

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAVANT TECHNOLOGIES LLC d/b/a GE LIGHTING,
ELONG INTERNATIONAL USA INC., and
XIAMEN LONGSTAR LIGHTING CO. LTD.,
Petitioners,

v.

FEIT ELECTRIC COMPANY, INC.,
Patent Owner.

Case IPR2025-00698
U.S. Patent No. 8,614,539

PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW

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37 C.F.R. § 42.23	2, 15

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EXHIBITS

Exhibit	Description
2001	Declaration of E. Fred Schubert, Ph.D.
2002	<i>Curriculum vitae</i> for E. Fred Schubert, Ph.D.
2003	U.S. Patent Publication 2002/0180351 (“McNulty”)
2004	U.S. Patent Publication 2001/0000622 (“Reeh”)
2005-2012	RESERVED
2013	Mike Krames, <i>Light-Emitting Diode Technology for Solid-State Lighting</i> , in <i>Frontiers of Engineering: Reports on Leading-Edge Engineering from the 2009 Symposium</i> , 67 (2009)
2014	E. Fred Schubert, <i>Light-Emitting Diodes</i> (2nd ed. 2006)
2015	Matthew G. Bevan & Bruce M. Romenesko, <i>Modern Electronic Packaging Technology</i> , 20 JOHNS HOPKINS APL TECH. DIGEST 22 (1999)
2016	X. A. Cao & S. D. Arthur, <i>High-power and reliable operation of vertical light-emitting diodes on bulk GaN</i> , 85 <i>Applied Physics Letters</i> 3971 (2004).
2017	Michael R. Krames et al., <i>Status and Future of High-Power Light-Emitting Diodes for Solid-State Lighting</i> , 3 <i>J. Display Tech.</i> 160 (2007)
2018	Mehmet Arik et al., <i>Thermal Management of LEDs: Package to System</i> , 5187 <i>Proc. SPIE</i> 64 (2004)
2019	U.S. Dep’t Energy, <i>Critical Materials Strategy</i> (Dec. 2010)
2020	Zongyuan Liu et al., <i>Measurement and numerical studies of optical properties of YAG:Ce phosphor for white light-emitting diode packaging</i> , 49 <i>Applied Optics</i> 247 (2010)
2021-2028	RESERVED
2029	Home Depot - Feit Electric White Filament LED Light Bulbs listing
2030	Candle Power Forums article: Feit LED filament bulb with white filaments
2031	The Home Depot Announces 2024 Innovation Award Winners
2032	Feit Electric Lighting Instagram consumer comments regarding filaments
2033	Feit Electric Lighting Instagram consumer comments regarding yellow filaments
2034	Feit Electric Lighting Instagram consumer comments: Regular Yellow Filament vs. White Filament

Exhibit	Description
2035	Home Depot White Filament price point of \$29.97
2036	Home Depot Yellow Filament price point of \$21.97
2037	Reddit: Do white filament LED edison bulbs exist?
2038	<i>Feit Electric Company, Inc. v. Savant Techs. LLC d/b/a GE Lighting</i> , N.D. Ohio Case No. 1:24-cv-00473-BMB, Defendant Savant Technologies LLC's Final Identification of '539 Patent Claim Terms to be Construed dated January 17, 2025
2039	<i>Feit Electric Company, Inc. v. Savant Techs. LLC d/b/a GE Lighting</i> , N.D. Ohio Case No. 1:24-cv-00473-BMB, Defendant Savant Technologies LLC's Final Proposed Constructions and Evidence dated February 25, 2025
2040	<i>Feit Electric Company, Inc. v. Savant Techs. LLC d/b/a GE Lighting</i> , N.D. Ohio Case No. 1:24-cv-00473-BMB, Defendant Savant Technologies LLC's Opening Claim Construction Brief dated March 13, 2025
2041	Memorandum Opinion and Order on claim construction, Dkt. 81, Case No. 3:24-cv-1089-x, <i>Feit Electric Co., Inc. v. Elong International USA, Inc. et al.</i>
2042	Patent Owner's Demonstrative Exhibits, July 16, 2026

CLAIM LISTING

Independent Claim 1	
1[pre]	A wavelength conversion component for a light emitting device comprising:
1[a]	at least one photoluminescence material; and
1[b]	a light scattering material,
1[c]	wherein the light scattering material has an average particle size that is selected such that the light scattering material will scatter excitation light from a radiation source relatively more than the light scattering material will scatter light generated by the at least one photoluminescence material,
1[d]	wherein the wavelength conversion component is configured such that in operation a portion of the excitation light comprising blue light having a wavelength of greater than or equal to 440 nm is emitted through the wavelength conversion component to contribute to a final visible emission product;
1[e]	wherein the light scattering material scatters the blue light at least twice as much as light generated by the at least one photoluminescence material.

