Filed: June 16, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

REVVO TECHNOLOGIES, INC.

Petitioner,

v.

CEREBRUM SENSOR TECHNOLOGIES, INC.

Patent Owner.

IPR2025-00632

Patent 11,835,421

PATENT OWNER'S DISCRETIONARY DENIAL BRIEF

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Exhibit List

Exhibit No.	Description
2001	Defendant Revvo Technologies, Inc.'s Initial Invalidity Contentions (cover pleading) in *Cerebrum Sensor Techs., Inc. and Tire Stickers LLC v. Revvo Techs., Inc.*, C.A. No. 24-245 (JLH) (SRF) (D. Del.)
2002	Defendant Revvo Technologies, Inc.'s Initial Invalidity Contentions (Exhibit C, redacted) in *Cerebrum Sensor Techs., Inc. and Tire Stickers LLC v. Revvo Techs., Inc.*, C.A. No. 24-245 (JLH) (SRF) (D. Del.)
2003	Summons Returned Executed in *Cerebrum Sensor Techs., Inc. and Tire Stickers LLC v. Revvo Techs., Inc.*, C.A. No. 24-245 (JLH) (SRF) (D. Del.) (Doc. No. 6)
2004	Scheduling Order in *Cerebrum Sensor Techs., Inc. and Tire Stickers LLC v. Revvo Techs., Inc.*, C.A. No. 24-245 (JLH) (SRF) (D. Del.) (Doc. No. 38)
2005	Status Report in *Cerebrum Sensor Techs., Inc. and Tire Stickers LLC v. Revvo Techs., Inc.*, C.A. No. 24-245 (JLH) (SRF) (D. Del.) (Doc. No. 103)
2006	U.S. patent application number 16671105, Information Disclosure Statement (December 23, 2024)
2007	U.S. patent application number 16671105, Information Disclosure Statement (January 3, 2025)
2008	U.S. patent application number 16671105, Notice of Allowance (January 21, 2025)
2009	U.S. patent application number 16671105, Information Disclosure Statement (April 18, 2025)
2010	U.S. patent application number 16671105, Notice of Allowance (May 1, 2025)
2011	Docket entries for notices of service of contentions, discovery and responses in *Cerebrum Sensor Techs., Inc. and Tire Stickers LLC v.*

	Revvo Techs., Inc., C.A. No. 24-245 (JLH) (SRF) (D. Del.)
2012	Redacted version of discovery letter in *Cerebrum Sensor Techs., Inc. and Tire Stickers LLC v. Revvo Techs., Inc.*, C.A. No. 24-245 (JLH) (SRF) (D. Del.) (Doc. No. 101)
2013	Order denying motions to compel in *Cerebrum Sensor Techs., Inc. and Tire Stickers LLC v. Revvo Techs., Inc.*, C.A. No. 24-245 (JLH) (SRF) (D. Del.) (Doc. No. 93)
2014	Report and recommendation on partial motion to dismiss in *Cerebrum Sensor Techs., Inc. and Tire Stickers LLC v. Revvo Techs., Inc.*, C.A. No. 24-245 (JLH) (SRF) (D. Del.) (Doc. No. 79)
2015	Order adopting report and recommendation on partial motion to dismiss in *Cerebrum Sensor Techs., Inc. and Tire Stickers LLC v. Revvo Techs., Inc.*, C.A. No. 24-245 (JLH) (SRF) (D. Del.) (Doc. No. 88)
2016	Order regarding number of claim terms for construction in *Cerebrum Sensor Techs., Inc. and Tire Stickers LLC v. Revvo Techs., Inc.*, C.A. No. 24-245 (JLH) (SRF) (D. Del.) (Doc. No. 82)
2017	Revvo's list of proposed claim terms for construction in *Cerebrum Sensor Techs., Inc. and Tire Stickers LLC v. Revvo Techs., Inc.*, C.A. No. 24-245 (JLH) (SRF) (December 6, 2025)

I. Introduction

Patent Owner Cerebrum Sensor Technologies, Inc. ("Cerebrum" or "Patent Owner") respectfully submits this brief on discretionary denial in response to the Petition by Revvo Technologies, Inc. ("Revvo" or "Petitioner") for *inter partes* review of U.S. Patent No. 11,835,421 ("the '421 Patent" (EX1001)).

