

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CORPAK MEDSYSTEMS, INC. and HALYARD HEALTH, INC.,  
Petitioners

v.

KIRN MEDICAL DESIGN, L.L.C.,  
Patent Owner.

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Case IPR2017-01990

Patent 6,631,715 B2

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**PETITIONER'S REPLY TO PRELIMINARY RESPONSE**

**TABLE OF AUTHORITIES**

*General Plastic Industrial Co. v. Canon Kabushiki Kaisha*,  
Case IPR2016-01357(P.T.A.B. Sept. 6, 2017)  
(Paper 19) (precedential)..... 1, 3, 4, 5

*Microsoft Corp. v. Bradium Techs. LLC*,  
Case IPR2016-00448 (P.T.A.B. July 25, 2016)  
(Paper 9) .....2, 3

*NetApp, Inc. v. Realtime Data LLC*,  
Case IPR2017-01354 (P.T.A.B. Nov. 14, 2017)  
(Paper 16) .....5

35 U.S.C. § 315(b).....4

35 U.S.C. § 325(d).....2, 3

**EXHIBITS**

- EXHIBIT 1001 U.S. Patent No. 6,631,715
- EXHIBIT 1002 U.S. Patent No. 5,185,005 (“Ballantyne”)
- EXHIBIT 1003 “A New Nasal Bridle for Securing Nasoentereal Feeding Tubes” by Jeffrey A. Meer
- EXHIBIT 1004 Declaration of Dr. Terry Layton
- EXHIBIT 1005 “Securing of intermediate duration feeding tubes” by W. Frederick McGuirt
- EXHIBIT 1006 “The Bridle: Increasing the Use of Nasoenteric Feedings” by Albert Barrocas
- EXHIBIT 1007 U.S. Patent No. 5,752,511 (“Simmons”)
- EXHIBIT 1008 U.S. Patent No. 5,097,827 (“Izumi”)
- EXHIBIT 1009 Patent Owner’s Initial Infringement Contentions
- EXHIBIT 1010 “Feeding Tube Anchor” by Albert Levenson
- EXHIBIT 1011 PCT International Application Publication No. WO 99/20334 (“Bierman”)
- EXHIBIT 1012 Confirmation of Exclusive Licensee Applied Medical Technology, Inc.’s Authority to Conduct *Inter Partes* Review
- EXHIBIT 1013 IPR2017-00646, Paper 9 (Decision) (P.T.A.B. July 26, 2017)
- EXHIBIT 1014 IPR2017-00646, Paper 1 (Petition) (P.T.A.B. January 19, 2017)
- EXHIBIT 1015 IPR2017-00646, Paper 7 (Preliminary Response) (P.T.A.B. April 28, 2017)

- EXHIBIT 1016 Declaration of Darlena H. Subashi for *Pro Hac Vice*
- EXHIBIT 1017 Transcript of Telephone Conference before the Board on  
January 8, 2018
- EXHIBIT 1018 IPR2017-00646, Exhibit 1004 (Declaration of Terry Layton,  
PH.D) (P.T.A.B. January 19, 2017)

Citing to *General Plastic Industrial Co. v. Canon Kabushiki Kaisha*, Exclusive Licensee Applied Medical Technology, Inc. (“AMT”) argues that the ’715 patent should be shielded from review. Case IPR2016-01357 (P.T.A.B. Sept. 6, 2017) (Paper 19) (precedential) (“*General Plastic*”). But “[t]here is no *per se* rule precluding the filing of follow-on petitions after the Board’s denial of one or more first-filed petitions on the same patent” and under the right circumstances, a second petition should be instituted. *General Plastic* at 15. Indeed, an analysis of the relevant factors, described below, leads to a conclusion that the petition in this proceeding should be instituted by the Board.

**Background.** On January 19, 2017, Petitioner filed a first Petition in IPR2017-00646. On April 28, 2017, AMT filed its POPR, and on July 26, 2017, the Board denied institution. Thirty-four days later, on August 29, 2017, Petitioner filed the present Petition. On October 18, 2017, *General Plastic* was designated precedential. On December 12, 2017, AMT filed its POPR in the present proceeding.

**Factor 1:** Petitioner filed a petition directed to the same claim of the same patent.

**Factor 2:** Petitioner was aware of the Ballantyne reference at the time of filing its first Petition, but was not aware of the later-asserted art at that time.

Petitioner discovered the Bierman reference on August 3, 2017, and the Simmons

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