

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

HOME DEPOT U.S.A., INC.,
Petitioner,

v.

H2 INTELLECT LLC,
Patent Owner.

IPR2025-00480
Patent 8,433,296 B2

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

H2 Intellect LLC (“Patent Owner”) filed a request for discretionary denial (Paper 6, “DD Req.”) in the above-captioned case, and Home Depot U.S.A., Inc. (“Petitioner,” or “Home Depot”) filed an opposition (Paper 7, “DD Opp.”). With authorization, Patent Owner filed a Reply (Paper 9), and Petitioner filed a Surreply (Paper 10).

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.

Some considerations favor exercising discretion to deny institution. In particular, the projected final written decision due date in the Board proceeding is November 19, 2026. DD Req. 8. The district court’s scheduled trial date is April 20, 2026, and the time-to-trial statistics suggest trial will begin in October 2026. *Id.* at 8–10. As such, it is unlikely that a final written decision in this proceeding will issue before district court trial occurs, resulting in significant duplication of effort, additional expense for the parties, and a risk of inconsistent decisions. Additionally, there is insufficient evidence that the district court is likely to stay its proceeding even if the Board were to institute trial. Furthermore, the challenged patent has been in force for over twelve years, creating strong settled expectations for Patent Owner.

Petitioner argues with respect to settled expectations that the challenged patent has not been commercialized, asserted, marked, licensed, or otherwise applied in its technology space. DD Opp. 13. Petitioner argues that Patent Owner only previously targeted smartphones, tablets, and watches, whereas Petitioner, Home Depot, is the proprietor of a chain of hardware stores and did not have reason to anticipate assertion of the patent

against it. *Id.* Petitioner's arguments are persuasive. These considerations weigh against Patent Owner's settled expectations and weigh in favor of Petitioner's expectations, and outweigh the considerations favoring discretionary denial.

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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