

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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LIFESCAN, INC., SENSEONICS HOLDINGS, INC., and ASCENSIA  
DIABETES CARE HOLDINGS AG,

Petitioners,

v.

CELLSPIN SOFT, INC.,

Patent Owner

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IPR2025-00102 (Patent 11,234,121 B2)

IPR2025-00103 (Patent 9,900,766 B2)

IPR2025-00104 (Patent 8,904,030 B2)<sup>1</sup>

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**PATENT OWNER'S SUPPLEMENTAL BRIEF**

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<sup>1</sup> This response addresses issues common to the identified cases

## I. INTRODUCTION AND POSTURE

The merits must be evaluated based on arguments and evidence attributable to Petitioners themselves and under a coherent claim-construction framework. The existing record was developed exclusively in response to TikTok in the now-vacated IPR proceedings. Petitioners filed mirror-image petitions for purposes of joinder and did not submit independent expert declarations, claim-construction positions, or distinct merits arguments. Paper 9 at 10–12. The Patent Owner Response and Sur-Reply that define the current record were drafted and litigated as responses to TikTok’s petition, TikTok’s expert, and TikTok’s reply-stage theories, not to any independently developed case by these Petitioners. The current record is built around positions Petitioners have *disclaimed* in the district court. *See Cellspin Soft, Inc. v. Senseonics Holdings, Inc.*, No. 2:24-cv-00263-JRG-RSP (E.D. Tex.) (“EDTX Case”), Senseonics Reply, Dkt. 66 at 5 & n.2.

**Reservation of Rights.** This supplemental brief is submitted solely in response to the Board’s authorization to address merits issues. In the post-vacatur posture required by the Director’s March 30, 2026 Order, Patent Owner addresses the merits issues here for the first time, without waiving its position that the April 15, 2026 institution decision was reached without consideration of these arguments. Patent Owner does *not* waive and expressly preserves its position that reliance on the record developed in the vacated TikTok proceedings is improper as a procedural

matter, including under the Director’s March 30, 2026 Decision. Nothing in this brief should be construed as conceding that such reliance is permissible. *See NuVasive, Inc. v. Iancu*, 841 F.3d 966, 971–72 (Fed. Cir. 2016); *Dell Inc. v. Acceletron, LLC*, 818 F.3d 1293, 1301 (Fed. Cir. 2016); *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1355–56 (2018).

## **II. THE RECORD REFLECTS TIKTOK-SPECIFIC POSITIONS AND NO ADOPTED CLAIM CONSTRUCTION**

The current record is TikTok-specific. Claim-construction disputes, expert testimony, including Mr. Lett’s initial declaration and his reply-stage declaration, reply arguments, and Patent Owner’s rebuttal were developed in response to TikTok’s positions. Current Petitioners’ own statements frame the issue. In the parallel district court action, Petitioners asserted that “TikTok’s claim construction positions in its district court case are not relevant to this case, which does not even involve TikTok,” and that “just because TikTok took certain positions does not mean the PTAB will adopt those positions.” EDTX Case, Senseonics Reply, Dkt. 66 at 5 & n.2. Those statements have direct consequences. The existing record, including expert testimony, reply arguments, and rebuttal, was developed entirely in response to TikTok’s positions. The record also reflects materially inconsistent claim-construction positions across forums under the same *Phillips* standard.

This inconsistency is not incidental. Patent Owner previously sought the opportunity to brief this inconsistency, but was not permitted to do so prior to

institution. This posture implicates the concern identified in recent USPTO guidance that such divergence requires explanation. *See Revvo Technologies, Inc. v. Cerebrum Sensor Technologies, Inc.*, IPR2025-00632 (precedential). Here, that concern is heightened. In *Revvo*, the same petitioner took inconsistent positions across forums. Here, TikTok took inconsistent positions, while the present Petitioners have inherited that record without adopting it and have expressly *disclaimed* its relevance in district court. This triple defect - TikTok's inconsistency, no adopted claim construction, and Petitioners' express disclaimer - renders the record unreliable.

The misalignment is not merely conceptual; it is structural. The evidentiary record, including expert declarations, rebuttal testimony, depositions, and the reply-sur-reply sequence, was developed and tested in a proceeding led by TikTok. Petitioners did not develop or test that record. The record therefore reflects TikTok's case, not that of the Petitioners now before the Board.

Petitioners have not identified any claim constructions they affirmatively advance. Their position presents a fundamental dilemma: if TikTok's claim-construction positions are not relevant, as Petitioners assert in district court, then the existing record cannot be relied upon without a replacement framework. If the record is relied upon, Petitioners have not explained how the materially inconsistent positions reflected in that record can be reconciled under a single *Phillips* standard. In either case, Petitioners have not shown that their asserted grounds succeed.

