

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TESLA, INC.,
Petitioner,

v.

INTELLECTUAL VENTURES II LLC,
Patent Owner.

IPR2025-00342
U.S. Patent No. 7,336,805

**PETITIONER'S AUTHORIZED REPLY TO
SUPPLEMENTAL PATENT OWNER'S RESPONSE**

I. Introduction

The Board should reject Patent Owner's argument that the Petition fails to explain why allegedly inconsistent claim construction positions are warranted. Patent Owner's argument is based on the false premise that there were inconsistent claim construction positions to address. The Petition construed the claims using the same constructions that Patent Owner pursued in the parallel district court proceeding and the district court adopted. In the district court proceeding, Petitioner addressed a different issue—the potential indefiniteness of relative terms—that cannot be addressed in this IPR proceeding. Nevertheless, Petitioner challenged the claims in this IPR proceeding using the same claim constructions proposed by Patent Owner and adopted by the district court. Consequently, there are no inconsistent claim positions to warrant vacatur of the institution decision.

In compliance with 37 C.F.R. § 42.104(b)(3), the Petition expressly informed Patent Owner and the Board how the claims were being construed and then explained in detail how the prior art taught each limitation of the claims. In doing so, the Petition set forth how it was logically possible to apply the prior art to the claims—despite any potential indefiniteness. The Board subsequently applied the prior art to the claims in the same manner in granting institution. Notably, Patent Owner did not dispute that the prior art teaches the limitations alleged to be indefinite in district court. Accordingly, the grant of institution was proper and

consistent with the Federal Circuit's precedential decision in *Intel Corp. v. Qualcomm Inc.*, 21 F.4th 801, 813 (Fed. Cir. 2021) (holding that "[t]he indefiniteness of a limitation . . . precludes a patentability determination only when the indefiniteness renders it logically impossible for the Board to reach such a decision.").

Moreover, the facts of this IPR satisfy at least two of the specific examples provided by the Director as to when different claim construction positions are warranted: (i) when "notwithstanding the alleged indefiniteness of the claim term, an ordinarily skilled artisan would understand that the asserted art satisfies the claim limitation" (*Tesla, Inc. v. Intellectual Ventures II*, IPR2025-00340, Paper 18 at 3-4 (Director Nov. 5, 2025) (informative)); and (ii) when a district court declines to adopt a party's construction and that party advances the court-adopted construction in the proceeding before the Board. *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, Paper 20 at 5 (Director Nov. 3, 2025) (citing *Sun Pharm. Indus. Inc. v. Nivagen Pharm., Inc.*, IPR2025-00893, Paper 18 at 3 (Director Sept. 19, 2025)). Both examples are applicable here.

Further, Patent Owner has not identified any requirement in *Revvo Techs.* or *Tesla* that the Petition itself must explain why inconsistent claim construction positions are warranted. There is no such requirement, and the Board should not impose such a requirement here when the Petition was filed before any claim

construction briefing in the district court. *See Revvo Techs.* at 5 (explaining that “*the petitioner* should explain sufficiently why the different positions are warranted,” and remanding the IPR back to the Board panel to authorize additional briefing).

Finally, Patent Owner waived its argument that inconsistent claim construction positions should lead to a denial of institution by not raising the argument until after filing the Patent Owner Response. Despite making the same argument in the Preliminary Response, Pre-Institution Reply, and Patent Owner Response in related case IPR2025-00340 involving the same parties, Patent Owner did not make the argument in any of those papers in the current case despite having multiple opportunities to do so. Patent Owner's strategic decision to not timely raise its inconsistent claim construction positions argument earlier prevents Patent Owner from belatedly raising the argument now.

II. The Petition explained in detail how it was logically possible to apply the prior art to the claims and the Board applied the prior art to the claims in the same manner in the Institution Decision.

Patent Owner asserts that “[t]he Petition also failed to explain how this case fit into any of the narrow exceptions that make it ‘logically possible’ to apply the prior art to a claim alleged to be indefinite.” Supplemental Patent Owner Response (POR), 2. However, the Petition explicitly explained how it was logically possible to apply the prior art to the claims and did, in fact, apply the prior art to the claims.