Dependent Claim 2	
2[pre]	The component of claim 1,
2[a]	wherein the light scattering material has an average particle size that is less than about 150 nm.
Dependent Claim 3	
3[pre]	The component of claim 1,
3[a]	wherein the light scattering material is selected from the group consisting of: titanium dioxide, barium sulfate, magnesium oxide, silicon dioxide and aluminum oxide.

Dependent Claim 4	
4[pre]	The component of claim 1
4[a]	wherein the at least one photoluminescence material is located in a wavelength conversion layer and the light scattering material is located in a diffusing layer.
Dependent Claim 5	
5[pre]	The component of claim 4,
5[a]	wherein the wavelength conversion layer and the light diffusing layer are in direct contact with each other.
Dependent Claim 6	
6[pre]	The component of claim 4,
6[a]	wherein the wavelength conversion layer comprises a mixture of the at least one phosphor material and a light transmissive binder and the light diffusing layer comprises a mixture of the light scattering material and the light transmissive binder.
Dependent Claim 7	
7[pre]	The component of claim 6,
7[a]	wherein the light transmissive binder comprises a curable liquid polymer selected from the group consisting of: a polymer resin, a monomer resin, an acrylic, an epoxy, a silicone and a fluorinated polymer.
Dependent Claim 8	
8[pre]	The component of claim 6,
8[a]	wherein the weight loading of light scattering material to binder selected from the group consisting of: 7% to 35% and 10% to 20%.
Dependent Claim 9	
9[pre]	The component of claim 4,

9[a]	wherein the wavelength conversion and light diffusing layers are deposited using a method selected from the group consisting of: screen printing, slot die coating, spin coating, roller coating, drawdown coating and doctor blading.
Dependent Claim 10	
10[pre]	The component of claim 4
10[a]	in which the wavelength conversion layer and the light diffusing layer comprises planar shapes.
Dependent Claim 11	
11[pre]	The component of claim 4
11[a]	in which the light diffusing layer comprises a dome or elongated dome shape.

Independent Claim 18	
18[pre]	A light emitting device, comprising:
18[a]	at least one solid-state light emitter operable to generate excitation light; and
18[b][1]	a wavelength conversion component comprising:
18[b][2]	at least one photoluminescence material; and
18[b][3]	a light scattering material,
18[b][4]	wherein the light scattering material has an average particle size that is selected such that the light scattering material will scatter excitation light from the at least one solid-state light emitter relatively more than the light scattering material will scatter light generated by the at least one photoluminescence material,

18[c]	wherein the wavelength conversion component is configured such that in operation a portion of the excitation light comprising blue light having a wavelength of greater than or equal to 440 nm is emitted through the wavelength conversion component to contribute to a final visible emission product;
18[d]	wherein the light scattering material scatters the blue light at least twice as much as light generated by the at least one photoluminescence material.

Dependent Claim 19	
19[pre]	The device of claim 18,
19[a]	wherein the light emitting device is selected from the group consisting of: downlights, light bulbs, linear lamps, lanterns, wall lamps, pendant lamps, chandeliers, recessed lights, track lights, accent lights, stage lighting, movie lighting, street lights, flood lights, beacon lights, security lights, traffic lights, headlamps, taillights, and signs.
Dependent Claim 20	
20[pre]	The device of claim 18
20[a]	in which the average particle size of the light scattering material is selected to improve an OFF state white appearance of the light emitting device.
Dependent Claim 23	
23[pre]	The device of claim 18,
23[a]	wherein the light scattering material has an average particle size that is less than about 150 nm.
Dependent Claim 24	
24[pre]	The device of claim 18

24[a]	in which the wavelength conversion layer and the light diffusing layer comprises planar shapes.
Dependent Claim 25	
25[pre]	The device of claim 18
25[a]	in which the light diffusing layer comprises a dome or elongated dome shape.