Revvo's petition is a transparent attempt by Revvo to unduly leverage the PTAB to gain tactical advantage in district court litigation that was filed in February 2024, rather than truly dispose of the parties' dispute once and for all. Revvo's petition is clearly Revvo's first bite-at-the-apple strategy, surely to be followed by Revvo's attempt at a second bite-at-the-apple in the district court litigation. Revvo's strategy imposes an undue burden on the PTAB and Patent Owner.

Revvo clearly intends to present the same or substantially the same references in both this PTAB proceeding and in district court. For example, the Petition relies upon Yamaguchi-727 and Yamaguchi-566, which Revvo observes "were commonly owned by Bridgestone." (Petition at 42.) Meanwhile, in the district court litigation, Revvo's invalidity contentions state that "To the extent that these initial invalidity charts refer to prior art products, these items were either in public use, sold, or offered for sale before the effective filing date of the Patents-in-Suit." (EX2001 at 3.) Thus, Revvo has indicated that it will be pursuing alleged

Bridgestone product prior art in the district court litigation if its Petition here is not successful. This is confirmed by Revvo's statement in its invalidity contentions before the district court that "Revvo reserves the right to amend and supplement these disclosures to identify other or additional types, models, versions, products, devices, systems, functions, implementations, and dates, in view of discovery obtained subsequent to the date of these contentions, including formal discovery from third parties in response to subpoenas." (*Id.*) There are yet three other categories of alleged product prior art presented in Revvo's invalidity contentions that Revvo intends to pursue in the district court litigation. (EX2002.)

The Federal Circuit recently held that a petitioner, such as Revvo, can pursue alleged product prior art without estoppel due to pursuit of the same or substantially the same alleged printed publication prior art before the PTAB. *Ingenico Inc. v. Ioengine LLC*, Case No. 23-1367, Slip Op. at 14 (Fed. Cir. May 3, 2025) ("IPR estoppel does not preclude a petitioner from relying on the same patents and printed publications as evidence in asserting a ground that could not be raised during the IPR, such as that the claimed invention was known or used by others, on sale, or in public use."). Rather than providing a "faster, less costly alternative[] to civil litigation to challenge patents," 157 Cong. Rec. S936, S952 (daily ed. Feb. 28, 2011) (statement of Sen. Grassley), Revvo thus seeks to pursue substantially duplicative invalidity arguments both before the PTAB and the

district court, thus increasing the expenses for all involved, and risking inconsistent decisions between this proceeding and the district court litigation.

In addition to its two bites-at-the-apple strategy overall, Revvo is also pursuing such a strategy for claim construction. Revvo is presenting different claim constructions in this proceeding than in the district court litigation. This gamesmanship by Revvo on claim construction pits the PTAB's pronouncements on claim construction against what Revvo is seeking from the district court and wastes the parties' and the PTAB's resources. Revvo's strategy disregards the risk that the PTAB rules on claim construction and confirms the validity of the challenged patent claims, and yet Revvo continues to pursue different claim constructions in the district court litigation.

This proceeding will not dispose of the parties' dispute regarding the subject matter of the '421 patent. On May 1, 2025, the Patent Office issued a notice of allowance of another patent out of the same family as the '421 patent, after considering both Revvo's Petition here and the cited references in the Petition, including the Bridgestone references (Yamaguchi-727 and Yamaguchi-566). Under the district court litigation schedule, Patent Owner will be entitled to assert this new patent in the district court litigation, as the litigation was temporarily suspended before the due date for amendments to the complaint.

To provide more context for the district court's order temporarily suspending the district court litigation than acknowledged by Revvo, the district court did not stay the litigation pending the outcome of this proceeding. Rather, the litigation is suspended while the parties are pursuing private mediation in mid-June 2025. If that mediation is unsuccessful, Patent Owner will be seeking to lift the suspension of the district court litigation and expects that litigation to resume and move forward with the very next step in the litigation being claim construction briefing on the parties' claim constructions already filed with the district court.

