

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FRESENIUS KABI SWISSBIOSIM GMBH,
Petitioner,

v.

REGENERON PHARMACEUTICALS, INC.,
Patent Owner.

Case: IPR2025-01269
U.S. Patent No. 10,828,345

PATENT OWNER'S DISCRETIONARY DENIAL BRIEF

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
TABLE OF EXHIBITS	iv
I. The Petition Should be Denied Under Section 325(d).....	4
A. Prosecution of the '345 Patent	7
B. <i>Advanced Bionics</i> Step 1 is Satisfied: Substantially the Same Art and Arguments Were Previously Presented to the Patent Office.....	12
1. The 12-Week Limitation.....	12
2. Dixon and Ground 5.....	16
3. Regeneron (18-February-2010) and Grounds 6-9	17
C. <i>Advanced Bionics</i> Step 2 (<i>Becton</i> Factors (c), (e), and (f)) is Satisfied: Petitioner Cannot Identify Any Material Error.....	18
II. Conclusion	20

TABLE OF AUTHORITIES

CASES

<i>Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH</i> , IPR2019-01469, Paper 6 (PTAB Feb 13, 2020) (precedential)	4, 18
<i>Becton, Dickinson & Co. v. B. Braun Melsungen AG</i> , IPR2017-01586, Paper 8 (PTAB Dec. 15, 2017) (precedential as to § III.C.5, first paragraph)	5
<i>Ecto World, LLC v. RAI Strategic Holdings, Inc.</i> , IPR2024-01280, Paper 13 (PTAB May 19, 2025) (precedential as to §A)	6, 13

TABLE OF EXHIBITS

Exhibit	Description
2001	Certified File History of U.S. Patent No. 10,828,345 B2
2002	Comparison between April 28, 2009 and December 1, 2009 Clinicaltrials.gov Record Histories for NCT00509795, <i>available at https://clinicaltrials.gov/study/NCT00509795?term=NCT00509795&rank=1&tab=history&a=9&b=10#version-content-panel</i>
2003	“Information from ClinicalTrials.gov archive on the view of NCT00509795 ‘Vascular Endothelial Growth Factor (VEGF) Trap-Eye: Investigation of Efficacy and Safety in Wet Age-Related Macular Degeneration (AMD)’(12-01-2009)” excerpted from file history of U.S. Patent Application No. 14/972,560.
2004	Donald Trump Remarks Transcript, Calls Contracting COVID-19 “Blessing from God” October 7, https://www.rev.com/transcripts/donald-trump-remarks-transcript-calls-contracting-covid-19-blessing-from-god-october-7 (last visited September 18, 2025).
2005	Kiran Stacey, David Crow, and Donato Paolo Mancini, <i>Regeneron: the company that Trump claims cured his Covid</i> , Financial Times, October 9, 2020, https://www.ft.com/content/70672ed3-bf66-4c14-8392-076d0c503558
2006	Kiran Stacey, <i>Trump calls Coronavirus treatment he received a “cure”</i> , Financial Times, October 7, 2020, https://www.ft.com/content/a792326c-40e7-460d-ac38-8a9b03286ea0

Patent Owner Regeneron Pharmaceuticals, Inc. (“Regeneron” or “Patent Owner”) respectfully requests that the Director exercise his discretion to deny the Petition filed by Fresenius Kabi Swissbiosim GmbH (“Fresenius” or “Petitioner”) challenging Regeneron’s U.S. Patent 10,828,345 (“the ’345 patent”).

Regeneron is an innovative American biotechnology company that devotes immense resources to the discovery of new medicines. The results have been nothing short of lifesaving—indeed, in October 2020, President Trump himself credited Regeneron’s then-experimental COVID treatment with bringing him back to health. EX2004 (“[T]hey gave me Regeneron, and it was . . . unbelievable. I felt good immediately. . . . [T]hings that nobody even thought of a few months ago. The job that the scientists, the labs, everybody has done is incredible.”); EX2005 at 1; EX2006 at 1-2. Today, Regeneron is led by the same physician-scientists who founded it over 30 years ago: Len Schleifer and George Yancopoulos. Together, they have delivered nine FDA-approved treatments to patients. One is Eylea®.

