

Petitioner's Brief in Response to Director's Order Vacating the Decision Granting
Institution and Remanding to the Board for Further Proceedings

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

REVVO TECHNOLOGIES, INC.,
Petitioner,

v.

CEREBRUM SENSOR TECHNOLOGIES, INC.,
Patent Owner.

Case IPR2025-00632
Patent 11,835,421

**PETITIONER'S BRIEF IN RESPONSE TO DIRECTOR'S ORDER
VACATING THE DECISION GRANTING INSTITUTION AND
REMANDING TO THE BOARD FOR FURTHER PROCEEDINGS**

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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.

Petitioner has advanced a narrow construction in the district court based on express statements in the specification of the '421 patent that the allegedly inventive sensor assembly housings disclosed therein "do not use or require the use of any such filling agents or materials for any fixturing of the electrical sensor device." (*See* Decision Granting Institution, 11.) Patent Owner's broader proposed construction, which the Petition adopted, ignores these statements from the specification.

Here, Petitioner has advanced Patent Owner's own broader construction before the Board in the event the district court declines to adopt the narrow construction. 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

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sufficient reason for advancing the broader, court-adopted construction in a proceeding before the Board.” (Paper 20, 5.)

II. FACTUAL BACKGROUND

The Petition was filed in this proceeding on February 21, 2025. (Paper 2.) 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 September 15, 2025, upon referral from the Acting Director and under Patent Owner's own interpretation of the scope of its challenged claims, the Board determined that the Grounds presented in the Petition relying on prior art that was not before the examiner indicated that “Petitioner has demonstrated a reasonable likelihood of showing” that the challenged claims are unpatentable and therefore granted institution of *inter partes* review. (Decision Granting Institution, 14.) The Board expressly recognized that “Petitioner ‘accepts Patent Owner's proposed constructions from the underlying district court litigation for the purposes’ of its Petition” and that “Patent Owner does not dispute any of the proposed interpretations.” (Decision Granting Institution, 6.)

In response to Patent Owner's arguments under 37 C.F.R. § 42.104(b)(3), the

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Board recognized there was no implication of the express requirements with respect to means-plus-function claiming under 35 U.S.C. § 112(f). (Decision Granting Institution, 7-8.) The Board further expressly noted with respect to “[h]ow the claim language is to be construed” sentence of Rule 42.104(b)(3) that “***Petitioner has, by any measure, complied*** by expressly proposing interpretations for identified claim language.” (Decision Granting Institution, 7, n.7 (emphasis added).) The Board’s finding that Petitioner complied with Rule 42.104(b)(3) in the Decision Granting Institution was consistent with its prior decisions applying the Rule for non-means-plus-function claim terms. *See, e.g., Western Digital Corp. v. Spex Techs., Inc.*, IPR2018-00084, Paper 14 at 11 (P.T.A.B. Apr. 25, 2018) (determining that a petition complies with Rule 104(b)(3) by identifying the claim constructions it proposes as the basis for requesting *inter partes* review); *Samsung Elecs. Co. v. Collect, LLC*, Case IPR2020-00476, Paper 14 at 12 (P.T.A.B. July 31, 2020) (“It is not a requirement of [rule] 104(b)(3) that for every term for which Petitioner has proposed an express construction in related district court litigation, Petitioner must propose the same construction in the Petition.”).

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.

Three days after the Board’s Decision Granting Institution pursuant to the Acting Director’s post-discretionary referral of the Petition, current Director Squires

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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.” (Ex. 1035, 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.” (Ex. 1035, 2.)

In this proceeding on October 20, 2025, the Director issued an Order Initiating *Sua Sponte* Director Review of the Board’s Decision Granting Institution “to address the claim construction issues raised.” (Paper 11.) Thereafter, on November 3, 2025, the Director Issued an Order Vacating the Decision Granting Institution, and Remanding to the Board for Further Proceedings after *Sua Sponte* Director Review, which was designated Precedential. (Paper 20.) The Director’s remand order was consistent with the Director’s Memorandum stating that all petitions referred to the PTAB for consideration of the merits . . . prior to October 20, 2025 will remain with a three-member panel.”

There has been no district court claim construction decision. Additionally, any decision by the district court on claim construction will not occur for many

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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* EX1036, App'x A (Page 0014).)