Independent Claim 28	
28[pre]	A light bulb comprising:
28[a]	a connector base configured to be inserted in a socket to form an electrical connection for the light bulb;
28[b]	a body comprising one or more solid-state light emitters;
28[c]	a wavelength conversion component having a three dimensional shape that is configured to enclose the one or more solid-state light emitters and to in part at least define a light mixing chamber,
28[d][1]	wherein the wavelength conversion component comprises
28[d][2]	at least one photoluminescence material; and
28[d][3]	a light scattering material,
28[d][4]	wherein the light scattering material has an average particle size that is selected such that the light scattering material will scatter excitation light from the one or more solid-state light emitters relatively more than the light scattering material will scatter light generated by the at least one photoluminescence material,
28[e]	wherein the wavelength conversion component is configured such that in operation a portion of the excitation light comprising blue light having a wavelength of greater than or equal to 440 nm is emitted through the wavelength conversion component to contribute to a final visible emission product;

28[f]	wherein the light scattering material scatters the blue light at least twice as much as light generated by the at least one photoluminescence material.
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I. INTRODUCTION

Patent Owner Feit Electric Company, Inc. (“Feit Electric”) respectfully requests Director Review of the Final Written Decision entered September 14, 2026 (Paper 29) in IPR2025-00698. Two errors warrant review.

First, nine days before filing the Petition, Petitioner Savant told the Northern District of Ohio that four limitations of the ’539 patent — including the two on which the Final Written Decision turned — are indefinite under 35 U.S.C. § 112 because those limitations allegedly have no plain and ordinary meaning. EX2039, Ex. A; EX2038. Petitioners then told the Board that “no construction should be necessary” and urged the Board to adopt the plain and ordinary meaning for *all* claim limitations. Paper 5 (“Pet.”) at 20. The Petition neither disclosed Savant’s opposite argument to the district court nor offered any explanation for the contradictory positions. Paper 14 (“POR”) at 25. That is precisely the conduct the Director’s recent precedential decisions forbid. Feit Electric raised the issue at trial, and the Board declined to reach it, holding that these arguments “are reserved for the Director to decide.” Paper 29 (“FWD”) at 10 n.7. Federal Circuit authority indicates that no court can do so either, leaving the issue solely for the Director to decide.

Second, the Board’s decision turned on finding that the prior art Stokes reference taught the claimed “average particle size” in a passage of Stokes that

Petitioners did not cite for that purpose in the Petition and improperly raised for the first time in their Reply. The Board also permitted Petitioners to reformulate their theory on the “average particle size” in their Reply and during oral argument.

FWD at 38-39, 39 n.9. Section 312(a)(3) and Rule 42.23(b) do not permit a petitioner to hold in reserve the evidence that carries its case for a brief to which the patent owner cannot respond with rebuttal evidence. Even worse, the Board defended Petitioners’ untimely *Reply* argument by inexplicably concluding that it was responsive to Patent Owner’s *Sur-reply*. Both of these errors are independently dispositive of every challenged claim.

II. STATEMENT OF FACTS

A. Patent Owner and the Challenged Patent

Feit Electric is a family-owned company headquartered in Pico Rivera, California. Founded in 1978, Feit Electric has grown into a global brand known for its focus on affordable, quality-driven lighting solutions, including LED bulbs, decorative fixtures, and a full smart home ecosystem. Feit Electric has also recently expanded its U.S. operations, acquiring a large distribution center in McDonough, Georgia, to better serve East Coast retail customers.

The ’539 Patent provides a solution to a longstanding problem with LED lightbulbs. To achieve white light, LED lightbulbs mix a combination of blue and yellow light. The blue light comes from the LED, and the yellow light comes from

a phosphorous layer that absorbs a portion of the blue light, converting it to yellow light. When the LED lightbulb is turned on, this mixture of blue and yellow light appears white to the human eye.

The invention of the '539 Patent improved the standard white-light LED lightbulb by reducing the amount of phosphor needed in a white-light LED lightbulb. As the '539 Patent explains, the diffusion layer increases the efficiency of the phosphorous layer, which the '539 Patent refers to as the wavelength conversion layer. EX1101, 3:21-28. The increased efficiency is achieved by reflecting some of the blue light back to the wavelength conversion layer. This increases the amount of yellow light emitted for a given amount of phosphor material and thereby reduces the amount of phosphor material needed to achieve the desired mix of blue and yellow light. The diffusion layer also scatters the blue and yellow light, resulting in a more uniform mixture of white light.

