

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 REQUEST FOR DIRECTOR REVIEW

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I. INTRODUCTION

Cyandia respectfully requests that the Director vacate the Institution Decision in this case under *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, No. IPR2025-00632, Paper 20 at 3-4 (P.T.A.B. Nov. 3, 2025) (precedential) (“*Revvo*”) because SAP’s Reply advanced a narrower construction of the disputed “determining a notification method” term to the PTAB than SAP argued to the District Court, and it never explained why its different positions were warranted. SAP’s forum dependent constructions—narrower for proving lack of written description to the PTAB and broader for proving obviousness to the District Court—are forbidden without sufficient explanation. Ultimately, the Board did not faithfully apply the Director’s guidance under *Revvo* and *Tesla* in excusing SAP’s forum-dependent constructions without explanation.

The Board also erred in adopting a construction of the “determining a notification method term” that expressly contradicts the plain language of the claim and the District Court’s construction. The Board’s conclusion that the “determining a notification method” encompasses sending alerts to ***offline devices*** is flatly incompatible with the plain language of the claims, which is precisely why the District Court rejected SAP’s argument that Claim 1 of the ’948 Patent is indefinite. *Compare* Ex. 3002 at 34 (rejecting SAP’s argument that Claim 1 is indefinite because “[t]he specification, however, describes providing an alert on the user’s

active devices”) with Final Written Decision (“FWD,” Paper 42) at 14 (“We find that the plain claim language indicates that the claims cover determining a notification method based on the current state of the device, *where the claimed ‘current state’ encompasses more than an active, or online state.*”) (emphases added).

The parties briefed this exact issue during the IPR with respect to another alleged written description defect, but the panel refused to reach that ground in the FWD. FWD at 24 (“Although the parties present additional written description contentions for other claim limitations, we find that addressing the determining limitation is sufficient to resolve the dispute between the parties.”).¹ Ultimately, the Board construed the “determining a notification method” in isolation, adopting a construction that was diametrically opposed to the District Court’s and the plain

¹ The Board’s action violates the *Memorandum* issued July 29, 2025, which requires Board panels to “address all grounds raised in the petition in their final written decisions” to “promote compact decision making and ensure that panels will not be required to address grounds for the first time in the event of a remand.” (“*Memorandum* (July 29, 2025)”),

<https://www.uspto.gov/sites/default/files/documents/20250729095727582.pdf>

language of the claims, which leave no doubt that the claimed alerts can only be provided on active (online) devices. Because the Board (and SAP) acknowledge that the 2009 Parent discloses determining a notification method for online devices, the Director should reverse the Board’s construction and the FWD.

II. ARGUMENT

A. The Director Should Vacate the FWD and Institution Decision Under *Revvo*

The Director should grant Director Review and vacate the Final Written Decision and Institution Decision under *Revvo* because SAP advanced a narrower construction of “determining a notification method” in its Reply to PTAB than it did before the District Court without explaining why those different positions were warranted. *Revvo* at 5 (“Thus, although a petitioner is not necessarily precluded from arguing different claim construction positions before a district court and the Board, the petitioner should explain sufficiently why the different positions are warranted . . .”).

In its Reply, SAP argued that “determining a notification method” **requires** determining “how to present the alert,” (Paper 25, Reply at 1-2, 10) which is a position that it did not take in the Petition or before the District Court:

SAP’s Petition	Plain and Ordinary Meaning. Pet at 16.
SAP’s District Court Position	“Indefinite under § 112 (¶ 2) due to internal inconsistencies between the claims requiring that the alert be sent to each external device from which session data is received in step ‘D’ versus the