See Pet., 7, 9-80. In particular, the Petition showed how limitations [1.4.1] and [1.4.2]—the limitations Petitioner later identified in district court as containing indefinite features (Ex.1060, 3)—are unpatentable over the prior art. Pet., 43-48. Petitioner clearly met its burden of establishing “a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a).

In the Institution Decision, the Board applied the prior art to the claims in the same manner. ID (Paper 13), 6-16. Accordingly, the grant of institution by the Board was proper and consistent with the Federal Circuit's precedential decision in *Intel Corp. v. Qualcomm Inc.*, 21 F.4th 801 (Fed. Cir. 2021). In *Intel*, the Court held that “[t]he indefiniteness of a limitation . . . precludes a patentability determination **only when** the indefiniteness renders it **logically impossible** for the Board to reach such a decision.” *Id.* at 813. Here, first Petitioner and then the Board showed that it is possible to apply the prior art to the claims, preliminarily determining the prior art teaches all the claim limitations. ID, 6-16. For example, the Board explained that “Patent Owner does not otherwise challenge Petitioner's contentions based on Broggi, Huttenlocher, and Brady” and that “[w]e have reviewed Petitioner's contentions and evidence, and conclude on the present record that Petitioner is likely to prevail with the unpatentability of [all the challenged] claims” ID, 15 (“Petitioner is likely to prevail with the unpatentability of

claims 6-8 and 11.”), 16 (“... Petitioner is likely to prevail with the unpatentability of claims 1, 2, 9, and 10.”). Accordingly, the Board’s analysis and determination in the Institution Decision satisfies the requirements of *Intel* for addressing patentability (i.e., it is **not** logically impossible to determine patentability).

III. The present case satisfies at least two of the Director’s examples of when different claim construction positions are warranted.

The facts of this IPR also satisfy at least two of the specific examples provided by the Director as to when potentially different claim construction positions are warranted. First, in *Tesla*, the Director noted that different claim constructions may be warranted when “notwithstanding the alleged indefiniteness of the claim term, an ordinarily skilled artisan would understand that the asserted art satisfies the claim limitation.” *Tesla*, Paper 18 at 3-4. The Director provided an example when “the limitation prescribed a range and only the outer bounds of the range were unclear.” *Id.* Here, consistent with the Director’s specific example, the claim limitations that were in dispute at the district court in the present case are terms of degree that define a range where the outer bounds are arguably unclear. Specifically, Petitioner argued that the terms “may at least partially describe,” “plausibility,” and “plausible objects” were indefinite because of the lack of clarity as to how to determine or measure when the limitation is satisfied. The Petition showed that—despite the potential indefiniteness—a person of ordinary skill in the

art would have understood the prior art taught each of the disputed limitations.

Pet., 43-48.

Patent Owner has never disputed the prior art relied upon in the Petition teaches all the aspects of limitations [1.4.1] and [1.4.2]. *See generally*, Preliminary Response (POPR), Patent Owner's Pre-Institution Sur-Reply, POR, Supplemental POR (all not contesting that the features of limitations [1.4.1] and [1.4.2] are taught by the prior art); ID, 15 ("Patent Owner does not otherwise challenge Petitioner's contentions based on Broggi, Huttenlocher, and Brady."). In instituting this IPR, the Board preliminarily agreed with Petitioner's showing that the prior art teaches these limitations. ID, 6-16. Accordingly, the present case satisfies the exception articulated by the Director that different claim construction positions are warranted when "notwithstanding the alleged indefiniteness of the claim term, an ordinarily skilled artisan would understand that the asserted art satisfies the claim limitation[s]." *Tesla*, Paper 18 at 3-4.

Second, in *Revvo Techs.*, the Director noted that a petitioner may rely on different claim construction positions when a district court declines to adopt a party's construction and that party advances the court-adopted construction in the proceeding before the Board. *Revvo Techs.*, Paper 20 at 5 (citing *Sun Pharm. Indus. Inc. v. Nivagen Pharm., Inc.*, IPR2025-00893, Paper 18 at 3 (Director Sept. 19, 2025)). That is precisely the current situation here.

