Director_Discretionary_Decision@uspto.gov
571-272-7822

Paper 21
Date: June 18, 2025

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*.

DECISION
Granting Patent Owner's Request for Discretionary Denial and Denying Institution of *Inter Partes* Review

AXA Power ApS ("Patent Owner") filed a request for discretionary denial (Paper 10, "DD Req.") in the above-captioned case, and Dabico Airport Solutions Inc. ("Petitioner") filed an opposition (Paper 17, "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.

Some facts counsel against discretionary denial. For example, Patent Owner's arguments regarding 35 U.S.C. § 325(d) are unpersuasive.

However, the considerations favoring discretionary denial outweigh those that counsel against it. In particular, the challenged patent has been in force almost eight years, creating settled expectations. *See* Ex. 1001. The interim processes permit a patent owner to file a brief explaining why discretionary denial is appropriate and the petitioner not only to respond to patent owner's arguments but also to identify reasons *not to exercise discretion to deny institution*. As the Office has explained, "the parties are permitted to address all relevant considerations . . . bearing on the Director's discretion."[1] The Office further has explained that "[p]arties are encouraged to address any fact or circumstance they believe bears on whether the Office *should* or should not institute trial."[2]

[1] Memorandum for Interim Processes for PTAB Workload Management at 2–3, *available at* https://www.uspto.gov/sites/default/files/documents/InterimProcesses-PTABWorkloadMgmt-20250326.pdf.
[2] FAQ 20, *FAQs for Interim Processes for PTAB Workload Management* ("FAQs"), *available at* https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management (emphasis added).

Petitioner does not provide any persuasive reasoning why an *inter partes* review is an appropriate use of Office resources. There may be persuasive reasons why the Office should review the challenged patent, but, in the absence of any such information, the Office is disinclined to disturb the settled expectations of Patent Owner in this instance.

Although there is no bright-line rule on when expectations become settled, in general, the longer the patent has been in force, the more settled expectations should be. This approach aligns with other approaches to settled expectations and incentives, for example, for filing infringement lawsuits. *Cf.* 35 U.S.C. § 286 ("Except as otherwise provided by law, no recovery shall be had for any infringement committed more than six years prior to the filing of the complaint or counterclaim for infringement in the action.").

Moreover, patent applications (after 18 months) and issued patents are almost always publicly available to provide notice to the public, other inventors, competitors, and commercial interests. 35 U.S.C. § 122. Interested parties may find published patents and patent applications using the Office's automated search systems as well as publicly available resources on the Internet. *See* 35 U.S.C. § 41(i). As such, actual notice of a patent or of possible infringement is not necessary to create settled expectations.

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:

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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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