As explained further in Patent Owner's preliminary response, the Petition is particularly weak and relies extensively on expert testimony rather than the cited references to read missing limitations into its references. As described in Patent Owner's preliminary response, each of Revvo's grounds fail for a fundamental reason—Revvo and its expert ignored the most pertinent portion(s) of the cited references which teach away from the challenged claims. As a matter of principle and policy, Revvo should not be permitted to pursue a petition that ignores the most pertinent portions of the cited references.

All things considered, as discussed further herein, the *Fintiv* test weighs against institution of this IPR.

Patent Owner respectfully requests that the Director exercise discretion to deny the Petition.

II. Procedural Background

On February 23, 2024, Patent Owner filed a patent infringement action against Revvo, asserting the '421 patent, and U.S. Patent No. 10,137,741 and U.S. Patent No. 11,124,027, both of which are in a different family from the '421 patent. That district court litigation is captioned *Cerebrum Sensor Techs., Inc. and Tire Stickers LLC v. Revvo Techs., Inc.*, C.A. No. 24-245 (JLH) (SRF) (D. Del.). The Patent Owner served Revvo with the complaint that same day, February 23, 2024. (EX2003.) The district court issued a scheduling order on September 13, 2024. (EX2004.)

Pursuant to the district court scheduling order, after the parties produced thousands of pages of "core technical" documents, the parties made extensive exchanges of their contentions and proposed claim constructions. Those include Patent Owner's initial infringement contentions served on November 7, 2024. (EX1014 and EX1015.) On November 27, 2024, Revvo served its invalidity contentions. (EX2001 and EX2002.) After those contentions, the parties made a series of claim construction exchanges, and then filed their proposed claim constructions with the district court on January 22, 2025. (EX1016 and EX1017.)

On February 13, 2025, the parties filed a joint stipulation to suspend the district court litigation while they conduct private mediation. (EX1024.) On February 14, 2025, the district court suspended the district court litigation pursuant

to the stipulation and ordered that a status report be filed by May 13, 2025. (EX1025.)

Days later, on February 21, 2025, almost three months after serving its invalidity contentions in the district court litigation, and just at the one-year due date for the petition, Revvo filed the Petition here.

On May 13, 2025, the parties filed a status report with the district court that the parties are scheduled for a private mediation on June 18, 2025. (EX2005.)

Under the district court's scheduling order, claim construction briefing was to begin on February 19, 2025. (EX2004.) Also, that scheduling order permitted amendments to the complaint as a matter of right by March 28, 2025. (*Id.*) Thus, if the parties' private mediation is unsuccessful, Patent Owner will seek to lift the district court litigation suspension, proceed promptly to claim construction briefing, and file an amended complaint with the recently allowed patent related to the '421 patent.

III. Argument

A. Proceeding With This IPR Substantially Risks Duplication of Resources, Inconsistent Results, and A Waste of PTAB Resources

If this IPR proceeds to a final written decision confirming the patentability of the challenged claims in the '421 patent, that will not be the end of Revvo's invalidity challenges in the district court on the same or substantially the same references.

The Petition relies upon Yamaguchi-727 and Yamaguchi-566 for the challenged independent claims in the '421 patent. In support of its Petition arguments, Revvo observes that Yamaguchi-727 and Yamaguchi-566 "were commonly owned by Bridgestone." (Petition at 42.)

There is no doubt that Revvo intends to present the substance of Yamaguchi-727 and Yamaguchi-566 as alleged Bridgestone product prior art as "on sale" or in "public use." In the district court litigation, Revvo's invalidity contentions state that:

> To the extent that these initial invalidity charts refer to prior art products, these items were either in public use, sold, or offered for sale before the effective filing date of the Patents-in-Suit. Revvo reserves the right to amend and supplement these disclosures to identify other or additional types, models, versions, products, devices, systems, functions, implementations, and dates, in view of discovery obtained subsequent to the date of these contentions, including formal discovery from third parties in response to subpoenas.

