UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

Petitioners,

v.

CELLSPIN SOFT, INC.,

Patent Owner.

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

PETITIONERS' SUPPLEMENTAL BRIEF

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I. INTRODUCTION

LifeScan, Inc., Senseonics Holdings, Inc., and Ascensia Diabetes Care Holdings AG ("Petitioners") respectfully submit this supplemental brief pursuant to the Board's Order on the Conduct of the Proceedings. Paper 16 at 4.

During the April 8, 2026 telephone conference, Patent Owner sought the Board's permission to file a new brief on the merits, purportedly to address recent changes in the law. When pressed during that call to identify the recent changes in the law, counsel for Patent Owner declined to do so. Nor does Patent Owner identify any in its brief. The only recent case Patent Owner cites is *Revvo Technologies, Inc. v. Cerebrum Sensor Technologies, Inc.*, IPR2025-00632, presumably for Paper 20 (Director November 3, 2025) (precedential) ("*Revvo*"), which is inapposite and relates to institution, not merits, contrary to the Board's April 15 order requiring this supplemental briefing to be limited to "the merits" of patentability. Paper 16 at 4.

In the scant arguments it does make relating to the merits, Patent Owner asserts that its Response and Sur-Reply "*fully addressed* the prior art combinations, expert testimony, and claim constructions at issue." Paper 20 at 4 (emphasis added). In other words, there is nothing more to argue on the merits, and this case is ready for oral argument.

The remainder of Patent Owner's supplemental brief rests on two false premises. The first is that this is "TikTok's case, not that of the Petitioners now

before the Board." Paper 20 at 3. This position is contrary to both the Board's longstanding joinder practice and the facts of this case. Petitioners joined the TikTok proceedings while agreeing that (1) they "shall not make any substantive filings and *shall be bound by the filings of Petitioner TikTok*;" and (2) "will act as an 'understudy' and will not assume an active role *unless Petitioner TikTok ceases to participate in the proceeding*." Paper 5 at 2, 7 (emphasis added). The Board quoted this very language in its Decision Granting Institution of *Inter Partes* Review and Granting Motion for Joinder. Paper 9 at 12-13 (emphasis added). Petitioners did exactly as the Board ordered, and once TikTok's participation ceased, Petitioners assumed an active role pursuant to their agreement and the Board's Order. Patent Owner notably did not oppose the joinder arrangement when Petitioners moved for and the Board granted it. *See* Paper 9 at 14 (granting joinder "in the absence of any opposition by Patent Owner").

The second false premise is that Petitioners have allegedly disclaimed TikTok's claim construction arguments. Paper 20 at 1-3. That is simply untrue. Petitioners have not taken *any* claim construction positions in the district court and have expressly *adopted* the claim construction positions in the TikTok IPRs. Paper 5 at 7-8 (Petitioners agreeing to be bound by TikTok's arguments); Paper 9 at 13-14 (Board noting Petitioners' agreement to be bound). Petitioners have not disclaimed

any argument that TikTok made to the Board, and Petitioners are prepared to proceed on the arguments exactly as TikTok presented them.

II. ARGUMENT

A. Institution Has Been Fully Resolved and Patent Owner's Arguments Relating to Institution are Moot

The Board instituted these proceedings and joined Petitioners in an understudy role unless and until TikTok was terminated from the proceedings. The Director's March 30, 2026 Order terminated the TikTok proceedings and directed the Board to determine whether the present proceedings should be instituted on their own. *See TikTok Inc. v. Cellspin Soft, Inc.*, IPR2024-00768, Paper 41 at 7 (Director Mar. 30, 2026). Pursuant to that directive, the Board instituted these proceedings on April 15, 2026. Paper 17. Patent Owner has twice tried to reverse that decision. Patent Owner requested rehearing (Paper 18), and the Board denied it (Paper 19). Patent Owner also requested Director Review (Paper 21), and the Director declined to consider the request, finding it procedurally improper (EX-3100, EX-3101).

The Board has therefore twice instituted these proceedings and has denied Patent Owner's Request for Rehearing. Papers 9, 17, 19. In view of this procedural history, the institution arguments that permeate Patent Owner's Supplemental Brief are moot (and outside the scope permitted by the Board's April 15 Order).