At the *Markman* hearing in the parallel district court proceeding, the district court rejected Petitioner's indefiniteness arguments and adopted plain and ordinary meaning constructions. Ex.1070, 2 (the Court's preliminary claim constructions for '805 patent were "Plain and ordinary meaning. Not indefinite."); Ex.1071 (Transcript of Markman Hearing), 21:23-24 (the Court stated, "The Court is going to maintain its preliminary constructions on both [terms]" that Petitioner alleged to be indefinite in district court.). And, as noted above, Patent Owner has not disputed—and can no longer dispute at this stage of the proceeding—that the prior art relied upon in the Petition teaches all aspects of limitations [1.4.1] and [1.4.2] alleged to be indefinite.

Further, the district court's rejection of Petitioner's claim construction in favor of the plain and ordinary meaning construction occurred more than a month before the filing of Patent Owner's Preliminary Response and more than three months before the Board issued the Institution Decision. Accordingly, now, and at the time of institution, there was no risk of inconsistent claim construction decisions between this IPR and the district court proceeding, furthering the Office's stated goal of "providing greater predictability and certainty in the patent system." *Revvo Techs.*, Paper 20 at 4-5. And, as discussed in Section V below, Patent Owner's belated attempt to relitigate the institution decision using an

argument Patent Owner could have raised, but strategically chose not to raise prior to institution is improper.

Patent Owner argues—contrary to the specific example in *Revvo Techs.*—that a district court's ruling rejecting a Petitioner's indefiniteness position is insufficient to warrant potentially different claim construction positions “because the issue will remain a subject for appeal where Petitioner can again advance its inconsistent indefiniteness position.” Supplemental POR at 5. However, *Revvo Techs.* and *Sun Pharm.* do not stand for the proposition that all appeals must be exhausted before potentially different constructions are warranted.¹ See, *Revvo Techs.*, Paper 20 at 5 (citing *Sun Pharm.*, IPR2025-00893, Paper 18 at 3). Rather, *Revvo Techs.* and *Sun Pharm.* simply require a district court to decline to adopt petitioner's proposed construction for the petitioner to have sufficient reason to utilize the “court-adopted construction in a proceeding before the Board.” *Id.*

¹ If Patent Owner's flawed theory were followed, a petitioner would likely be time-barred from pursuing an IPR, because any appeal to the Federal Circuit is likely to take more than 1 year. As a result, a petitioner would be statutorily prohibited from pursuing an IPR if the petitioner was required to appeal the district court decision before pursuing a different claim construction position in an IPR.

Again, that is precisely the situation here where the district court declined to adopt Petitioner's proposed indefiniteness constructions in favor of Patent Owner's proposed "plain and ordinary meaning" constructions and the Petition utilizes the court-adopted constructions. This IPR satisfies the exception articulated by the Director that potentially different claim construction positions are warranted when a district court declines to adopt a petitioner's construction and the petitioner advances the court-adopted construction before the Board. *Revvo Techs.*, Paper 20 at 5.

IV. There is no requirement for the Petition itself to explain why potentially different claim construction positions are warranted.

The Board should reject Patent Owner's argument that the Petition itself must contain an explanation why potentially different claim positions are warranted. Supplemental POR, 1 ("The Petition failed to explain why inconsistent claim construction positions were warranted.") (capitalization removed). Patent Owner has invented a requirement that does not exist. *Revvo Techs.* explains that "*the petitioner* should explain sufficiently why the different positions are warranted...." *Revvo Techs.*, IPR2025-00632, Paper 20 at 5. However, *Revvo Techs.*, *Tesla*, and *Cambridge Mobile* do not establish that a petition itself must explain why different claim construction positions are warranted. Rather, *Revvo Techs.* "clarifies how a petitioner should approach different claim construction

positions and how the Office will assess those positions,” and the Director remanded the IPR back to the Board to authorize additional briefing on the new requirements created by *Revvo Techs. Id.*

The timing of this case is fundamentally different than all the cases Patent Owner relies upon to assert that “the present Petition is deficient on its face for failing to offer any explanation why inconsistent claim construction positions are warranted.” Supplemental POR, 1-2 (emphasis removed) (citing *Revvo Techs.*, IPR2025-00632, Paper 20 (precedential), *Tesla*, IPR2025-00340, Paper 18 (informative), and *Cambridge Mobile Telematics, Inc. v. Sfara, Inc.*, IPR2024-00952, Paper 12 at 8-9 (PTAB 2024) (informative)), 4 (citing *American Airlines, Inc. et al. v. Intellectual Ventures I LLC*, IPR2025-01055, Paper 11 at 13 (PTAB November 21, 2025)).