(EX2001 at 3.)

There is also no doubt that Revvo will seek to rely upon the Federal Circuit's recent decision that a petitioner can pursue product prior art without estoppel due to pursuit of the same or substantially the same printed publication prior art before

the PTAB. *Ingenico*, Case No. 23-1367, Slip Op. at 14 ("IPR estoppel does not preclude a petitioner from relying on the same patents and printed publications as evidence in asserting a ground that could not be raised during the IPR, such as that the claimed invention was known or used by others, on sale, or in public use.").

Allowing this proceeding to go forward thus presents a substantial risk of duplication of resources in the PTAB and in the district court litigation. In addition to wasting the PTAB's resources, this also creates a substantial risk of inconsistent decisions between the two proceedings. *See, e.g.*, *Motorola Sols., Inc. v. Stellar, LLC*, IPR2024-01205, Paper 19 at 4 (PTAB Mar. 28, 2025) (Director Review Decision) (denying institution on Director Review, explaining that "Petitioner's invalidity arguments in the district court are more expansive and include combinations of the prior art asserted in these proceedings with unpublished system prior art" thus creating the risk of duplication between the parallel district court proceeding and the IPRs).

Moreover, if review is instituted, this will risk wasting resources deciding validity of claims that are not asserted against Petitioner in district court. The district court has ordered that Patent Owner narrow the asserted claims to 18 claims among three asserted patents, only one of which is at issue here. (EX2004 at 3.) The substantial amount of time and resources the PTAB will invest in resolving this Petition, may ultimately have no impact on the district court litigation.

Revo's approach to claim construction also substantially risks inconsistent results. For example, the Petition applies the following claim construction for the term "housing": "a protective cover." (Petition at 9.) But in the district court, Revvo proposes the following claim construction for "housing": "a protective casing that surrounds the sensor device and constructed to provide an 'internal cavity' that is configured with surface features that mechanically fix and retain the placement position of the sensor device and does not use or require the use of any coating or filling agents or materials to fix and retain the placement position of the electrical sensor device therein." (EX1017 at 6.) There are numerous other examples of Revvo's inconsistent approach to claim construction in the Petition and in the district court litigation. (*Compare* Petition at 9-10 *with* EX1017 at 6-8.)

In contrast, by denying institution, the PTAB will allow the district court to move forward with its plan to streamline the litigation and expeditiously resolve the dispute between the parties and without risking inconsistent results and wasting resources.

B. *Fintiv* Weighs In Favor of Denial of Institution

1. Stay

While a temporary suspension of the district court litigation has been issued, this factor is not dispositive, and other factors weigh in favor of denying institution of IPR for the '421 Patent. *See Motorola Sols.,* IPR2024-01205, Paper 19 at 3-4

(denying institution despite the district court issuance of a temporary stay). Whether or not the PTAB decides not to institute review here, Patent Owner intends to seek to lift the district court suspension and resume the litigation, if the parties' private mediation in June 2025 is unsuccessful. The Patent Owner is confident that the district court litigation suspension will be lifted, given that this IPR will not come close to resolving all of the parties' disputes.

Indeed, if the parties' private mediation in June 2025 is unsuccessful, Patent Owner will amend its complaint as a matter of right to add a recently allowed patent that is related to the '421 patent. That recently allowed patent was allowed over the same alleged prior art presented by the Petition and with full knowledge of this IPR proceeding by the Examiner. To be specific, related application number 16671105 received notices of allowance after **Revvo's cited references <u>and</u> the Petition** were identified in Information Disclosure Statements. (EX2006 through EX2010.) Through another intervening application, application number 16671105 also ultimately yielded the '421 patent. (EX1001.)

In addition to this recently allowed patent related to the '421 patent, Patent Owner will be further asserting U.S. Patent No. 10,137,741, which is already asserted in the district court litigation and for which Revvo has not filed an IPR petition and no longer can do so. (EX1016 at 2.)