B. The Petition, Briefing, and Final Written Decision

Petitioners Savant Technologies LLC (“Savant”), Elong International USA Inc. (“Elong”), and Xiamen Longstar Lighting Co. Ltd. (“Xiamen Longstar”) filed IPR2025-00698 on March 6, 2025, challenging claims 1-11, 18-20, 23-25, and 28 of the '539 Patent. Paper 5.

Feit Electric filed its Response to the Petition on December 30, 2025. Paper 14. In its Response, Feit Electric disputed Petitioners’ substantive arguments

and also notified the Board that Petitioners had argued contradictory claim constructions to the Board and to a federal district court, respectively. *Id.* at 23-45. On April 1, 2026, Petitioners filed their Reply. Paper 21. On May 13, 2026, Feit Electric filed its Sur-reply. Paper 24. On July 16, 2026, the Board conducted an oral argument. Paper 28.

On September 14, 2026, the Board issued its final decision finding that all challenged claims are unpatentable. Paper 29. The Board declined to address the contradictory claim construction arguments that Petitioners presented in district court because only the Director has authority to address that issue. *Id.* at 10 n.7.

III. ARGUMENT

A. Petitioners' Inconsistent Claim Constructions Before the Board and the District Court Independently Justify Director Review

Petitioners' decision to conceal their contradictory claim construction positions to the Board and the district court justifies Director Review, vacatur of the institution Decisions, and termination of the *inter partes* review. *See Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20 at 3-5 (Director Nov. 3, 2025) (“*Revvo I*”) (precedential) (explaining the Office’s approach to addressing a petitioner’s different claim construction positions in two forums); *Tesla, Inc., v. Intellectual Ventures II LLC*, IPR2025-00340, Paper 18 (Director Nov. 5, 2025) (“*Tesla*”) (informative) (same). The Petitioners to this proceeding also did exactly the same thing in the IPR of a related patent, and Feit

Electric has requested Director Review there too. *See* IPR2024-01357, Paper 91 at 4-5, 12-14.

In *Revvo I*, the Director held that, “although the Board’s rules ‘do not necessarily prohibit petitioners from taking inconsistent claim construction positions before the Board and a district court,’ when a petitioner takes alternative positions before the Board and a district court, that petitioner should, at a minimum, explain why alternative positions are warranted.” *Revvo I*, Paper 20 at 3-4. Just a few days later, the Director vacated institution and terminated *Tesla* because the petitioner had failed to notify the Board that it was arguing indefiniteness to the district court. *Tesla*, Paper 18 at 3-4. The Director rejected the petitioner’s statement that “it cannot raise indefiniteness challenges in an *inter partes* review” as an insufficient explanation. *Id.* at 3.

Here, Petitioners and their expert, Prof. Doolittle, did the same thing. Petitioners urged the Board to adopt the plain and ordinary meaning for all claim terms while Savant argued to the district court that four separate limitations of the challenged claims are indefinite and therefore *have no plain and ordinary meaning*.¹ *See* POR at 25; EX2039 at Ex. A. Savant also advanced specific

¹ Savant asserted to the district court that the following claim terms are indefinite and therefore have no plain and ordinary meaning:

constructions in district court for the terms “planar shapes” and “light mixing chamber,” constructions which Petitioners also concealed from the Board. *Id.*

Shortly after the Petition was filed, Savant doubled down on these positions in its opening claim construction brief to the district court. *See* EX2040.

Petitioners made no mention of Savant’s contradictory positions in the Petition. None of the Petitioners informed the Board that they had argued or would argue indefiniteness in district court, nor did they even attempt to explain how their diametrically opposed invalidity arguments to the Board and the district court could be reconciled or justified. Indeed, they cannot be reconciled, and Petitioners’ invalidity grounds should be dismissed for this reason alone. *See Revvo I*, Paper

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1. “average particle size” (all challenged claims);
 2. “the light scattering material will scatter excitation light from a radiation source relatively more than the light scattering material will scatter light generated by the at least one photoluminescence material” (claims 1-11);
 3. “the light scattering material scatters the blue light at least twice as much as light generated by the at least one photoluminescence material”
(all challenged claims); and
 4. “improve an OFF state white appearance of the light emitting device”
(claim 20).