B. Petitioners Agreed to Be Bound by TikTok's Briefing, Arguments, and Evidence, and the Board Ordered Joinder on that Basis Without Objection

Patent Owner asserts that this is "TikTok's case, not that of the Petitioners now before the Board." Paper 20 at 3. Patent Owner further asserts that "[t]he existing record was developed exclusively in response to TikTok in the now-vacated IPR proceedings" and that 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 the Petitioners." *Id.* at 1. These statements miss the point.

Consistent with Board precedent and practice, Petitioners filed their own Petition and presented the same arguments and evidence that TikTok presented. Paper 1. Simultaneously, Petitioners requested joinder with the TikTok proceedings. Paper 5. Again, consistent with Board precedent and practice, Petitioners agreed (a) not to make any substantive filings and (b) to be bound *by TikTok's filings*. Paper 5 at 7 (emphasis added). Petitioners further agreed to serve in an "understudy" role and, "[u]nless and until Petitioner TikTok ceases to participate in the instituted TikTok IPR, the Joining Petitioners will not assume an active role." *Id.* at 8. Each of these agreements was consistent with the Board's joinder practice as articulated in *Sony Corp. v. Memory Integrity, LLC.*, IPR2015-01353, Paper 11 at 5-6 (PTAB Oct. 5, 2015).

Patent Owner made no objection to this arrangement when Petitioners moved for and the Board granted joinder. Paper 9 at 13 (granting joinder "in the absence of any opposition by Patent Owner"). Petitioners have precisely followed the Board's Order. Now that the Director has terminated the TikTok proceedings and the Board has decided to institute these proceedings on their own, Petitioners' role has transitioned from passive to active.

As previously agreed, Petitioners remain bound by the TikTok filings, arguments, and evidence. Paper 5 at 7-8 (Petitioners' agreement); Paper 9 at 12-14 (Board Order). Contrary to Patent Owner's assertion, "reliance on the record developed in the vacated TikTok proceedings" is not "improper as a procedural matter." *See* Paper 20 at 1. Rather, relying on the record from the TikTok proceedings that Petitioners joined is fully consistent with PTAB practice and precedent. *See, e.g., Sling T.V., LLC et al v. Real Time Adaptive Streaming, LLC*, IPR2018-01342, Paper 45 at 12-14 (PTAB Jan. 17, 2020) (denying motion to terminate and allowing understudy petitions to proceed on a fully developed record after lead petitioner terminated from case).

C. Petitioners Have Not Taken Inconsistent Claim Construction Positions or Disclaimed Any Claim Constructions

Patent Owner argues that the record "reflects materially inconsistent claim-construction positions . . ." and that Petitioners have "disclaimed" TikTok's claim constructions in this proceeding. Both statements are false as evidenced by the

record and very statements that Patent Owner cites (and misquotes). *See* Paper 21 at 1-3.

First, Petitioners have not taken *any* claim construction positions in the district court because that case was stayed three months before claim construction began. *See Cellspin Soft, Inc. v. Senseonics Holdings, Inc.*, No. 2:24-cv-00263-JRG-RSP ("District Court Case"), Dkt. 33 at 4 (Docket Control Order scheduling claim construction to begin on May 23, 2025); *id.*, Dkt. 69 (Order staying case entered on February 6, 2025). Furthermore, Petitioners have adopted the claim construction in the present record and therefore have not taken "inconsistent" positions. Patent Owner's reliance on *Revvo* is misplaced. *Revvo* holds that if a petitioner takes inconsistent claim construction positions it must explain why. *Revvo* at 5. But this holding is inapplicable because Petitioners are not taking inconsistent positions, not here and not in district court.

Second, Patent Owner's argument that Petitioners "expressly disclaimed" any claim construction positions is also untrue. Patent Owner cites to Petitioners' reply in support of their motion to stay the district court case in support of this argument. In the district court case, Patent Owner initially opposed Petitioners' motion to stay, arguing in part that *TikTok* had made inconsistent claim construction arguments before the Board and the district court. District Court Case, Dkt. 63 at 2, 5-6. In reply, Petitioners argued that TikTok's claim construction positions *in the district*

court are irrelevant to Petitioners' arguments *in the district court*. *Id.*, Dkt. 66 at 2-3[1]. In its Supplemental Brief to the Board, Patent Owner misquoted Petitioners' words to make it look like Petitioners disclaimed TikTok's claim constructions *in these proceedings*. Paper 20 at 2. Petitioners did no such thing and remain bound by TikTok's claim construction arguments in these proceedings. Patent Owner also *omitted* Petitioners' statement to the district court that "[s]taying the case prior to the beginning of claim construction will allow this Court *to benefit from the IPR claim construction* if/when the stay is lifted down the road," which further belies Patent Owner's argument that Petitioners have asserted inconsistent claim constructions. District Court Case, Dkt. 66 at 2-3.