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. (Paper 13 ("Decision Granting Institution"), 1-2, 8, 14.) As recognized by the Board's Decision Granting Institution, "Petitioner 'accepts Patent Owner's proposed construction from the underlying district court litigation for the purposes' of its Petition." (Decision Granting Institution, 6.) Consistent with established practice for non-means-plus-function claims, the Board's Decision Granting Institution determined that in adopting Patent Owner's proposed constructions "***Petitioner has, by any measure, complied*** [with Rule 42.104(b)(4)] by expressly proposing interpretations for the identified claim language." (Decision Granting Institution, 7, n.7 (emphasis added).) 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 an Exhibit 1017 to the Petition. (Pet. at 9-10

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(citing EX1017, Exhibit A (Joint Claim Construction Chart) at 5-7).)

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.*) Contrary to Patent Owner's unfounded accusations, there was no "gamesmanship" by Petitioner regarding claim interpretation in the Petition.

To the contrary, the Board has already concluded that Patent Owner's interpretation of its own claims and how Patent Owner undeniably intends to apply the challenged claims against the public, including various potential third parties, merits *inter partes* review because the challenged claims are reasonably likely to be unpatentable under the prior art relied on in the Petition that was never before the examiner. (Decision Granting Institution, 7, 14.) As such, the Board properly recognized that "Patent Owner does not currently dispute Petitioner's proposed interpretation of the claims" and advised that "both parties are free to address claim interpretation in more detail at trial as they deem fit." (*Id.*, 8.)

The Director's Order vacating the Decision Granting Institution clarified how the Board is to interpret of Rule 42.104(b)(3), noting that "[b]ecause this decision clarifies how a petitioner should approach different claim construction positions and how the office will assess those positions, the appropriate course is to vacate the Board's decision and remand the case to the Board." (Paper 15, 5.)

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The Director expressly acknowledged that “a petitioner is not necessarily precluded from arguing different claim construction positions before the district court and the Board.” (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.” (Paper 20, 5 (citing to a discretionary denial by the Acting Director in *Sun Pharm. Indus. Inc. v. Nivagen Pharm., Inc.*, IPR2025-00893, Paper 18, at 3 (Director Sept. 19, 2025).)

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* EX1036, App'x A (Page 0014).)

Additionally, the Board has already, at least tacitly, recognized the claim

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construction proposed by Petitioner in the district court proceeding is consistent with express disclosures in the specification. In this regard, the Board has noted that the specification of the ’421 patent expressly states that the disclosed “sensor assembly housings” exclude any use of filling agents or materials:

The ’421 patent explains that: “*Sensor assembly housings 12 as disclosed herein* are constructed to provide the inside or internal cavity 38 configured in a manner to fixedly retain and house the electrical sensor device 40 therein *without the need for filling agents or materials.*” *Id.* at 12:41–45. The ’421 patent also states that “*A feature of sensor assemblies as disclosed herein is that they do not use or require the use of any such coating or filling agents or materials for any fixturing of the electrical sensor device 40 within the internal cavity 38.*” *Id.* at 13:60–64.

(Decision Granting Institution, 3 (emphasis added); *see also* Paper 8 (POPR), 8 (quoting and citing the same statements in the specification).)

The Board further recognized the ’421 patent specification’s admission that, like the prior art used in the Grounds, “[a] common technique used to assist in fixturing the electrical sensor device 40 known within the automotive industry is to fill the internal cavity with a coating material such as a neutral silicone or the like for purposes of retaining placement position.” (Decision Granting Institution, 11

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(quoting Ex. 1001, 13:56–60.) The Board also recognized that “the Specification also asserts that the sensor assemblies disclosed in the 421 patent ‘do not use or require the use of any such coating or filling agents or materials for any fixturing of the electrical sensor device 40.’” (Decision Granting Institution, 11 (quoting EX1001 at 13:61–64); *see also* EX1001, 13:64-14:1 (“Again, structural support of the electrical sensor device **40** within the internal cavity **38** to fix the position of the electrical sensor device **40** therein is provide by mechanical fixturing, e.g., through the use of surface features within the housing internal cavity **38**.”).)

The Board therefore recognized the specification’s disclosed sensor assembly housings exclude any use of potting material, and that Patent Owner’s Preliminary Response was “absent a persuasive argument to the contrary” regarding claim element 1[b] because Patent Owner did not dispute the proposed constructions set forth in the Petition and, accordingly, “appl[ied] them in our analysis below of whether to institute trial.” (Decision Granting Institution, 11, 8.) The Board again noted that “[b]oth parties are encouraged to adduce intrinsic evidence relating to the meaning of limitation 1b at trial.” (Decision Granting Institution, 11.)