Eylea®’s active ingredient, aflibercept, treats severe “angiogenic” eye disorders, including age-related macular degeneration (AMD), diabetic macular edema (DME), and diabetic retinopathy (DR). Angiogenesis, i.e., the growth of blood vessels, is a normal process in the human body, but sometimes, abnormal angiogenesis in the eye can lead to vision loss and even blindness. When it was invented by Dr. Yancopoulos and his team, aflibercept was a completely new fusion

protein, designed to neutralize a protein called vascular endothelial growth factor (VEGF), a key driver of angiogenesis. Since its approval in 2011, Eylea[®] has revolutionized the treatment of AMD, DME, and DR, among other conditions.

Eylea[®], like earlier treatments, is injected directly into the eye by an ophthalmologist. This process is both literally and figuratively invasive—not only must patients endure a needle stuck into their eyeball, but often they must travel substantial distances to obtain that injection, sometimes with caregivers in tow. The need for frequent injections of anti-VEGF drugs thus presented a true burden.

Before the invention of the '345 patent, VEGF inhibitors typically were administered monthly, or on an “as needed” (referred to as “*pro re nata*” or “PRN”) basis. EX1001 at 1:57-60; EX1007 at 2. PRN regimens typically involved monthly monitoring visits during which a patient traveled to their doctor, who would then determine whether an injection was necessary. *Id.*; EX1031 at 1. If the patient needed an injection, the doctor would administer it, and the patient would return in a month for another potential injection. And if the patient did *not* need an injection, the patient likewise would return in a month for another assessment. Efforts to extend the treatment interval without individualized assessment—for example, to fixed quarterly injections—simply were not effective. EX1007 at 2; EX1031 at 1.

The '345 patent, in contrast, discloses the use of aflibercept in a revolutionary, extended and fixed dosing regimen. Specifically, the '345 patent claims a method

of treating an angiogenic eye disorder using a period of monthly doses—i.e., an “initial dose . . . followed by one or more secondary doses . . . administered 4 weeks after the immediately preceding dose”—“followed by one or more tertiary doses . . . administered **12 weeks** after the immediately preceding dose.” EX1001 at claim 1 (emphasis added). This “12-week regimen” represents a sea change for patients.

The innovations protected by the ’345 patent resulted from years of research and clinical trials. It is therefore unsurprising that when Petitioner scoured the prior art for disclosure of Regeneron’s new treatment method, it came up empty. Instead, Petitioner rehashes the same art and arguments the Examiner already considered and rejected. Petitioner asserts that the claimed **12-week** regimen was in fact disclosed by references describing the VIEW 1 or VIEW 2 trials—i.e., Regeneron’s phase III clinical trials designed to test **8-week** and **4-week** dosing regimens in AMD. In those trials, after one year of treatment with the experimental 8-week or 4-week regimen, patients were followed by their doctors and received another year of treatment PRN. In this “as needed” phase, doctors decided whether to administer a dose based on certain criteria—but were not permitted to administer doses less than four weeks or more than twelve weeks after the preceding one.

During prosecution, the Examiner explicitly considered and rejected the argument that publication of these VIEW trial regimens defeated patentability of the challenged claims. In fact, a third party submitted a claim chart setting forth that

very argument, the Examiner issued a rejection based on the argument, and then the Examiner *withdrew* his rejection and allowed the claims, expressly concluding that the disclosure of the VIEW trials did *not* disclose the claimed 12-week regimen.

The Petition adds nothing to this record. Instead, it repeats the arguments as though they were not previously rejected, and it mischaracterizes the Examiner's reasons for allowance by altering quotations to suggest, wrongly, that he did not believe the relevant reference was prior art. Petitioner cannot alter the facts, and it cannot identify any material error in the Examiner's reasoned decision. Discretionary denial is appropriate under 35 U.S.C. § 325(d).

I. The Petition Should be Denied Under Section 325(d).

The Director should exercise his discretion to deny the Petition under 35 U.S.C. § 325(d). Under the framework set forth in *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, a two-part test applies:

- (1) whether the same or substantially the same art previously was presented to the Office or whether the same or substantially the same arguments previously were presented to the Office; and (2) if either condition of [the] first part of the framework is satisfied, whether the petitioner has demonstrated that the Office erred in a manner material to the patentability of challenged claims.

