

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BELDEN INC. and PPC BROADBAND, INC.
Petitioners,

v.

COMMSCOPE, INC. OF NORTH CAROLINA,
Patent Owner

Case No. IPR2025-00833
U.S. Patent No. 9,266,697

**PETITIONERS' REQUEST FOR DIRECTOR REVIEW OF
DECISION DENYING INSTITUTION OF *INTER PARTES* REVIEW**

TABLE OF CONTENTS

	Page
I. Introduction.....	1
II. Legal Standard.....	1
III. Argument	2
A. The Board Erred By Finding an Examiner’s Interference Search Was a Prior Art Search.	2
B. The Board Failed to Address Petitioners’ Showing of Material Examiner Error.	4
C. The Board Should Spend Resources to Correct Examination Deficiency and Advance Office Policy.	7
IV. Conclusion	9

TABLE OF AUTHORITIES

	Page(s)
Federal Cases	
<i>Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH,</i> IPR2019-01469, Paper 6 (PTAB Feb. 13, 2020).....	1
<i>Anthony, Inc. v. ControlTec, LLC,</i> IPR2025-00559, Paper 12 (Director July 16, 2025).....	8
<i>Becton, Dickinson & Co. v. B. Braun Melsungen AG,</i> IPR2017-01586, Paper 8, 17-18 (PTAB Dec. 15, 2017).....	2
<i>Ecto World, LLC, et al. v. RAI Strategic Holdings, Inc.,</i> IPR2024-01280, Paper 13 (Director May 19, 2025)	2, 4
<i>Embodify, Inc. v. LifeNet Health,</i> IPR2025-00248, Paper 12 (Director June 26, 2025)	8
<i>Eunsung Glob. Corp. v. HydraFacial LLC,</i> IPR2025-00445, Paper 14 (Director July 10, 2025).....	8
<i>Microsoft Corp. v. Partec Cluster Competence Center GmbH,</i> IPR2025-00318, Paper 9 (Director June 12, 2025)	8
<i>Tesla, Inc. v. Charge Fusion Techs., LLC,</i> IPR2025-00152, Paper 11 (Director June 12, 2025)	8
Federal Statutes	
35 U.S.C. § 325(d)	1, 2, 7
Other Authorities	
Director Review Process, Section 2.B (available at https://www.uspto.gov/patents/ptab/decisions/director-review- process , last accessed October 13, 2025).....	1
M.P.E.P. § 719.05 (III)	3

M.P.E.P. §§ 904-904.03.....	4
M.P.E.P. § 1302.08	3
M.P.E.P. § 2103 (II).....	3, 4
M.P.E.P. § 2304.01(a).....	3

I. INTRODUCTION

The Director should reverse the Board’s decision to discretionarily deny institution of *inter partes* review of U.S. Patent No. 9,266,697 (“the ’697 patent”) (Paper 13, “Decision”) for three reasons. First, the Board erroneously found that an Examiner’s “Interference Search” was a prior art search, contrary to Office practice and the evidence of record. Second, the Board failed to address Petitioners’ detailed showing of material examiner error, as required by *Advanced Bionics* and *Ecto World*. Third, denial of institution frustrates the policy objective of correcting clear examination oversights.

II. LEGAL STANDARD

Director Review is appropriate where the request presents “(a) an abuse of discretion, (b) important issues of law or policy, (c) erroneous findings of material fact, or (d) erroneous conclusions of law.” Director Review Process, Section 2.B (available at <https://www.uspto.gov/patents/ptab/decisions/director-review-process>, last accessed October 13, 2025). Review is particularly warranted where a discretionary denial conflicts with precedential PTAB guidance, such as *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 8-9 (PTAB Feb. 13, 2020) (precedential), which establishes the governing two-step framework for § 325(d). Under *Advanced Bionics*, the Board must: (1) determine whether the same or substantially the same art or arguments were

previously presented to the Office; and (2) if so, assess whether the Office erred in a manner material to patentability. When applying this framework, the Board considers six factors outlined in *Becton, Dickinson & Co. v. B. Braun Melsungen AG*, IPR2017-01586, Paper 8, 17-18 (PTAB Dec. 15, 2017) (precedential as to § III.C.5, first paragraph) (“*Becton, Dickinson*”). Failure to perform the *Advanced Bionics* two-step inquiry constitutes reversible error. *Ecto World, LLC, et al. v. RAI Strategic Holdings, Inc.*, IPR2024-01280, Paper 13 at 3-5 (Director May 19, 2025) (precedential).