In each of *Revvo Techs.*, *Tesla*, *Cambridge*, and *American Airlines*, claim construction briefing in the related district court litigation was submitted *before* the IPR Petition was filed. In *American Airlines*, the Board emphasized this timing, noting that “[i]n district court, *before* filing its Petition here, Petitioner argued ... indefiniteness and lack of written description.” *American Airlines*, Paper 11 at 13 (emphasis original). Similarly, in *Revvo Techs.* and *Cambridge*, both parties’ district court claim construction briefing was submitted *before* the Petition was filed. *See, e.g., Revvo Techs.*, Pet., 9-10 (citing Ex. 1017, Ex. A at 5-7, 10, Ex. B at

10-15); *Cambridge*, Pet. 7 n.3 (citing Ex. 1008, 9–16, 21–23, 26–37). Finally, in *Tesla*, Petitioner's opening claim construction brief was submitted shortly before the Petition was filed. *Tesla*, POPR, 10 (citing Ex. 2004, 227-228).

In contrast, the Petition in this IPR was filed *before* any claim construction briefing was submitted by either party in the related district court litigation. *See*, Pet. (Jan. 3, 2025); Opening Claim Construction Brief by Tesla, Inc. (Jan. 9, 2025); Opening Claim Construction Brief by Intellectual Ventures II LLC (Feb. 10, 2025). Put simply, **there were no district court claim construction positions to address when the Petition was filed**. Accordingly, any assertion that the Petition is somehow deficient for failing to explain a relationship to something that did not exist lacks merit. The Petition's alleged failure to specifically address district court claim constructions that **did not exist** at the time of filing the Petition cannot justify disturbing the Institution Decision at this stage of the trial.

V. Patent Owner waived its argument that inconsistent claim construction positions should lead to a denial of institution.

Patent Owner waived its argument that allegedly inconsistent claim construction positions should lead to a denial of institution by not raising this argument until after its Patent Owner Response (Paper 16). Patent Owner was aware of this situation at the time it filed its Request for Discretionary Denial (Paper 7), Preliminary Response (Paper 8), Pre-Institution Sur-Reply (Paper 12),

and Patent Owner Response (Paper 16). Patent Owner offers no justification for why it waited to raise an argument it could have raised earlier.

This IPR and IPR2025-00340 are both related to the same district court litigation. In fact, the claim construction briefing addressed both patents together in the same briefs. Ex.1060, 2-3 (Petitioner's claim construction positions for U.S. 6,894,639 involved in IPR2025-00340, and U.S. 7,336,805 involved in this IPR). In IPR2025-00340, Patent Owner repeatedly raised the argument it now attempts to raise in this case—that inconsistent claim construction positions should lead to a denial of institution. *See* IPR2025-00340, POPR, 10-11; Pre-Institution Sur-Reply, 7; Request for Director Review, 7-14.

However, in this IPR, Patent Owner filed its Discretionary Denial Brief (Paper 7), Preliminary Response (Paper 8), Pre-Institution Sur-Reply (Paper 12), and Patent Owner Response (Paper 16) over a similar time frame without ever making the argument. Every one of these four briefs was filed after the parties filed the Joint Claim Construction Statement in the district court proceeding on March 28, 2025. Ex.1060, 4. Patent Owner was thus fully aware of the alleged claim construction positions but never raised it until now. Patent Owner has thus waived its argument that allegedly inconsistent claim construction positions justify vacatur of the institution decisions.