IPR2019-01469, Paper 6 at 8 (P.T.A.B. Feb. 13, 2020) (precedential). “[T]he *Becton, Dickinson* factors provide useful insight” into application of this framework.

Id. at 9. They include:

- (a) the similarities and material differences between the asserted art and the prior art involved during examination;
- (b) the cumulative nature of the asserted art and the prior art evaluated during examination; (c) the extent to which the asserted art was evaluated during examination, including whether the prior art was the basis for rejection;
- (d) the extent of the overlap between the arguments made during examination and the manner in which Petitioner relies on the prior art; (e) whether Petitioner has pointed out sufficiently how the Examiner erred in its evaluation of the asserted prior art; and (f) the extent to which additional evidence and facts presented in the Petition warrant reconsideration of the prior art or arguments.

Id. at 9 n.10 (citing *Becton, Dickinson & Co. v. B. Braun Melsungen AG*, IPR2017-01586, Paper 8 at 17-18 (PTAB Dec. 15, 2017) (precedential in relevant part)).

The Petition sets forth nine grounds that rely on five references, either alone or in various combinations with “a POSA’s knowledge”: Dixon (EX1007); NCT-377 (EX1018); NCT-795 (EX1017); Regeneron (8-May-2008) (EX1022); and Regeneron (18-February-2010) (EX1052). Every one of those references was before the Examiner, EX2001¹ at 116 (Nos. 6, 13, 14), 241 (Nos. 31 and 32), a fact that

¹ Patent Owner submits as EX2001 the certified file history of the ’345 patent, which includes copies of submitted art that Petitioner’s uncertified exhibit lacks.

alone would have been sufficient to satisfy the first step of the *Advanced Bionics* framework. *Ecto World, LLC v. RAI Strategic Holdings, Inc.*, IPR2024-01280, Paper 13 at 4 (P.T.A.B. May 19, 2025) (“Because the references that Petitioner asserts in this proceeding were provided on the applicant’s IDS, the Board correctly determined that the references were previously presented to the Office.”).

That is not where the similarities between the Petition and the file history end. The Petition’s nine grounds are premised on a single, flawed theory—namely, that Regeneron’s disclosure of the PRN regimen used for the second year of its VIEW trials constituted a disclosure of the ’345 patent’s claimed, 12-week, fixed dosing regimen. The Examiner *explicitly rejected* that argument during prosecution. In fact, a third party submitted a claim chart attempting to show that the VIEW regimens—as described in a 2009 Regeneron Press Release—anticipated the challenged claims in precisely the way the Petition urges. EX2001² at 130-31 (claim chart), 126-27 (2009 Press Release); Pet. 46-47. The Examiner issued a rejection on that basis, but *withdrew* the rejection after Regeneron explained why the VIEW regimens did *not* teach the claimed, fixed 12-week regimen. In allowing the claims, the Examiner expressly confirmed that “*none of [the VIEW studies] teach or fairly suggest the dosing regimen recited in the instant claims.*” EX2001 at 949-50.

² The Petition cites the 2009 Press Release a single time but does note that the Examiner expressly considered this prior art. Pet. 55; EX1040.

The Petition does not grapple with these facts, nor does it add anything to this previously rejected theory. The Petition's four anticipation grounds (Grounds 1-4, claims 1-9) rely on publications, all disclosed during prosecution, that describe the VIEW trial regimens in substantially the same way (and sometimes with *less* detail) than the 2009 Press Release the Examiner addressed during prosecution. The Petition's obviousness grounds are no different. In Ground 5, the Petition asserts ipse dixit that the POSA would have been motivated to combine Dixon with NCT-377. In Grounds 6-9, the Petition relies on the same purported disclosures of the 12-week regimen as it did for anticipation—this time in combination with a second reference, “Regeneron (18-February-2010)” (which also was before the Examiner during prosecution)—for the alleged disclosure treatment of DME and DR, as dependent claims 10 and 11 require.

Every one of the Petition's nine grounds rests on the very same theory the Examiner expressly considered and rejected during prosecution, and Petitioner does not even attempt to show that the Examiner erred in his evaluation of that art. The Petition should be denied under 35 U.S.C. § 325(d).