III. ARGUMENT

A. The Board Erred By Finding an Examiner’s Interference Search Was a Prior Art Search.

The Decision’s § 325(d) analysis rests on the mistaken factual finding that “the Examiner did perform a search for flexible bags.” Decision at 3 (citing Ex. 1003 at 20). But as Petitioners explained in the discretionary denial briefing (Paper 8, “DD Opp.” at 3-4), the record shows the only search entry is an interference search, and the prior art search history is empty, as shown below:

EAST Search History

EAST Search History (Prior Art)

< This search history is empty >

EAST Search History (Interference)

Ref #	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
L1	147	242/170.ccls.	US-PGPUB; USPAT	OR	ON	2015/12/03 07:59
L2	272	242/171.ccls.	US-PGPUB; USPAT	OR	ON	2015/12/03 08:00

Ex. 1003, 19-20; DD Opp. at 3-4.

An interference search is not a prior art search. Instead, it is an internal procedural step performed before allowance to search for whether the **claims** of any other patents or pending applications **claims** “interfere” with the allowed claims at issue.

M.P.E.P. § 2304.01(a) states “[w]hen an application is **in condition for allowance**, an interference search must be made by using the most efficient and effective manner **based on the claimed subject matter in the broadest claim.**” Such interference search is conducted in the U.S. Patent Office internal databases, not in prior art databases. *Id.* (emphasis added); Ex. 1003, 19-20 (showing databases used in the Examiner’s Interference Search are “US-PGPUB” “US-PAT”). It is limited to searching **for similar claims**, and does not involve searching for prior art to reject the claims. DD Opp. at 3-4, 22-24; Ex. 1003, 19-20; M.P.E.P. §§ 2304.01(a),

719.05 (III), 1302.08. By contrast, prior art searches are governed by M.P.E.P. §§ 2103 (II), 904-904.03, which require a “a thorough and complete search of the prior art.” M.P.E.P. §§ 719.05, 2103 (II), 904-904.03 (a thorough search of the prior art includes searching in all relevant areas using various search tools, including commercial databases and the Internet).

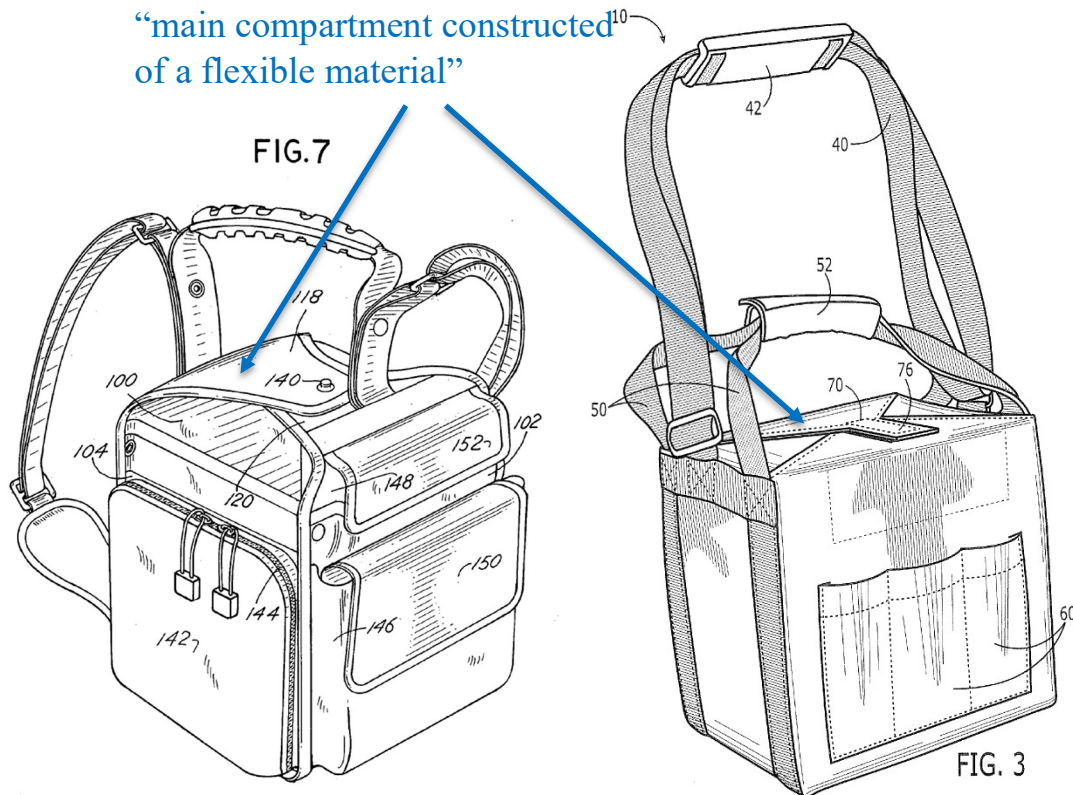
Accordingly, the Board’s reliance on an interference search to conclude that “the Examiner did perform a search for flexible bags” is clearly erroneous, unsupported by the record, and contrary to established Office procedure.

