

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ABBOTT LABORATORIES,
Petitioner,

v.

MIRACOR MEDICAL SA,
Patent Owner.

IPR2025-00114
U.S. Patent No. 11,572,879

**PETITIONER ABBOTT LABORATORIES' AUTHORIZED RESPONSE
TO PATENT OWNER MIRACOR MEDICAL SA'S REQUEST FOR
DIRECTOR REVIEW OF INSTITUTION DECISION**

PO seeks Director Review for five issues: particularity of the Petition, identification of claim constructions, word count, *Fintiv* factors, and the merits of the Petition. The Board already considered and rejected all but the *Fintiv* argument, and PO does not argue that the Board abused its discretion or reached an erroneous conclusion of law—it simply asks the Director to revisit the Board’s findings of fact. As to *Fintiv*, PO raises its argument for the first time here—but it is not of record and was not considered by the Board, so there is nothing for the Director to review.¹

Granting PO’s Request will also inject inefficiencies. PO asserted six related patents in district court, all of which the Board instituted Petitioner’s IPRs on. *See* IPR2025-00096, -112, -113, -114, -115, -116. The challenged claims significantly overlap, and Petitioner’s grounds are the same across all six. PO, however, only seeks Director Review on three institution decisions. No efficiency would be gained from denying institution of this IPR, while at least three related IPRs proceed.

Compelling reasons also exist for denying this request. PO began prosecuting the challenged claims in 2021—years after Petitioner commercialized the product accused of infringement—but claimed priority to a 2007 application. *See* Pet. at 2-3. The challenged claims diverge from the specification’s disclosure to capture

¹ PO’s *Fintiv* request is not permitted under the *Interim Processes for PTAB Workload Management* (March 26, 2025), which does not apply to this proceeding.

technology that Petitioner disclosed as early as 2001 (i.e., Bourque, Ex.1007) and spent much time and resources advancing. *Id.* Director Review should be denied.

I. Petitioner Satisfied the Particularity Requirement

PO previously argued that Petitioner failed to “identify[] with particularity the evidence supporting its challenge.” Dec. at 12-13, n.10. But the Board “considered all of Patent Owner’s arguments” and “determined [that] Petitioner made a sufficient showing in the Petition to support institution.” *Id.* PO now argues that “[t]he Board dismissed PO’s arguments in a footnote,” Req. at 2, but that ignores that the footnote states the Board’s finding is “explained below.” Dec. at 12-13, n.10. Indeed, the Board detailed how the Petition’s evidence supported each challenge. *See* Dec. at 30-48.

PO also faults Petitioner for using a “shortcut.” Req. at 2-3. But Petitioner and its expert explained that two sets of claims recite “identical or analogous” elements, justifying its use of tables to correlate those elements to prior sections. *See* Pet. at 47, 74, 106, 132. PO argues that “there are significant differences between claim[s]” but has not explained why any “differences” are not analogous. Req at 3. In any case, PO’s argument only applies to “half of the [claims]” (Req. at 2), so denying institution is unwarranted. *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1359 (2018).

PO misapplies *Adaptics*. The petition there used “ten references” connected by “and/or,” “yield[ing] hundreds of possible combinations.” IPR2018-1596, Paper

20 at 18-19 (Mar. 6, 2019). By contrast, here, Petitioner uses “and/or” to connect two references: to assert a single-reference obviousness ground and a two-reference obviousness ground (*e.g.*, Wampler alone or in combination with Bourque). Pet. at 53-67. And Petitioner details how each limitation is obvious under each ground. *Id.*

Lastly, PO’s claim that it “was prejudiced in not being able to fully respond to Petitioner’s allegations” is untrue. PO Preliminary Response (“POPR”) responded to Petitioner’s supporting evidence over a span of 55 pages. POPR at 16-71.

