

Patent Owner's Request for Director Review
Case No. IPR2025-01374

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TERUMO BCT, INC.,

Petitioner

v.

HAEMONETICS CORP.,

Patent Owner

Case No. IPR2025-01374

U.S. Patent No. 11,738,124

**PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW TO VACATE
INSTITUTION AND TERMINATE *INTER PARTES* REVIEW**

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2022	Joint Disputed Claim Terms Chart, <i>Haemonetics Corp. v. Terumo BCT, Inc.</i> (D. Colo.) (Feb. 3, 2026), D.I. 77

Patent Owner Haemonetics Corporation (“Patent Owner”) respectfully requests Director Review of the PTAB Panel’s institution of this *inter partes* review regarding the claims of U.S. Patent No. 11,738,124 (the “’124 Patent”) challenged by Petitioner Terumo BCT, Inc. (“Petitioner”).

I. INTRODUCTION

One week after institution, Petitioner and Patent Owner filed their Joint Disputed Claim Terms chart in the co-pending district court litigation. *See* EX2022. Patent Owner took the position—as it did in this proceeding—that all terms should be given their plain and ordinary meaning and did not propose any terms for construction. Petitioner, on the other hand, proposed numerous terms for construction, including the “controller [is/further] configured to” term within the ’124 Patent and at-issue in the Petition. Petitioner now argues that “at least claims 11-20 of the ’124 patent are indefinite” because the “controller [is/further] configured to” terms are governed by means-plus-function interpretation pursuant to 35 U.S.C. § 112(f) and fail to recite sufficient structure. *Id.* at 21-42.

In direct contradiction to its arguments in the district court, Petitioner has already argued to the Board that all claims “need no construction” and “[t]he claims should be construed ‘in accordance with the ordinary and customary meaning of such claims as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.’” Pet. at 20 (quoting 37 C.F.R. § 42.100(b)) (citing

Phillips v. AWH Corp., 415 F.3d 1303 (Fed. Cir. 2005) (*en banc*)). The Board's "rules discourage petitioners from seeking broader constructions at the Board to support a patentability challenge while seeking narrower constructions in litigation to avoid infringement liability." *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20 at 4 (Nov. 3, 2025) (precedential).

Petitioner's approach violates the Director's policy regarding the requirement that a petitioner explain any inconsistent claim construction positions to the Board. *See, e.g., id.* at 2-5 (precedential); *Id.*, Paper 36 at 2-4 (Jan. 26, 2026); *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00340, Paper 18 (Nov. 5, 2025) (informative). As the party that proposed the "controller" term for construction and further argued it is indefinite pursuant to 35 U.S.C. § 112(f) in the district court, Petitioner should have raised its conflicting construction to the Board and explained its contradictory approach in the competing forums. Instead, Petitioner seeks to pursue a broad construction before the Board that presupposes structural sufficiency, while simultaneously asserting in district court that no such structure exists, all the while increasing the expense of litigation and reducing any efficiencies that could be gained by institution.

Because Petitioner's contradictory claim construction arguments squarely violate the Director's precedential decisions¹ and are not in compliance with 37 C.F.R. § 42.104(b)(3), the Director should vacate institution and terminate *inter partes* review of this proceeding.

II. STATEMENT OF FACTS

A. Overview of the '124 Patent

The '124 Patent is directed to plasma apheresis systems that calculate anticoagulant and pure plasma volumes based on donor characteristics and terminate collection upon reaching a target pure plasma volume. EX1001, 1:26–28, 10:13–26.

B. The Petition and PTAB's Institution Decision

After Patent Owner filed a suit for patent infringement in district court, Petitioner filed the instant Petition on August 4, 2025. *See generally* Pet. Petitioner challenges all claims (claims 1-20). *See id.* On November 12, 2025, Patent Owner

¹ Petitioner's claim construction gamesmanship is but one example of Petitioner's circumvention of the Board's precedent. For example, the purported expert declaration accompanying the Petition is almost entirely a word-for-word copy of the Petition and provides no additional analysis or opinion. The Board has found such repetition warrants denial of institution. *See, e.g., Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 12 at 4 (Feb. 10, 2023) (precedential).

