

**From:** [Director\\_PTABDecision\\_Review](#)  
**To:** ["Gordon, Lori A"; Samuel.Thacker@klarquist.com; Amy.Haspel@klarquist.com; Delainey.Tanner@klarquist.com; todd.siegel@klarquist.com; andrew.mason@klarquist.com; Msft-X1-IPRs@klarquist.com; Daughtrey, Natasha E; Larochelle, Christie](#)  
**Cc:** [Trials](#)  
**Subject:** RE: IPR2025-00253, -00254, -00255: Request for Extension of Time to File Director Review Request - Denied  
**Date:** Friday, November 21, 2025 7:14:00 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)  
[image007.png](#)

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Counsel,

Patent Owner's request for authorization to file Requests for Director Review in the above identified proceedings is denied.

Thanks

IPR2025-00253, 00254, and 00255  
Ex.3102

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**From:** Gordon, Lori A <LoriGordon@goodwinlaw.com>  
**Sent:** Thursday, November 20, 2025 12:38 PM  
**To:** Director\_PTABDecision\_Review <Director\_PTABDecision\_Review@uspto.gov>; Trials <Trials@USPTO.GOV>  
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**Subject:** IPR2025-00253, -00254, -00255: Request for Extension of Time to File Director Review Request

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**IPR2025-00253**  
**IPR2025-00254**  
**IPR2025-00255**

Dear Honorable Board,

Patent Owner in the above-captioned IPR proceedings respectfully requests authorization to file Requests for Director Review. While the deadline for requesting director review has passed, for reasons explained below Patent Owner submits that good cause exists to grant an extension. The parties have conferred. Petitioner opposes and submits that no good cause

exists for the belated Requests for Director Review sought by Patent Owner. The parties' positions are provided below, and the parties can be available at the Board's convenience should a call be necessary.

### **Patent Owner's Position**

Patent Owner in the above-captioned IPR proceedings respectfully requests authorization to file Requests for Director Review. While the deadline for requesting director review has passed, Patent Owner submits that good cause exists to grant an extension. 37 C.F.R. § 42.75(c)(1). Specifically, the Director recently issued a precedential Director Review decision where he vacated an institution decision and stated that allowing petitioners to propose different claim constructions in post-grant reviews than what they advocated for in district court proceedings on the same patent "does not further the Office's goal of 'providing great predictability and certainty in the patent system.'" *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20, 4 (Nov. 3, 2025) (Order Vacating the Decision Granting Institution, and Remanding to the Board for Further Proceedings after Sua Sponte Director Review) (quoting 83 Fed. Reg. at 51, 342-43).

Specifically, in the parallel district court litigation, Petitioner Microsoft advocated claim constructions for terms that appear in every claim of the challenged U.S. Patent Nos. 7,370,035, 9,633,139, and 10,552,490, as shown in the table below:

| <b>Term</b>                                                                                                                                                       | <b>Microsoft's proposed district court construction</b>                                                                                                                                                                                                                                                             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| "identified one or more documents that are included in each of the first and second groups of documents" ('035 patent, claims 1 and 10)                           | "identified one or more documents as a result of three distinct processes: first identifying a first group of documents, second identifying a second group of documents, and third identifying one or more documents found in each of the first two groups."                                                        |
| "identifying one or more documents included in both the first one or more documents and the second one or more documents" ('139 patent, claims 1 and 23)          | "identifying one or more documents as a result of three distinct processes: first identifying a first one or more documents, second identifying a second one or more documents, and third identifying one or more documents found in each of the first one or more documents and the second one or more documents." |
| "non-adjacent in at least one of the identified documents" ('139 patent, claims 1 and 23)                                                                         | Plain and ordinary meaning, which is "non-adjacent within the content of at least one of the identified documents."                                                                                                                                                                                                 |
| "identifying any of the plurality of files included in both the first one or more of the plurality of files and the second one or more of the plurality of files" | "identifying any of the plurality of files as a result of three distinct processes: first identifying a first one or more of the plurality of files, second identifying a second one or more of the plurality of                                                                                                    |

|                                                                             |                                                                                                                                                                                    |
|-----------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (‘490 patent, claim 1)                                                      | files, and third identifying any of the plurality of files included in both the first one or more of the plurality of files and the second one or more of the plurality of files.” |
| “non-adjacent in at least one of the matching files” (‘490 patent, claim 1) | Plain and ordinary meaning, which is “non-adjacent within the content of at least one of the identified documents.”                                                                |

