

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

REVVO TECHNOLOGIES, INC.,

Petitioner,

v.

TIRE STICKERS LLC,

Patent Owner.

Case No. IPR2025-00631

Patent 11,124,027

**PETITIONER'S AUTHORIZED RESPONSE TO
DIRECTOR REVIEW REQUEST**

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I. INTRODUCTION

The Board has already determined the institution is warranted under 35 U.S.C. § 314(a) under Patent Owner's own interpretation of the claims by granting institution of proposed grounds based on prior art that was never before the examiner. (*See* Paper 13 ("Decision Granting Institution").) Although the parties have proposed constructions in the district court proceeding, the district court is not scheduled to resolve claim construction for at least several months.

Here, Petitioner has advanced Patent Owner's own broader constructions before the Board in the event the district court declines to adopt Petitioner's narrow constructions. Thus, Petitioner's different positions regarding its proposed claim constructions are warranted for the precise reasoning and justification endorsed by the Director: "if a party advances a narrow construction in the district court and the district court declines to adopt the narrow construction, the party would have sufficient reason for advancing the broader, court-adopted construction in a proceeding before the Board." (*Revvo Techs. Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20, 5 (Director Nov. 3, 2025) (precedential) (citing to *Sun Pharm. Indus. Inc. v. Nivagen Pharm., Inc.*, IPR2025-00893, Paper 18, 3 (Director Sept. 19, 2025))).)

II. FACTUAL BACKGROUND

The Petition was filed in this proceeding on February 21, 2025. (Paper 2 (“Pet.”).) On July 24, 2025, the then Acting Director denied Patent Owner’s request for discretionary denial, noting that “the Petition is referred to the Board to handle the case in the normal course, including by issuing a decision on institution addressing the merits and other nondiscretionary considerations, as appropriate.” (Paper 12 (“Decision Denying Discretionary Denial”), 2.)

On August 25, 2025, upon referral from the Acting Director, the Board determined that the Grounds presented in the Petition relying on prior art that was not before the examiner “establishes a reasonable likelihood that Petitioner would prevail in showing” that the challenged claims are unpatentable and therefore granted institution of *inter partes* review. (Decision Granting Institution, 24.) The Board expressly recognized that “Patent Owner proposed several claim constructions for the underlying district court litigation and Petitioner adopts those constructions ‘for the purposes of this proceeding’” and that “Patent Owner [] does not dispute the constructions.” (Decision Granting Institution, 9-10.)

Significantly, the Board determined that “no express claim construction is necessary for any claim terms[,]” citing *Realtime Data*, which held that the Board must construe “only those terms... that are in controversy, and only to the extent necessary to resolve the controversy.” (*Id.*, 10 (citing *Realtime Data, LLC v. Iancu*,

912 F.3d 1368, 1375 (Fed. Cir. 2019)).) The Board then analyzed each claim limitation and explained how the prior art satisfied those limitations. In doing so, it did not rely on any claim constructions but instead referenced the Petitioner's undisputed evidence and the Patent Owner's own admissions regarding certain prior art features from its infringement analysis in the district court. (*See, e.g.*, Decision Granting Institution, 20, 22-23.)

Patent Owner did not file any request for rehearing under Rule 42.71(d) or for director review under Rule 42.75(c) of the Decision Granting Institution.

On September 18, 2025, approximately three weeks after the Board's Decision Granting Institution pursuant to the Acting Director's post-discretionary referral of the Petition, current Director Squires was confirmed by the Senate.

On October 17, 2025, Director Squires issued a Memorandum "effective October 20, 2025" that "the Director will determine whether to institute trial for *inter partes* review ("IPR") and post-grant review ("PGR") proceedings" and, as such, "merit-based decisions on whether to institute petitions will [no longer] be referred to a three-member panel of the PTAB." (Director's Memorandum on Director Institution of AIA Trial Proceedings dated October 17, 2025, 1-2.) The memorandum further expressly stated that "all petitions referred to the PTAB for consideration of the merits and non-discretionary considerations under the Interim Processes prior to October 20, 2025 will remain with a three-member panel." (*Id.*,

2.)

On November 18, 2025, Patent Owner filed its Patent Owner Response, asserting that Petitioner engaged in “impermissible gamesmanship” by adopting Patent Owner’s claim constructions. (Paper 19 (“POR”), 9-13.) Notably, Patent Owner did not challenge those constructions, nor did it depose Petitioner’s technical expert regarding the constructions or any other substantive arguments.

The following day, Patent Owner filed an unauthorized and untimely Request for Director Review, asking the Director to waive the time bar under 37 C.F.R. § 42.75 and to vacate the August 25 Decision Granting Institution, thereby terminating the proceeding.

On December 8, 2025, the parties received an email from the Director indicating that Patent Owner’s Request will be considered and Petitioner is authorized to file this Response to Patent Owner’s Director Review Request within five business days of the email. This Response is timely filed.

