

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

IRHYTHM TECHNOLOGIES, INC.,
Petitioner,

v.

WELCH ALLYN, INC.,
Patent Owner.

IPR2025-01081
Patent 8,630,699 B2

Before MICHAEL J. FITZPATRICK, ROBERT L. KINDER, and
TIMOTHY G. MAJORS, *Administrative Patent Judges*.

FITZPATRICK, *Administrative Patent Judge*.

DECISION

Dismissal Prior to Institution of Trial
35 U.S.C. § 314; 37 C.F.R. § 42.71(a)

Petitioner, iRhythm Technologies, Inc., filed a Petition to institute an *inter partes* review of claims 1–4 and 8 of U.S. Patent 8,630,699 B2 (“the ’699 patent”) pursuant to 35 U.S.C. § 311(a). Paper 2. Patent Owner, Welch Allyn, Inc., filed a discretionary denial brief and a Preliminary Response. Papers 6 and 7.

On October 3, 2025, prior to the Director’s determination whether to discretionarily deny the Petition and prior to our determination of whether to grant the Petition, Petitioner filed a “Motion to Withdraw” its Petition. Paper 8 (“Mot.”). Patent Owner filed an Opposition. Paper 9 (“Opp.”).¹

In the Opposition, Patent Owner summarizes the procedural history of the instant proceeding, as well as its opposition to the Motion, as follows:

Three days after Petitioner filed its instant petition for the ’699 Patent, the Acting Director ordered discretionary denials for five similarly situated petitions. The ’699 Patent petition suffers from the same fatal flaw as its five predecessors and, upon receiving the five Discretionary Denial decisions, Patent Owner requested that Petitioner withdraw its petition for the ’699 Patent at that time to save the parties’ and Board’s resources. Petitioner ignored Patent Owner’s request, instead requiring Patent Owner to file its Discretionary Denial request in this case and substantially prepare its Preliminary Patent Owner Response. Accordingly, Patent Owner respectfully requests that the Board deny Petitioner’s eleventh-hour motion to withdraw the ’699 Patent petition as if it had never been filed and, instead, grant Patent Owner’s unopposed Request for Discretionary Denial to provide Patent Owner with the finality of a concluded *inter partes* review proceeding.

¹ Petitioner initially requested authorization to file its Motion on September 19, 2025. Ex. 3001. On October 1, 2025, we authorized the Motion as well as Patent Owner’s Opposition. *Id.* No reply brief was authorized or filed. *Id.*

Opp. 1.

The premise of this argument, that a discretionary denial of the Petition would “provide Patent Owner with the finality of a concluded *inter partes* review proceeding,” is erroneous. Such a decision would not constitute a final decision under 35 U.S.C. § 318(a). And, granting Petitioner the relief it seeks—withdrawal of its Petition—produces the same practical effect as a discretionary denial of the Petition. In either case, no *inter partes* review against the ’699 patent will proceed on the Petition.

We recognize that Patent Owner expended resources it might not have had to expend had Petitioner sought to file its Motion earlier. However, Patent Owner’s reliance on *Trutek v. University of Michigan*, No. IPR2022-00674, Paper 9 (PTAB Sept. 27, 2022) (“*Trutek*”) is not persuasive here. *See* Opp. 6.

As correctly quoted by Patent Owner, the Board in *Trutek* stated “[a]llowing [p]etitioner to withdraw the petition will not save the parties any additional time or expense.” *Trutek*, at 3. However, the facts here are different than in *Trutek*. In *Trutek*, the Board did not deny a motion to withdraw (or dismiss, terminate, etc.) the petition. Instead, the Board, on the very eve of issuing its decision on institution, received from the petitioner “an e-mail request to the Board seeking ‘authorization to file a motion to terminate the proceeding.’” *Id.* at 2 (quoting email of record). The Board denied the request, noting that “[a] decision by the Board whether to institute an *inter partes* review will be mailed on or before its statutory due date of September 30, 2022, which is three days away.” *Id.* Indeed, the Board had already decided the merits of the petition and was in the process of finalizing its decision denying institution, which it issued the very next day. *See*

Trutek v. University of Michigan, No. IPR2022-00674, Paper 10 (PTAB Sept. 28, 2022).

Unlike in *Trutek*, the Board here has not decided the merits of the Petition. Granting the Motion will conserve the resources of the Board. Further, neither party wants us to institute an *inter partes* review. Under these circumstances, granting of the Motion is the prudent result.

Accordingly, it is:

ORDERED that the Petition is dismissed pursuant to 37 C.F.R. § 42.71(a), IPR2025-01081 is terminated, and no trial is instituted.

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Patent 8,630,699 B2

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