	Specification which describes the alert being sent to a device that session data indicates is currently in use by the user.” Ex. 2025 at 2 (emphasis added).
Cyandia’s Court Position	Definite; Plain and Ordinary Meaning. In SAP’s hypothetical in which a user has three devices—one off, one on but locked and one in active use—the claims will provide an alert to the devices that are on (both locked and in active use). This is because a device that is off will not send any session data to indicate its current state for the processor to receive and thus will not be among the “at least one external devices” in (D). Instead, at (D), the processor will receive session data from the two devices that are on and, if the “event” is determined at (E), then at (F), the processor determines a notification method for them. Ex. 3002 at 33-34.
District Court’s Construction	Definite; plain and ordinary meaning. “SAP says these claims conflict with the specification, which would make a skilled artisan unclear about whether they have an error. Dkt. No. 78 at 23. Specifically, Step D) requires ‘receiving session data indicating a current state of at least one external device of the user.’ ’948 Patent at 31:52–53. But if session data indicates the user’s laptop is off, the claimed apparatus nonetheless provides an alert. Dkt. No. 78 at 24. The specification, however, describes providing an alert on the user’s <i>active</i> devices. <i>Id.</i>” Ex. 3002 at 33-34. “These claims are not indefinite. SAP does not argue some part of the claim language is itself unclear. Nor has SAP shown the claims contain an error. At best, SAP presents a non-infringement question—whether a device in an ‘off’ or ‘inactive’ state provides an alert—but this is not a claim construction issue. The Court will give this term a ‘plain and ordinary meaning’ construction.” Ex. 3002 at 33-34.
PTAB D.I. Constructions	The Board initially found that “determin[ing] the active devices of the subscriber . . . appears to address the claim language requiring an alert ‘based on the current state of the at least one external device indicated by the session data.” Institution Decision (“D.I.”) at 20 (emphasis added) The Board initially found that “determining a notification method” requires that the system “determines how an alert is presented.”

	D.I. at 21.
SAP's Reply	“‘[D]etermining a notification method’ requires determining how to present the alert , and, as the Institution Decision correctly found, the 2009 application does not provide written description support for this.” Reply at 10 (emphasis added).
PTAB FWD Construction	“We find that the plain claim language indicates that the claims cover determining a notification method based on the current state of the device, where the claimed ‘current state’ encompasses more than an active, or online state.” FWD at 14.

As is apparent from the table above, SAP never argued to the District Court that “determining a notification method” requires “determining how to present the alert,” as it argued in its Reply. Ex. 2025 at 2; Reply at 1-2, 10. And when given the opportunity to explain why its “different positions are warranted,” SAP admitted that its Reply advocated for the narrow construction applied in the Institution Decision simply because it believed it would help its written description challenge before the PTAB. Paper 39 at 1-2 (“In its reply, SAP did not change its position that the plain and ordinary meaning applied but explained, consistent with the institution decision, how ‘determining a notification method by which to provide at least one alert . . .’ involves determining how to present the alert.”); Reply at 10 (“‘[D]etermining a notification method’ requires determining how to present the alert, and, as the Institution Decision correctly found, the 2009 application does not provide written description support for this.”); *Revvo* at 5.

As explained in *Revvo*, if a district court declines to adopt a petitioner's

construction, the petitioner “would have sufficient reason for advancing the broader, court-adopted construction in a proceeding before the Board,” but that is not the tack that SAP took here. *Revvo* at 5. After the District Court rejected SAP’s argument that this limitation was indefinite (Ex. 3002, 33-34), (1) SAP’s District Court expert applied the Court’s “plain and ordinary meaning”—which did not require “determining how to present the alert”—for purposes of proving obviousness (Ex. 1134, ¶¶ 170, 533-36), and (2) SAP argued for a narrower construction to the PTAB for purposes of proving lack of written description. Reply at 1-2, 10. Accordingly, SAP’s admission that it argued in favor of the Board’s narrow construction in its Reply “amounts to an assertion that [it] should be permitted to raise inconsistent invalidity challenges in the two forums.” *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00340, Paper 18 at 3 (Squires, Nov. 5, 2025) (informative); Paper 39 at 2.

The facts that (1) the Institution Decision did not characterize its narrow implicit construction as the “ordinary meaning” of the term, (2) SAP did not argue in the Reply that the Board’s narrow construction represented the “ordinary meaning” of the term, and (3) the Board ultimately did not find that the ordinary meaning of the term requires “determining how to present the alert” all belie Petitioner’s *Revvo* brief position that the narrow construction advanced in the Reply was (or was ever meant to represent) the “ordinary meaning” of the term. See Paper 39 at 2 (“Thus, the reply explained the ‘ordinary meaning in the context of the

[patent].”); see FWD at 14, 17 (declining to find that “determining a notification method” requires “determining how to present the alert”).

