

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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NEVRO CORP.,  
Petitioner,

v.

BOSTON SCIENTIFIC NEUROMODULATION CORP.,  
Patent Owner.

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Case No. IPR2018-00147  
Patent No. 8,650,747 B2

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Before HUBERT C. LORIN, MICHAEL W. KIM, and  
AMANDA F. WIEKER, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION  
Denying Institution of *Inter Partes* Review  
35 U.S.C. § 314

## I. INTRODUCTION

### A. Background

Nevro Corp. (“Petitioner”) filed a Petition requesting *inter partes* review of claims 1–19 of U.S. Patent No. 8,650,747 B2 (Ex. 1001, “the ’747 patent”) pursuant to 35 U.S.C. §§ 311–319. Paper 2 (“Pet.”). Boston Scientific Neuromodulation Corp. (“Patent Owner”) filed a Preliminary Response to the Petition (Paper 6, “Prelim. Resp.”).

We have authority under 35 U.S.C. § 314.

Upon consideration of the arguments and evidence presented by Petitioner and Patent Owner, we are not persuaded that Petitioner has demonstrated, under 35 U.S.C. § 314(a), a reasonable likelihood that it would prevail in showing the unpatentability of any of the challenged claims. Accordingly, we do not institute an *inter partes* review of any claim.

### B. Related Proceedings

Petitioner notifies us that “[t]he ’747 patent is the subject of one civil action: *Boston Scientific Corporation et al. v. Nevro Corp.*, Case No. 1:16-cv-01163 (D. Del.), filed December 9, 2016.” Pet. 62; *see also* Paper 4, 2 (indicating the same).

### C. The ’747 patent (Ex. 1001)

#### 1. Effective Filing Date

Petitioner indicates that the earliest priority date of the ’747 patent is January 11, 2005. Pet. 5. This is in accord with the information recited on the cover of the ’747 patent. Ex. 1001, (60).

## 2. Disclosure

The '747 patent, titled “Electrode Array Assembly and Method of Making Same,” discloses a “stimulation lead assembly for making a lead” related to implantable leads for providing electrical stimulation used to treat a variety of maladies. Ex. 1001, (57), 1:14–22. According to the patent,

[i]n general, it is desirable to make the lead efficiently, with the fewest number of process steps, maximize the manufacturing yield, and hence reduce the cost of goods of building the leads. There is thus a continual need to improve the design of a percutaneous lead in order to improve its performance and to improve the method of manufacturing the lead.

Ex. 1001, 1:67–2:6.

In one embodiment, relevant to what is claimed, during manufacture, a void space in a part of a lead assembly is filled with nonconductive material (e.g., a monofilament) and “then placed into a heat.” Ex. 1001, 6:11–17.

## 3. Claims

The '747 patent has 19 claims, all of which are challenged.

Independent claim 1 is illustrative.

1. A stimulation lead assembly for making a lead, the assembly comprising:

a lead body defining a central lumen extending along the lead body and a plurality of conductor lumens disposed circumferentially around the central lumen and extending along the lead body;

a plurality of electrically conductive contacts disposed along an end of the lead body, wherein a portion of each of the conductor lumens is disposed radially underneath the conductive contacts;

a plurality of conductor wires disposed in the conductor lumens, wherein at least one of the conductor wires is electrically connected to each conductive contact, wherein each conductor lumen comprises an occupied portion within which at least one of the conductor wires is disposed and an unoccupied portion in which none of the conductor wires is disposed, the unoccupied portion extending from an end of the conductor lumen; and

a solid, non-conductive material disposed, at least in part, radially underneath the conductive contacts and filling the unoccupied portion of at least one of the conductor lumens;

wherein the non-conductive material is thermally fused with the lead body from heat applied to the lead assembly, which heat is at a temperature to cause the nonconductive material to thermally reflow or melt.

Claim 11 is also directed to “[a] stimulation lead assembly for making a lead.” Claims 1 and 11 parallel each other, except that claim 11 is broader; for instance, while claim 11 calls for “a solid, non-conductive material disposed . . . within portions of the conductor lumens not occupied by conductor wire,” claim 1 further requires “the unoccupied portion extending from an end of the conductor lumen.” *Compare* Ex. 1001, 8:21–46, *with id.* at 9:4–21.

Claims 2–10 depend from claim 1, and claims 12–19 depend from claim 11.

#### *D. Asserted References*

Petitioner relies on the following references:

Name	Reference	Ex. No.
Stolz	U.S. Patent Application Publication No. 2003/0199950 A1, published Oct. 23, 2003	1005

Ormsby	PCT Application Publication No. WO 00/35349, published June 22, 2000	1006
Black	U.S. Patent No. 6,216,045 B1, granted Apr. 10, 2001	1008

### *E. Grounds Asserted*

Petitioner contends that claims 1–19 of the '747 patent are unpatentable under the following ground:

Basis	Prior Art	Claims
§ 103	Stolz, Ormsby, and Black	1–19

Pet. 5.

Petitioner also relies on the Declaration of Michael Plishka (Ex. 1003) as support for the various contentions.

## II. ANALYSIS

### *A. Claim Construction*

This Decision requires construing the claim phrase “radially underneath.” This is so because a major contention in this case is whether the cited prior art discloses “a solid, non-conductive material disposed, at least in part, *radially underneath* the conductive contacts.” *See* Ex. 1001, claim 1 (similarly claim 11).

The '747 patent specification does not provide an express definition for “radially underneath.” The phrase is recited in the Abstract and in some of the claims but is not otherwise mentioned. However, “radially” is commonly and ordinarily understood to mean like a radius. *See Webster’s New World Dictionary, Third College Edition*, 1988, p. 1107 (defining RADIAL as “2 of or situated like a radius”). Given that a circle’s radius

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