III. CONCLUSION

Petitioners stand by the arguments TikTok presented and stand ready to continue with these proceedings based on those arguments. Based on Patent Owner's assertion that its Response and Sur-Reply "fully addressed" TikTok's arguments, it seems Patent Owner is ready too. Paper 20 at 4.

[1] Petitioners' district court reply brief is attached for convenience as **Attachment A**.

Respectfully submitted,

Dated: May 27, 2026

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§ 42.6(e) and 42.105(b), the undersigned certifies that on May 27, 2026, a complete and entire copy of this Supplemental Brief was provided via email, to the following parties of IPR2025-00103:

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ATTACHMENT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

CELLSPIN SOFT, INC.	§	
	§	
v.	§	Case No. 2:24-CV-0263-JRG-RSP
	§	LEAD CASE
SENSEONICS HOLDINGS, INC., ET AL.	§	

DEFENDANTS' REPLY IN SUPPORT OF MOTION STAY PENDING *INTER PARTES* REVIEW

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I. INTRODUCTION

The motion to stay filed by Senseonics Holdings, Inc. ("Senseonics"), Ascensia Diabetes Care Holdings AG ("Ascensia AG"), and LifeScan Inc. ("LifeScan") (collectively, "Defendants") should be granted for the reasons set forth in Defendants' opening brief. Cellspin's opposition brief was untimely[1] and fails to show that *any* of the three factors in the stay analysis weighs against a stay pending resolution of the IPRs instituted on ***every claim*** of the patents-in-suit. To the contrary, a stay is particularly warranted here where it would simplify the issues in this case, discovery is in its infancy, and there is a lack of prejudice to plaintiff.

II. ARGUMENT

A. Factor 1: Cellspin Fails to Show that a Stay Would Not Simplify the Issues

Cellspin addresses the "simplification of the issues" prong of the stay analysis by arguing that: (1) Defendants failed to agree to be bound to the full estoppel of 35 U.S.C. § 315(e); (2) Tik Tok is taking inconsistent claim construction positions in the IPR and district court proceedings; and (3) because IPRs have been instituted on all asserted claims of all asserted patents does not mean TikTok will succeed in invalidating all of those claims. Each of these arguments fail.

First, Cellspin's argument that Defendants agreed only to a "limited estoppel" is wrong. Defendants' opening brief clearly states that Defendants agree to be bound by the statutory estoppel provision set forth in 35 U.S.C. § 315(e)(2). D.I. 59 at 11. This is not "limited estoppel" or "estoppel light." *Cf. Intellectual Ventures II LLC v. Kemper Corp.*, No. 6:16-cv-0081, 2016 WL 7634422, at *3 (E.D. Tex. Nov. 7, 2016). It bars Defendants from raising in litigation any

[1]Cellspin's opposition should be stricken because it was filed late and without leave of court. D.I. 61-63. Cellspin requested and was granted a two-week extension (*see* D.I. 62) but missed even the extended deadline. While a single missed deadline may be excusable, Cellspin has missed nearly every deadline in this case. *See* D.I. 60 at 9-10 (listing missed deadlines). In view of Cellspin's repeated dilatory conduct, Defendants request that Cellspin's opposition be stricken.

arguments ***that were raised or reasonably could have been raised*** in the IPRs. *See* 35 U.S.C. § 315(e). Defendants cite numerous cases in their opening brief supporting that this is "full estoppel" and results in simplification of the issues. D.I. 59 at 11.

The cases Cellspin cites in its opposition are consistent. *See e.g., Signal IP, Inc. v. Fiat U.S.A., Inc.*, No. 14-cv-13864, 2015 WL 5716970, at *3-4 (E.D. Mich. Sept.30, 2015). In *Uniloc*, the Court found that a petition seeking joinder is not equivalent to agreeing to the statutory estoppel provision, the latter of which is stronger support for "simplification of the issues." *Uniloc 2017 LLC v. Samsung Elecs. Am., Inc.*, No. 2:19-cv-00259-JRG-RSP, 2020 WL 1433960, at *6 (E.D. Tex. Mar. 24, 2020). In *Adobe*, the Court acknowledged that filing a petition for joinder on top of agreeing to be bound by 35 U.S.C. § 315(e) makes for a stronger likelihood of simplification. *Realtime Adaptive Streaming LLC v. Adobe Sys. Inc.*, 2019 WL 5716970, at n. 5 (C.D. Cal. May 14, 2019). Here, Defendants did ***both***—filed a joinder petition ***and*** agreed to be bound by 35 U.S.C. § 315(e) – so the "simplification" prong in this case is very strong.