B. The Board Failed to Address Petitioners’ Showing of Material Examiner Error.

Petitioners showed with detailed explanation how the Examiner materially erred in allowing the application leading to the ’697 patent by overlooking key prior art *Redzisz* and the combination of *Cohn* and *Redzisz* under *Advanced Bionics* step 2. *Ecto World*, IPR2024-01280, Paper 13 at 5 (holding that petitioner satisfies step 2 of *Advanced Bionics* because the asserted prior art (i) was not a basis for rejection during examination, (ii) is not substantially the same as prior art the Examiner applied, and (iii) includes specific teachings that “impact patentability of the challenged claims”).

First, Petitioners explained how the prior art *Redzisz* reference (Ex. 1005) was new and not presented or relied on during examination—a fact Patent Owner did not

dispute. DD Opp. 6-11; Paper 12, 1; *see generally* Paper 11. Petitioners explained in detail in the Petition and their discretionary denial briefing that *Redzisz* discloses a bag having a main compartment constructed of a flexible material, as recited in the challenged claims and shown below (Pet. 23-24; DD Opp. 8-11).

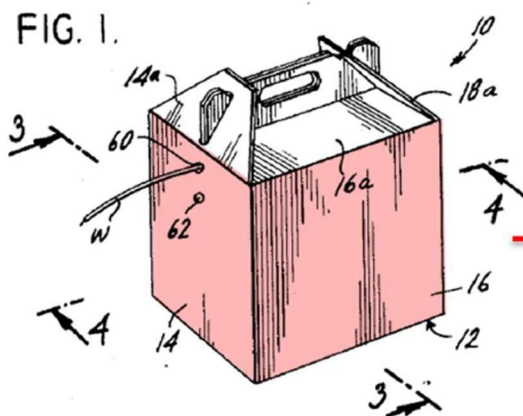


Compare Redzisz, FIG. 7 with Ex. 1001, FIG. 3; Pet. 10-11.

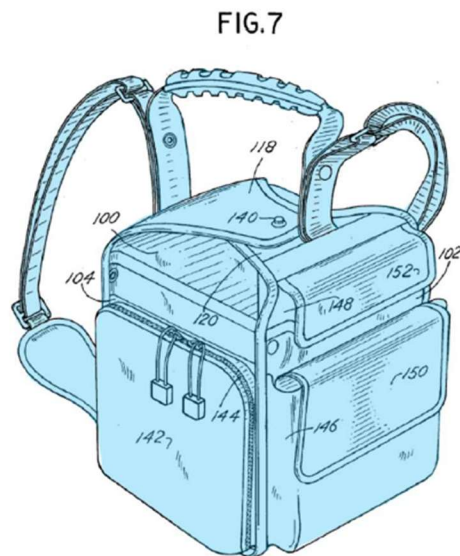
Second, Petitioners also explained how prior art *Redzisz* reference is not substantially the same as the prior art *Cote* reference (Ex. 1010), which the Examiner applied during examination. DD Opp. 6-11. Petitioners explained how the Examiner mapped *Cote*’s cardboard box to the claimed main compartment constructed of a flexible material. DD Opp. 6-7; Ex. 1003, 28-31. Petitioners further explained how,

during the *ex parte* appeal, the Board found that the Examiner erred in concluding that *Cote*'s box is made of a flexible material, noting that the reliance on cardboard as the claimed "flexible material" was unreasonable. DD Opp. 6-7; Ex. 1003, 27-29. Petitioners then explained how *Redzisz*'s bag made of a flexible material (e.g., canvas) discloses the claimed main compartment constructed of a flexible material, consistent with the Board's construction. DD Opp. 8-11; Pet. 23-24; Ex. 1002, ¶¶ 58-62.

