

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MEDTRONIC, INC. and MEDTRONIC VASCULAR, INC.,  
Petitioners,

v.

TELEFLEX INNOVATIONS S.À.R.L.  
Patent Owner.

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IPR2020-00131  
Patent RE45,380

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Before SHERIDAN K. SNEDDEN, JON B. TORNQUIST, and  
CHRISTOPHER G. PAULRAJ, *Administrative Patent Judges*.

TORNQUIST, *Administrative Patent Judge*.

DECISION

Denying Petitioner's Request on Rehearing of Decision  
Denying Institution of *Inter Partes* Review  
*35 U.S.C. § 42.71(d)*

## INTRODUCTION

Medtronic, Inc. and Medtronic Vascular, Inc. (collectively “Petitioner”) filed a request for rehearing (Paper 21, “Req. Reh’g”) of our decision (Paper 20, “Decision” or “Dec.”) denying institution of *inter partes* review of claims 25–39 of U.S. Reissue Patent RE45,380 (Ex. 1801, “the ’380 patent”). Patent Owner, Teleflex Innovations S.À.R.L., filed a Response to Petitioner’s request for rehearing. Paper 22.

## STANDARD FOR REHEARING

Pursuant to 37 C.F.R. § 42.71(d):

A party dissatisfied with a decision may file a single request for rehearing without prior authorization from the Board. The burden of showing a decision should be modified lies with the party challenging the decision. The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply.

When reconsidering a decision on institution, we review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). An abuse of discretion exists where a “decision [i]s based on an erroneous conclusion of law or clearly erroneous factual findings, or . . . a clear error of judgment.” *PPG Indus. Inc. v. Celanese Polymer Specialties Co.*, 840 F.2d 1565, 1567 (Fed. Cir. 1988).

## ANALYSIS

The Petition in IPR2020-00131 was the fourth filed by Petitioner against the ’380 patent and is identified by Petitioner as “Petition 2B.” Paper 2, 2. The other three petitions are identified by Petitioner as “Petition 1A,” “Petition 1B,” and “Petition 2A” and assigned case numbers IPR2019-00128, IPR2019-00129, and IPR2019-00130, respectively. *Id.* In its papers,

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Petitioner asserted that the fourth petition challenging claims of the '380 patent was justified because Petitions 1A and 1B rely on a primary reference to which Patent Owner has “raised a priority date issue” and Petition 2B, in contrast to Petition 2A, addresses claims that are in means-plus-function format. *Id.* at 2–4 (quoting *Microsoft Corp. v. IPA Techs., Inc.*, IPR2019-00810, Paper 12 at 15 (PTAB Oct. 16, 2019)).

We did not find Petitioner’s arguments related to the current Petition persuasive because Petition 1B contains grounds addressing every means-plus-function claim challenged in Petition 2B, based on a reference that has a filing date that is prior to Patent Owner’s asserted date of conception and reduction to practice. Dec. 5. Petitioner does not disagree with this analysis or point to any facts or discussion in the Petition that the Board misapprehended or overlooked. Instead, Petitioner asserts that in IPR2020-00127 (challenging a related patent) and in IPR2020-00130 (Petition 2A), the Board found that Petitioner had demonstrated a reasonable likelihood that claims reciting, *inter alia*, a coaxial lumen with an inner diameter that is not more than one French smaller than the inner diameter of the guide catheter, would have been obvious over the combined disclosures of Kontos, Adams, and Takahashi. Req. Reh’g 3–4. And because Petitioner considers the Kontos, Adams, and Takahashi ground challenging claims 32 and 33 in the current Petition nearly identical to the grounds found to present a reasonable likelihood of success in IPR2020-00127 and Petition 2A, Petitioner contends there is a possibility that nearly identical claims are determined to be “unpatentable in IPR2020-00127 and -00130, but not in IPR2020-00131.” *Id.* at 4.

Petitioner contends that because there is considerable overlap between the grounds raised in Petition 2B, IPR2020-00127, and Petition 2A, instituting an *inter partes* review in this case would not require analysis of additional prior art references or consideration of different obviousness arguments. Req. Reh'g 6–7. Nevertheless, Petitioner offers to streamline this proceeding by limiting the Petition to claims 32 and 33, if rehearing is granted. *Id.* at 8.

We instituted review of claims 32 and 33 in IPR2020-00129 (Petition 1B). *See* IPR2020-00129, Paper 22, 7, 38. Thus, Petitioner will have an opportunity to address the patentability of those claims in that proceeding. *Id.* at 7. Any potential for inconsistent results between the proceedings is the result of Petitioner's strategic decisions as to how to separate its grounds and arguments between four different petitions.

Petitioner's offer to limit its challenge to claims 32 and 33 simply comes too late. It is an inefficient use of the Board's and Patent Owner's time and resources for Petitioner to challenge claims of a single patent in four separate IPR petitions and then, only after seeing the Board's institution decisions, agree to limit the scope of a petition in a request for rehearing.

For the foregoing reasons, we determine that Petitioner has not established that we misapprehended or overlooked any matter in declining to institute an *inter partes* review. Nor has Petitioner shown that the Decision is based on erroneous conclusions of law, clearly erroneous factual findings, or a clear error of judgment. *See PPG*, 840 F.2d at 1567. Thus, the request for rehearing is denied.

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ORDER

It is:

ORDERED that Petitioner's Request for Rehearing in IPR2020-00131  
is *denied*.

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