

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE  
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE  
UNITED STATES PATENT AND TRADEMARK OFFICE

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ANTHONY INC.,  
Petitioner,

v.

CONTROLTEC, LLC,  
Patent Owner.

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IPR2025-00559 (Patent 7,207,181 B2)  
IPR2025-00636 (Patent 7,421,847 B2)

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

DECISION  
Referring the Petitions to the Board

ControlTec LLC (“Patent Owner”) filed a request for discretionary denial (Paper 7, “DD Req.”) in the above-captioned cases, and Anthony, Inc. (“Petitioner”) filed an opposition (Paper 9, “DD Opp.”).<sup>1</sup> With authorization, Patent Owner filed a reply (Paper 10, “DD Reply”) and Petitioner filed a sur-reply (Paper 11, “DD Sur-reply”).

After considering the parties’ arguments and the record, and in view of all relevant considerations, discretionary denial of institution is not appropriate in these proceedings. This determination is based on the totality of the evidence and arguments the parties have presented.

In particular, Petitioner provides persuasive reasoning, supported by evidence, that the Office erred in a manner material to the patentability of the challenged patents during patent examination, and, accordingly, discretionary denial under 35 U.S.C. § 325(d) is not appropriate. Specifically, at the beginning of patent examination, the patent examiner issued a restriction requirement for the application that eventually became the challenged patents. Ex. 1002, 72. Patent Owner elected a group of claims and filed a divisional patent application. *Id.* at 36. The patent examiner issued a notice of allowance of both patent applications as the first office action. *Id.* at 14. Petitioner persuasively explains that the patent examiner erred by overlooking the teachings of Carter.<sup>2</sup> Although the challenged patents have been in force for approximately eighteen and seventeen years, Petitioner appears to show a material error by the Office, and it is an appropriate use of Office resources to review the potential error.

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<sup>1</sup> Citations are to papers in IPR2025-00559. The parties filed similar papers in IPR2025-00636.

<sup>2</sup> U.S. Patent No. 7,137,262 B2, issued Nov. 21, 2006 (Ex. 1004).

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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 Petitions are referred to the Board to handle the cases 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:

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

FURTHER ORDERED that the Petitions are 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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