

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG DISPLAY CO., LTD.,
Petitioner,

v.

PICTIVA DISPLAYS INTERNATIONAL LTD.,
Patent Owner.

Case No. IPR2024-01094
Patent No. 8,558,223 B2

PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. BACKGROUND	3
III. ARGUMENT.....	5
A. Petitioner Failed to Explain Inconsistent Arguments and Expert Testimony in the District Court Proceeding.....	5
B. The Inconsistencies Require Vacatur and Termination.....	10
C. The Board Improperly Disregarded or Ignored the Contradictory Expert Testimony and Claim Construction Arguments	11
D. The Board Adopted a New Theory Improperly Made in Reply	14
IV. CONCLUSION.....	15

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Alacritech, Inc. v. Intel Corp.</i> , 966 F.3d 1367 (Fed. Cir. 2020)	13
<i>American Airlines, Inc. v. Intellectual Ventures I LLC</i> , IPR2025-01055, Paper 11 (PTAB Nov. 21, 2025).....	6
<i>Aqua Prods., Inc. v. Matal</i> , 872 F.3d 1290 (Fed. Cir. 2017) (<i>en banc</i>)	13
<i>Ariosa Diagnostics v. Verinata Health, Inc.</i> , 805 F.3d 1359 (Fed. Cir. 2015)	15
<i>Dell Inc. v. Acceleron, LLC</i> , 884 F.3d 1364 (Fed. Cir. 2018)	8
<i>Finesse Wireless LLC v. AT&T Mobility LLC</i> , No. 2024-1039, 2025 WL 2713518 (Fed. Cir. Sept. 24, 2025).....	11
<i>Generac Power Systems, Inc. v. Champion Power Equipment, Inc.</i> , IPR2025-00805, Paper 40 (Director Feb. 3, 2026).....	11
<i>Intelligent Bio-Systems, Inc. v. Illumina Cambridge Ltd.</i> , 821 F.3d 1359 (Fed. Cir. 2016)	15
<i>Interactive Commc’ns Int’l v. Blackhawk Network</i> , IPR2024-00465, Paper 40 (Director Oct. 9, 2025).....	11
<i>Orca Security Ltd. v. Wiz, Inc.</i> , IPR2025-01086, Paper 13 (PTAB Dec. 15, 2025)	6
<i>Pictiva Displays Int’l Ltd. v. Samsung Elecs. Co.</i> , No. 2:23-cv-0495, Dkt. 653 (E.D. Tex. Feb. 11, 2026).....	2, 5, 9, 11
<i>Pictiva Displays Int’l Ltd. v. Samsung Elecs. Co.</i> , No. 2:23-cv-0495 (E.D. Tex.) (Gilstrap, J.)	3
<i>Provisur Techs., Inc. v. Weber, Inc.</i> , 50 F.4th 117 (Fed. Cir. 2022)	13

<i>Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.</i> , IPR2025-00632, Paper 20 (Director Nov. 3, 2025).....	<i>passim</i>
<i>Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.</i> , IPR2025-00632, Paper 36 (Director Jan. 26, 2026)	6
<i>Revvo Techs., Inc. v. Tire Stickers LLC</i> , IPR23025-00631, Paper 34 (Director Feb. 3, 2026).....	6
<i>Samsung Elecs. Co. v. Wilus Institute of Standards & Technology Inc.</i> , IPR2025-00988, Paper 14 (PTAB Jan. 5, 2026)	6
<i>SAS Inst. Inc. v. Iancu</i> , 138 S. Ct. 1348 (2018).....	15
<i>Tesla, Inc. v. Intellectual Ventures II LLC</i> , IPR2025-00340, Paper 18 (Director Nov. 5, 2025).....	<i>passim</i>
<i>Ultratec, Inc. v. CaptionCall, LLC</i> , 872 F.3d 1267 (Fed. Cir. 2017)	14
<i>In re Universal Elecs., Inc.</i> , No. 22-1230, 2023 WL 3335536 (Fed. Cir. May 10, 2023).....	13

Rules

Rule 42.51(b)(1)(iii).....	5, 7
----------------------------	------

Other Authorities

37 C.F.R. § 42.6	17
37 C.F.R. § 42.51(b)(1)(iii).....	13
37 C.F.R. § 42.104	15

I. INTRODUCTION

Patent Owner Pictiva Displays International Ltd. respectfully requests Director Review of the Board’s Final Written Decision (Paper 42, “FWD”) finding certain claims of U.S. Patent No. 8,558,223 (EX1001, “the ’223 Patent”) unpatentable over Ma (EX1007). Director Review is necessary to discourage gamesmanship and ensure consistency with co-pending litigation.

In its Petition, Samsung and its expert, Dr. Rand, told the Board that Ma discloses the “joint vaporization” claim limitation. Pet. 59; EX1003, ¶ 141. Meanwhile, Dr. Kymissis, Samsung’s expert in the related district court litigation, reached the *opposite* conclusion, stating unequivocally that he “do[es] not agree that [Ma’s] process constitutes ‘joint vaporization.’” EX2051, ¶¶ 452-53. The Board did not address the conflicting testimony by Samsung’s experts. Instead, it adopted a new invalidity theory raised first in the Reply that “joint vaporization” was “at least obvious” in view of Ma’s disclosures. *See* FWD 15-16 (no reference to Kymissis’s analysis). In doing so, the Board also expressly disregarded EX2106, which includes additional inconsistent testimony by Dr. Kymissis. *See* FWD 31; Paper 37 (explaining EX2106’s relevance and Petitioner improper withholding of it).

The Board next accepted Petitioner’s representation that the district court’s construction of “metal complex” meant Liq (the metal complex disclosed in Ma) has a “central metal atom.” *See* FWD 8-9, 16-17; Paper 24 (“Reply”) at 23 (citing

EX2055 at 25), Pet. 58. But Samsung continues to argue—including at trial and in post-trial briefs—that Liq “cannot meet the ‘central metal atom’ limitation under its plain and ordinary meaning.” *Pictiva Displays Int’l Ltd. v. Samsung Elecs. Co.*, No. 2:23-cv-0495, Dkt. 653, at 12 (E.D. Tex. Feb. 11, 2026); Paper 19 (“POR”) at 56.

Petitioner also took inconsistent positions on the claim term “coordinate.” Samsung persuaded the district court to narrowly construe the term, but Petitioner’s expert, Dr. Rand, failed to apply that construction and instead treated “coordinate” very broadly. The Board again ignored the inconsistency. *See* POR 5; FWD 18-19.

The Office recently confirmed the importance of “reduc[ing] the risk of the Office and a district court rendering inconsistent decisions.” Notice of Proposed Rulemaking, 90 Fed. Reg. 48335, 48338 (Oct. 17, 2025). Consistent with that principle, the Director has issued several decisions “to minimize inconsistency in claim construction between forums.” *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20, at 4 (Director Nov. 3, 2025) (precedential); *see also Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00340, Paper 18 (Director Nov. 5, 2025) (informative). This IPR raises similar concerns.

Specifically, the FWD presents important issues of law and policy related to inconsistent arguments in co-pending litigation regarding claim construction and the teachings of alleged prior-art references. This proceeding provides an opportunity to reinforce *Revvo* and *Tesla* and extend their reasoning to such inconsistent expert

testimony. Director Review also provides an opportunity to address legal errors by the Board, including improperly disregarding (and permitting Petitioner to withhold) inconsistent evidence, and permitting new obviousness theories in Reply.

II. BACKGROUND

The '223 Patent relates to organic electronic devices such as OLEDs. It describes a novel and nonobvious way of obtaining an electron-conducting layer that has high conductivity, long service life, and uniform properties. Claim 1 recites an “electron-conducting layer ... obtained by joint vaporization of a metal complex, which comprises a central metal atom, with an organic compound,” specifically “a heteroaromatic compound which is conjugated with an aromatic compound via a C–C bond.” EX1001 at 19:10-23. Claim 2 requires that “the organic compound coordinates to the metal complex due to the joint vaporization.” *Id.* at 19:24-26.

Petitioner Samsung Display Co., Ltd. submitted a Petition for IPR of claims 1, 2-4, 6, and 8-14 of the '223 Patent (Paper 1) on July 2, 2024. The patent is also at issue in *Pictiva Displays Int'l Ltd. v. Samsung Elecs. Co.*, No. 2:23-cv-0495 (E.D. Tex.) (Gilstrap, J.), which involves Petitioner's real parties in interest. Pet. 2. The Board instituted review on January 23, 2025, rejecting discretionary denial arguments in view of Petitioner's *Sotera* stipulation and now-obsolete guidance. *See* Paper 11, at 10-11. The institution decision addressed only Ground II, which relies primarily on Ma. *See* Paper 11, at 20-21. The Board relied on a declaration submitted

after the Petition to find that Ma was prior art, even though Petitioner knew it could not secure the declarant's deposition. *See* EX3102. Ultimately, the FWD relies on a different declaration submitted with the Reply to find Ma is prior art. FWD 12-13.

The Petition presented only the following conclusory argument regarding “joint vaporization,” alleging that Ma “discloses” the limitation by attempting to equate Ma’s “co-deposition process” with claim 1’s recited “joint vaporization”:

Ma discloses that *the electron-conducting layer is obtained by joint vaporization of a metal complex with an organic compound* because the electron transport layer (ETL) was formed by joint vaporization of a metal complex (Liq) and an organic compound (BPhen).

Pet. 59. It quotes portions of Ma that mention “co-deposition,” as well as Dr. Rand’s declaration that parrots the Petition without explaining why “co-deposition” should be interpreted as “joint vaporization.” *See* EX1003, ¶ 141.

Meanwhile, Samsung’s district court expert, Dr. Kymissis, took the *opposite* position. He explained, for example, that he would agree that Ma discloses “joint vaporization” *only* if the accused products were found to infringe (which they were not), and clarified that he “do[es] not agree that [Ma’s] process constitutes ‘joint vaporization.’” EX2051, ¶¶ 452-53. Patent Owner flagged Samsung’s inconsistent expert opinions, as well as other deficiencies in Petitioner’s “joint vaporization” arguments. *See* POR 53-56; Paper 32 (“Sur-Reply”) at 19-22. Patent Owner also pointed out Samsung’s inconsistent positions on the terms “central metal atom” and

“coordinate.” *See* POR 4-5, 56-58, 61-62; Sur-Reply 13-14, 24-25.

Petitioner’s Reply did not deny the unequivocal statement of Samsung’s district court expert. *See* Reply 21-22. In addition, it withheld EX2106, the transcript of Dr. Kymissis’s deposition that took place after the POR but before Petitioner’s Reply, even though EX2106 was used as an exhibit at a deposition in this proceeding and Petitioner submitted other exhibits used at the deposition that it viewed as neutral or advantageous to its positions. *See* Paper 37. When Patent Owner submitted the missing exhibit with its Sur-Reply, Petitioner moved to strike it; and the Board stated that it disregarded Exhibit 2106. *See* FWD 31; Paper 37.

The Final Written Decision fails to address Samsung’s inconsistent expert testimony. The Board instead relied on Petitioner’s speculative characterization of the “most natural interpretation” of Ma as “sufficient to render joint vaporization at least obvious.” FWD 16. The Board also failed to appreciate that Samsung had continued to argue that Liq (the metal complex in Ma) has no central metal atom as required by the claims. *See* Pet. 58; POR 56; FWD 16-17; *Pictiva*, Dkt. 632 at 20; *id.*, Dkt. 653, at 12-14. The FWD also did not address Samsung’s inconsistent interpretations of the claim term “coordinate.” *See* FWD 18-19.

III. ARGUMENT

A. Petitioner Failed to Explain Inconsistent Arguments and Expert Testimony in the District Court Proceeding

Following *Revvo* and *Tesla*, the Director has continued to clarify that

advancing inconsistent claim construction arguments before the Board and in related district-court proceedings is disfavored and requires sufficient explanation. *E.g.*, *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 36, at 4 (Director Jan. 26, 2026); *Revvo Techs., Inc. v. Tire Stickers LLC*, IPR23025-00631, Paper 34 (Director Feb. 3, 2026). Following this guidance, the Board has required petitioners to explain or abandon such inconsistent positions. *E.g.*, *Orca Security Ltd. v. Wiz, Inc.*, IPR2025-01086, Paper 13, at 8 (PTAB Dec. 15, 2025); *Am. Airlines, Inc. v. Intellectual Ventures I LLC*, IPR2025-01055, Paper 11, at 13 (PTAB Nov. 21, 2025); *Samsung Elecs. Co. v. Wilus Inst. of Standards & Tech. Inc.*, IPR2025-00988, Paper 14, at 6 (PTAB Jan. 5, 2026).

The same reasoning should extend to inconsistent expert testimony regarding disclosures in references asserted as prior art. *See Tesla*, IPR2025-00340, Paper 18, at 3 (rejecting “assertion that a petitioner should be permitted to raise inconsistent invalidity challenges in the two forums”); *Revvo*, IPR2025-00632, Paper 20, at 4 (“Allowing petitioners to continue this practice does not further the Office’s goal of providing greater predictability and certainty in the patent system.”). The Board’s contrary approach invites gamesmanship and results in inconsistent outcomes.

“Joint Vaporization” As explained above, both Samsung’s district court expert and Patent Owner’s IPR expert agreed that Ma does not disclose “joint vaporization” because it does not disclose sufficient information regarding the

configuration of Ma's evaporator. *E.g.*, EX1021 (Schanze) at 174:8-17 ("Ma does not provide sufficient information to define joint vaporization."); EX2106 (Kymissis) at 153:22-154:20 (testifying that he "can't say whether or not [Ma] represents joint vaporization," because "we need to know more details"). According to Dr. Kymissis, to understand how "joint vaporization" is performed, "it is at least necessary to understand basic parameters like: (i) applied temperature ranges, (ii) applied pressure ranges, and (iii) duration." EX2051, ¶ 1046. But Ma does not disclose an applied temperature range, and Petitioner has never contended that it does. *See* POR 56. Dr. Kymissis also testified that evaporating two materials at the same time will "not necessarily" result in joint vaporization because "[i]t really depends on the details of the deposition, the pressure, the reactivity of the two materials, [and] the degree of intermixing" as well as on "the structure of the evaporation sources and whether the plumes are allowed to interact in a way that permits that reaction to occur in the vapor phase." EX2106, at 81:21-82:3, 82:20-83:17. Patent Owner's expert, Dr. Schanze, agreed that "Ma does not provide sufficient information to define joint vaporization." EX1021, at 174:8-17; *see also* EX2041, ¶¶ 154-57; POR 54; Sur-Reply 20; Paper 41, at 84:5-87:24, 98:7-24.

Petitioner's Reply did not attempt to explain this conflict. *See* Reply 21-22. Moreover, it withheld Dr. Kymissis's deposition transcript from the Board in contravention to Rule 42.51(b)(1)(iii). *See* Paper 37. Petitioner then belatedly

attempted to address this issue at the hearing, suggesting that Dr. Kymissis’s statement that he “do[es] not agree that [Ma’s] process constitutes ‘joint vaporization’” (EX2051, ¶¶ 452-53) related to infringement and that Dr. Kymissis “can’t say whether or not [Ma] represents joint vaporization.” Paper 41, at 92:17-93:13. Those new arguments were untimely. *See Consolidated Trial Practice Guide* at II.M (limiting hearing to “arguments relied upon in the papers previously submitted”); *Dell Inc. v. Acceleron, LLC*, 884 F.3d 1364, 1369 (Fed. Cir. 2018) (“[T]he Board was obligated to dismiss Dell’s untimely argument ... raised for the first time during oral argument.”).

More importantly, Petitioner’s untimely arguments fail on the merits. First, Patent Owner explained how Dr. Kymissis disclaimed any teaching of “joint vaporization” in Ma to preserve his infringement argument. *See Paper 41*, at 98:7-24. Second, Petitioner’s counsel did not even attempt to address the many additional inconsistent statements by Dr. Kymissis. *E.g.*, EX2051, ¶ 1046 (regarding necessity of “applied temperature ranges,” which Ma does not disclose); EX2106, at 82:20-83:17 (need to know “the structure of the evaporation sources and whether the plumes are allowed to interact”). That testimony is equally problematic because, as Dr. Schanze explained, “Ma provides no information on its evaporator configuration, the position of the sources, or the degree of intersection, if any, of the plumes.” EX2041, ¶ 154. Third, admission by Petitioner’s counsel that Dr. Kymissis

could not determine whether Ma represents “joint vaporization” without additional (undisclosed) information underscores the inconsistent positions taken by Petitioner. Dr. Kymissis’s view (EX2106, at 153:22-154:20) is consistent with Dr. Schanze’s testimony and directly undermines Petitioner’s expert, Dr. Rand, who did not even attempt to reconcile his inconsistent testimony with Dr. Kymissis.

“Central Metal Atom” Samsung argued in the district court that Liq, the metal complex in Ma, has no central metal atoms, but argues the opposite here. *See, e.g.*, POR 56 (citing EX2052, at 49-57); Pet. 58 (allegedly adopting Pictiva’s position that Liq has “central” metal atom for IPR). The Board then mistakenly believed that the district court had resolved the dispute. *See* FWD 16-17. It has not, and Samsung continues to argue that Liq “cannot meet the ‘central metal atom’ limitation under its plain and ordinary meaning.” *Pictiva*, Dkt. 653, at 12. Samsung contends that “‘central metal atom’ is naturally understood ‘to be a relatively heavy atom which has multiple available electrons to bond to neighboring molecules.’” *Id.* at 13. Neither Dr. Rand nor Petitioner claims the light lithium atom in Liq meets this requirement. Instead, per Dr. Kymissis, “Lithium Does Not Enable Liq to Coordinate with Additional Ligands” and “Does Not Enable Liq to Have a High Disposition and Ability to Provide ‘Free’ Electrons.” EX2052, at 52-57; POR 56. Under Samsung’s interpretation, the Ma ground necessarily fails because if Ma’s Liq has no central atoms, it cannot be the claimed metal complex that is required to

“comprise[] a central metal atom.” EX1001, cl. 1, 19:19-20; *contra* FWD 16-17.

“Coordinate” Samsung persuaded the district court to narrowly construe “coordinate” to mean “form[s] a chemical bond between two atoms in which a shared pair has been supplied by one of the two atoms” (aka a dative bond). EX2055, at 29-30. Petitioner’s expert, Dr. Rand, however, applied no such construction in his analysis and treated “coordinate” instead as encompassing any interaction between any two atoms. *See* POR 5; Sur-Reply 24; EX2042, at 93:2-94:12, 211:22-212:14. In fact, Dr. Rand conceded that he did not determine the specific types of interactions between Liq and BPhen. POR 4-5, 61-62; Sur-Reply 24-25.

B. The Inconsistencies Require Vacatur and Termination

The Board’s failure to address these conflicting arguments and expert testimony undermines the credibility of the Final Written Decision and is inconsistent with the jury verdict in the related action. As Patent Owner explained, Samsung’s district court expert disagreed that Ma discloses the “joint vaporization” limitation to preserve a non-infringement argument. *See* Paper 41 (Oral Hearing Tr.) at 98:7-24 (discussing EX2051, ¶¶ 452-53). Samsung also argued in the district court that Liq has no central atoms while taking the opposite position here. *See* POR 56; EX2052, at 49-57. It also obtained a narrow construction of the term “coordinate” in the district court while taking an extremely broad view here. *Compare* EX2055, at 29-30, *with* EX2042, at 93:2-6, 94:10-12, 211:22-212:14.