20 at 3–5; *Tesla*, Paper 18; *Am. Airlines, Inc. v. Intellectual Ventures I LLC*, IPR2025-01055, Paper 11 at 12-14 (Nov. 21, 2025) (“*Am. Airlines*”).

The inconsistencies did not end with Petitioners. Their expert, Prof. Doolittle, also contradicted Petitioners’ position, advancing specific constructions for a completely different set of claim terms.² Prof. Doolittle’s constructions, which purport to govern his declaration, contradict Petitioners’ statement that “no construction should be necessary.” *See* Pet. at 19. In particular, Prof. Doolittle advanced specific constructions for the terms “blue light having a wavelength of greater than or equal to 440 nm generated by the light emitting device,” “light scattering [material],” and “[photoluminescence] material.”³ Contradicting their own expert, Petitioners did not seek to construe any of these terms in the Petition, arguing instead that those terms also should be given their plain and ordinary meaning. As a result, Petitioners found themselves at odds with

² A full chart of Petitioners’ various claim construction positions for the ’539 Patent is provided for the Director’s reference in Appendix A to Paper 14.

³ Prof. Doolittle refers to the claim terms “light scattering particles” and “photoluminescent materials,” but those terms do not appear in any of the challenged claims. Presumably, Prof. Doolittle is referring to the terms “light scattering material” and “photoluminescence material.”

both their own positions in district court *and* their own expert's positions in this proceeding—the same expert on whose testimony the Board has now relied in its final decision. *See, e.g.*, Paper 29 at 39-40, 46-47, 50-52 (citing EX1102). Given that Petitioners and their expert could not even agree on the proper claim interpretation, Petitioners could not have met their burden of proving that the challenged claims are invalid. *See Hologic, Inc. v. Enzo Life. Sci.*, IPR2018-00019, Paper 17 at 8 (Apr. 18, 2018) (denying institution where petitioner advocated for one construction but performed its invalidity analysis using a different construction).

Caught red-handed, Petitioners finally acknowledged in their Reply that they argued contradictory claim constructions on four different claim terms before the Board and the district court. Paper 21 (“Reply”) at 21-23. Petitioners’ belated excuse was that that they allegedly fell within the within the *Tesla* “safe harbor.” *Id.* This argument should have failed for two reasons. First, Petitioners’ argument addressed, at best, only one of the four claim limitations on which they took contradictory positions (“average particle size”). *Id.* at 22. Second, the *Tesla* safe harbor requires a petitioner to explain any contradictory claim constructions *in the petition*. *Tesla*, Paper 18 at 3-4. Petitioners did no such thing. Instead, Petitioners intentionally kept their options open, waiting to see what would happen, and recanting the indefiniteness arguments only *after* a district court expressly rejected

them. *See* Paper 24 (“Sur-reply”) at 10-12; Reply at 23 (citing EX1196). The Director has specifically rejected this “wait and see” approach. *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 36 at 4 (Director Jan. 26, 2026) (“*Revvo I*”) (“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.”).

The Board declined to address Petitioners’ contradictory claim constructions, concluding that only the Director can correct this wrong. FWD at 10 n.7. The Federal Circuit agrees. *See Fed. Express Corp. v. Qualcomm Inc.*, 174 F.4th 910, 916 (Fed. Cir. 2026). Feit Electric therefore respectfully requests that the Director exercise his sole authority to correct the wrong and reach the same conclusion reached previously in *Revvo I*, *Revvo II*, *Tesla*, and similar cases.⁴ *Revvo II*,

⁴ The Board criticized Feit Electric for raising Petitioners’ contradictory claim constructions “nearly two months after the Director’s initial decisions in [*Revvo I*] and [*Tesla*]” (FWD at 10 n.7), but Feit Electric could not have raised it any earlier. Feit Electric tried to do so in a related IPR, requesting Director Review immediately in the wake of *Revvo I* and *Tesla*, but the Director denied that request on procedural grounds. *See* IPR2024-01357, Paper 47 (Request for Director

Paper 24 at 10-12; *Revvo I*, Paper 20 at 3–5; *Tesla*, Paper 18; *Am. Airlines*, Paper 11 at 12-14.