A. Prosecution of the '345 Patent

Petitioner's summary of the '345 patent's file history is selective and misleading. Pet. 15-18. For example, Petitioner omits crucial events (such as the third-party submission of a claim chart advancing the same theory as the Petition)

and mischaracterizes the Examiner's basis for allowance (wrongly implying that the Examiner did not believe the key reference was prior art, instead of reporting the Examiner's explicit statement that the reference "did not teach or fairly suggest the dosing regimen recited in the instant claims"). The salient facts are as follows.

The '345 application originally contained claims directed to two dosing regimens: (1) a "PRN regimen" (requiring an initial dose, then one or more secondary doses administered every four weeks, then one or more tertiary doses administered "pro re nata" (i.e., "PRN" or "as needed" dosing)), EX2001 at 5 (e.g., claim 21) and (2) a fixed "12-week regimen" (requiring an initial dose, then one or more secondary doses administered every four weeks, then one or more tertiary doses administered "12 weeks after the immediately preceding dose"), EX2001 at 6 (e.g., claim 32). After an initial rejection for obviousness-type double patenting (overcome by argument and terminal disclaimers), EX2001 at 103-08, 230-31, an anonymous third party submitted two claim charts pursuant to 37 C.F.R. 1.290, *id.* at 18-38. The first purported to show that Dixon (EX1007) disclosed the claimed PRN regimen. *Id.* at 128-29. The second (below, highlighting added) purported to show that the 2009 Press Release (called "Regeneron" below) disclosed the claimed fixed 12-week regimen by virtue of disclosing the VIEW regimen. *Id.* at 130-31.

U.S. Application No. 16/159,282	Relevant disclosure in Regeneron (with evidentiary support from Dixon)
32. A method for treating an angiogenic eye disorder in a patient, said method comprising	Regeneron discloses the VIEW Program, which included Phase 3 studies for treating neovascular age-related macular degeneration (wet AMD). Wet AMD is a known angiogenic eye disorder. <i>See also</i> definition of “angiogenic eye disorder” in the ‘282 application (para. [0004]).
sequentially administering to the patient a single initial dose of a VEGF antagonist, followed by one or more secondary doses of the VEGF antagonist, followed by one or more tertiary doses of the VEGF antagonist;	The VIEW Program teaches patients with wet AMD are to receive regular doses of 0.5mg or 2mg VEGF Trap-eye at 4-week intervals in the first year, followed by continued treatment for another year on a flexible, criteria-based extended PRN regimen with a dose administered at least every 12 weeks , but not more often than every four weeks. Thus, Regeneron teaches AMD patients being treated by (1) a single initial dose of 0.5mg or 2mg, followed by (2) secondary doses at 4-week intervals for a year, followed by (3) treatment for another year based on a flexible schedule, which would include at least one tertiary dose at 12-week from the immediately preceding dose. <i>See also</i> , Example 4 of the ‘282 application, which tracks closely to the VIEW program. Example 4 provides the written support for the dosing regimen recited in claim 32.
wherein each secondary dose is administered 4 weeks after the immediately preceding dose; and	
wherein each tertiary dose is administered 12 weeks after the immediately preceding dose;	
wherein the VEGF antagonist is a receptor-based chimeric molecule comprising an immunoglobulin-like (Ig) domain 2 of a first VEGF receptor and Ig domain 3 of a second VEGF receptor, and a multimerizing component.	VEGF Trap-eye is an anti-VEGF agent, a soluble VEGF receptor fusion protein that binds all forms of VEGF-A along with the related placental growth factor (PlGF). <i>See</i> “About VEGF Trap-Eye; <i>see also</i> evidentiary support in Dixon.

The Examiner accepted the third-party submission, then issued rejections of (1) the PRN-regimen claims as anticipated by Dixon, and (2) the 12-week claims as anticipated by the 2009 Press Release. *Id.* at 143, 231-33. With respect to the 12-week claims challenged here³, the Examiner asserted that the VIEW regimen’s disclosure of “treatment for another year based on a flexible PRN schedule . . . would include at least one tertiary dose at 12 weeks from the immediately preceding dose.” *Id.* at 232. As Regeneron summarized during prosecution, “[t]he Examiner’s argument appears to suggest that the claims were inherently anticipated by the Press

³ Regeneron later cancelled the PRN-regimen claims. EX2001 at 714.