Any argument that the district court will stay the litigation, particularly before any institution decision, is inappropriate speculation. *See Fitbit, Inc. v. Philips North America LLC*, IPR2020-00828, Paper No. 13 at 8 (PTAB Nov. 3, 2020) ("[W]e decline to speculate as to the likelihood of a stay of the district court proceeding.") (denying institution).

This *Fintiv* factor therefore favors discretionary denial of institution or is at least neutral.

2. Proximity of Trial Date

Prior to the district court suspending the case pending the parties' private mediation, although trial had not been scheduled, dispositive motions would have been filed in June 2026. (EX2004 at 17.) The district court trial likely thus would have been in the Fall or Winter of 2026. (*See id.*) This would have been about the time that the PTAB would issue a final written decision.

While there is currently no set trial date in the district court litigation, Patent Owner intends to seek to lift the suspension of the district court litigation and resume the litigation if the parties' private mediation in June 2025 is unsuccessful. That trial would include at least the recently allowed patent related to the '421 patent and at least one other asserted patent, as was discussed above in the previous section. Given that those patents are not challenged in IPRs, there is no basis to

speculate that the district court will stay the litigation, as was discussed above. *See Fitbit, Inc.*, IPR2020-00828, Paper No. 13 at 8.

Nor is there any basis to speculate as to the proximity of the trial date to a final written decision. But even if the trial date were scheduled after the date for a final written decision here, other factors as described above favor denying institution, including that the district court litigation includes patents – related and unrelated – not subject to IPR petitions. *See Irhythm Technologies, Inc. v. Welch Allen, Inc.,* IPR2025-00363, Paper No. 10 at 2-3 (PTAB June 6, 2025) ("[I]t is likely that a final written decision in this proceeding will issue before the district court trial occurs … Although certain arguments are highlighted above, the determination to exercise discretion to deny institution is based on a holistic assessment of all of the evidence and arguments presented.") (denying institution); *Fitbit*, IPR2020-00828, Paper No. 13 at 9-11 ("[T]he actual trial will likely take place after the final decision here … The fact that trial in the *Garmin* case will likely take place several months prior to the final decision weighs in favor of invoking our discretion to deny institution. Overall, we determine that this factor weighs slightly in favor of invoking our discretion to deny institution.") (denying institution).

This *Fintiv* factor therefore favors discretionary denial of institution or is at least neutral.

3. Investment in the Parallel Proceedings by the Court and the Parties

The parties extensively invested in the district court litigation prior to the district court suspension pending private mediation. (EX2004.) Prior to the suspension, the parties collectively served 24 sets of infringement contentions, invalidity contentions, and discovery requests, including interrogatories, document requests, and requests for admissions. (EX2011.) The parties have already produced "core technical documents" according to the district court scheduling order. (EX2004 at 16.) Those documents can be seen, for example, in Cerebrum's infringement contentions. (EX1014 and EX1015.) Meanwhile, "Cerebrum has substantially completed its production of documents associated with and samples of Cerebrum's marked products." (EX2012 at 5; EX2013.)

Additionally, the parties have engaged in substantial motions practice in the district court litigation. Each side filed motions to compel with multiple parts, including on interrogatories, document production, and the substance of the parties' respective contentions – Patent Owner's infringement contentions and Revvo's invalidity contentions – and the Court ruled on those motions. (EX2013.) Revvo also filed and the Patent Owner was forced to defend against, a partial motion to dismiss the district court litigation, and the district court ruled on that motion. (EX2014 and EX2015.)

Due to Revvo's delay in filing the Petition until just a few days before its due date,[1] the parties also devoted substantial effort to claim construction, including exchanging claim terms and proposed constructions and filing proposed claim constructions in the district court litigation. Revvo's intentional delay of months in filing the Petition can be seen in the timeline. By November 27, 2024, Revvo already had served its invalidity contentions under the district court scheduling order. (EX2001, EX2002, and EX2004 at 16.) Those invalidity contentions include the same cited references that the Petition relies upon for the challenged independent claims of the '421 patent – Yamaguchi-727 and Yamaguchi-566. (EX2002.) In December 2024 and January 2025, the parties exchanged claim constructions and then filed their proposed claim constructions with the district court. (EX2004 at 16, EX1016, and EX1017.)

