

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ASCENTCARE DENTAL PRODUCTS, INC.
Petitioner

v.

SOLMETEX, LLC
Patent Owner

Patent No. 11,589,969
Issue Date: February 28, 2023
Title: INTRAORAL DEVICE WITH MESH

Inter Partes Review No. IPR2025-01020

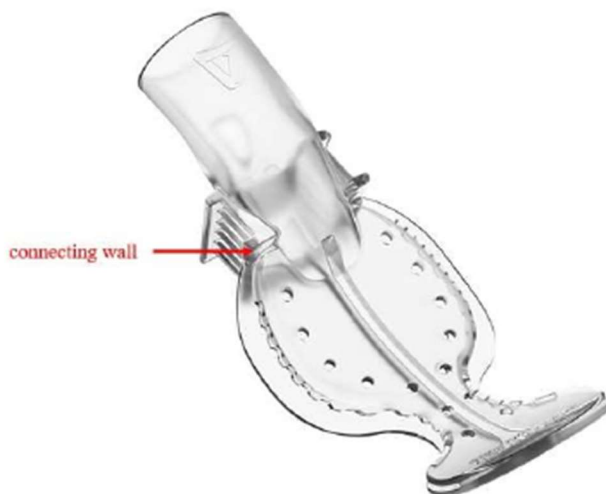
**PETITIONER'S SUR-REPLY TO PATENT OWNER'S BRIEF ON
DISCRETIONARY DENIAL**

“Strength of the unpatentability challenge” is one of the five relevant considerations listed in the director’s memo. Interim Processes for PTAB Workload Memorandum (“Memo”) dated March 26, 2025. Patent Owner’s Preliminary Patent Owner Response (“POPR”) demonstrates the strength of the Petition.

Patent Owner’s primary argument for validity hinges on a claim construction that reads in curvature from the specification into the recited “wave shape” in all independent claims. Patent Owner argues that the phrase “a wave shape comprising one or more waves and one or more crests” necessarily means that there is curvature to the wave shape. Paper 8, p. 19-20. However, nothing in the claim language specifies or even suggests curvature in the recited “wave shape”, and a PHOSITA would know that waves come in several shapes (e.g., triangle, square, sinusoidal). EX1003, ¶ 99. Black and Baughan clearly teach square waves, rendering the claims invalid.

Patent Owner argues that Petitioner’s construction of wave shape renders the language “comprising one or more waves and one or more crests” superfluous. Paper 8, pp. 21-23. However, that is false. This language specifies the *number* of crests and troughs in the wave shape; it does not unambiguously mean the wave shape has curvature. Black and Baughan both show a wave shape having the recited *number* of crests (one or more) and troughs (one or more), again rendering the claim invalid.

Patent Owner next argues that the specification supports this construction, pointing only to FIG. 1E, but this position reads in a limitation from the figures. Patent Owner uniquely takes the position that the “wave shape” is limited by what is expressly illustrated by the specification. Meanwhile, Patent Owner stretches and strains the written description for other claim language, including by suggesting that a bite block can be a “connecting wall” that connects an inferior edge of the anterior wall to the inferior edge of the posterior wall or a superior edge of the anterior wall to the superior edge of the posterior wall. EX1011, p. 7; *see also* EX1001, 3:44-54.



Finally, Patent Owner argues that the prosecution history supports this construction. However, the Examiner never expressed that he understood the term “wave shape” to mean a curved shape. Patent Owner’s citations to the prosecution history where the Examiner says that Black does not teach a “bridge structure” relate to claim language specifying that the bridge structure is *unconnected* to the anterior

wall. EX1015, 109-11; EX1002, 247; EX1002, 349-50. Petitioner has never suggested that Black teaches a bridge structure only connected to the posterior wall. So, the Examiner found that Black didn't teach a bridge structure *unconnected* to the anterior wall, not that Black fails to teach a curved bridge structure. In fact, the examiner found that Black *did* teach a bridge structure multiple times. *E.g.*, EX1015, pp. 51-52; EX1015, pp. 109-111.

Finally, Petitioner demonstrated that the Examiner erred in failing to consider a square wave shape to be a wave shape. If Patent Owner intended to limit themselves to a wave shape with curves, it should have done so with clear claim language, not *post hoc* claim construction arguments in response to invalidity concerns.

As such, Petitioner's merits are exceptionally strong because they rely on the plain and ordinary meaning and the correct construction of "wave shape". Patent Owner's arguments for validity hinge on a clearly incorrect and flatly illogical construction, thereby demonstrating the weakness of Patent Owner's position. Thus, this factor strongly favors institution.

Respectfully submitted,

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By: /Nathan P. Sportel/
Nathan P. Sportel, Reg. No: 67,980
Brandon Griffith, Reg. No: 74,934
Jacob Cowdrey, Reg. No: 81,803
MILLER JOHNSON

Patent No. 11,589,969
Paper 10

45 Ottawa Ave SW, Suite 1100
Grand Rapids, MI 49503
(616) 831-1793 Telephone
(616) 831-1505 Facsimile
sporteln@millerjohnson.com
griffithb@millerjohnson.com

*Attorneys for Petitioner
Ascentcare Dental Products, Inc.*

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CERTIFICATE OF SERVICE

I hereby certify that on this the September 25, 2025, the foregoing Sur-Reply were served via email to the attorneys of record for the '969 Patent at the following address:

Angelo Christopher, achristopher@nixonpeabody.com

Daniel Burnham, dburnham@nixonpeabody.com

NIXON PEABODY

70 West Madison St., Suite 5200, Chicago, IL 60602

Respectfully submitted,

By: /Nathan P. Sportel/

Nathan P. Sportel

Reg No. 67,980

Lead Counsel for Petitioner