Release insofar as the *upper limit of PRN dosing frequency*, which followed the [every-four-weeks] component, *was set at 12 weeks.*” *Id.* at 253 (emphasis added).

In response to the rejection, Regeneron explained that the Examiner’s understanding of the VIEW trial disclosures was incorrect. As Regeneron detailed, the POSA would not have understood PRN dosing regimens (even ones with 4-12 week limits) to encompass the claimed “q12w [i.e., every 12 weeks] dosing component.” *Id.* Although the disclosed PRN regimen had a dosing interval that “may extend out as far as 12 weeks, the dosages administered to patients were not necessarily this infrequent.” *Id.*

Regeneron then met with the Examiner for an interview, which it summarized in a subsequent response: “During the interview, the Examiner requested further clarification with respect to specific elements of the pending independent claims with respect to the Press Release having an indicated date of September 14, 2009.” *Id.* at 714. Regeneron clarified that the “single appearance of the words ‘12 weeks’ within the fourth paragraph of the Press Release” referred to a “flexible, criteria-based extended PRN regimen with a dose administered at least every 12 weeks, but not more often than every four weeks.” *Id.* In other words, a PRN regimen in which patients are evaluated frequently and injected whenever the physician believes necessary—but no more frequently than every four weeks, and no less frequently than every 12 weeks—does not, in fact, teach a fixed 12-week dosing regimen. At

most, the Press Release disclosed the “prospective *possibility* of dosing at 12 weeks”—a far cry from the “necessarily” true standard for inherent disclosure. *Id.* at 714-15 (emphasis added); *see also id.* at 253.

The Examiner was persuaded. He issued a Notice of Allowance explicitly confirming that the Press Release did not disclose the claimed 12-week regimen:

The rejection . . . is withdrawn . . . in response to Applicant’s persuasive arguments as they pertain to the disclosure of the Regeneron Press Release Publication. **There are 3 separate studies⁴ disclosed in the Press Release, and *none of them teach or fairly suggest the dosing regimen recited in the instant claims.***

Id. at 949-950 (emphasis added).

Thus, the Petition is demonstrably wrong to suggest that the Examiner allowed the claims because he did not believe the Press Release to be prior art. Pet. 18. To create that impression, Petitioner selectively quotes Regeneron’s statement that “[d]uring an Examiner Interview, ‘the Examiner requested further clarification . . . with respect to the Press Release having an indicated date of September 14, 2009.’” Pet. 18. The omission of text using an ellipsis creates the misimpression that the Examiner sought clarification with respect to the date of the Press Release, rather than how its disclosure mapped onto the pending claims. In full (without

⁴ The Press Release described trials beyond VIEW 1 and VIEW 2. EX2001 at 127.

ellipsis), Regeneron stated that “the Examiner requested further clarification *with respect to specific claim elements of the pending independent claims* with respect to the Press Release having an indicated date of September 14, 2009.” EX2001 at 714 (emphasized text omitted by Petitioner). Regeneron thus understood the Examiner to be focused on whether the Press Release discloses “specific claim elements” of the pending claims, not whether it is prior art. Regeneron noted that the Press Release’s publication date had not been proven, *id.*, but its two responses focused on the Press Release’s failure to teach the claimed 12-week regimen, *id.* at 252-54, 714-716, and that is why the Examiner allowed the claims, *id.* at 949-950 (Press Release did “not teach or fairly suggest” claimed regimen).

Petitioner’s misdirection is not a show of strength. Every aspect of its theory was considered and rejected by the Examiner and the Director should exercise his discretion to deny the Petition for that reason.

B. *Advanced Bionics* Step 1 is Satisfied: Substantially the Same Art and Arguments Were Previously Presented to the Patent Office.

All art in the Petition’s grounds previously was presented to the Office, and the Examiner carefully engaged with this art’s common disclosure before concluding the claims were patentable. Step 1 of the *Advanced Bionics* framework is satisfied.