filed its Preliminary Response that identified blatant errors in the Petition that should have prohibited institution, including a nearly verbatim expert declaration and a lack of any substantive motivation to combine analysis. *See* Paper 10 at 12-13, 19, 21, 23-27. Nevertheless, on January 27, 2026, this proceeding was instituted in a Notice of Decisions on Institution. *See* Paper 13. The institution decision did not address Petitioner's procedural failures that Patent Owner identified in the Preliminary Response or provide a substantive explanation supporting institution. *See id.*

C. Petitioner's Inconsistent Claim Construction Positions Before the PTAB Panel and District Court Under 35 U.S.C. § 112(f)

In the Petition, Petitioner argued that the “claims should be construed in accordance with the ordinary and customary meaning of such claims as understood by one of ordinary skill in the art”. Pet. at 20 (internal citations omitted). Petitioner had no issue arguing that the prior art invalidated the claims, relying on the plain and ordinary meaning of the term “controller [is/further] configured to” in those claims. *See id.* at 38-43, 52-54, 61-63, 67-68, 71. Petitioner's expert, Dr. Fletcher, in his nearly identical declaration supporting the Petition, repeatedly opined that the controller limitation is structurally and functionally understood by a person of ordinary skill—testimony that is irreconcilable with Petitioner's later assertion that the same limitation lacks any cognizable structure under § 112(f). *See* EX1003 at ¶¶ 105-124, 156-169, 182-185, 195-196, 203.

In the parallel district court litigation, however, Petitioner has made the exact opposite claim construction argument. On February 3, 2026, Petitioner argued in the Joint Disputed Claim Terms Chart that these same claims are indefinite because the “controller [is/further] configured to” term is a means-plus-function term pursuant to 35 U.S.C. § 112(f) and lacks adequate structure. EX2022 at 21-42. Petitioner is the party who proposed this term in the district court and specifically argued it is governed by 35 U.S.C. § 112(f) and indefinite. Nevertheless, Petitioner did not inform the Board that it would be arguing indefiniteness, or means-plus-function, in the district court.

D. The Co-Pending District Court Litigation

Although Petitioner filed a motion to stay the district court litigation on November 11, 2025—which Patent Owner opposed—the district court has yet to rule on the stay motion. As such, the district court case is progressing on schedule, and the parties have begun claim construction. Petitioner's opening claim construction brief will be filed by March 3, 2026, and the parties will complete all claim construction briefing by the end of that month. *See* EX2012 at 8-9. Accordingly, at the same time Petitioner will be arguing the prior art meets the plain and ordinary meaning of the claim terms in this proceeding, Petitioner will simultaneously, and irreconcilably, be arguing that the same claim terms are indefinite, means-plus-function terms in the district court litigation. A petitioner

cannot simultaneously argue “this limitation has sufficient structure for anticipation and obviousness” and “this same limitation lacks any cognizable structure” without explanation—even if the latter argument is procedurally unavailable in IPR.

E. The Related PTAB Proceedings

Patent Owner asserted nine patents against Petitioner in the co-pending district court litigation. Petitioner summarily filed nine petitions before the PTAB—both for *inter partes* review and post-grant review—to challenge all asserted patents. *See Terumo BCT, Inc. v. Haemonetics Corp.*, IPR2025-01391, PGR2025-00077, PGR2025-00078, IPR2025-01420, IPR2026-00046, PGR2026-00006, IPR2026-00045, PGR2026-00009. In each of those Petitions, Petitioner took the position that all terms should be given their plain and ordinary meaning, in direct contradiction to the approach Petitioner has taken across all patents in the district court. *See* EX2022.

Patent Owner is seeking Director review in the other *inter partes* review already instituted (IPR2025-01391) based on the same unexplained claim construction inconsistencies presented here, and requesting vacatur of institution and termination of that proceeding. Patent Owner will also seek leave to provide additional information to the Board in any still-pending institution decisions involving related petitions raising the same issues. The inconsistent district court claim construction position relied upon here was not formalized until February 3, 2026, when the parties submitted their Joint Disputed Claim Terms Chart to the

district court. Accordingly, Patent Owner could not have raised these inconsistencies earlier. Patent Owner raises this issue here to ensure the Board is aware that the claim construction defects identified in this Preliminary Response are not isolated to this proceeding, but reflect a broader, recurring deficiency in Petitioner's parallel filings.

