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To: [Director PTABDecision Review](#)
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Subject: Petitioner's Request for Rehearing by the Director in Bio Imaging SAS d/b/a Vilber v. Spectral Instruments Imaging, LLC (IPR2023-00449)
Date: Friday, August 18, 2023 7:41:51 PM
Attachments: [Request for Dir Review IPR2023-00449.pdf](#)

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RE: Petitioner's Request for Rehearing by the Director in Bio Imaging SAS d/b/a Vilber v. Spectral Instruments Imaging, LLC (IPR2023-00449) filed in P-TACTS

August 18, 2023

Dear Director:

Pursuant to the USPTO's guidance set forth on July 24, 2023 regarding its Director review process, Petitioner Bio Imaging SAS d/b/a Vilber ("Vilber") respectfully requests that the Director review the Institution Decision in IPR2023-00449. Petitioner's Request for Rehearing by the Director is attached to this email and has also been filed in P-TACTS.

Pursuant to the Board's guidance, Petitioner Vilber provides the following priority-ranked list of the issues for which review is sought.

1. The Board's *sua sponte* construction of "support structure" is incorrect as a matter of law and fact. The Board's explicit finding that "no specific structure is necessary" for the "support structure" is confusing and appears to be a definition based on function rather than specific structure. The Board's additional finding, that the support structure is "not required to understand or practice the present invention" in the Denial Decision is based on an incorrect reading of the '516 patent specification.
2. The Board's Denial Decision requires that the prior art disclose more detail than the '516 patent discloses regarding the "support structure." It rests upon clearly erroneous findings of fact, overlooking the presence of a fluorescence detecting unit 28 in Olympus and making contradictory findings which resulted in an incorrect finding that Olympus fails to anticipate the '516 patent.
3. The Board incorrectly determined that all independent claims (claims 1, 14, and 25) require "a camera" mounted to the "support structure." The Board's determination overlooks differences in claim language between independent claim 14 (positive recitations of "camera" and "support structure" and "being mounted to") and claim language in independent claims 1 and 25 ("camera" and "support structure" not positively recited and "being mountable to" instead of "being mounted to") to reach its incorrect determination.

This email shall also provide service of process of this P-TACTS Filing to Patent Owner (copied).

Ex. 3100

If there are any questions about this matter, please contact me at this email address or at (612) 373-6912. Thank you.

Regards,

Timothy E. Bianchi
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