1. The 12-Week Limitation

Each of the Petition’s nine grounds asserts that one of four references—Dixon, NCT-377, NCT-795 or Regeneron (8-May-2008)—discloses the claim

limitation “wherein each tertiary dose is administered 12 weeks after the immediately preceding dose.” Pet. 11, 46-47. Dixon and NCT-795 describe the dosing regimen of the VIEW 1 study; Regeneron (8-May-2008) and NCT-375 describe the VIEW 2 regimen. In the second year of *both* studies, the VIEW 1 and VIEW 2 regimens identically call for patients to receive “a flexible, criteria-based extended PRN regimen with a dose administered at least every 12 weeks, but not more often than every 4 weeks.” EX2001 at 126. The Petition asserts that this disclosure—of a “capped” PRN regimen in which patients receive doses at an *unspecified* time based on their physician’s assessment, and somewhere between four and twelve weeks after their last dose—is a disclosure of the claimed regimen, in which patients receive a dose at the *fixed* time period of twelve weeks after the preceding dose (after a monthly loading phase). All four of these references were before the Examiner, EX2001 at 116 (Dixon at No. 6, NCT-377 at No. 13, NCT-795 at No. 14), 241 (Regeneron (8-May-2008) at No. 31), meaning that all relevant art was previously before the Patent Office, *see Ecto World*, IPR2024-01280, Paper 13 at 4. The chart below illustrates that Petitioner’s art is cumulative of the 2009 Press Release that was the subject of the third-party submission and Examiner’s rejection.

Reference	File History	Regimen
2009 Press Release	EX2001 at 232 (rejection of challenged	“In the first year of the studies, the safety and efficacy of VEGF Trap-Eye at doses of 0.5 mg and 2.0 mg administered at four-week intervals and 2.0 mg at an

(EX1040)	claims)	eight-week dosing interval following one additional 2.0 mg dose at week four are being evaluated. . . . After the first year of treatment, patients will continue to be followed and treated for another year on a flexible, criteria-based extended PRN regimen with a dose administered at least every 12 weeks, but not more often than every four weeks until the end of the study.” EX2001 at 126.
Regeneron (8-May-2008) (EX1022)	EX2001 at 221 (disclosed as No. 31), 241 (considered)	“In the first year, the VIEW 2 . . . study will evaluate the safety and efficacy of VEGF Trap-Eye at doses of 0.5 milligrams (mg) and 2.0 mg administered at 4-week intervals and 2.0 mg at an 8-week dosing interval, including one additional 2.0 mg dose at week four After the first year of treatment, patients will continue to be followed and treated for another year on a flexible, criteria-based extended regimen with a dose administered at least every 12 weeks, but not more often than every 4 weeks until the end of the study.” EX1022 at 1.
Dixon (EX1007)	EX2001 at 23 (rejection of PRN claims)	“VIEW 1 . . . will evaluate the safety and efficacy of intravitreal VEGF Trap-Eye at doses of 0.5 and 2.0 mg administered at 4-week dosing intervals and 2.0 mg at an 8- week dosing interval (following three monthly doses), compared with 0.5 mg of ranibizumab administered every 4 weeks. After the first year of the study, patients will enter a second

		year of p.r.n. dosing evaluation. The VIEW 2 study has a similar study design” ⁵ EX1007 at 4.
NCT-377 (EX1018)	EX2001 at 86 (disclosed as No. 13), 116 (considered)	“2.0 mg VEGF Trap-Eye administered every 4 weeks during the first year. Thereafter a dose may be administered as frequently as every 4 weeks, but no less frequently than every 12 weeks.” EX1018 at 6.
NCT-795 (EX1017)	EX2001 at 86 (disclosed as No. 14), 116 (considered). ⁶	“2.0 mg VEGF Trap-Eye administered every 4 weeks during the first year. Thereafter a dose may be administered as frequently as every 4 weeks, but no less frequently than every 12 weeks.” EX1017 at 7.

Petitioner’s argument is also precisely the same argument that the Examiner

⁵ The Petition asserts that Dixon incorporates NCT-377 by reference. Pet. 33, 42, 46. Regeneron reserves the right to challenge that assertion when appropriate.