The Board explicitly warned Patent Owner in the Scheduling Order that “Patent Owner is cautioned that any arguments not raised in the response may be deemed waived.” Scheduling Order, 9. Despite the Board’s warning, Patent Owner still chose not to raise the issue. Patent Owner cannot argue that it was unaware of the argument since Patent Owner repeatedly made the argument in related case IPR2025-00340. Likewise, Patent Owner cannot argue that *Revvo Techs.* created a new precedent that warranted its delay in raising the issue. Patent Owner has explicitly argued to the Board in IPR2025-00340 that “the aspect of *Revvo* pertinent to the present case is not new law” and that “the burden of explaining why inconsistent claim construction positions are warranted is not new.” IPR2025-00340, Paper 20 at 12 (emphasis original). Patent Owner cannot have it both ways. Accordingly, Patent Owner waived the argument by failing to raise it in a timely manner in this case.

Further, Patent Owner advances conflicting positions on whether Petitioner should be allowed to substantively respond to Patent Owner’s delayed argument. On the one hand, Patent Owner asserts that “there is no prejudice to allowing Patent Owner to raise the issue now, as Petitioner has been granted an opportunity to respond to Patent Owner’s present submission.” Supplemental POR, 4. On the other hand, Patent Owner argues that it “would be fundamentally unfair for Petitioner to be allowed to first present an explanation arguing why it is ‘logically

possible' to apply the prior art to allegedly indefinite limitations at this point in the trial" Supplemental POR, 3-4. However, the issue is being raised "at this point in the trial" only due to Patent Owner's delay, not any fault of Petitioner's.

As discussed in Sections II and III above, the Petition was filed *before* any claim construction briefing in the related district court litigation and the Petition explained in detail how the prior art applied to all the claim limitations. The Petition also informed the Board and Patent Owner that "Petitioner reserves the right to raise §112 challenges in other forums." Pet., 24 n.3. But before Patent Owner's Preliminary Response and the Institution Decision, the district court rejected Petitioner's indefinite claim construction positions and adopted plain and ordinary meanings for the disputed claim terms—the same constructions used in the Petition. Accordingly, to the extent there could have ever been any potential concern about allegedly inconsistent claim construction positions in this IPR, those concerns were resolved long before the Institution Decision. The Board addressing the same claim constructions used in the district court proceeding is consistent with the Office's stated goal of "providing greater predictability and certainty in the patent system." *Revvo Techs.*, Paper 20 at 4-5.

VI. Conclusion

The Board should maintain the Institution Decision and continue the trial as scheduled.

Respectfully submitted,

Dated: December 31, 2025
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PETITIONER'S EXHIBIT LIST

Ex.1001	U.S. Pat. No. 7,336,805 to Gehring et al. ("the '805 patent")
Ex.1002	Prosecution History of U.S. Pat. No. 7,336,805 (U.S. Application No. 11/154,772) ("the '772 application")
Ex.1003	Declaration of Dr. Jeffrey Rodriguez under 37 C.F.R. § 1.68
Ex.1004	<i>Curriculum Vitae</i> of Dr. Jeffrey Rodriguez
Ex.1005	"Visual Perception of Obstacles and Vehicles for Platooning," Broggi et al. ("Broggi")
Ex.1006	"Object Recognition Using Alignment," Daniel Huttenlocher ("Huttenlocher")
Ex.1007	U.S. Patent No. 5,434,927 to Brady et al. ("Brady")
Ex.1008	"Automatic Vehicle Guidance: The Experience of the ARGO Autonomous Vehicle," Broggi, Bertozzi, et al. ("Bertozzi")
Ex.1009	Microsoft Computer Dictionary, 3rd ed., 1997, excerpts
Ex.1010	IV's Complaint, <i>Intellectual Ventures II, LLC v. Tesla, Inc.</i> , No. 6:24-cv-188-ADA (WDTX)
Ex.1011	Proposed Scheduling Order, <i>Intellectual Ventures II, LLC v. Tesla, Inc.</i> , No. 6:24-cv-188-ADA (WDTX)
Ex.1012	Statistics on District Court Timing
Ex.1013	Interim Procedure for Discretionary Denials in AIA Parallel District Court Litigation, June 21, 2022
Ex.1014	IV's Preliminary Infringement Contentions, <i>Intellectual Ventures II, LLC v. Tesla, Inc.</i> , No. 6:24-cv-188-ADA (WDTX)
Ex.1015	Declaration of Sylvia Hall-Ellis, Ph.D.
Ex.1016	Exhibit 1 to Intellectual Ventures II LLC's Preliminary Infringement Contentions – Infringement Claim Chart of U.S. Patent No. 7,336,805 (the "'805 Patent"), <i>Intellectual Ventures II, LLC v. Tesla, Inc.</i> , No. 6:24-cv-188-ADA (WDTX)
Ex.1017- Ex.1052	<i>Reserved</i>
Ex.1053	Statistics on District Court Timing (Dec. 31, 2024)