For its part, the Board did not conduct the proper analysis under *Revvo* because it did not compare the narrow construction advocated in Petitioner's Reply with the construction SAP initially argued for (indefiniteness) or the construction SAP ultimately adopted (plain and ordinary meaning) in the District Court proceeding, which is the relevant inquiry. See FWD at 17-21; Paper 40 at 1-2. The colloquy regarding this issue during the Oral Hearing was prophetic on this account. Paper 43, Tr. at 39:22-40:21.

The Board's willingness to overlook SAP's venue-dependent constructions failed to “minimize inconsistency in claim constructions between forums.” *Revvo* at 4 . As discussed in detail below, the District Court adopted Cyandia's plain and ordinary meaning of “determining a notification method” because, according to limitation [D], “session data” can only be received for active (online) devices. Accordingly, the “at least one external device of the user,” recited in limitations [D] and [F] encompass **only** active devices. § II, *supra*; Ex. 3002 at 33-34 (adopting the plain and ordinary meaning). The Board's construction extending “current state” to include offline devices among “the at least one external device” conflicts with plain language of the claims and the District Court's adopted plain and ordinary meaning of the term. See D.I. at 20-21.

Under these circumstances, the Director should vacate the FWD and Institution Decision and terminate this proceeding under *Revvo*. See *BioDelivery Scis. Int'l, Inc. v. Aquestive Therapeutics, Inc.*, 935 F.3d 1362, 1366-67 (Fed. Cir. 2019) (revisiting institution and terminating the proceeding after the FWD).

B. The Board's Construction of "determining a notification method" is Inconsistent With the District Court's Construction and the Plain Language of the Claims

The Board's decision to avoid ruling on the SAP's alternate grounds obscured that the construction it ultimately applied—that the Challenged Claims encompass sending alerts to *offline* devices—directly other claim limitations *and* the District Court's construction (which the Board purported to follow). The issue of whether the Challenged Claims encompass sending alerts to offline devices was litigated with respect to a different written description challenge, which SAP abandoned in its Reply after the District Court ruled that the Challenged Claims are definite because they require sending alerts to *online* devices. Although the Director must at least vacate and remand the FWD so that the Board can decide this ground in the first instance, the record is clear enough for the Director to reverse.

1. The Director Should Reverse or Vacate and Remand the FWD Because the Board did not Decide All Grounds

To the extent that the Director does not vacate the FWD and Institution Decision in view of *Revvo*, the Director should vacate and remand the case to the

Board so that it can decide all grounds in the first instance. *See Memorandum* (July 29, 2025) (“Effective immediately, absent extraordinary circumstances, all Board panels assigned to an inter partes review or post-grant review proceeding where an oral hearing has not yet occurred will address all grounds raised in the petition in their final written decisions.”).

The Board did not address all grounds raised in the Petition. The Petition raised four separate grounds arguing that the '948 Patent lacked written description. Of these four grounds, the Institution Decision decided only one in favor of SAP. *See* D.I. at 17; *see also id.* at 17-23. As discussed above, the only ground that the Board decided in favor of SAP concerned the “determining a notification method” limitation, where the Board’s implicit construction required “determining how to present an alert,” which the Board found missing from the 2009 Patent on the preliminary record. *Id.* at 21 (“Nothing about that indicates the system determines ***how an alert is presented.***”) (emphasis added).

In the FWD, the Board did not reach SAP’s allegation that the “May 2009 parent application does not support any claim because it does not support providing the claimed alert to multiple external devices as required in steps F), G), and H) of each of the independent claims.” Pet. at 29; FWD at 24 (“Although the parties present additional written description contentions for other claim limitations, we find that addressing the determining limitation is sufficient to resolve the dispute between

the parties.”). Critically, this ground depended on an interpretation of “session data” that included indications that a “device is not currently in use.” Pet. at 30 (“For example, if session data is received from two external devices indicating that one is being used by the user and one is not, the May 2009 parent application does not describe sending an alert to both devices, as is required by each independent claim.”).