⁶ Petitioner states that NCT-795 (EX1017) is a clinicaltrials.gov record for the VIEW 1 trial (NCT00509795) dated April 28, 2009. The submitted exhibit instead appears to be a comparison of the March 3, 2009, clinicaltrials.gov record for NCT-795 with the April 28, 2009, record, and its upper left corner suggests it was created on January 7, 2021. Regeneron reserves the right to challenge the authenticity and prior art status of EX1017 if necessary. Regardless, Regeneron submitted multiple versions of the clinicaltrials.gov history for NCT-795 to the Examiner, including one dated December 1, 2009, EX2001 at 86; *see also* EX2003 at 1063, 5738, but did not, of course, submit a comparative document generated after the ’345 patent issued. For avoidance of doubt, EX2002 compares the April 28, 2009, clinicaltrials.gov record for NCT-795 to the December 1, 2009, record. The submitted, December record (EX2003) includes all information relied on by Petitioner.

rejected. Grounds 1-4 assert that each of the above references anticipates challenged claims 1-9. After quoting each reference in its claim chart, Petitioner recites (three times): “In other words, the tertiary dose—i.e., doses after the first year—may be administered as infrequently as 12 weeks after the immediately preceding dose, including immediately after the last secondary dose of the first year.” Pet. at 46-47 (emphasis added). That is no different from the Examiner’s initial, flawed understanding of the 2009 Press Release: in the October 1, 2019 Office Action, the Examiner asserted that the “flexible PRN schedule . . . would include at least one tertiary dose at 12 weeks from the immediately preceding dose.” EX2001 at 232. Of course, as the Examiner later agreed, following Regeneron’s responses to the rejection, the PRN dosing regimen of *somewhere between* four and twelve weeks after a patient’s last dose does not “teach or fairly suggest” a 12-week dosing regimen. EX2001 at 714-15, 949-50. There can be no doubt that Petitioner’s same art and arguments were previously evaluated by the Patent Office.

2. Dixon and Ground 5

Petitioner relies on Dixon for its disclosure of aflibercept’s structure and the VIEW PRN regimen (via alleged incorporation of NCT-377). Pet. at 33, 42, 46. As explained above, those disclosures are cumulative of the 2009 Press Release, which the Examiner considered in determining whether the prior art disclosed the claimed 12-week dosing regimen. Regardless, the Examiner plainly analyzed Dixon’s

disclosure, because he issued a rejection over Dixon in connection with the other set of then-pending claims in the '345 patent application. EX2001 at 231-32.

3. Regeneron (18-February-2010) and Grounds 6-9

Grounds 6-9 of the Petition address dependent claims 10 and 11. Claims 1-9 recite “method[s] of treating an angiogenic eye disorder in a patient” using the 12-week regimen. EX1001 at 20-21. Claims 10 and 11, in contrast, recite methods of treating the specific angiogenic eye disorders of “diabetic retinopathy” (DR) and “age related macular degeneration” (DME), respectively. *Id.* at 21. But the VIEW studies were designed to study the effects on patients with AMD, a *distinct* and *separate* pathogenesis from DME or DR. *See, e.g.*, EX1007; EX1017; EX1018; EX1022. Thus, Petitioner cobbles together four obviousness grounds—each relying on a different one of the four VIEW references for a purported disclosure of the 12-week regimen, in combination with a second reference (Regeneron (18-February-2010)) and/or “a POSA’s knowledge.” Pet. at 11. Even wrongly assuming that the asserted art disclosed a fixed 12-week regimen, Regeneron will demonstrate that the POSA would not have been motivated to apply that 12-week regimen to the treatment of DME and/or DR.

Regardless, each of Grounds 6-9 reflects art and arguments already presented to the Patent Office. Every one of these Grounds rests on the same, Examiner-rejected premise that underlies Grounds 1-5—namely, that disclosure of the VIEW

flexible PRN regimens is a disclosure of the 12-week fixed regimen. Moreover, Regeneron (18-February-2010) *also* was presented to the Examiner during prosecution. EX2001 at 221 (No. 32), 241 (Examiner initialed).

* * *

The Petition presents the same art and arguments that the Examiner considered and ultimately rejected. *Advanced Bionics* step 1 is satisfied in spades.

C. *Advanced Bionics* Step 2 (*Becton* Factors (c), (e), and (f)) is Satisfied: Petitioner Cannot Identify Any Material Error.

