

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

BERKSHIRE HATHAWAY ENERGY COMPANY,
INTERSTATE POWER & LIGHT COMPANY,
MIDAMERICAN ENERGY COMPANY,
PACIFICORP,
WEC ENERGY GROUP, INC., and
WISCONSIN POWER & LIGHT COMPANY,
Petitioner,

v.

BIRCHTECH CORP.,
Patent Owner.

IPR2025-00422 (Patent 10,668,430 B2)
IPR2025-00423 (Patent 10,668,430 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 Petitions to the Board

IPR2025-00422 (Patent 10,668,430 B2)
IPR2025-00423 (Patent 10,668,430 B2)

Birchtech Corp. (“Patent Owner”) filed a request for discretionary denial (Paper 16, “DD Req.”) in the above-captioned cases, and Berkshire Hathaway Energy Company, Interstate Power & Light Company, MidAmerican Energy Company, PacifiCorp, WEC Energy Group, Inc., and Wisconsin Power & Light Company (collectively, “Petitioner”) filed an opposition (Paper 20, “DD Opp.”).¹

After considering the parties’ arguments and the record, and in view of all relevant considerations, discretionary denial of institution is not appropriate in these proceedings. This determination is based on the totality of the evidence and arguments the parties have presented.

IPR2025-00422 and IPR2025-00423 present the same discretionary considerations as those presented in IPR2025-00274, IPR2025-00278, IPR2025-00280, and IPR2025-00281. *See, e.g., Berkshire Hathaway Energy Co. v. Birchtech Corp.*, IPR2025-00274, Paper 23 (Director July 2, 2025) (denying Patent Owner’s request for discretionary denial). Accordingly, that analysis is incorporated here. *Id.* at 2–3.

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 Petitions are referred to the Board to handle the cases in the normal course, including by issuing decisions on institution addressing the merits and other non-discretionary considerations, as appropriate.

In consideration of the foregoing, it is:

¹ Citations are to papers in IPR2025-00422. The parties filed similar papers in IPR2025-00423.

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

FURTHER ORDERED that the Petitions are 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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