Petitioner’s proposed construction for the recited “housing” in claims 1, 28, and 41 of the ’421 patent in the district court proceeding derives precisely from the express statements in the specification: “a protective casing . . . [that] does not use or require the use of any coating or filling agents or materials to fix and retain the

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placement position of the electrical sensor device therein.” (EX1017, Exhibit A (Joint Claim Construction Chart) at 5.) *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005) (“[T]he specification may reveal an intentional disclaimer, or disavowal, of claim scope by the inventor. In that instance as well, the inventor has dictated the correct claim scope, and the inventor's intention, as expressed in the specification, is regarded as dispositive.”).

In contrast, Patent Owner's broader proposed district court construction for “housing” as “a protective cover” is inconsistent with the material statements identified by the Board from within the specification asserting “that the sensor assemblies disclosed in the '421 patent ‘do not use or require the use of any such coating or filling agents or materials for any fixturing of the electrical sensor device 40,’” which was the basis for the Board noting that the “parties are encouraged to adduce intrinsic evidence relating to the meaning of limitation 1b at trial.” (Decision Granting Institution, 11 (quoting EX1001 at 13:61–64).) Thus, the Board itself has recognized that Patent Owner, should it wish to try to save the claims from invalidity, could seek a narrower claim construction in this proceeding. Until now, Patent Owner has chosen not to dispute any of its own litigation inspired proposed interpretations of the claims. (Decision Granting Institution, 6, 8.)

Additionally, the unpatentability of the challenged claims based on the prior art not before the examiner in the grounds presented in the Petition has been further

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validated by the Patent Office in the pending prosecution of the child application of the '421 patent, in which the examiner has rejected pending claims materially similar to those in the '421 patent for anticipation and obviousness. (*See* EX1029 (05/09/2025 Rejection) at Page 007-016 (Non-Final Rejection of Claims by Examiner in 18/828,624 for anticipation and obviousness based on Yamaguchi-566).) Both Yamaguchi references disclose this same overlapping and invalidating subject matter for the challenged claims of the '421 patent, as demonstrated by the grounds in the Petition under Yamaguchi-727 and Yamaguchi-566. (*See generally* Pet. at 16-84.) The materially identical nature of the pending claims rejected by the examiner during prosecution of the 18/528,624 child application of the '421 patent and the presently challenged claims was set forth in a table comparing claim 1 of the '421 patent and pending claims 58-59 of the '624 application in Petitioner's Response to Patent Owner's Discretionary Denial Brief. (*See* Paper 10, 3-5.)

Hence, now that the Patent Office has been made aware of the subject matter disclosed in Yamaguchi-727 and Yamaguchi-566, it has not allowed claims Patent Owner is presently pursuing with materially similar scope to those in the presently challenged '421 patent. Accordingly, the Patent Office has implicitly determined the challenged claims of the '421 patent would not have issued in view of Yamaguchi-727 and Yamaguchi-566, as relied on in the Grounds of the Petition, if they were before the examiner during prosecution. For consistency within the Patent

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Office, the Board should re-institute *inter partes* review.

Finally, although Petitioner has proposed different constructions for the terms “internal cavity” and “unfilled open space,” and alternatively that such terms are 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, at 3-4 (Director November 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.*, Paper 2 (Pet.), 17 (“internal cavity”: housing space S), 20-21 (same), 25-27 (“unfilled open space” is the “unfilled portion of housing space S (orange in Fig. 5 above)”).

IV. CONCLUSION

The Board has already decided the merits of institution under Patent Owner's own interpretation of the challenged claims, which the Petition adopted. 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. Unless the Board determines that Patent Owner's interpretation of the challenged claims as accepted for purposes of the Petition is incorrect, the result should be the same and Petitioner respectfully requests that the Board re-institute *inter partes* review.

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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 BRIEF IN RESPONSE TO DIRECTOR'S ORDER VACATING THE DECISION GRANTING INSTITUTION AND REMANDING TO THE BOARD FOR FURTHER PROCEEDINGS** and related documents were served on December 3, 2025, upon the parties via electronic mail:

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