Second, Cellspin argues that "a stay will give Defendants a significant unfair tactical advantage" because TikTok allegedly advanced broad claim interpretations in the IPRs, but is seeking more narrow claim constructions in the district court. D.I. 63 at 9. Not so. Cellspin fails to explain how TikTok's claim construction positions in its district court case are relevant to ***this*** case, which does not even involve TikTok.[2] Cellspin's argument is further undermined by the fact that claim construction in this case is not scheduled to ***begin*** until late May 2025. *See* D.I. 59 at 7. Staying this case prior to the beginning of claim construction will allow this Court to benefit from the IPR claim construction if/when the stay is lifted down the road.

[2] Cellspin also fails to explain how TikTok's alleged inconsistent claim construction positions affect the "simplification of the issues" prong. Just because TikTok took certain positions does not mean the PTAB will adopt those positions.

Third, Cellspin generically argues that institution of IPRs on all asserted claims of all asserted patents does not necessarily mean TikTok will succeed in invalidating all of those claims. This argument is weak and could be said of every instituted IPR. Cellspin also speculates that the scope of the TikTok IPR proceedings does not cover all of Defendants' invalidity theories in this case (Defendants' invalidity contentions are not due until February 25, 2025). *See* D.I. 63 at 11. Even if true, Cellspin is misconstruing "simplification" as requiring "complete simplification." The legal standard does not require that the IPRs be guaranteed to dispose of the patents-in-suit and/or resolve every conceivable invalidity argument. Rather, the test is "whether the stay will simplify issues in question in the litigation." *See* D.I. 63 at 7. Here, because (1) Defendants have agreed to be bound by 35 U.S.C. § 315(e), (2) Defendants have filed joinder petitions, and (3) the PTAB has already instituted IPRs on ***every asserted claim*** of ***every asserted patent***, there is a very high chance that the issues in the litigation will be simplified—even if all claims are not rendered unpatentable.[3] Finally, Cellspin's assertions regarding the potential sale or shutdown of TikTok are a red herring. Even if TikTok is sold or shut down (this is

[3] Cellspin argues that Defendants rely primarily on cases prior to the Supreme Court ruling in *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348 (2018) ("*SAS*"). *See* D.I. 63 at 12. Not so. Defendants cite ten cases post-*SAS*, including five cases from the last two years. *See Broadphone LLC v. Samsung Elecs. Co., Ltd.*, No. 23-cv-00001-JRG-RSP, 2024 WL 3524022 (E.D. Tex. July 24, 2024); *Commc'n Techs., Inc. v. Samsung Elecs. Am., Inc.*, No. 21-cv-00444-JRG, 2023 WL 1478447 (E.D. Tex. Feb. 2, 2023); *Polaris Powerled Techs., LLC v. Dell Techs. Inc.*, No. 22-cv-0973-RP, 2023 WL 5282381 (E.D. Tex. 2023); *Resonant Sys. Inc. v. Samsung Elecs. Co., Ltd.*, No. 22-cv-00423-JRG, 2024 WL 1021023 (E.D. Tex. Mar. 8, 2024); *Vill. Green Techs., LLC v. Samsung Elecs. Co., Ltd.*, No. 22-cv-00099-JRG, 2023 WL 416419 (E.D. Tex. Jan. 25, 2023).

Cellspin also argues that none of the cases Defendants rely on involve facts where the moving party had no control over the IPRs. D.I. 63 at 13. Again, not so. *See., e.g.*, D.I. 59 at 14 (citing *Cywee Grp. Ltd. v. Samsung Elecs*. Co., No. 17-cv-00140-WCBRSP, 2019 WL 11023976 (E.D. Tex. 2019) (Samsung moved to stay after institution of IPR filed by Google (a defendant in another case) and after Samsung filed joinder petition)). *See also* D.I. 59 at 12 (citing *Scorpcast, LLC v. Boutique Media*, No. 20-cv-00128-JRG-RSP, 2021 WL 3514751, *1-3 (E.D. Tex. June 8, 2021) (motion to stay based on IPR filed by third party).

speculative), TikTok or its real parties in interest could continue to litigate the IPRs. And even if TikTok settles out, Defendants have filed their own IPRs that mirror the TikTok IPRs that will proceed. Cellspin cites no authority—and Defendants are aware of none—that would prevent Defendants' IPR petitions from being instituted if TikTok settles. *See* D.I. 63 at 15.

