compartment “*constructed of a flexible material.*”

The *Becton* factors (c), (e), and (f) strongly show that Petitioner has not shown—and cannot show—that the Office committed any material error in its finding that the Cote reference failed to disclose the claimed “*main compartment constructed of a flexible material.*” The Petitioner’s Ground 1 and 2 references—Cohn and Redzisz—are redundant of Cote in this respect and have the very same deficiency.

Grounds 3 through 8: The Petition’s Grounds 3-8 rely on Young, in various combinations with Bass, Barnett, Redzisz and/or Eastwood. Petition, 2.

The Applicant already specifically distinguished Young during prosecution. The Applicant overcame Young by explaining that Young disclosed paying out cable “from the center of the coil,” while the claims were amended to make clear that the “*cable payout passageway is configured to receive therethrough the loose end of cable from the outer portion of the reel of communications cable.*” Ex-1003, 121 (emphasis added). Again, Petitioner has not even tried to show that the Office erred in any material manner with respect to its examination of the claims in view of Young.

The secondary references Petitioner relies on—Bass and Barnett—similarly fail to disclose a cable payout passageway in *a main compartment constructed of a flexible material* with a *cable payout passageway that is configured to receive*

therethrough the loose end of cable from the outer portion of the reel, as recited by the claims, including independent claim 10. As explained above, each discloses a generally rigid cable case and is also cumulative of other generally rigid cable case references already considered by the office, such as Eastwood (already specifically considered in combination with Young) and Cote.

The *Becton* factors (c), (e), and (f) confirm that Petitioner cannot show any material error.

Becton factor (c)—“the extent to which the asserted art was evaluated during examination, including whether the prior art was the basis for rejection”: As explained above, Young was the subject of a rejection the Applicant overcame during prosecution (Ex-1003, 121), and the Examiner also specifically considered a Young-plus-Eastwood combination (Ex-1003, 146, 126). While Bass and Barnett were not before the Office, other generally rigid cable-reel case prior art was and was specifically cited by the Examiner as a basis for rejection, including Cote and Eastwood.

Becton factor (e)—“whether Petitioner has pointed out sufficiently how the Examiner erred in its evaluation of the asserted prior art”: Again, Petitioner has not even addressed how the examiner purportedly erred in evaluating the prior art such as Cote.

Becton factor (f)—“the extent to which additional evidence and facts

presented in the Petition warrant reconsideration of the prior art or arguments”:

The Petitioner merely asserts, without any supporting explanation, that “Young in combination with Bass or Barnett was never considered by the Office” and that Young “discloses a cable payout bag comprising a main compartment constructed of a flexible material.” Petition, 92. But as explained above, the Applicant already overcame Young, based on a different claim limitation—the limitation requiring a cable payout passageway in the main compartment *configured to receive therethrough the loose end of cable from the outer portion of the reel*. Petitioner does not even address this, much less explain how the Office materially erred. And as also explained above, Bass and Barnett are cumulative of other substantially rigid case prior art already considered by the Office, including Eastwood (already considered specifically in combination with Young) and Cote.

The Petition’s single reference to purported “material error”: The Petition’s overview of the prosecution history contends that the Office “materially erred” because while it rejected then-pending application claim 11 over the Cote and Godshaw references, it did not reject other claims (issued claims 9 and 10) over the same references. Petition, 8. But as the Petition itself admits, the rejected application claim 11 was different. Rejected application claim 11 lacked the “*main compartment constructed of a flexible material*” limitation that the PTAB cited in reversing the Examiner’s rejection of now-issued claims 9 and 10 (application

claims 20 and 21). *See* Petition, 5 (table comparing ‘rejected claim’ 11 and ‘challenged claim 10’). Moreover, the Petition does not even seek review based on the combination of Cote and Godshaw.

To summarize: Three of the Petition’s six references, including both lead references, were before the Office during prosecution (Cohn, Young, Eastwood), and the remaining three (Redzisz, Bass, Barnett) are cumulative of other generally rigid box/case references that were presented to the Office. Moreover, the Petition’s lead grounds (Grounds 1 and 2) suffer from the *very same deficiency* that caused the PTAB to reverse the Examiner’s claim rejections during prosecution and resulted in the claims being allowed. The Petitioner has not even attempted to show any error in that finding. *Advanced Bionics* parts 1 and 2 are met, and the Petition should be denied under Section 325(d). It would be highly inefficient to force the Office to revisit art and issues that were already considered (and decided) during prosecution.

V. The *Fintiv* Factors Favor Discretionary Denial

The Petition should also be denied in view of the ongoing parallel district court litigation, as institution would result in duplicative and inefficient

proceedings. The district court lawsuit⁴ was filed well over a year ago, and the Petitioner has not offered any *Sotera* stipulation. Institution of review would not be an efficient use of Board resources, and the *Fintiv* factors favor denial.

Fintiv factor 1 favors denial. No stay has been requested or entered.