There has been no district court claim construction decision. Additionally, any decision by the district court on claim construction will not occur for many months. Claim construction has been delegated to a Magistrate Judge with a hearing scheduled for April 16, 2026, the Magistrate Judge’s tentative order on claim construction in late May of 2026, and any final adoption or rulings on objections by the district court Article III judge will almost certainly not occur until at least July

of 2026. (*See* EX2037, App'x A (Page 14).)¹ Trial is tentatively set for August 23, 2027, which is approximately a year after a Final Written Decision is due to issue in this proceeding.

III. ARGUMENT

The Board has already evaluated and decided the merits under Patent Owner's litigation-inspired constructions regarding the scope of the challenged claims in the underlying district court proceeding by granting institution of *inter partes* review. (Decision Granting Institution, 9-10, 24.) In doing so, the Board expressly determined that no claim construction was necessary, underscoring that the prior art plainly disclosed the challenged claim elements. (*Id.*, 10.) (Notably, in its recently-filed Patent Owner Response, the Patent Owner did not even depose Petitioner's technical expert—on the merits or otherwise—to challenge his prior art opinions.

¹ EX2037 was filed with Patent Owner's Request for Director Review and is a copy of the parties' joint proposed amended scheduling order in the district court case as of November 11, 2025. Petitioner notes that a new amended scheduling order issued on November 24, 2025 with revised dates that push certain deadlines ahead by a month. Petitioner was instructed not to submit evidence with this Response and, as a result, has not filed the new amended scheduling order. However, Petitioner can do so if requested by the Director.

While there is no requirement to depose an expert in responding to a petition, the decision not to do so strongly suggests that the merits of Petitioner's case are unassailable; there is simply no logical or strategic reason to forgo such an opportunity unless the evidence is overwhelmingly compelling.)

The Board did not rely on Patent Owner's claim constructions in its Decision Granting Institution, which completely undermines Patent Owner's assertion that these constructions are "highly prejudicial[,] "disrupt[] the overall goal of PTAB proceedings[,] "or raise "concerns of inconsistent outcomes on claim construction in district court proceedings and IPRs." (Paper 20 ("Director Review Request"), 2.) In fact, the Board did not apply Patent Owner's constructions at all. Given the Board's reasoning, it is evident that the same conclusion would have been reached even if Petitioner had advanced its own claim constructions. Thus, Patent Owner's argument is not only moot – it is fundamentally unconvincing.

The Petition also included and cited to both parties' proposed claim constructions from a joint claim construction chart in the district court proceeding, which was included as Exhibit 1024 to the Petition. (Pet., 9 (citing EX1024, Exhibit A (Joint Claim Construction Chart).) Petitioner was transparent that its Petition was applying Patent Owner's proposed constructions from the underlying district court litigation and submitted its own proposed constructions from the district court. (*Id.*, 8-9.) Contrary to Patent Owner's unfounded accusations, there was no

“gamesmanship” by Petitioner regarding claim interpretation in the Petition.

In a recent precedential order, the Director expressly acknowledged that “a petitioner is not necessarily precluded from arguing different claim construction positions before a district court and the Board[.]” (*Revvo Techs. Inc.*, IPR2025-00632, Paper 20, 5.) The Director further noted, however, that “the petitioner should explain sufficiently why the different positions are warranted” and advised that “if a party advances a narrow construction in the district court and the district court declines to adopt the narrow construction, the party would have sufficient reason for advancing the broader, court-adopted construction in a proceeding before the Board.” (*Id.*, 5 (citing to a discretionary denial by the Acting Director in *Sun Pharm. Indus.*, IPR2025-00893, Paper 18).)

The Director's identified justification is precisely the explanation for Petitioner's accepting Patent Owner's broad proposed constructions in this proceeding while maintaining its narrower proposed construction in district court: Petitioner is pursuing a narrower proposed construction, and Patent owner a broader construction, before the district court, but there has been no claim construction ruling by the district court. Any such district court claim construction decision is not scheduled to occur for several months, which is two-and-a-half years after the case was filed such that Petitioner could not simply wait for the district court's claim construction before timely filing the Petition. (*See* EX2037, App'x A (Page 14) and

footnote 1 above.)

Although Petitioner has argued in district court that the term “outer layer” is indefinite, an ordinarily skilled artisan would understand that the asserted art satisfies these claim limitations notwithstanding the alleged indefiniteness. (*See Tesla, Inc. v. Intellectual Ventures II, LLC*, IPR2025-00340, Paper 18, 3-4 (Director Nov. 5, 2025).) Here, the prior art plainly falls within the non-indefinite scope of the terms even though their outer bounds do not have reasonable certainty. (*See, e.g., Pet.*, 8 (“outer layer”: “at least one layer that is outermost”), 16 (a prior art patch comprised of a single layer that necessarily forms the “outer layer”), 33-34 (showing that the prior art patch and the accused patch in the district court have similar configurations, so satisfaction of the claim limitation by the accused patch implies the prior art patch does as well), 55 (another prior art patch with an identically named “outer layer 13”). Patent Owner implicitly concedes this point – its Patent Owner Response does not contend that the prior art fails to disclose an “outer layer.”