### **III. THE ASSERTED GROUNDS FAIL ON THE MERITS**

The asserted grounds fail for the reasons set forth in Patent Owner’s Response and Sur-Reply, which fully addressed the prior art combinations, expert testimony, and claim limitations at issue. As shown there, the asserted references do not disclose or render obvious key limitations, including but not limited to a connection “maintained on a continuous basis,” transmission of data “along with” user information, and the claimed “object” and event “signaling” requirements. The prior record further shows that TikTok relied on shifting and overbroad theories to attempt to satisfy these limitations. Those deficiencies were developed in response to TikTok’s positions. Current Petitioners have disclaimed those positions but have not articulated any claim constructions of their own or shown that their asserted grounds succeed under any consistent framework.

### **IV. THE “CONTINUOUS” LIMITATION CONFIRMS THE MERITS FAILURE**

The requirement that a paired connection be “maintained on a continuous basis” is dispositive. The prior record shows that the asserted references disclose only intermittent connectivity. Prior art Bluetooth systems connect when needed and disconnect thereafter, and combining such systems does not yield a continuously maintained paired connection. Petitioners have not shown that their asserted grounds satisfy this limitation under any construction. If “continuous” is given its proper meaning, the references fail. Their own statements reinforce the gap. Having

disclaimed TikTok’s claim-construction positions, Petitioners must show how their asserted grounds satisfy the “continuous” limitation under a construction they affirmatively adopt. They have not done so. The disconnect is stark: Petitioners’ products are described as *continuous* glucose monitoring systems, while the asserted prior art reflects intermittent communication.

**V. THE BOARD RELIED ON AN ABSENT BRIEFING RECORD WHILE PROCEEDING ON A NON-PETITIONER-SPECIFIC RECORD, CONTRARY TO THE DIRECTOR’S “ON THEIR OWN” DIRECTIVE**

The Director’s March 30, 2026 Order vacated the prior joinder and directed that these petitions be evaluated “on their own,” i.e., based on Petitioners’ own arguments and evidence. That did not occur. The record was developed in the TikTok IPRs and directed to TikTok’s positions. Petitioners have disclaimed those positions, asserting that they are “not relevant to this case” and that the Board is not bound to adopt them. Senseonics Reply, Dkt. 66 at 5 & n.2. At the same time, Petitioners advanced no claim constructions of their own. Nor would any assertion that Petitioners now “adopt” the TikTok record cure this defect. A belated attempt to rely on a record developed under positions Petitioners themselves rejected does not supply a coherent claim-construction framework or satisfy Petitioners’ burden. Petitioners have not reconciled those positions or demonstrated that the asserted grounds succeed under any coherent, petitioner-specific framework.

The procedural posture compounded this defect. During the April 8, 2026

teleconference, Patent Owner raised concerns regarding reliance on the TikTok-developed record and the absence of a petitioner-specific framework, and requested the opportunity to brief those issues. Patent Owner had also raised these same issues in its April 3, 2026 submission, which was expunged by the Board and is not part of the record in these proceedings. The absence of a developed briefing record is not a neutral circumstance. The Board cannot cure the absence of a merits determination at institution by permitting limited supplemental briefing after institution. The Decision then relies on that absence of briefing while proceeding on a record developed by a different party under different positions.

Under controlling law, Petitioners must carry their burden with their own showing. *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015); *In re Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1364, 1375 (Fed. Cir. 2016). The Board's review is limited to the petition and the record actually presented. *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1355–56 (2018). And Patent Owner must have a fair opportunity to respond to the case at issue. *NuVasive*, 841 F.3d at 971–72; *Dell*, 818 F.3d at 1301; *Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1080 (Fed. Cir. 2015). The Decision does not align with the Director's directive. The petitions were to be evaluated on their own, yet the Decision proceeds on a record developed by a different party, whose petitions were vacated and whose participation has been set aside, and without any articulated framework attributable to these Petitioners.

*See Return Mail, Inc. v. U.S. Postal Serv.*, 587 U.S. 618, 626–27 (2019) (IPR is a party-driven proceeding initiated and carried by the petitioner).

Under these circumstances, there is no petitioner-specific record or framework against which the asserted grounds can be reliably evaluated. See *SEC v. Chenery Corp.*, 318 U.S. 80, 87 (1943) (agency action must be judged on the grounds invoked and the record presented). Petitioners have not carried their burden to show that the asserted grounds satisfy the claim limitations.

## **VI. CONCLUSION**

On the present record: (i) Singh129 does not qualify as prior art for the reasons set forth in Patent Owner’s Response and Sur-Reply; (ii) the asserted grounds fail to disclose key limitations, including a continuously maintained connection; and (iii) Petitioners have not demonstrated a coherent merits case under a consistent claim construction. The Board should reject the patentability challenges.

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Date: May 6, 2026

Respectfully submitted,

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Counsel for Patent Owner

## **CERTIFICATION OF SERVICE**

Pursuant to 37 C.F.R. §§ 42.6(e) and 42.105(b), the undersigned certifies that on May 6, 2026, a copy of the foregoing document was served by electronic mail on the following:

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