

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

NKT PHOTONICS INC. and NKT PHOTONICS A/S,
Petitioner,

v.

OMNI CONTINUUM LLC,
Patent Owner.

IPR2025-00839
Patent 7,433,116 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

Omni Continuum LLC (“Patent Owner”) filed a request for discretionary denial (Paper 7, “DD Req.”) in the above-captioned case, and NKT Photonics Inc. and NKT Photonics A/S (collectively, “Petitioner”) filed an opposition (Paper 8, “DD Opp.”).

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

Although the parties are engaged in a parallel proceeding involving the challenged patent, it is unclear whether a final written decision in these proceedings will issue after the district court trial occurs. The projected final written decision due date in the Board proceeding is November 13, 2026.

DD Req. 8. The district court has not yet scheduled a trial date, and the parties offer different time-to-trial statistics that suggest trial could begin in July 2026, or could begin several months or even years later. *See id.* at 7–8; DD Opp. 8–13. As such, these considerations neither favor nor counsel against discretionary denial.

Other factors weigh in favor of discretionary denial. In particular, the challenged patent has been in force for nearly seventeen years, creating strong settled expectations for Patent Owner, and Petitioner does not provide any persuasive reasoning why an *inter partes* review is an appropriate use of Board resources. *Dabico Airport Sols. Inc. v. AXA Power ApS*, IPR2025-00408, Paper 21 at 2–3 (Director June 18, 2025). Furthermore, Patent Owner provides evidence that Petitioner first became aware of the challenged patent as early as 2012—having received notice from the previous patent owner of the challenged patent as part of its patent portfolio. DD Req. 5–6; Ex. 2002; *see iRhythm Techs., Inc. v. Welch Allyn, Inc.*,

IPR2025-00363, Paper 10, 3 (Director June 6, 2025). Discussions between the parties about the challenged patent continued in 2017, and licensing discussions regarding Patent Owner's patent portfolio continued through 2022. *See* DD Req. 5–6; DD Opp. 18–19. Accordingly, Petitioner appears to have had notice of the challenged patent for a significant period of time and was engaged in discussions with Patent Owner about its portfolio until shortly before Patent Owner asserted the challenged patent. Under these circumstances, the factors that favor discretionary denial outweigh those that counsel against it.

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 Petition is 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 Petition is *denied*, and no trial is instituted.

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