Petitioners explained why and how Petitioners' combination of *Cohn* and *Redzisz* was not considered by the Office. DD Opp. 11-13; Pet. 18-34. The Examiner never considered a prior art combination that provides carrying a cardboard box in a bag, as shown below, which is an obvious modification within ordinary skill. Pet. 18-22.



Cohn, FIG. 1 (annotated)



Redzisz, FIG. 7 (annotated)

Finally, Petitioners showed how the Examiner made a material error by overlooking *Redzisz* and the *Cohn* and *Redzisz* combination. Petitioners explained that in the Decision on Appeal, the Board found that the Examiner unreasonably viewed *Cote*'s cardboard box as made of a "flexible material." DD Opp. 22-23; Ex. 1003, 27-29. After receiving Board's reversal and claim construction guidance, the Examiner committed a material error by failing to conduct a prior art search for the crucial limitation "flexible material," failing to identify *Redzisz*, and overlooking a combination of *Cohn* and *Redzisz* that directly affects patentability of the challenged claims. DD Opp. 22-24; Pet. 18-34.

The Board never engaged Step 2 of *Advanced Bionics*—it did not evaluate whether the Examiner's omission of a targeted prior art search led to overlooking Petitioners' prior art and combination and constituted material error. *Advanced Bionics*, Paper 6 at 8-9; *see generally* Decision. In fact, the Board's entire § 325(d) analysis collapsed into the erroneous and unfounded finding that "the Examiner did perform a search for flexible bags" despite the prior art search history is empty. *Supra* Section III.A; Decision at 3.

C. The Board Should Spend Resources to Correct Examination Deficiency and Advance Office Policy.

The record reveals a clear examination deficiency that undermines confidence in the validity of the '697 patent. The Petition presents a detailed and strong

obviousness analysis demonstrating that combining *Cohn*'s box with *Redzisz*'s flexible bag renders the claims unpatentable. Pet. 18-34; DD Opp. 6-13, 22-24. It is appropriate to use Office resources to review the evidence of material errors during examination. *See Microsoft Corp. v. Partec Cluster Competence Center GmbH*, IPR2025-00318, Paper 9 at 3 (Director June 12, 2025) (holding that “discretionary denial of institution is not warranted because of Petitioners’ showing of material error during patent examination” and “it is an appropriate use of Office resources to review the potential error”).

Institution here would correct examination deficiency without duplicating efforts in the parallel district court proceeding. If instituted, the IPR would reach a final written decision well before the district court trial. Decision at 2; DD Opp. 41-45. Any purported “settled expectations” are outweighed by the public interest in ensuring that patents are not insulated from review where examination are deficient.

Finally, exercising discretion where there is a clear examination oversight as here undermines the policy set forth by the recent discretionary denial decisions. *Microsoft*, IPR2025-00318, Paper 9 at 3; *Anthony, Inc. v. ControlTec, LLC*, IPR2025-00559, Paper 12 at 2 (Director July 16, 2025); *Eunsung Glob. Corp. v. HydraFacial LLC*, IPR2025-00445, Paper 14 at 3 (Director July 10, 2025); *Tesla, Inc. v. Charge Fusion Techs., LLC*, IPR2025-00152, Paper 11 at 1 (Director June 12, 2025);

Embodiment, Inc. v. LifeNet Health, IPR2025-00248, Paper 12 at 2 (Director June 26, 2025).

IV. CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Director grant review, vacate the denial, and remand for institution of *inter partes* review of the '697 patent.

Respectfully submitted,

Dated: October 14, 2025

By: / Cory Bell /
Cory Bell, Reg. No. 75,096
Lead Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **Petitioners' Request for Director Review of Decision Denying Institution of *Inter Partes* Review** was served on October 14, 2025, via e-mail directed to counsel of record for the Patent Owner at the following:

Philip P. Caspers
Samuel A. Hamer
CARLSON CASPERS VANDENBURGH & LINDQUIST
Capella Tower, Suite 4200
225 South Sixth Street
Minneapolis, MN 55402
pcaspers@carlsoncaspers.com
shamer@carlsoncaspers.com

Dated: October 14, 2025

/ William Esper /
William Esper
Senior Litigation Paralegal
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP