

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAP AMERICA, INC.,
Petitioner,

v.

CYANDIA, INC.,
Patent Owner.

Case IPR2024-01433
U.S. Patent No. 8,751,948

**PATENT OWNER'S REPLY TO PETITIONER'S RESPONSE
TO PATENT OWNER'S SUR-REPLY ARGUMENTS UNDER REVVO**

The Board should vacate the institution decision because SAP “takes alternative positions before the Board and a district court” without explaining “why alternative positions are warranted.” *Revvo Techs. v. Cerebrum*, IPR2025-00632, Paper 20 at 3-4 (P.T.A.B. Nov. 3, 2025) (precedential). Before the District Court, SAP argued that “determining a notification method” was indefinite. Ex. 3002, 33-34. The Court rejected SAP’s argument and held that the term should be given its “plain and ordinary meaning,” which required only consulting “session information and a user’s notification preferences to determine how to notify the user.” *Id.*; Ex. 2024, 19-20, Ex. 2025, 23-24. Following the District Court’s Guidance, Dr. Clark, applied the plain and ordinary meaning of the term in his invalidity expert report. Ex. 1134, ¶¶ 170, 534-535; Sur-Reply, 7. Despite SAP’s earlier argument to the District Court and Dr. Clark’s application of the plain and ordinary meaning in his opinion, SAP argued in its Reply that “‘determining a notification method’ requires determining how to present an alert.” Reply, 10. Because SAP took a different position on claim construction in the District Court and in its Reply, the institution decision should be vacated under *Revvo*. Sur-Reply, 7.

SAP’s argument that it “advances no inconsistent construction” contradicts the record. *Revvo Resp.*, 1. After SAP’s indefiniteness argument was rejected, Dr. Clark applied the District Court’s preliminary guidance in his obviousness analysis. Sur-Reply, 7; Ex. 1134, ¶¶ 170, 534-535; Ex. 2028, 5. And while Dr. Clark’s report

preceded the District Court's *Markman* Order, the *Markman* Order merely memorialized the Preliminary Guidance, which he did apply. Ex. 3002, 33-34; Ex. 2028, 5; Ex. 1134, ¶ 170. Moreover, that Dr. Clark did not adopt "the assumed construction of Cyandia's Infringement Contentions" is irrelevant because he adopted the District Court's plain and ordinary meaning. *Revvo* Resp., 1; Ex. 1134, ¶ 170. Nor, as SAP now claims, did it say that its narrow IPR construction represented the term's plain and ordinary meaning. *Revvo* Resp., 2; Reply, 10-13. Thus, SAP cannot justify its shifting sands approach to claim construction.

SAP's reliance on *O2 Micro* "amounts to [] an assertion that a petitioner should be permitted to raise different claim constructions in the two forums," which is prohibited without sufficient explanation. *Revvo*, Paper 36 at 4; *Revvo* Resp., 2. SAP also misreads *O2 Micro*, which holds that a party may advance different arguments in support of the **same** construction over time, not that a party can advance inconsistent plain and ordinary meanings in different proceedings to support whatever "dispute" is raised in a particular forum. *Cf. Revvo* Resp., 2 (citing *O2 Micro Int'l Ltd. v. Beyond Innov. Tech. Co.*, 521 F.3d 1351, 1360-61 (Fed. Cir. 2008)). In any event, the 2009 Parent discloses this limitation even under SAP's overly-narrow construction because the 2009 Parent states that information (such as notifications) may be delivered in a variety of ways based on the user's identity as established by the user's session. Sur-Reply, 8-10; Ex. 1106, ¶¶ 21, 39.

Patent Owner's Revvo Reply
IPR2024-01433 (U.S. Patent No. 8,751,948)

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies, in accordance with 37 C.F.R. § 42.6(e), and pursuant to agreement by the parties that filing with the Board through the P-TACTS constitutes electronic service if Patent Owner sends an email notifying Petitioner of the filing, service was made on the Petitioner as detailed below.

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<i>Documents served</i>	PATENT OWNER'S REPLY TO PETITIONER'S RESPONSE TO PATENT OWNER'S SUR-REPLY ARGUMENTS UNDER REVVO
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