

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BOE TECHNOLOGY GROUP CO., LTD.,

Petitioner,

v.

OPTRONIC SCIENCES LLC,

Patent Owner.

Case IPR2025-00239
U.S. Patent No. 8,502,757

**PATENT OWNER'S SUPPLEMENTAL BRIEF IN SUPPORT OF
DISCRETIONARY DENIAL**

PATENT OWNER'S EXHIBIT LIST

No.	Description
2001	Docket Navigator Stay Statistics
2002	February 14, 2025, DCO
2003	BOE's April 1, 2025 Invalidity Contentions
2004	Exhibit C-9 to BOE's April 1, 2025 Invalidity Contentions
2005	Exhibit C-5 to BOE's April 1, 2025 Invalidity Contentions
2006	Exhibit 2026 of IPR2024-01133, Dr. Bretschneider's Declaration
2007	Exhibit 2020 of IPR2024-01130, Dr. Bretschneider's Declaration
2008	Exhibit C-6 to BOE's April 1, 2025, Invalidity Contentions
2009	Docket Navigator Median Time-to-Trial Statistics for the Eastern District of Texas
2010	<i>Dabico Airport Solutions Inc. v. Axa Power Aps</i> , IPR2025-00408 (Paper 21)
2011	US8502757B2, GOOGLE PATENTS, available at https://patents.google.com/patent/US8502757B2/en?q=8%2c502%2c757 (accessed July 3, 2025).
2012	BOE Technology, WIKIPEDIA, available at https://en.wikipedia.org/wiki/BOE_Technology (accessed July 3, 2025).

TABLE OF AUTHORITIES

Cases

Dabico Airport Solutions Inc. v. Axa Power Aps,
IPR2025-00408, Paper 21 (P.T.A.B., June 18, 2025) 1, 2

Irythm Technologies, Inc. v. Welch Allyn, Inc.,
IPR2025-00363 (Paper 10) (P.T.A.B., June 6, 2025) 2

Statutes

35 U.S.C. § 286..... 1

Patent Owner filed its request for discretionary denial on June 11, 2025. (Paper 7). On June 18, 2025, the Director published a decision granting Patent Owner's Request for Discretionary Denial and Denying Institution of *Inter Partes* Review in *Dabico Airport Solutions Inc. v. Axa Power Aps*, IPR2025-00408, Paper 21 (P.T.A.B., June 18, 2025) ("*Dabico*"). Ex. 2010. Patent Owner submits that *Dabico* further supports its request that the Director deny institution in the instant proceeding.

In *Dabico*, the Director denied institution after reviewing the totality of the evidence, holding that the Office is "disinclined to disturb the settled expectations" of the patent owner in the absence of persuasive reasons why the Office should review the challenged patent. Ex. 2010 at 3. The Director held that settled expectations were created because "the challenged patent has been in force almost eight years[.]" *Id.* at 2. The Director further stated, "[a]lthough 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." *Id.* at 3. The Director emphasized consistency with the "other approaches to settled expectations and incentives, for example, for filing infringement lawsuits." *Id.* (citing, *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."). *Dabico* further explains that "actual

notice of a patent or of possible infringement is not necessary to create settled expectations.” *Id.* at 3. *Dabico* builds on *Irythm Technologies, Inc. v. Welch Allyn, Inc.*, IPR2025-00363 (Paper 10) . In *Irythm*, the USPTO denied institution because the Petitioner had long been aware patents being challenged. *Id.* at 3. The *Irythm* petitioner “cited the then-pending application . . . in an Information Disclosure Statement. . . . Petitioner’s awareness of Patent Owner’s applications and failure to seek early review of the patents favors denial and outweighs the above-discussed considerations.” *Id.*

The settled expectations of the ’757 Patent are stronger than those in *Dabico*. As highlighted in Patent Owner’s discretionary denial brief (Paper 7), the ’757 Patent has been in force since 2013 and was filed in 2011. Ex. 1001 at 1. The ’757 Patent has therefore been in force for ***nearly twelve (12) years***—almost four years longer than the patent in *Dabico* and double the length of statutory damages for infringement actions, as cited by the Director in *Dabico*. See Ex. 2010 at 3 (“in general, the longer the patent has been in force, the more settled expectations should be”). Further, Patent Owner’s settled expectations are even stronger than those in *Dabico* because Petitioner has had a long and detailed knowledge of the patent—BOE cited the ’757 Patent in ***thirteen*** Chinese patents. Ex. 2011 at 6–7 (annotated with highlighting showing BOE’s native name citing the ’757 Patent in thirteen Chinese patents); *see also* Ex. 2012 (showing BOE’s native name).

When a patent has strong settled expectations like the '757 Patent, a petitioner must provide "persuasive reasoning" to disturb those settled expectations. *See* Ex. 2010 at 3. As described in Patent Owner's request for discretionary denial (Paper 7), no such reasoning exists here.

Accordingly, Patent Owner respectfully requests that the Director exercise discretion under Section 314(a) to deny institution for the reasons set forth in Patent Owner's request for discretionary denial (Paper 7) and in light of additional reasons submitted herein.

Date: July 3, 2025

Respectfully submitted,

/Jefferson Cummings/

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e)(1))

The undersigned hereby certifies that the above document was served on July 3, 2025, by filing this document through the P-TACTS system as well as delivering a copy via electronic mail upon the following attorneys of record for the Petitioner:

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