Fintiv factor 2 is at best neutral. Trial is scheduled for May 17, 2027. Ex-2004, 12. That is near in time (only six months after) to the projected statutory deadline for issuing a Final Written Decision in this matter, in November 2026.

Fintiv factor 3 favors denial. The parties and the Court have invested substantial resources in the district court proceeding. The parties have exchanged initial Infringement and Invalidity Contentions. *See, e.g.* Ex-2007; Ex-2008. The period for fact discovery is underway, and document production must be substantially complete by September 19, 2025. Ex-2004, 2. Opening, response, and reply claim construction briefing is complete and a claim construction hearing is set for August 28, 2025. *Id.*, 9.

Fintiv factor 4—overlap between the issues raised by in the petition and in the parallel proceeding—strongly favors denial. The Petitioner has not offered any sort of stipulation, much less a *Sotera* stipulation, in an effort to reduce overlap.

⁴ *CommScope, Inc. of North Carolina v. Belden Inc. and PPC Broadband, Inc.*, Civ. No. 24-427-RGA (D. Del.).

See also FAQs for Interim Processes for PTAB Workload Management, at 14 (petitioner should offer any *Sotera* stipulation at least a month before Patent Owner’s discretionary denial brief is due). Despite not offering any stipulation, Petitioner is pursuing invalidity in the district court using the same ***Cohn, Young, Bass, Barnett***, and ***Eastwood*** references that its Petition relies on:

- Ex-2008, at 2-3 (relying on the following as “asserted prior art”: “U.S. Pat. No. 3,150,769 (‘**Cohn**’)”; “U.S. Pat. No. 4,650,073 (‘**Young**’)”; “U.S. Pat. No. 5,529,186 (‘**Bass**’)”; “U.S. Pat. No. 5,704,479 (‘**Barnett**’)”; “U.S. Pat. No. 7,320,445 (‘**Eastwood**’)”)
- Ex-2007, at 6-7 (identification of prior art), 7-8 (overview of claim charts)
- Ex-2007, at 13-46 (Exhibit A, claim chart for ***Young*** reference—also the lead reference for the Petition’s Grounds 3-8, identifying the same combinations of Young + Bass and Young + Barrett)
- Ex-2007, at 134-139 (Exhibit E, claim chart for ***Cohn*** reference—also the lead reference for the Petition’s Grounds 1-2)
- Ex-2008, at 2 (district court defendants/IPR petitioners seeking to “reserve[] the right to rely on additional prior art, including all art identified in Belden’s Initial Invalidity Contentions, as background and to show the general state and knowledge of the art and/or to

determine the knowledge of a person of ordinary skill in the art”)

Fintiv factor 5—whether the petitioner and the district court defendant are the same party—strongly favors denial. Here the Petitioners are the defendants in the district court action.

Finally, other factors, including the weakness of the merits (*Fintiv* factor 6), also favor denial, as explained in the next section.

VI. The Merits Are Weak

As the Patent Owner Preliminary Response (POPR) will show more fully, the merits of Petitioner’s validity challenge are weak. This is yet another reason review would not be an efficient use of Board resources.

For example, as outlined above the Petition’s lead Grounds (Grounds 1 and 2) rely on a tool bag constructed of “generally rigid” and “reinforced” integral panels as purportedly disclosing the claimed “*main compartment constructed of a flexible material,*” despite the fact (and without addressing) that the PTAB itself already found that a main compartment constructed of “relatively stiff” material did not meet that limitation.

As another example, the Petition’s remaining grounds (Grounds 3-8) rely on Young, a reference that the Applicant already explained does not disclose *a main compartment constructed of a flexible material having a cable payout passageway that is configured to receive therethrough the loose end of cable from the outer*

portion of the reel, as recited by the claims, including independent claim 10. And the secondary references the Petition relies on (Bass and Barnett) do not disclose this either. Petitioner impermissibly relies on hindsight, using the invention as a roadmap.

VII. Conclusion

For the foregoing reasons, Petitioner submits that institution of review would not be an efficient or appropriate use of Board resources and respectfully requests that the Petition be denied.

Dated: July 23, 2025

Respectfully submitted,

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CERTIFICATION UNDER 37 CFR § 42.24(d)

Under the provisions of 37 C.F.R. § 42.24(d), the undersigned hereby certifies that the word count for the foregoing *Patent Owner's Brief Requesting Discretionary Denial* totals 4,845 words per Microsoft Word 365, which complies with the word limit set forth in 37 C.F.R. § 42.24 and the Acting Director's Memorandum regarding Interim Processes for PTAB Workload Management, at 2 (March 26, 2025).

Dated: July 23, 2025

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CERTIFICATION OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e) and the agreement of the parties, the undersigned certifies that on July 23, 2025, a true and correct copy of the foregoing *Patent Owner's Brief Requesting Discretionary Denial* was served via electronic mail upon the following:

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