

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE  
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE  
UNITED STATES PATENT AND TRADEMARK OFFICE

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ASCENTCARE DENTAL PRODUCTS, INC.,  
Petitioner,

v.

SOLMETEX, LLC,  
Patent Owner.

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IPR2025-01065 (Patent 11,826,217 B2)  
PGR2025-00058 (Patent 12,167,948 B2)

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Before COKE MORGAN STEWART, *Deputy Under Secretary of  
Commerce for Intellectual Property and Deputy Director of the United  
States Patent and Trademark Office.*

DECISION  
Denying Institution of *Inter Partes* Review

Solmetex, LLC (“Patent Owner”) filed a request for discretionary denial (Paper 6, “DD Req.”) in the above-captioned cases, and Ascentcare Dental Products, Inc. (“Petitioner”) filed an opposition (Paper 8, “DD Opp.”).<sup>1</sup>

After considering the parties’ arguments and the record, and in view of all relevant considerations, discretionary denial of institution is appropriate in these proceedings. 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 patents, it is unclear whether a final written decision in this proceeding will issue after the district court trial occurs. In particular, the projected final written decision due date in the Board proceedings is January 1, 2027. DD Opp. 11. The district court does not have a scheduled trial date, but time-to-trial statistics suggest that the trial could begin before the projected final written decision due date. DD Req. 17. As such, these considerations neither favor nor counsel against discretionary denial.

Other considerations, however, favor discretionary denial. In particular, Patent Owner persuasively demonstrates that Petitioner relies on references that were considered by the patent examiner during prosecution of the challenged patents or cited by the Patent Owner during prosecution. DD Req. 4–6. Petitioner does not address Patent Owner’s arguments that the same prior art was previously presented to the Office. 35 U.S.C. § 325(d). Nor has Petitioner persuasively demonstrated that the Office erred in evaluating this art. *Advanced Bionics, LLC v. MED-EL*

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<sup>1</sup> Citations are to papers in IPR2025-01065. The parties filed similar papers in PGR2025-00058.

*Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 8 (PTAB Feb. 13, 2020) (precedential). Rather, Petitioner merely disagrees with the Examiner’s treatment of the art without showing material error. DD Opp. 6–10. “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.” See *Advanced Bionics*, Paper 6 at 9. Petitioner’s assertion is insufficient to demonstrate material error by the Office. Under these circumstances, discretionary denial is appropriate.

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 Petitions are denied under 35 U.S.C. §§ 314(a) and 325(d).

In consideration of the foregoing, it is:

ORDERED that Patent Owner’s requests for discretionary denial are *granted*; and

FURTHER ORDERED that the Petitions are *denied*, and no trial is instituted.

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