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# PTAB designates as precedential a Director Review decision addressing § 325(d)

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## Patent Trial and Appeal Board



### PTAB designates as precedential a Director Review decision clarifying the analysis under 35 U.S.C. § 325(d)

#### **Ecto World, LLC v. RAI Strategic Holdings, Inc., IPR2024-01280, Paper 13 (May 19, 2025) (precedential as to § A)**

This Director Review decision addresses discretion to deny institution of an inter partes review under 35 U.S.C. § 325(d) and clarifies how the Patent Trial and Appeal Board (PTAB) applies the Advanced Bionics and Becton Dickinson precedent.

The decision explains that:

- Challenging claims using the same prior art that was previously presented on an Information Disclosure Statement (IDS) is sufficient to satisfy the first part of the Advanced Bionics framework.
- A petitioner must provide an analysis under the second part of Advanced Bionics when the asserted prior art is on an IDS, even if the examiner did not apply the reference in a rejection.
- Under part two of Advanced Bionics, a petitioner must explain, with reference to Becton Dickinson factors (c), (e), and (f), how the examiner erred in overlooking the prior art.

The decision also explains that, even if a petitioner fails to make a persuasive argument that the examiner materially erred, a petitioner may argue that discretionary denial is not appropriate under Becton Dickinson factor (f), for example, based on the volume of the references in the IDS and applicant information or assistance provided to the examiner regarding the relevance of references.

This Director Review decision vacates the decision denying institution and remands the case for further proceedings.

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