Fresenius does not raise new art or arguments; it simply wants a do-over. But the law is clear—disagreement with the Examiner’s reasoned conclusion is *not* error:

If reasonable minds can disagree regarding the purported treatment of the art or arguments, it cannot be said that the Office erred in a manner material to patentability. At bottom, this framework reflects a commitment to defer to previous Office evaluations of the evidence of record unless material error is shown.

Advanced Bionics, IPR2019-01469, Paper 6 at 9.

Here, there can be no doubt that the Examiner carefully evaluated the disclosures on which the Petition is based, pursuant to *Becton* factor (c). The third-party claim chart reviewed by the Examiner, the Examiner’s rejection, and the Petition all are based on the same theory.

Third-Party Chart	Examiner's Rejection	Petition
“[T]reatment for another year based on a flexible schedule, which would include <i>at least one tertiary dose at 12-week[s]</i> from the preceding dose.” EX2001 at 130.	“[F]lexible PRN schedule [of the VIEW trials] . . . would include at least one tertiary dose at 12 weeks from the immediately preceding dose.” EX2001 at 232.	“[T]he tertiary dose—i.e., doses after the first year—may be administered as infrequently as 12 weeks after the immediately preceding dose, including immediately after the last secondary dose of the first year.” Pet. at 47.

In response to the rejection, Regeneron explained that asking a doctor to administer a dose whenever the patient needed one (but no more than twelve weeks after the patient's last dose) was not a disclosure of a regimen requiring administration at the fixed interval of twelve weeks after the last monthly dose. *Id.* at 252-53, 714-15. The Examiner was persuaded and expressly concluded that “none of [the VIEW studies] teach or fairly suggest the dosing regimen recited in the instant claims.” EX2001 at 949-50.

The Petition identifies no error in the Examiner's conclusion (*Becton* factor (e)), nor does it present additional evidence that warrants its reconsideration (factor (f)). Petitioner has uncovered no new facts and offers no new explanation for how a PRN dosing schedule, even one that “may be administered as infrequently as 12 weeks” could anticipate a claim requiring that “each tertiary dose is administered 12 weeks after the immediately preceding dose.” Petitioner nominally relies on the

testimony of Dr. John Galanis in support of its arguments. Pet. at 11. But the Petition sprinkles citations to only 25 paragraphs of Dr. Galanis’s 317-paragraph declaration and engages with his opinions only in the contexts of public accessibility and incorporation by reference, neither of which suggests that the Examiner erred.

Finally, it does not matter that the Board previously found a *different* dosing regimen (claimed in a related Regeneron patent) to be anticipated by Dixon. As the Petition itself acknowledges, Regeneron’s ’601 patent claimed a fixed **8-week** dosing regimen, whereas the challenged claims recite a fixed **12-week** regimen. Pet. at 18-21. Dixon expressly recites that the VIEW studies “will evaluate the safety and efficacy of . . . 2.0 mg at an **8 week dosing interval** (following three monthly doses).” EX1007 at 4 (emphasis added). Dixon does *not* recite a 12-week dosing interval—indeed, not even Petitioner can find the word “twelve” in its references to the VIEW trials, and instead argues Dixon incorporates NCT-795’s disclosure of the capped PRN regimen. Neither the Board nor any court has evaluated whether Dixon or any other prior art reference disclosed the claimed 12-week regimen—only the Examiner has done so. He expressly concluded the answer was “no,” and the Petition casts no doubt on that careful decision. Step 2 of the *Advanced Bionics* framework is satisfied, and the Petition should be denied under 35 U.S.C. § 325(d).

II. Conclusion

Regeneron respectfully requests the Director deny the Petition.

Date: September 23, 2025

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CERTIFICATION OF PAGE LIMIT

The undersigned certifies that this Discretionary Denial Brief complies with the 20-page limit provided in Section II.C.iii of the Interim Director Discretionary Process guidance available at <https://www.uspto.gov/patents/ptab/interim-director-discretionary-process>.

Date: September 23, 2025

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CERTIFICATE OF SERVICE
(37 C.F.R. § 42.6(e))

The undersigned hereby certifies that on September 23, 2025, I caused true and correct copies of the following materials:

- Patent Owner's Discretionary Denial Brief
- Patent Owner's Exhibit List
- Exhibits 2001-2006

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