As such, the Board reached a conclusion of unpatentability by accepting positions directly at odds with positions taken by Samsung to secure a non-infringement verdict in district court. *See Pictiva*, Dkt. 755 (Verdict Form) at 4 (finding claims 1, 2, and 9 of the '223 Patent not infringed by Samsung). That is precisely the type of inconsistency that undermines the integrity of the patent system. Because the Board's unpatentability determination rests on fundamentally contradictory and unexplained arguments and expert testimony, vacating the Final Written Decision and terminating the proceeding would be appropriate. *See, e.g., Interactive Commc'ns Int'l v. Blackhawk Network*, IPR2024-00465, Paper 40, at 3-4 (Director Oct. 9, 2025) (terminating IPR proceeding after vacating final written decision premised on expert who "gave conflicting testimony about how he proposed that the ordinarily skilled artisan would have modified [the prior art]"); *Finesse Wireless LLC v. AT&T Mobility LLC*, No. 2024-1039, 2025 WL 2713518, at *4 (Fed. Cir. Sept. 24, 2025) (finding "expert's self-contradictory testimony" insufficient to carry burden of proof); *Generac Power Sys., Inc. v. Champion Power Equip., Inc.*, IPR2025-00805, Paper 40, at 2-4 (Director Feb. 3, 2026) (vacating institution decisions that failed to consider the impact of *Revvo* and *Tesla* and denying petitions in view of inconsistent positions).

C. The Board Improperly Disregarded or Ignored the Contradictory Expert Testimony and Claim Construction Arguments

Remarkably, the FWD failed to include *any* discussion of either the

inconsistent expert testimony or Patent Owner’s arguments regarding that testimony, despite characterizing the question of whether Ma deposits Liq and BPhen on a substrate by joint vaporization as a “central dispute.” FWD 14. It in fact expressly disregarded some of the inconsistent testimony by Samsung’s district court expert (EX2106), which Patent Owner submitted with its Sur-Reply because Petitioner improperly withheld it. *See* FWD 31; Paper 37. The Board also unexpectedly misapprehended the district court’s *Markman* order and believed that it disposed of the inconsistent “central metal atom” theory. *See* FWD 16-17. It further ignored the inconsistency regarding “coordinate” and made no finding under Petitioner’s construction, which the district court adopted. *See* FWD 18-19; EX2055, at 29-30.

In denying Petitioner’s Motion to Strike, the Board stated that it is “capable of disregarding any new issues exceeding the proper scope of Patent Owner’s Sur-reply and have done so in this Decision.” FWD 31. It is unclear what issues the Board disregarded, but Patent Owner properly raised the issue of the inconsistent expert testimony in its Patent Owner Response. *See* POR 55-56. The Board also stated that it did not rely on Exhibit 2106, which is Dr. Kymissis’s deposition transcript. FWD 31. The Board does not address the fact that this transcript reflects a deposition taken on June 14, 2025 (*see* EX2106, at 1), and was thus unavailable when Patent Owner filed its POR on May 5, 2025. Nor does the Board address Petitioner’s withholding of EX2106 in violation of its obligation to serve “relevant

information that is inconsistent with a position advanced by the party during the proceeding.” 37 C.F.R. § 42.51(b)(1)(iii); *see* Paper 37, at 2. In any event, the Board’s statements in connection with the denied Motion to Strike do not extend to Dr. Kymissis’s expert report (EX2051), which the Board also does not address.