II. Petitioner Presented Alternative Claim Constructions

Contrary to PO’s argument, the Petition articulates and applies the correct plain and ordinary meaning constructions. Pet. at 8-11. Because PO takes a broader view of claim terms in its infringement contentions to capture Petitioner’s product, however, the Petition alternatively applies PO’s broader constructions in separate Grounds. *Id.* PO’s “ambiguity” argument was directly addressed and rejected by the Board, finding “no ambiguity or improper contradiction in the claim construction arguments advanced by Petitioner.” Dec. at 24, 26-27 (“the broader construction applied by Petitioner . . . encompasses the narrower construction Petitioner proposes”). PO also argues that the constructions “adopt[ed]” from its infringement case “ignore[] the plain and ordinary meaning” without articulating why Petitioner’s literal recitation of PO’s detailed infringement claim chart is wrong. Req. at 4.

III. Petitioner Complied with the Word Count

The Board has expressly permitted the use of Petitioner’s citation format, and has done so more recently than the non-precedential *Axon* decision PO relies on. *See NVIDIA Corp. v. Advanced Cluster Systems, Inc.*, No. IPR2021-00075, Paper No. 9 at 65 (PTAB May 5, 2021) (finding “non-standard formats such as ‘EX-1001’ . . . to make two words count as one” do not violate the rule). This format is also permitted at the appellate level. *See* Federal Circuit, Electronic Filing Procedures, version 3.2.2, at 34, accessible at <https://www.cafc.uscourts.gov/wp-content/uploads/ElectronicFilingProcedures.pdf> (“Appx123”). In any event, as the Board found, PO was not prejudiced by Petitioner’s citation format, since PO’s POPR was more than 700 words under the limit. Dec. at 12; POPR at 76. The Board thus correctly concluded that denial on this basis was not warranted. Dec. at 12.

IV. PO’s Request to Consider the *Fintiv* Factors Is Improper, and in Any Case, the Factors Favor Institution

Given the litigation stay and no scheduled trial date, PO unsurprisingly did not raise *Fintiv* in its POPR. Consequently, the Board did not address *Fintiv*. PO is precluded from doing so here for the first time—“The Director will not consider . . . new arguments not part of the official record.” USPTO, Director Review Process at 3.E. But even if considered, PO’s argument lacks merit. Factors 1-2 weigh against denial because the litigation is stayed and the earliest expected trial date is July 2028, about two years after a FWD. Pet. at 136. Factor 3 also weighs against denial because little has happened in district court: final contentions have not been served, and

neither claim construction nor expert discovery have begun. The Board has devoted significantly more resources to these issues than the district court. Factors 4-5 are neutral because the issues and parties are the same.

V. The Merits of the Petition Are Compelling

Each primary reference proposes the same solutions using nearly identical architecture as the challenged claims under the correct construction, illustrating the Petition's compelling merits. *See, e.g.*, Pet. at 2-3. PO argues the merits are "weak"—it argues that Ground 2 would require "substantial redesign." Req. at 13. But the Board correctly dismissed PO's argument as "unsupported, conclusory ... attorney argument and mischaracterized evidence." Dec. at 42. PO "d[id] not otherwise dispute that [Ground 2] teaches or suggests each of the [claim] limitations." Dec. at 38. PO does not challenge Ground 4's merits, apparently accepting the Board's findings that the flaws alleged in the POPR about Ground 4 were merely "attorney argument." Req. at 13-14; Dec. at 47. Grounds 1 and 3 are also compelling, given that the Board's only critique turned on a disputed claim construction, which the Board noted "is not a final . . . construction." Dec. at 30-31, 44, 49. Finally, PO argues that "the Board refused even to finish its analysis." Req. at 13. But this only confirms the Petition's strength—the Board considered Ground 2 sufficiently strong and there was no need to say more at this time. *See SAS*, 138 S. Ct. at 1359.

For the foregoing reasons, Director Review should be denied.

Dated: July 1, 2025

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I hereby certify that on July 1, 2025, I caused to be served a true and correct copy of the foregoing to be served via e-mail on the following counsel for Patent Owner:

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