

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

LIFEVAC, LLC,
Petitioner,

v.

DCSTAR INC.,
Patent Owner.

IPR2025-00454
Patent 11,478,575 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
Referring the Petition to the Board

DCSTAR Inc. (“Patent Owner”) filed a request for discretionary denial (Paper 6, “DD Req.”) in the above-captioned case, and LifeVac, LLC (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 not appropriate in this proceeding. This determination is based on the totality of the evidence and arguments the parties have presented.

Patent Owner asserts that this Petition should be denied because Petitioner previously challenged U.S. Patent No. 11,478,575 B1 (“the ’575 patent”) in PGR2023-00032, and that petition was denied on the merits. DD Req. 12–24 (citing *General Plastic Industrial Co., Ltd. v. Canon Kabushiki Kaisa*, IPR2016-01357, Paper 19, at 17–18 (PTAB Sept. 6, 2017) (precedential)); *LifeVac, LLC v. DCSTAR Inc.*, PGR2023-00032, Paper 11 (PTAB Nov. 29, 2023). Petitioner’s earlier challenge, however, did not result in a final written decision. *LifeVac, LLC*, PGR2023-00032, Paper 2. Additionally, petitions for post-grant review are favored because they must be filed no later than nine months from the grant of the patent (35 U.S.C. § 321(c)), are close in time to examination, and occur before expectations in the patent rights are strongly settled. As such, petitions for *inter partes* review will generally not be discretionarily denied because of an earlier petition for post-grant review when the post-grant review was not instituted.

Furthermore, Patent Owner’s argument that the Petitioner is advancing the same or substantially the same prior art or arguments as in PGR2023-00032 is not persuasive, and, accordingly, discretionary denial under 35 U.S.C. § 325(d) is inappropriate. DD Req. 24–29; DD Opp. 21–25.

Although certain arguments are highlighted above, the determination not to exercise discretion to deny institution is based on a holistic assessment of all of the evidence and arguments presented. Accordingly, the Petition is referred to the Board to handle the case in the normal course, including by issuing a decision on institution addressing the merits and other non-discretionary considerations, as appropriate.

In consideration of the foregoing, it is:

ORDERED that Patent Owner's request for discretionary denial is *denied*;

FURTHER ORDERED that the Petition is referred to the Board; and

FURTHER ORDERED that neither party shall file a request for rehearing or Director Review of this decision until the Board issues a decision on institution.

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Patent 11,478,575 B1

FOR PETITIONER:

Patrick Muldoon
Brian Siff
Patrick McPherson
Donald English
DUANE MORRIS LLP
pcmuldoon@duanemorris.com
bsiff@schiffhardin.com
pdmcpherson@duanemorris.com
djenglish@duanemorris.com
BDSiff@duanemorris.com

FOR PATENT OWNER:

Justin Krieger
Nicoletta Kennedy
Valerie Moore
Megan Saia
KILPATRICK TOWNSEND & STOCKTON LLP
jkrieger@kilpatricktownsend.com
nkennedy@kilpatricktownsend.com
vmoore@kilpatricktownsend.com
msaia@kilpatricktownsend.com