Those claim construction efforts were extensive in the district court litigation, and made more so by Revvo's unwarranted approach. It is noteworthy that "[g]enerally, the [district] court will entertain no more than ten (10) disputed terms." (EX2016.) Yet, Revvo initially proposed 38 claim terms for construction in the '421 patent. (EX2017.) Ultimately, as filed with the district court, Revvo still

[1] Revvo was served with the complaint on February 23, 2024. (EX2003.) The last day to file the Petition was therefore February 25, 2024. 35 U.S.C. § 315(b). Revvo filed the Petition on February 21, 2025.

proposes at least a dozen additional claim constructions for claim terms never presented in its Petition. (EX1017 at 19-24.) Thus, while the district court has not yet issued a claim construction order, the parties have expended substantial effort on claim construction in the district court litigation due to Revvo's intentional delay and gamesmanship in its barrage of claim constructions in the district court litigation and three-month delay in filing the Petition (on February 21, 2025) after it had already served its invalidity contentions on the same cited references in the district court litigation (on November 27, 2024).

These substantial expenditures of resources by the parties and the district court in the district court litigation favors discretionary denial of institution. *See, e.g.*, *BOE Tech. Grp. Co. v. Element Cap. Com. Co. Pte. Ltd*, IPR2023-00808, Paper 9 at 23, 2023 WL 7715885, at *8 (PTAB Nov. 15, 2023) (finding "the parties and the District Court ha[d] invested substantial resources in th[e] litigation" because, among other things, "[s]ignificant discovery ha[d] been completed, including the exchange of infringement and invalidity contentions, document requests and interrogatories, and proposed claim terms for construction"); *see also Comcast Cable Commc'ns, LLC v. Touchstream Techs., Inc.*, IPR2024- 00323, Paper 13 at 9-10, 2024 WL 3530021, at *4 (PTAB July 24, 2024) ("Factor 3 favor[ed] denial" where "substantial work on claim construction [had] happened," and "the related district court litigation ha[d] progressed in other aspects as well,"

including with respect to contentions); *10x Genomics, Inc. v. President & Fellows of Harvard Coll.*, IPR2023-01299, Paper 15 at 18, 2024 WL 993828, at *8 (PTAB Mar. 7, 2024) (similar, noting that the parties had exchanged contentions, "completed claim construction briefing," and that the "district court ha[d] also considered two motions to dismiss and presided over several discovery disputes") (citations omitted).

This *Fintiv* factor therefore strongly favors discretionary denial of institution.

4. Issue Overlap

There is essentially complete overlap between the claims, arguments, and evidence raised in the co-pending district court litigation and the Petition. The Petition challenges all of the asserted claims in the district court litigation. (Petition at 1; EX1014 at 2.) This overlap weights in favor of discretionary denial of institution. *See Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 13 (PTAB Mar. 20, 2020) (precedential) (it is "inefficient to proceed because the district court may resolve validity of enough overlapping claims to resolve key issues in the petition.").

Further, the Petition also relies on the same references for the independent challenged claims, namely, Yamaguchi-727 and Yamaguchi-566. (Petition at 4; EX2001; EX2002.) But the estoppel that attaches to a final written decision will

not substantially reduce the overlap between the proceedings. As was discussed above, Revvo's invalidity contentions rely on alleged Bridgestone product prior art. (Petition at 42; EX2001 at 3.) Even more, "Petitioner's invalidity arguments in the district court are more expansive" than those asserted in its IPR "and include combinations of the [alleged] prior art asserted in these proceedings with [alleged] unpublished system prior art." *Motorola Sols.,* IPR2024-01205, Paper 19 at 4. Putting aside Bridgestone products, Revvo clearly intends to present other alleged product prior art in the district court litigation, including "[b]ased on the VDO REDI-Sensor," "[b]ased on Michelin-Track Connect," "[b]ased on the Revvo-Nuro Sensor," and "[b]ased on TRW-TPMS Sensors." (EX2002 at 313, 387, 435, and 523; EX2001.)