III. ARGUMENT

A. The Director's Decisions in *Revvo* and *Tesla*, and Their Progeny, Justify Vacatur of Institution.

Petitioner's exact approach in this proceeding has been deemed improper and warrants vacatur of institution. In the Director's recent decision in *Revvo Technologies*, the Director vacated institution of the petition where the petitioner took different claim construction positions before the Board and in the district court litigation. IPR2025-00632, Paper 36 at 4. The Director's decision in *Revvo Technologies* was designated precedential and is binding here. *Id.*, Paper 20.

In the *Revvo Technologies* decisions, the Director explained that "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." *Id.*, Paper 20 at 3-4; *see id.*, Paper 36 at 3 ("Simply put, you can't have it both ways and certainly not without a sufficient explanation."). This precedential decision was recently followed by the Board in *Tesla, Inc. v. Intellectual Ventures II, LLC*, designated informative, where the court denied institution because petitioner argued

for the plain and ordinary meaning of a term in its petition, but argued that same term was indefinite in the district court. IPR2025-00340, Paper 18 at 2-4; *id.* at 3 (holding “petitioner is *required* to explain” its differing claim construction positions) (emphasis in original). The Director also recently followed *Revvo Technologies* and *Tesla* in two recent decisions, vacating institution. *See Generac Power Sys., Inc. v. Champion Power Equip., Inc.*, IPR2025-00805, IPR2025-00951, Paper 40 at 4 (Feb. 3, 2026) (vacating and denying institution where petitioner advanced indefiniteness arguments in district court and failed to adequately explain the inconsistency); *Revvo Technologies, Inc. v. Tire Stickers LLC*, IPR2025-00631, Paper 34 (Feb. 3, 2026) (same). The same holds true here.

In this proceeding, Petitioner has similarly taken opposing claim construction positions before the Board and in district court. In district court, Petitioner has argued “at least asserted claims 11-20 of the ’124 patent are indefinite” based on the “controller” limitation that, Petitioner argues, is governed by means-plus-function under 35 U.S.C. § 112(f). EX2022 at 21-42. Yet in its Petition, Petitioner argues the same term should be construed in accordance with its ordinary and customary meaning. Pet. at 20. Like the petitioners in *Revvo Technologies* and *Tesla*, Petitioner failed to provide any explanation to the Board regarding why its completely contrasting positions are warranted. And, Petitioner has no such explanation. Indeed, the Board has already held the fact that an indefiniteness challenge cannot be raised in

an *inter partes* review “is not a sufficient explanation.” *Tesla*, IPR2025-00340, Paper 18 at 3.²

Accordingly, Petitioner's shifting approach to claim construction defies the underlying purpose of the Board's claim construction rules which are “to minimize inconsistency in claim construction between forums.” *Revvo Techs.*, IPR2025-00632, Paper 20 at 4. Indeed, Petitioner's approach has done quite the opposite: arguing *for* plain and ordinary meaning before the Board and *against* plain and ordinary meaning in the district court. *See Tesla*, IPR2025-00340, Paper 18 at 3. Allowing a petitioner to advance a claim construction before the Board when that petitioner has made inconsistent indefiniteness arguments in the district court fails to further, but instead detracts from, the Office's goal of ‘providing greater predictability and certainty in the patent system.’” *Id.*, IPR2025-00340, Paper 18 at 4 (quoting *Revvo Techs.*, IPR2025-00632, Paper 20 at 4-5).

As the Director aptly summarized:

My precedential decision does not provide for conditional future outcomes, and while petitioner would no doubt like to ‘wait and see,’

² Notably, in the parallel post-grant review proceedings, where Petitioner did raise Section 112 arguments, it did not raise any means-plus-function arguments to the same “controller” terms that appear in those patents and are being challenged by Petitioner as indefinite, means-plus-function terms in district court.

we cannot and will not. The appropriate course of action under these circumstances is to deny institution.

