

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SATTLER TECH CORPORATION,  
Petitioner,

v.

YAQI LYU,  
Patent Owner.

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PGR2021-00095  
Patent D910,645 S

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Before KEN B. BARRETT, GRACE KARAFFA OBERMANN, and  
SCOTT A. DANIELS, *Administrative Patent Judges*.

DANIELS, *Administrative Patent Judge*.

DECISION

*Denying Institution of Post Grant Review*  
*35 U.S.C. § 325(a)(1); 37 C.F.R. § 42.201*

I. INTRODUCTION

Sattler Tech Corporation, (“Petitioner,” or “Sattler”) filed on June 9, 2021, a Petition requesting post-grant review of U.S. Design Patent D910,645 S (“the ’645 patent,” Ex. 1001). Paper 1 (“Pet.”). The Petition challenges the patentability of the sole claim of the ’645 patent on the grounds of anticipation under 35 U.S.C. § 102(a). Yaqi Lyu (“Patent

Owner”) did not file a Preliminary Response, enter an appearance of counsel, or respond to the filing of the Petition.

Sattler identifies itself as the real party-in-interest and indicates that the ’645 patent is at issue in *Sattler Tech Corp. v. Yaqi Lyu*, No. 1:21-cv-00471-LO-IDD in the United States District Court, Eastern District of Virginia. Pet. 2. The Virginia lawsuit is a Complaint for Declaratory Judgement of Patent Non-Infringement and Invalidity of the ’645 patent, filed by Sattler, against Yaqi Lyu. Ex. 3001 (“Complaint”).

## II. LEGAL STANDARDS

Congress authorized post grant review proceedings in Section 6 of the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284, 305 (2011) (“AIA”), which provides under Chapter 32, in part:

### § 321 Post–grant review

(a) IN GENERAL –Subject to the provisions of this chapter, a person who is not the owner of a patent may file with the Office a petition to institute a post-grant review of the patent.

AIA § 6(d). Thus, the AIA provides for post grant review proceedings to employ all the statutory standards and procedures promulgated under 35 U.S.C. §§ 321–29. 35 U.S.C. § 325(a)(1) therefore applies, and states in part:

(1) POST–GRANT REVIEW BARRED BY CIVIL ACTION – A post-grant review may not be instituted under this chapter if, *before the date on which the petition for such a review is filed*, the petitioner or real party in interest filed a civil action challenging the validity of a claim of the patent.

35 U.S.C. § 325(a)(1) (emphasis added); *see SecureBuy LLC v. CardinalCommerce Corp.*, CBM2014-00035 (PTAB April 25, 2014) (Paper 12) (Precedential) (Denial of Institution of CBM Patent Review).

### III. ANALYSIS

Sattler filed this Petition for post grant review of the '645 patent on June 9, 2021. Approximately two months prior, on April 15, 2021, Sattler filed the Virginia lawsuit seeking a declaratory judgment that the claim of the '645 patent is invalid based on prior art sales and activity prior to October 18, 2019. *See* Ex. 3002; *see also* Ex. 3001 ¶¶ 15, 25(a). Because the Board may not institute a post grant review of a challenged patent when the petitioner filed a civil action challenging the validity of a claim of the patent before the date on which the petition for review is filed, we deny the Petition in all respects. *See* 35 U.S.C. § 325(a)(1).

### IV. ORDER

For the foregoing reasons, it is:

ORDERED that the Petition is DENIED, and no trial is instituted.

PGR2021-00095  
Patent D910,645 S

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