See *X1 Discovery, Inc. v. Microsoft Corporation*, Case No. 8:23-cv-02415-GW-JDE, Dkt. 86 (Joint Claim Construction Statement). In its Petitions here, Microsoft argued that no terms needed construction, did not apply the same constructions for obviousness as it advocated for in the district court litigation related to non-infringement, and did not explain why it had taken different positions on claim construction. IPR2025-00253, Paper 1 at 15 (“Petitioner applies the plain and ordinary meaning of all claim terms below.”); IPR2025-00254, Paper 1 at 11 (same); IPR2025-00255, Paper 1 at 12 (same). As the Director held in *Revvo Techs.*, “when a petitioner takes alternative positions before the Board and a district court, that petitioner should, at a minimum, explain why alternative positions are warranted.” *Revvo Techs.*, IPR2025-00632, Paper 20 at 3-4. Petitioner’s argument that PO should have addressed Petitioner’s inconsistent claim constructions in its POR misses the mark. The POR appropriately addresses the merits of Petitioner’s arguments under the constructions Petitioner advanced in the Petition. In each of the cases Petitioner cites below, the inconsistent claim construction positions were available to Patent Owner in time to be raised in the POPR or in Discretionary Denial briefing. Further, contrary to Petitioner’s assertion, the precedential *Revvo* decision does mark a change in policy, requiring Petitioner to justify in the Petition any inconsistent claim construction positions. Petitioner here did not do so.

Patent Owner respectfully requests permission to file a Request for Director review pursuant to 37 C.F.R. § 42.75 limited to 3 pages within two business days of the Board’s approval of this request. This brief would explain the different claim construction positions that Petitioner has taken and their relevance to the institution decision. To ensure fairness, Patent Owner would not oppose Petitioner submitting a responsive brief of equal length within five business days of Patent Owner’s submission.

### **Petitioner’s Position**

Petitioner opposes. Patent Owner seeks improper use of the Director Review process to belatedly introduce new evidence and arguments based on “preliminary claim constructions” that Patent Owner received on August 28, shortly before the stay of the district court case on October 2. See *X1 Discovery, Inc. v. Microsoft Corp.*, No. 8:23-cv-02415-GW-JDE, Dkt. Nos. 86, 104 (C.D. Cal.). Petitioner could not have addressed these preliminary constructions in the petitions because they arose eight months after the petitions were filed, and after institution of the IPRs. Patent Owner, however, has had ample time and opportunity to raise these issues, including in its November 3 Patent Owner Responses, yet failed to do so.

The preliminary constructions are consistent with the grounds presented in the Petitions. If Patent Owner thought otherwise, it could have argued as much in the November 3 Patent Owner Responses (Paper 21 in each IPR) or promptly raised the issue with the Board in September. Patent Owner's more than two-month delay in raising this issue alone shows that the preliminary constructions are not relevant to these IPRs and that Patent Owner's request lacks good cause.

Patent Owner alleges good cause based entirely on *Revvo*, yet that decision does not justify Patent Owner's delay or warrant revisiting institution. While *Revvo* "clarifie[d] how a petitioner should approach different claim construction positions," it neither created new doctrine/arguments nor excused patent owners from timely raising issues of claim construction. IPR2025-00632, Paper 20 at 5. Indeed, in *Revvo* and two decisions cited by *Revvo*, patent owners had timely raised the "different claim constructions" argument. *Revvo*, IPR2025-00632, Paper 20 at 2-3 (argument raised in POPR); *Cambridge Mobile Telematics, Inc. v. Sfara, Inc.*, IPR2024-00952, Paper 12 at 7 (PTAB Dec. 13, 2024) (informative) (same); *Sun Pharm. Indus. Inc. v. Nivagen Pharm., Inc.*, IPR2025-00893, Paper 18 at 2-3 (Director Sept. 19, 2025) (argument raised in request for discretionary denial).

Thus, well before *Revvo*, Patent Owner could have raised arguments based on allegedly inconsistent claim construction positions, and should have timely raised them had it wanted to preserve them. The Director Review process is not a backdoor for tardy presentation of new evidence and arguments. Patent Owner's request should be denied in each of IPR2025-00253, -00254, and -00255. If the Board allows Patent Owner to file Requests for Director Review, Petitioner requests equal-length responses, per the current Director Review process. See <https://www.uspto.gov/patents/ptab/decisions/director-review-process> at § 3.E.

Regards-  
Lori A. Gordon  
Lead Counsel – Patent Owner

Lori Gordon



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