

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NUVASIVE, INC.,
Petitioner,

v.

ACANTHA LLC,
Patent Owner.

IPR2020-00684
IPR2020-00706
Patent RE43,008 E

Before TIMOTHY J. GOODSON, JAMES J. MAYBERRY, and
TIMOTHY G. MAJORS, *Administrative Patent Judges*.

MAYBERRY, *Administrative Patent Judge*.

ORDER¹
Conduct of the Proceeding
37 C.F.R. §§ 42.5, 42.20(d)

¹ This Order addresses issues that are the same in both listed cases. We do not authorize the parties to use this style heading for any subsequent papers at this time.

I. BACKGROUND

On March 13, 2020, NuVasive, Inc. (“Petitioner”), filed a Petition requesting *inter partes* review of U.S. Patent No. RE43,008 E. Paper 2. On March 24, 2020, the Board designated *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469 (PTAB Feb. 13, 2020) (Paper 6), as precedential. *Advanced Bionics* sets forth a two-part framework for considering when the Board should exercise its discretion under 35 U.S.C. § 325(d) to deny a petition.

In its Preliminary Response, filed June 18, 2020, Patent Owner, Acantha LLC, asserts that we should exercise our discretion and deny institution under § 325(d) and addresses *Advanced Bionics*. Paper 7.

Because the Petition was filed prior to *Advanced Bionics* being designated as precedential and because Patent Owner addresses *Advanced Bionics*, we authorize the parties to submit additional briefing on the § 325(d) issue. We determine that this briefing would be helpful to the panel. *See* 37 C.F.R. § 42.20(d).

II. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner is authorized to file a Reply Brief of no more than seven (7) pages, to be filed no later than July 1, 2020, limited to addressing 35 U.S.C. § 325(d) issues, including *Advanced Bionics*; and

FURTHER ORDERED that Patent Owner may file a Sur-reply Brief of no more than seven (7) pages, to be filed no later than July 8, 2020, and limited to responding to arguments in Petitioner’s Reply Brief.

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