Ex.1054	WDTX 2024 Statistical Public Report, available at https://www.txwd.uscourts.gov/court-information/district-statistics/
Ex.1055	Amended Order Assigning the Business of the Court (Judge Moses, Jan. 31, 2025)
Ex.1056	LexMachina docket report
Ex.1057	LexMachina docket report
Ex.1058	"Albright Worried Multipatent Trials Ask Too Much Of Jurors," Law360 (Dec. 18, 2020), at https://www.law360.com/articles/1337976/albright-worriedmultipatent-trials-ask-too-much-of-jurors
Ex.1059	Bifurcation Order – Videolabs, Inc. v. Asustek Computer, Inc. 6:22-cv-00720-ADA (WDTX)
Ex.1060	Joint Claim Construction Statement, <i>Intellectual Ventures II, LLC v. Tesla, Inc.</i> , 1:24-cv-884-ADA, ECF No. 37 (WDTX) (March 28, 2025)
Ex.1061	"The economic contributions of Tesla to the California economy, 2018–2021," IHS Markit (Oct. 2022), available at https://digitalassets.tesla.com/tesla-contents/image/upload/Tesla-California-Economic-Impact-Final-Report-October-2022
Ex.1062	"Tesla's 'American-made' cars won't get hit as hard by the auto tariffs," CNN.com, https://www.cnn.com/2025/03/29/cars/american-made-cars-tesla-auto-tariffs/index.html , retrieved Apr. 14, 2025
Ex.1063	"An Assessment of the Impact of the Inter Partes Review Process under the Patent Trial and Appeal Board on the US Economy," The Perryman Group, available at https://www.perrymangroup.com/publications/report/2021/9/23/an-assessment-of-the-potential-impact-of-expanding-inter-partes-review-ipr-under-the-america-invents-act-on-the-us-economy/
Ex.1064	'805 Patent Assignment Recordation

Ex.1065	"Tesla's California Footprint," https://www.tesla.com/blog/teslas-california-footprint (retrieved Apr. 25, 2025)
Ex.1066	"FAQs for Interim Processes for PTAB Workload Management," available at https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management (retrieved May 13, 2025).
Ex.1067	Notice of <i>Sotera</i> Plus Stipulation for Defendant Tesla, Inc., <i>Intellectual Ventures II, LLC v. Tesla, Inc.</i> , 1:24-cv-884-ADA, ECF No. 63 (WDTX) (June 11, 2025)
Ex.1068	Order Granting Motion to Extend Time to File Infringement Contentions, <i>Intellectual Ventures II, LLC v. Tesla, Inc.</i> , 1:24-cv-884-ADA, ECF No. 60 (WDTX) (May 27, 2025)
Ex.1069	Judge Albright Patent FAQ, available at https://www.txwd.uscourts.gov/for-attorneys/judge-albright-courtroom-faq/ (retrieved June 2, 2025)
Ex.1070 (NEW)	Preliminary Constructions from the Court, April, 9, 2025 email to counsel, <i>Intellectual Ventures II, LLC v. Tesla, Inc.</i> , No. 1:24-cv-00884-ADA
Ex.1071 (New)	Transcript of <i>Markman</i> Hearing on April 10, 2025, <i>Intellectual Ventures II, LLC v. Tesla, Inc.</i> , No. 1:24-cv-00884-ADA, ECF No. 84 (August 21, 2025)

CERTIFICATE OF SERVICE

The undersigned certifies, under 37 C.F.R. § 42.6, that service was made on the Patent Owner as detailed below.

Date of service December 31, 2025

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Documents served **Petitioner's Authorized Reply to Supplemental Patent Owner's Response; Exhibits 1070-1071**

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