Revvo Techs., IPR2025-00632, Paper 36 at 4. In the same vein, denial of institution is appropriate here where the Petitioner should not be allowed to wait and see how its means-plus-functions arguments will fare in district court while simultaneously relying on the plain and ordinary meaning of the same terms to invalidate the '124 Patent at the PTAB. As held in *Revvo Technologies*, vacatur of institution is appropriate.

B. Petitioner Violated 37 C.F.R. § 42.104(b)(3) Confirming Institution is Improper.

Unlike *Revvo Technologies*, which did not involve constructions concerning 35 U.S.C. § 112(f), Petitioner's contradiction of the Board's rules regarding claim construction are even more flagrant. All petitions for *inter partes* review must comply with 37 C.F.R. § 42.104, governing what must be included in each petition. 37 C.F.R. § 42.104(b)(3) statutorily requires that Petitioner:

Provide a statement of the precise relief requested for each claim challenged. The statement must identify the following:

...

(3) How the challenged claim is to be construed. **Where the claim to be construed contains a means-plus-function or step-plus-function limitation as permitted under 35 U.S.C. 112(f), the construction of the claim must identify the specific portions of the specification that describe the structure, material, or acts corresponding to each claimed function.**

37 C.F.R. § 42.104 (emphasis added). Despite the fact that Petitioner itself proposed the “controller” term as being governed by a means-plus-function interpretation under 35 U.S.C. § 112(f) in the district court, the Petition is noticeably silent as to any discussion of means-plus-function limitations. Institution of the Petition should be vacated for Petitioner's refusal to comply with the statute.

The Board has repeatedly found that a violation of 37 C.F.R. § 42.104(b)(3), where petitioner advocates for plain and ordinary meaning before the Board but means-plus-function for those same terms at district court, justifies denial of institution. *See, e.g., Revvo Techs.*, IPR2025-00632, Paper 36 at 2 (“the Board erred when it found that Petitioner had complied with Rule 42.104(b)(3)” where Petitioner failed to disclose its district court indefiniteness position); *Cambridge Mobile Telematics, Inc. Sfara, Inc.*, IPR2024-00952, Paper 12 at 8 (Dec. 13, 2024) (informative) (denying institution for failing to satisfy 37 C.F.R. § 42.104(b)(3) with respect to claims identified as means-plus-function in district court); *10X Genomics, Inc. v. President & Fellows of Harvard College*, IPR2023-01299, Paper 15 at 13 (Mar. 7, 2024) (denying institution where “the Petition is deficient on its face under 37 C.F.R. § 42.104(b)(3)” regarding means-plus-function terms); *Orthopediatrics Corp. v. K2M, Inc.*, IPR2018-01546, Paper 10 at 10-12 (Feb. 14, 2019) (denying institution for failing to satisfy 37 C.F.R. § 42.104(b)(3) with respect to claims

identified as means-plus-function in district court). The same is true here and institution should be vacated.

As the Board has pointed out, a petitioner is required to provide a construction or explanation when a claim term may be construed under 35 U.S.C. § 112(f). *See 10X Genomics*, IPR2023-01299, Paper 15 at 8; *Cambridge*, IPR2024-00952, Paper 12 at 8. Failure to do so results in denial of institution. *10X Genomics*, IPR2023-01299, Paper 15 at 8 (noting the Consolidated Trial Practice Guide “warns that ‘[a] petitioner who chooses not to address construction under § 112(f) risks failing to satisfy the requirement of 37 C.F.R. § 42.104(b)(3).’”). Petitioner alone was in the unique position of raising its 35 U.S.C. § 112(f) arguments to the Board in the Petition and, by remaining silent, “is now left with the consequences of its strategic choice to not address § 112(f) in the Petition.” *Id.*, IPR2023-01299, Paper 15 at 11. Instead, Petitioner filed all nine petitions, including the instant Petition, arguing that no terms required construction and then, after institution, argued against Patent Owner’s plain and ordinary construction of the claim terms, instead asserting indefiniteness under 35 U.S.C. § 112(f). This approach is plainly improper under PTAB precedent and institution should be vacated.

