

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

BE SMARTER, LLC AND JAMES GUERRA,
Petitioner,

v.

YONDER, INC.,
Patent Owner.

IPR2025-00970
Patent 9,819,788 B2

Before COKE MORGAN STEWART, *Deputy Under Secretary of
Commerce for Intellectual Property and Deputy Director of the United
States Patent and Trademark Office.*

DECISION
Denying Institution of *Inter Partes* Review

Yonder, Inc. (“Patent Owner”) filed a request for discretionary denial (Paper 7, “DD Req.”) in the above-captioned case, and Be Smarter, LLC and James Guerra (collectively, “Petitioner”) filed an opposition (Paper 10, “DD Opp.”).

After considering the parties’ arguments and the record, and in view of all relevant considerations, discretionary denial of institution is appropriate in this proceeding. This determination is based on the totality of the evidence and arguments the parties have presented.

The projected final written decision due date in the Board proceeding is December 10, 2026. DD Req. 7–8. The district court’s scheduled trial date is September 21, 2026 (DD Req. 7–8; Ex. 2008), but Petitioner offers conflicting time-to-trial statistics that suggest trial could begin as late as 2027 (DD. Opp. 17–18). As such, it is not clear whether a final written decision in this proceeding will issue before the district court trial occurs. The parties, however, have made meaningful investments in the district court proceeding. DD Req. 8–10. For example, the parties have exchanged infringement and invalidity contentions, and a *Markman* hearing is scheduled to occur before the due date for an institution decision. *Id.*

Additionally, the challenged patent has been in force for approximately eight years, creating settled expectations for Patent Owner, and Petitioner does not provide persuasive reasoning why an *inter partes* review is an appropriate use of Board resources. *Dabico Airport Sols. Inc. v. AXA Power ApS*, IPR2025-00408, Paper 21 at 2–3 (Director June 18, 2025).

Although certain arguments are highlighted above, the determination to exercise discretion to deny institution is based on a holistic assessment of all of the evidence and arguments presented. Accordingly, the Petition is denied under 35 U.S.C. § 314(a).

IPR2025-00970
Patent 9,819,788 B2

In consideration of the foregoing, it is:

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

FURTHER ORDERED that the Petition is *denied*, and no trial is instituted.

IPR2025-00970
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