B. The Board Erred by Resting its Dispositive Finding on Untimely Evidence and a Reformulated Theory Not Present in the Petition

Limitation 1[c] of the '539 patent recites:

wherein the light scattering material has an *average particle size* that is selected such that the light scattering material will scatter excitation light from a radiation source relatively more than the light scattering material will scatter light generated by the at least one photoluminescence material.

EX1101, cl. 1 (emphasis added); *see also id.* at cls. 18, 28. The Board's decision, which rests on Stokes' alleged disclosure of limitation 1[c], suffers from three fatal flaws. First, the Board improperly relied on a passage from Stokes (6:62-67) that Petitioners raised for the first time in their Reply and did not cite in the Petition for limitation 1[c]. FWD at 39 n.9. Second, the Board justified its decision by relying on evidence and arguments that the Petition presented only for *other* claim limitations, not limitation 1[c]. FWD at 39 (citing arguments the Petition presented

Review), EX3100 (denial on procedural grounds), EX3101 (denial of requested good cause extension). Accordingly, Feit Electric raised the issue in that case and in this one at the earliest procedurally available opportunity with the Board and now with the Director.

for limitation 1[e], not 1[c]). Third, the Board inexplicably justified Petitioners' untimely Reply argument by concluding that it was somehow *responsive* to Feit Electric's later-filed Sur-reply, which is obviously impossible. *Id.*

For limitation 1[c], the Petition advanced two theories, one of which contradicted itself. First, Petitioners argued that Krummacher “renders obvious this claim element by literally disclosing the selection of average particle sizes that preferentially scatter blue light,” based on a TiO₂ radius range of 50-1000 nm. Pet. at 26. Second, Petitioners argued that Stokes “explicitly discloses the selection of an average particle size.” Importantly, Petitioner cited only Stokes at 7:1-4 and 7:17-26 for this proposition. Pet. at 26-27. Then, contradicting their own argument, Petitioners conceded that Stokes actually does *not* teach an *average* particle size. See Pet. at 35 n.4 (“Stokes [is] based on *exact* particle size, not the *more practical average* particle size”).⁵

Feit Electric's Response identified the Petition's evidentiary gap: the Petition never identified which theory or reference allegedly supplies the teaching of the claimed “average particle size”. See POR at 31-32; see *generally* POR at 27-32. Krummacher's extremely broad range of 50-1000 nm discloses no average, and much of this range does not preferentially scatter blue light, which all of the

⁵ Ground 2 incorporates the same theories. See Pet. at 65-69, 73-78.

challenged claims require. The Stokes passages cited in the Petition likewise identify no average particle size at all, despite Petitioners' obligation to present their arguments and supporting evidence *in the Petition*. POR at 27-32; Sur-reply at 9-10; EX2001, ¶¶ 97-100. "[I]t is the petitioner's burden to make clear when alternative arguments are being presented and to sufficiently expound on each one." *Netflix, Inc. v. DivX, LLC*, 84 F.4th 1371, 1380 (Fed. Cir. 2023); *cf. DeSilva v. DiLeonardi*, 181 F.3d 865, 866-67 (7th Cir. 1999) ("A brief must make all arguments accessible to the judges, rather than ask them to play archeologist with the record.").

Instead of defending the Petition, which they could not, Petitioners answered by improperly citing *new* evidence: the Reply cited for the first time Stokes at 6:60 – 7:8 for limitation 1[c]. Reply at 5. At the hearing, Petitioners' counsel attempted to backfill and explain that this was Petitioners' theory all along. *See* Paper 28 ("Hrg. Tr."), 16:24–17:2 (explaining that the uncited Stokes at 6:60 – 7:8 is just "a more accurate way of saying average particle size."). In doing so Petitioners contradicted the argument they presented in the Petition itself. *See* Pet. at 35 n.4 (conceding that "Stokes [is] based on *exact* particle size, not the more practical *average* particle size" (emphasis added)). Feit Electric immediately objected that this was a new argument. Hrg. Tr., 23:8 – 24:11. According to Petitioners' belated Reply argument—and now the Board's Final Written Decision—column 6 of

Stokes is “the more accurate” way to say average particle size, but the Petition *did not cite* column 6 for limitation 1[c].