B. Factor 2: Cellspin Acknowledges this Case is in Early Discovery

Cellspin's argument that "the advanced stage of the case weighs against a stay" is legally and factually meritless. *See* D.I. 63 at 14. The relevant inquiry for this prong is "whether the proceedings before the court have reached an advanced stage, ***including whether discovery is complete and a trial date has been set***." *See* D.I. 63 at 7. Here, discovery is in its infancy, and the trial date—while set—is well over a year away (March 16, 2026). *See* D.I. 33.

The bulk of Cellspin's argument on this factor is again focused on the wrong case. Cellspin argues that its expert recently completed review of TikTok's source code (in a different litigation) on December 19, 2026 [sic], and in that case, Cellspin is now supplementing its infringement contentions with source code. D.I. 63 at 7. Cellspin further argues that it is 'about two weeks away from proceeding with additional discovery and source code for Defendants in this litigation." *Id*. Respectfully, Defendants do not know what Cellspin is talking about. To date, no source code inspections have been noticed, and no experts have been disclosed. Moreover, even if discovery were proceeding to a source code inspection, that would not change the fact that discovery has barely begun, claim construction is not scheduled to begin until May 2025, and invalidity contentions have not yet been served, no depositions have been noticed, and no written discovery requests have been served—all of which Cellspin does not contest. *See* D.I. 59 at 13. The cases cited in Defendants' opening brief make clear that courts in this district regularly stay cases upon institution of a parallel IPR proceeding where the litigation is at a similar stage to the current consolidated cases. *See id*. Cellspin does not cite any cases to the contrary in its brief.

C. Factor 3: Cellspin Would Not be Unduly Prejudiced by a Stay

Cellspin's "undue prejudice" argument is meritless. D.I. 63 at 14-17. It merely regurgitates generalized grievances that, if sufficient to defeat this motion to stay, would defeat ***all*** motions to stay. Cellspin argues that delayed resolution of the case would "violate Rule 1 of the Federal Rules of Civil Procedure and prejudice Cellspin's 'timely enforcement of [its] patent rights.'" D.I. 63 at 15. All stays delay enforcement of patent rights, yet courts have found that not all delays cause undue prejudice. *See* D.I. 59 at 13-14 ("[m]ere delay in the litigation does not establish prejudice").

Moreover, the *Trover* case Cellspin cites emphasized that there was in fact potential harm caused by the risk of loss of documentary and testimonial evidence. *Trover Grp., Inc. v. Dedicated Micros USA*, No. 2:13-CV-1047-WCB, 2015 WL 1069179, at *2 (E.D. Tex. Mar. 11, 2015). Yet, even there, the Court commented that the facts did "not present an especially strong claim of actual prejudice." *Id*. In contrast, Cellspin has alleged *no facts to support a claim of actual prejudice with respect to the case against the Defendants*. Cellspin argues that there is a flight risk and risk regarding the future availability of "evidence and witnesses of TikTok," but respectfully that is of no relevance whatsoever to this case or these Defendants. *See* D.I. 63 at 16.

Finally, Cellspin's generic concerns about a "lengthy, indeterminate stay" fall flat. The requested stay runs through the final written determinations of the IPRs and, if appeals are sought, the parties could then brief the issue of a further stay. Cellspin's purported concerns about delay are further belied by its own persistent delays—repeatedly missing court deadlines with impunity and admitting to tactical delays in initiating discovery in this case. *See, e.g.*, D.I. 60 at 9-10.

III. CONCLUSION

For all of the foregoing reasons, and the reasons set forth in Defendants' opening brief, Defendants' motion should be granted.

Dated: January 9, 2025

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this, I caused to be electronically-filed the foregoing document with the Clerk of Court using the Court's CM/ECF system on January 9, 2025. As such, this document was served on all counsel who are deemed to have consented to electronic service.

/s/ Jennifer Parker Ainsworth
Jennifer Parker Ainsworth