

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

THERABODY, INC.,
Petitioner,

v.

DATAFEEL INC.,
Patent Owner.

PGR2025-00026
Patent 12,036,174 B1

Before KALYAN K. DESHPANDE,¹ *Acting Deputy Chief Administrative Patent Judge.*

DECISION
Referring the Petition to the Board

¹ Coke Morgan Stewart, Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office, is recused and took no part in this decision. The Acting Director has delegated her authority in a Notice of Delegation. See <https://www.uspto.gov/sites/default/files/documents/deshpande-delegation-letter.pdf>.

DataFeel Inc. (“Patent Owner”) filed a request for discretionary denial (Paper 7, “DD Req.”) in the above-captioned case, and Therabody, Inc. filed an opposition (Paper 9, “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.

In particular, the projected final written decision due date is August 27, 2026. *See* DD Req. 6. The district court has not yet scheduled a trial date. *Id.* at 5. As such, it is likely that a final written decision in this proceeding will issue before the district court trial occurs. Furthermore, the challenged patent issued on July 16, 2024, and Petitioner filed its Petition on January 17, 2025. Early challenges favor robust, predictable patent rights and weigh against discretionary denial. Further, 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. *LifeVac, LLC v. DCSTAR Inc.*, IPR2025-00454, Paper 11 at 2 (Director July 11, 2025).

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:

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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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