As a result, Revvo has already disclosed its intention to raise alleged product-based prior art invalidity arguments in seeking to circumvent the estoppel that attaches to a final written decision, which substantially increases the risk of duplication between the parallel proceeding and this one. *See SAP Am., Inc. v. Cyandia, Inc.*, IPR2024-01496, Paper 13 at 8-9 (PTAB Apr. 7, 2025) (concluding that, despite petitioner's *Sotera* stipulation, "a majority of the parties' work that would be done [in IPR] will also be required in the Litigation regardless of whether we institute review" because of duplicative asserted system art); *Motorola Sols.*, IPR2024-01205, Paper 19 at 4.

This *Fintiv* factor therefore strongly favors discretionary denial of institution.

5. Party Overlap

"Because the petitioner and the defendant in the parallel proceeding are the same party, this factor weighs in favor of discretionary denial." *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 15 at 15 (PTAB May 13, 2020). Revvo does not dispute that it is a defendant in the co-pending district court litigation.

This *Fintiv* factor therefore strongly favors discretionary denial of institution.

6. Other Circumstances

As described above, the Petition is part of Revvo's effort to unduly leverage the PTAB to gain tactical advantage Revvo's position in the ongoing district court litigation. And by doing so, Revvo is also imposing a substantial burden on the PTAB. As was described above, Revvo's cumulative conduct can be briefly summarized as follows:

- Revvo seeks to duplicate consideration of the Bridgestone references here in the PTAB and in the district court litigation;
- Revvo seeks to avoid estoppel by presenting yet additional alleged product prior art in the district court litigation;

- Revvo served its invalidity contentions in November 2024 in the district court litigation yet waited until February 21, 2025 to file the Petition;
- In between those dates, Revvo pursued claim construction on as many as 38 claim terms in the '421 patent and still pursues claim construction on at least a dozen such terms not even presented in the Petition; and
- Revvo is seeking claim constructions in the district court litigation inconsistent with the claim construction presented in the Petition.

In addition, and as described in Patent Owner's preliminary response, Revvo's extensive reliance on expert testimony indicates that its assertions are better resolved in district court. "[P]etitions" are "require[d] to be based on prior art patents and printed publications." PTAB, *FAQs for Interim Processes for PTAB Workload Management*, at question 21, https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management (last visited Apr. 26, 2025). The failure to provide focused expert testimony here weighs against institution. *Id.* ("The failure to provide focused expert testimony may weigh against institution."). In the absence of persuasive alleged prior art, Petitioner relies extensively on its expert declaration, citing its 140 page expert

declaration (EX1003) more than 100 times throughout the Petition. *See generally* Petition (citing Davenport.)

Nevertheless, as described in Patent Owner's preliminary response, Revvo and its expert ignore the most pertinent portions of the cited references, which teach away from the challenged claims of the '421 patent. The Petition thus does not present the full picture and import of the cited references to the PTAB, and on that ground alone, the Petition could and should be denied, as a matter of principle and policy.

In view of the weakness of the Petition, and Revvo's conduct described above, it is clear that the Petition is Revvo's effort to unduly leverage the PTAB to gain tactical advantage for Revvo's position in the ongoing district court litigation.

This *Fintiv* factor therefore strongly favors discretionary denial of institution.

IV. Conclusion

For the reasons set forth above, the Director should exercise discretion to deny the Petition for *Inter Partes* Review.

Date: June 16, 2025

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CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d), the undersigned certifies that the foregoing Patent Owner's Discretionary Denial Brief contains, as measured by the word-processing system used to prepare this paper, 4,278 words. This word count does not include the items excluded by 37 C.F.R. § 42.24.

Respectfully submitted,

Dated: June 16, 2025

By: /Christopher D. Bright/
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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on June 16, 2025 I caused to be served on the counsel for Petitioner a true and correct copy of the foregoing Patent Owner's Discretionary Denial Brief by electronic means on Counsel for Petitioner at the following addresses of record:

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