The Board found Petitioners had “shown sufficiently that Stokes discloses selecting an ‘average’ particle size” by relying on the evidence Petitioners chose *not* to cite in the Petition⁶. FWD at 38-39. The Board then devoted footnote 9 to justifying that reliance, conceding that “part of this portion of Stokes (6:62–67) was cited with respect to limitation 1[d], even if it was *not* cited with respect to limitation 1[c].” *Id.* at 39 n.9 (emphasis added).

Absent from the Board’s rationalization is the prejudice to Feit Electric, which was denied any chance to submit evidence rebutting the belated reliance on Stokes column 6. Feit Electric could have submitted additional expert testimony or other evidence rebutting this late-stage disclosure, but such evidence is not allowed on Sur-reply (nor should it have been allowed in Petitioners’ Reply).

Indeed, governing law prevents the Board from re-writing the Petition as it did here. A petition must identify “with particularity . . . the evidence that supports

⁶ Not only is this evidence not disclosed in the Petition, but Petitioners’ expert Prof. Doolittle likewise neglected to cite this evidence in his analysis of claim limitation 1[c]. *See* EX1102, ¶¶ 122-130. Petitioners’ newly introduced citations are therefore nothing more than attorney argument.

the grounds for the challenge to each claim.” 35 U.S.C. § 312(a)(3); *see* 37 C.F.R. § 42.104(b)(4)-(5). “A reply may only respond to arguments raised in the corresponding opposition or patent owner response.” 37 C.F.R. § 42.23(b). The Federal Circuit has enforced these requirements: “It is of the utmost importance that petitioners in the IPR proceedings adhere to the requirement that the initial petition identify ‘with particularity’ the ‘evidence that supports the grounds for the challenge to each claim.’” *Intelligent Bio-Systems, Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016). “Unlike district court litigation . . . the expedited nature of IPRs bring with it an obligation for petitioners to make their case in their petition to institute.” *Id.* at 1369-70. New issues prohibited in reply include “new evidence necessary to make out a *prima facie* case for the . . . unpatentability of an original . . . claim, and new evidence that could have been presented in a prior filing.” *Id.* (citing Office Patent Trial Practice Guide).

The Board treated Stokes column 6 as establishing the dispositive claim limitation even though Petitioner failed to cite column 6 for that purpose in the Petition. This disclosure was indisputably available to Petitioners when they filed the Petition, yet Petitioners chose not to cite it.

The Board’s reliance on this new evidence also violated the Administrative Procedure Act. *See* 5 U.S.C. § 554(b)-(c); *Dell Inc. v. Acceleron, LLC*, 818 F.3d 1293, 1300-01 (Fed. Cir. 2016) (Board violated patent owner’s procedural rights by

relying on a factual assertion introduced after the patent owner's opportunity to respond); *Nike, Inc. v. Adidas AG*, 955 F.3d 45, 53-54 (Fed. Cir. 2020) (finding that Board violated APA where it relied on portion of reference not cited by parties); *In re Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1364, 1381 (Fed. Cir. 2016) ("we find no support for the PTO's position that the Board is free to adopt arguments on behalf of petitioners that could have been, but were not, raised by the petitioner during an IPR"). By rule, Feit Electric's Sur-reply was limited to argument only; new evidence is precluded. PTAB Consolidated Trial Practice Guide (Nov. 2019) at 73-74. Feit Electric therefore had no opportunity to submit expert testimony on, *e.g.*, whether the d_{50} value described in Stokes column 6 characterizes a distribution (as argued by counsel for the first time at the hearing, Hrg. Tr., 16:21 – 17:2), or whether the mean diameters in column 6 satisfy the "selected such that" preferential-scattering requirement of limitation 1[c]. The Board's prejudicial error in relying on this untimely evidence affects every challenged claim in the '539 Patent, and Patent Owner respectfully requests Director Review to correct it.

IV. CONCLUSION

Feit Electric respectfully requests Director Review to address Petitioners' concealment of its contradictory district court claim construction arguments, which only the Director can correct, as well as the Board's improper reliance in its Final Written Decision on Petitioners' untimely, reply-stage arguments and evidence.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2026, a true and correct copy of the foregoing was served by electronic mail upon the following counsel of record for

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