These omissions independently warrant Director intervention. *See Aqua Prods., Inc. v. Matal*, 872 F.3d 1290, 1325 (Fed. Cir. 2017) (*en banc*) (plurality) (“[A]n agency's refusal to consider evidence bearing on the issue before it is, by definition, arbitrary and capricious....” (citations omitted)); *In re Universal Elecs., Inc.*, No. 22-1230, 2023 WL 3335536, at *3 (Fed. Cir. May 10, 2023) (“We cannot conclude that the Board has ‘done its job’ when it avoids an applicant’s primary argument”). Failing to acknowledge relevant arguments and evidence contravenes the APA and undermines confidence in the Board. The Federal Circuit has vacated decisions like the FWD in this case where “the Board’s analysis does not explicitly address [patent owner’s] arguments or even implicitly explain how the combined system [satisfies the claim limitations] in a way that fairly contemplates and resolves those arguments.” *Provisur Techs., Inc. v. Weber, Inc.*, 50 F.4th 117, 124 (Fed. Cir. 2022); *see also Alacritech, Inc. v. Intel Corp.*, 966 F.3d 1367, 1371 (Fed. Cir. 2020) (vacating because “the Board did not endorse, adopt, or otherwise suggest that it was persuaded by those arguments, much less explain why it found those arguments persuasive”).

The failure to address Samsung’s inconsistent expert testimony requires Director Review for the same reasons the Federal Circuit vacated the Board in *Ultratec, Inc. v. CaptionCall, LLC*, 872 F.3d 1267 (Fed. Cir. 2017). In that case, an expert offered inconsistent testimony on “cross examination at trial in front of a jury.” *Id.* at 1272. As in *Ultratec*, Patent Owner brought the inconsistency to the Board’s attention as soon as it could. “A reasonable adjudicator would have wanted to review this evidence,” and “[t]he Board offers no reasoned basis why it would not be in the interest of justice to consider sworn inconsistent testimony on the identical issue.” *Id.* at 1272-73.

D. The Board Adopted a New Theory Improperly Made in Reply

The Board also based its unpatentability determination on an untimely obviousness theory. Specifically, while the Petition tersely asserted that Ma “*discloses*” “joint vaporization,” the Reply pivoted to argue that Ma’s disclosures would have rendered the limitation “*at least obvious*.”¹ Pet. 59; Reply 22. The Board adopted this new obviousness theory. FWD 16 (“[u]nder a preponderance standard, Ma’s disclosures are sufficient to render joint vaporization *at least obvious*” (quoting Reply 22)). The Board did not acknowledge or attempt to justify this shift

¹ The Reply cites new evidence such as Ma’s disclosures on deposition rates and sensors, new expert testimony on Ma’s purported objectives, and infringement opinions on an EP counterpart with materially different limitations. Reply 21-22.

despite Patent Owner flagging this issue. *See* Sur-Reply 1.

That was legal error and invites further gamesmanship. The Board does not “enjoy[] a license to depart from the petition,” which should “define[s] the scope of the litigation all the way from institution through to conclusion.” *SAS Inst. Inc. v. Iancu*, 138 S. Ct. 1348, 1357 (2018). The Petition must “identify ‘with particularity’ the ‘evidence that supports the grounds for the challenge to each claim.’” *Intelligent Bio-Systems, Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016) (quoting 35 U.S.C. § 312(a)(3)); *see also* 37 C.F.R. § 42.104. Here, Petitioner could have—but chose not to—contend that the “joint vaporization” limitation was obvious in view of Ma (as opposed to disclosed by Ma). *See* Consolidated Trial Practice Guide at II.I (“Petitioner may not submit new evidence or argument in reply that it could have presented earlier, e.g. to make out a prima facie case of unpatentability.”). Director Review provides an opportunity to emphasize that the Board should not permit sandbagging by accepting what amounts to an “entirely new rationale,” *Intelligent Bio-Systems*, 821 F.3d at 1370, or a “meaningfully distinct contention,” *Ariosa Diagnostics v. Verinata Health, Inc.*, 805 F.3d 1359, 1367 (Fed. Cir. 2015), introduced for the first time in Reply.

IV. CONCLUSION

For these reasons, Patent Owner respectfully requests Director Review so that gamesmanship as played by Petitioner throughout the proceeding can be stopped.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 C.F.R. § 42.6, that on February 23, 2026, a complete copy of the foregoing document, **PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW**, was served by ELECTRONIC MAIL, as agreed to by the parties, upon the following:

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