The District Court correctly rejected the idea that the Challenged Claims are indefinite because “session data” is not received for inactive devices. At District Court, Petitioner alleged that the “determining” limitation was indefinite because the claims allegedly require providing an alert on each device for which the server has determined a “current state (e.g., active, locked, off).” Ex. 2025 at 2-3. In response, Cyandia argued that the Challenged Claims were definite because session data can only be received for active devices, i.e. those with an active session:

There are no inconsistencies between the claims of the '948 Patent and its specification that would result in a POSITA not understanding their scope with reasonable certainty. As SAP acknowledges, the claims provide an alert on “the” “at least one external device” where the antecedent basis for “the” is Element D, which recites “receiving *session data* indicating a current state of at least one external device of the user.” See, e.g., '948 Patent, Claim 1 (emphasis added). In SAP's hypothetical in which a user has three devices—one off, one on but locked and one in active use—***the claims will provide an alert to the devices that are on (both locked and in***

active use). This is because a device that is off will not send any session data to indicate its current state for the processor to receive and thus will not be among the “at least one external devices” in (D). Instead, at (D), the processor will receive session data from the two devices that are on and, if the “event” is determined at (E), then at (F), the processor determines a notification method for them.

Ex. 2024 at 19 (emphasis added). The District Court agreed with Cyandia. Ex. 3002 at 33-34 (“These claims are not indefinite. SAP does not argue some part of the claim language is itself unclear. Nor has SAP shown the claims contain an error.”).

Cyandia made the same argument in the POR, and SAP ***did not dispute*** this argument in its Reply. *See generally* Reply; Paper 21 (“POR”) at 31 (“The Challenged Claims require providing an alert to external device(s) based on ‘session data’ that signifies ***active*** device(s).” ’948 Patent at Claim 1. Therefore, providing an alert on ‘at least one external device’ refers to user’s external device(s) that are ***active***, which is disclosed in the 2009 Parent. *See* Goodrich Decl. at ¶¶ 90-97.”); *see also id.* at 31-34 (detailing the District Court’s agreement with Cyandia, intrinsic and extrinsic evidence confirming the meaning of “session data,” Dr. Clark’s admission that the claimed alerts are sent to a “user’s device where ***the session is active***”); Paper 30, PO Sur-Reply at 2-3 (“Petitioner does not dispute that the 2009 Parent discloses providing an alert to external devices based on ‘session data’ that indicates the ‘current state’ of user’s active devices.”).

At the very least, the Director should vacate the FWD and remand to the Board so that it can address each of the grounds raised in the Petition, including whether the 2009 Parent discloses “providing the claimed alert to multiple external devices as required in steps F), G), and H) of each of the independent claims.” Pet. at 29.

2. The Board's *Sua Sponte* Construction of “Current State” Violated the APA

The Board's *sua sponte* construction of “current state” also violated the APA because Cyandia had no reason to expect that the Board would adopt a new construction of “current state” in the FWD when (1) the Board's Institution Decision agreed that the 2009 Parent's disclosure of “determin[ing] the active devices of the subscriber . . . to provide a visual or auditory alert in the channel”. . . appears to address the claim language requiring an alert ‘based on the current state of the at least one external device indicated by the session data’” (D.I. at 20), (2) the District Court determined that the claims are definite because session data is only received for active devices (Ex. 3002 at 33-34), and (3) SAP did not dispute Cyandia's argument in the POR that “[t]he Challenged Claims require providing an alert to external device(s) based on ‘session data’ that signifies **active** device(s).” POR at 31; PO Sur-Reply at 2-3.