Regarding the term “cavity,” Petitioner adopts Patent Owner’s construction (“a space for accommodating an element or object”) for Grounds 1 and 5; therefore, the arguments previously raised apply equally here. (*Pet.*, 8-9.) For Grounds 3 and 4, however, Petitioner argues for the plain and ordinary meaning (“an unfilled or hollowed-out space within a mass”), which is broader than Patent Owner’s construction. (*Id.*) This distinction arises because Grounds 3 and 4 do not challenge

claims 8 and 17, which depend from claims 7 and 16 respectively and expressly recite “an element disposed within the cavity.” By contrast, claims 7 and 16 only require “a cavity disposed therein,” without specifying that the cavity must accommodate an element. In this context, limiting “cavity” to Patent Owner’s narrower construction would improperly read limitations from claims 8 and 17 into claims 7 and 16, contrary to established claim differentiation principles. In other words, the broader interpretation aligns with the scope of claims 7 and 16. Regardless, as noted, the Board concluded that no express construction was necessary, and thus Patent Owner cannot claim prejudice from any alleged inconsistency.

IV. WAIVER OF RULES

Patent Owner has failed to establish good cause to waive the rules under 37 C.F.R. § 42.75. The *Revvo Technologies* and *Tesla* orders it relies upon were designated precedential and informative nearly two months after the Board issued the Decision Granting Institution in this case. Patent Owner offers no basis – none – for applying those orders retroactively. The Board’s own Standard Operating Procedure 2 is clear: “[a] precedential decision is binding Board authority in *subsequent matters* involving similar facts or issues.” Board Standard Operating Procedure 2 (Rev. 11) (“SOP2”), 7 (emphasis added). This proceeding is not

“subsequent” – it was instituted long before those decisions were designated. Re-evaluation under *Revvo Technologies* or *Tesla* is therefore improper.

Unlike *Revvo Technologies* and *Tesla*, where Director Review was initiated within the statutory 30-day window following institution, this proceeding is far beyond that point. Institution was granted three-and-a-half months ago, Patent Owner has filed its Response, and Petitioner is well into briefing its Reply and preparing for depositions. Both parties have already invested significant time and resources. Delaying the schedule now for Director Review would be highly prejudicial to Petitioner – particularly given the possibility that the proceeding could be terminated at this late stage.²

Petitioner Revvo Technologies is a small company with fewer than ten employees. For more than two years, it has been forced to defend itself in costly district court litigation with Patent Owner while simultaneously advancing this IPR proceeding. Petitioner strategically chose to pursue IPRs after recognizing the

² Petitioner notes that allowing such a request would not only be inequitable, it would also set a dangerous precedent. It would invite a flood of Director Review petitions from proceedings at even later stages, undermining finality of institution decisions and judicial efficiency. There must be a principled limit on how far back the Director can reach.

overwhelming strength of the prior art and understanding Congress's intent for IPRs to provide a streamlined, efficient alternative to district court litigation. The Board confirmed that strength in its Decision Granting Institution, finding the prior art so compelling that no claim construction was even necessary.

The America Invents Act was designed precisely for situations like this—to give small businesses a faster, less expensive path to challenge questionable patents. For the Director to allow this proceeding to progress this far, only to terminate it now, would impose severe financial harm on Petitioner and undermine confidence in the USPTO's processes. It would also frustrate the very purpose of the AIA: ensuring that strong prior art can be used to invalidate unpatentable claims efficiently and fairly.

Moreover, Patent Owner should not be permitted another bite at the apple. It had the opportunity to request rehearing and director review after institution – and chose not to. It had the opportunity to depose Petitioner's expert on claim construction and other issues – and chose not to. It had multiple opportunities to dispute the asserted claim constructions in its papers – and chose not to. Now, Patent Owner argues that its own claim constructions are prejudicial. Allowing Patent Owner to reopen institution now would reward strategic delay and undermine the integrity of these proceedings. Again, the Board has already determined that the prior

art is so compelling that claim construction was unnecessary. That finding speaks volumes. The proceeding should continue as scheduled.

V. CONCLUSION

The Board has already decided the merits of institution, determining that no express claim construction is necessary for any claim terms and that the information presented shows a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of at least one of the challenged claims of the '027 patent. Petitioner has sufficiently explained why it has proposed a narrower construction in the district court and no decision regarding the parties' claim construction disputes will occur for several months. Under these circumstances, Revvo respectfully requests that Patent Owner's extraordinary and untimely request for the Director to suspend the rules governing IPR proceedings several months after the Board's institution decision and after Patent Owner has already filed a Patent Owner Response be denied.

Petitioner's Authorized Response to Director Review Request
Case No. IPR2025-00631

Dated: December 15, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 C.F.R. § 42.6(e), that a complete copy of the attached **PETITIONER'S AUTHORIZED RESPONSE TO DIRECTOR REVIEW REQUEST** and related documents were served on December 15, 2025, upon the parties via electronic mail:

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