

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

REVVO TECHNOLOGIES, INC.,
Petitioner,

v.

CEREBRUM SENSOR TECHNOLOGIES, INC.,
Patent Owner.

IPR2025-00632
Patent 11,835,421 B2

Before JOHN A. SQUIRES, *Under Secretary of Commerce for Intellectual
Property and Director of the United States Patent and Trademark Office.*

ORDER

Initiating *Sua Sponte* Director Review, Vacating the Decision Granting
Institution, and Denying Institution of *Inter Partes* Review

On remand from my precedential Decision vacating the Board’s prior institution in the above-referenced proceeding (Paper 20, “Director Review Decision”), the Board issued a second Decision granting institution of *inter partes* review (Paper 30, “Institution Decision”). For the reasons provided below, Director Review of the Board’s Decision is initiated, the Decision granting institution is vacated, and the Petition is denied.¹

In this case, Revvo Technologies, Inc. (“Petitioner”) did not propose its own constructions for claim terms in the Petition, but instead accepted Patent Owner’s proposed constructions submitted in the parties’ district court litigation. Paper 1 (“Pet.”) at 9–10 (citing Ex. 1017, Exhibit A at 5–7, 10, Exhibit B at 10–15). Although Petitioner proposed different constructions for the claim terms in the district court litigation, Petitioner failed to explain why it was taking a different position here. *Id.* Petitioner did argue, however, that its Petition complied with 37 C.F.R. § 42.104(b)(3)² because Petitioner had adopted Patent Owner’s proposed constructions from the district court litigation. *See* Paper 10 at 17, n.5.

I initiated *sua sponte* Director Review and determined that the Board had erred in limiting its consideration of a petitioner’s differing claim construction positions to instances that implicate means-plus-function interpretation under 35 U.S.C. § 112. Director Review Decision 3. I also determined that the Board erred when it found that Petitioner had complied with Rule 42.104(b)(3). In clarifying that a petitioner taking different claim

¹ On January 24, 2026, Cerebrum Sensor Technologies, Inc.’s (“Patent Owner”) filed a request for Director Review. Paper 33. That request is moot in light of this decision.

² Rule 104(b)(3) requires a petition to identify “[h]ow the challenged claim is to be construed.”

construction positions before the Board and a district court “should, at a minimum, explain why alternative positions are warranted,” I pointed out that the Board’s claim construction rules discourage petitioners from seeking broader constructions at the Board to support unpatentability while seeking narrower constructions in litigation to avoid infringement liability. *Id.* at 4 (citing Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board, 83 Fed. Reg. 51,340, 51,349 (Oct. 11, 2018) (“Claim Construction Standard”)). Simply put, you can’t have it both ways and certainly not without a sufficient explanation.

I also explained that Petitioner has not chosen “a single claim construction that best captures the true meaning of the patent claim,” as the claim construction rules state, because Petitioner had proposed different claim constructions as between the two forums. *Id.* (quoting Claim Construction Standard, 83 Fed. Reg. at 51,350). Because I issued my decision to clarify how a petitioner should approach different claim construction positions and how the Office should assess those positions, I then remanded this case to the Board to determine whether Petitioner had provided a sufficient reason why its different claim construction positions are warranted. *Id.*

In further briefing on remand, Petitioner maintained that it had proposed broader claim constructions because the district court may decline to adopt the narrow constructions that it has pursued in the litigation. Paper 23, 1. Petitioner asserted that because claim construction in the litigation “is not scheduled to occur for several months,” it could not have filed a timely

petition if it were to wait for the district court's claim construction order. *Id.* at 7.

The Board found Petitioner's explanation sufficient "because it follows" my "exemplary logic" that a district court "might in the future decline to adopt constructions that a petitioner proposes in related district court litigation." Institution Decision 8. It is not. This is error and mischaracterizes both my decision and its import. My "exemplary logic" is thus: in the generally rare instances where diverging constructions are advanced before two different tribunals, a party may proffer a different, broader construction before the Board when the district court *already has rejected* petitioner's narrower construction. Director Review Decision 4; *accord Sun Pharm. Indus. Inc. v. Nivagen Pharm., Inc.*, IPR2025-00893, Paper 18 at 3 (Director Sept. 19, 2025) (informative). Petitioner's explanation here amounts to nothing more than an assertion that a petitioner should be permitted to raise different claim constructions in the two forums when there is a chance that the district court will reject that petitioner's preferred construction. My precedential decision does not provide for conditional future outcomes, and while petitioner would no doubt like to 'wait and see,' we cannot and will not. The appropriate course of action under these circumstances is to deny institution.

Accordingly, based on the foregoing, it is

ORDERED that a *sua sponte* Director Review of the Board's Decision granting institution of *inter partes* review (Paper 30) is initiated;

FURTHER ORDERED that the Decision granting institution of *inter partes* review is vacated; and

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FURTHER ORDERED that the Petition is denied, and no trial is instituted.

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