While the Board has repeatedly held denial of institution is justified where petitioner fails to address § 112(f) arguments in the Petition, the same holds true for taking inconsistent claim construction positions generally across district court and

PTAB proceedings. *See e.g., Revvo Techs.*, IPR2025-00632, Paper 36; *American Airlines, Inc. v. Intellectual Ventures I LLC*, IPR2025-01055, Paper 11 at 12 (Nov. 21, 2025) (denying institution where petitioner argued indefiniteness in district court and plain and ordinary meaning in the petition); *Orca Security Ltd. v. Wiz, Inc.*, IPR2025-01086, Paper 13 at 7-9 (Dec. 15, 2025) (holding denial of institution appropriate where inconsistent claim construction positions are taken without explanation); *Sun Pharms. Indus. Inc. v. Nivagen Pharms., Inc.*, IPR2025-00893, Paper 18 at 2-4 (Sept. 19, 2025) (same). The Board should not be required to reconcile Petitioner's unexplained and strategically inconsistent constructions, which undermine the Petition's threshold showing and independently weigh against institution. As such, Petitioner's inconsistent approach to claim construction here should be rejected.

C. Petitioner's Other Violations of PTAB Precedent Warrant Vacatur of Institution.

Petitioner's violation of 37 C.F.R. § 42.104 is only one example of the procedural deficiencies inherent in the Petition that justify vacating institution. Additionally, the Petition fails to present an independent or reasoned technical analysis. The declaration of Petitioner's expert, Dr. Fletcher, mirrors the Petition almost verbatim, offering no additional explanation, reasoning, or insight into what a person of ordinary skill in the art would have understood at the time of the

invention. Such duplicative expert testimony cannot satisfy Petitioner's burden and provides no evidentiary support for institution. As the Board has held, denial of institution is appropriate where, as here, the expert's declaration "is an exact restatement of the Petition's arguments without any additional supporting evidence or reasoning." *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 12 at 4 (Feb. 10, 2023) (affirming denial of institution and designating that decision precedential).

As another example, Petitioner's obviousness theories are legally deficient, relying exclusively on Dr. Fletcher's parroted declaration, and providing only conclusory assertions with no analysis. These obviousness arguments, including the alleged motivations to combine, are insufficient under controlling law. *See Activision Blizzard, Inc. v. Milestone Ent., LLC*, IPR2025-00713, Paper 15 at 11 (Oct. 16, 2025) ("Petitioner cannot satisfy its burden of proving obviousness by employing 'mere conclusory statements,' but 'must instead articulate specific reasoning, based on evidence of record, to support the legal conclusion of obviousness.'") (quoting *In re Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016)); *see also TQ Delta LLC v. Cisco Sys., Inc.*, 942 F.3d 1352, 1359 (Fed. Cir. 2019) (holding conclusory expert opinions cannot support an obviousness determination); *Xerox*, IPR2022-00624, Paper 12 at 5 ("the Board was correct in giving little weight to Petitioner's expert because the expert declaration merely

offered conclusory assertions without underlying factual support and repeated, *verbatim*, Petitioner's conclusory arguments") (emphasis in original).

Petitioner's repeated procedural failures cannot be overlooked. As the Board has held, deficiencies such as these warrant denial of institution. Institution should be vacated.

IV. CONCLUSION

In light of the Director's recent *Revvo Technologies* and *Tesla* decisions, Patent Owner respectfully submits these procedural deficiencies warrant vacatur of the Notice of Institution decision and termination of this *inter partes* review proceeding. The Petitioner has chosen to advance inconsistent positions under 35 U.S.C. § 112(f) in district court and before the Board, in violation of the Director's precedent and 37 C.F.R. § 42.104. These violations are compounded by the preexisting procedural deficiencies in the Petition. For the foregoing reasons, Petitioner respectfully requests the Director vacate the decision to institute.

V. TIMELINESS OF THIS REQUEST

The PTAB Panel's Notice of Institution decision is dated January 27, 2026. Paper 13. This Request for Director Review of that decision is timely according to 37 C.F.R. § 42.71. Please charge any fees due for this Request for Director Review to Deposit Account No. 503081.

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Respectfully submitted,

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Dated: February 10, 2026

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I hereby certify that on February 10, 2026, I caused a complete copy of Patent Owner's Request for Director Review to Vacate Institution and Terminate *Inter Partes* Review and all exhibits, to be served on the Petitioner as follows:

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