The APA guarantees that “[a] patent owner in [an] IPR is undoubtedly entitled to notice of and a fair opportunity to meet the grounds of rejection,” and requires a

tribunal to “hold unlawful and set aside agency action” when these requirements are not met. *Qualcomm Inc. v. Intel Corp.*, 6 F.4th 1256, 1262 (Fed. Cir. 2021). Cyandia was not afforded such an opportunity here. The theory underlying the Board’s *sua sponte* construction of “current state” was based on an embodiment disclosed in the ’948 Patent that neither party discussed during the proceedings. *See* FWD, 15. In this embodiment, a “notification manager . . . queries session manager 456 to determine the user’s connectedness.” *Id.* (quoting Ex. 1101, 21:6-8). Thus, as the Board reasoned, the ’948 Patent discloses an embodiment where they system queries a “session manager” for a device’s online or offline status before choosing “to notify an offline device by text message based on the current state of the device as offline.” *Id.*

But the claims do not recite querying a session manager for a user’s connectedness, which is an embodiment first disclosed in the CIP application. ’948 Patent at 20:60-21:15. The claims recite “D) receiving session data indicating a current state of **at least one external device of the user**,” and undisputed record evidence establishes that “session data” can only be “received” for external devices with active sessions. *See, e.g.*, Pet. at 29, 50-51 (emphasis added); Ex. 2024 at 2-3. And because limitation [D] provides antecedent basis for the “at least one external device of the user” referenced in limitation [F], then the claimed notification method also only extends to external devices with active sessions. *See* Claim 1 (reciting 1F)

determining a notification method by which to provide at least one alert on **the at least one external device** based on the current state of the at least one external device indicated by the session data”) (emphasis added).

Had Cyandia been on notice that the construction of “session data” and “current state” was still in play after the District Court rejected the same argument and SAP abandoned that ground in its Reply, it would have been trivial to demonstrate that the Board’s construction is inconsistent with still other claim limitations. *Intel Corp. v. Qualcomm Inc.*, 21 F.4th 801, 810-11 (Fed. Cir. 2021) (“It is highly disfavored to construe terms in a way that renders them void, meaningless, or superfluous.”).

For example, the claim language requires that the alert and associated notification data are “transmitted via **the first channel.**” ’948 Patent, Claim 1 (the “alerts transmitted **via the first channel**” and “transmit the notification data . . . **via the first channel**”) (emphasis added). Accordingly, the plain language of the claims limits the transmission of notifications to active (online) devices because only active devices are accessible via a channel. Petitioner’s expert, Mr. Schmandt, confirmed that any notifications sent to offline devices “bypass[] the channel session.” Ex. 2022 at 88:3-5; Ex. 2030 at 79:7-23; Ex. 3002 at 14 (construing “channel” as “a conduit for accessing and interacting with information . . .”).

Because the claimed invention requires notification transmission “via the first

channel,” and only active (online) devices have a channel connection, the claims exclude providing the alert on offline devices. The Board's construction, therefore, conflicts with the claims and necessarily reads the “transmitted *via the first channel*” language out of the claims. '948 Patent, Claim 1.

3. Under the Proper Construction Limiting the Claims to Providing Alerts on the User's Active Devices, the 2009 Parent Provides Written Description Support

When the claims are properly limited to providing alerts on the user's active (online) devices, the Board acknowledged written description support for “determining a notification method” in the 2009 Parent:

[T]he 2009 Parent and the corresponding testimony from Patent Owner's expert witness, Dr. Goodrich, show written description support for providing a notification to an active external device.

FWD at 25; *id.* at 26 (“[T]he 2009 Parent may support a narrower scope of ‘determining a notification method’ for an active, or online, external device.”). Accordingly, under the proper interpretation, written description support for “determining the notification method” is found in the 2009 Parent.

III. CONCLUSION

Cyandia respectfully requests terminate this case under *Revvo*, remand the case so that the Board can address all grounds in the first instance, or reverse case based on the Board's determination that the claims encompass sending alerts to offline devices.

Patent Owner's Request for Director Review
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 REQUEST FOR DIRECTOR REVIEW
<i>Persons Served</i>	KLARQUIST SPARKMAN, LLP, Andrew M. Mason, Roy Chamcharas, Todd M. Siegel, Samuel B. Thacker

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