UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TESLA, INC.,
Petitioner

v.

CHARGELOGIC LLC,
Patent Owner

Case IPR2026-00381
U.S. Patent 11909,010

PATENT OWNER'S
3-PAGE REBUTTAL BRIEF[1]

[1] The Director authorized this briefing via email on October 8, 2026. Ex. 3102.

Petitioner admits that the fifty (50) indefiniteness positions it advances in the litigation are "*inconsistent with* its claim constructions in this IPR" (Paper 11, 2), and that it attempted to withdraw them only *after*, and *because*, Patent Owner raised the issue. *Id.*, 4. Those admissions warrant denial under *Revvo*, *Tesla*, and *Ford*, among other decisions. Paper 10, 2-3. Petitioner thus devotes nearly its entire sur-reply to arguing that its fifty positions were an "error," relying on the declaration of Brian Rosenthal, one of Tesla's twelve litigation counsel. Paper 11., 4 (citing Ex. 1096, "Declaration"). But the Declaration is vague and uncorroborated and does not establish the alleged error. Even if it did, Office precedent still warrants denial.

I. The Declaration Is Entitled to No Weight.

The Declaration is vague, uncorroborated, and internally contradictory.

First, Mr. Rosenthal provides no meaningful information about the purported "miscommunication," even though he details when and how Patent Owner raised the inconsistencies and Tesla sought to withdraw them. Ex. 1096 ¶¶ 3, 7-8 (providing specific dates and times). He does not identify: (1) <u>*who*</u> "added … indefiniteness contentions" and <u>*when*</u>; (2) <u>*who*</u> "made the decision to not include" them and <u>*when*</u>; (3) <u>*who*</u> failed to communicate <u>*what*</u> and <u>*when*</u>; or (4) <u>*how*</u> ***twelve attorneys of record*** missed the alleged error, including Mr. Rosenthal, who signed the contentions. *Id.* ¶¶ 4-6; Ex. 2034, 87. Nor does he state that he, or any other attorney, did not review the final contentions before service. The indefiniteness theories were clearly left in

knowingly by those who reviewed the final draft. As Tesla concedes, this was no "typo" (Paper 11, 4); it was ***fifty* (50)** claim-specific indefiniteness theories, ***eight* (8)** directed to the '010 Patent. Ex. 2034, 73-76. A declaration that raises far more questions than it answers deserves no evidentiary weight. *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 at 15 (PTAB Aug. 24, 2022) (precedential).

Second, the Declaration offers no corroborating evidence, such as redacted email correspondence, that any Tesla attorney "made the decision to not include any indefiniteness contentions." Nor did Tesla ask Patent Owner to agree not to assert privilege waiver if Tesla relied on such evidence. For an "error" of this magnitude, the absence of any corroboration, or attempt to provide it, is significant and telling.

Third, the Declaration is so vague that the "miscommunication" could refer to a fleeting thought that one attorney failed to convey to others, which would not be a communication error at all. The vagueness is plainly deliberate: Mr. Rosenthal readily supplies dates and times about Patent Owner raising the inconsistencies and the attempted withdrawal, yet offers no detail about the "miscommunication" itself.

Fourth, the Declaration is internally contradictory and reflects intent and awareness of *Revvo*, *Tesla*, and *Ford*, not error. Mr. Rosenthal calls the inclusion of indefiniteness contentions "unintentional," yet acknowledges that Tesla's team "***added potential indefiniteness contentions***" to the draft. Ex. 1096 ¶ 5. Their inclusion was thus *intentional*. He further states that Tesla decided to remove them

"***so as to be entirely consistent with the pending IPR petitions***." *Id.* On Tesla's own account, then, its attorneys drafted 50 claim-specific indefiniteness theories, recognized ***before*** service that they conflicted with Tesla's petitions, and served them anyway; the only alleged "error" was failing to remove them. That admitted awareness places Tesla within *Terumo*, where petitioner "knew that, consistent with Board precedent, it cannot take different positions on claim construction … without an adequate explanation." *Terumo*, IPR2025-01374, Paper 20, 3.

II. Denial Is Warranted Even if the Declaration Is Given Weight.

Even crediting the "miscommunication" excuse, Tesla's inconsistent positions fall within the conduct forbidden by *Revvo*, *Tesla*, and *Ford*, none of which turned on whether such positions were advanced "erroneously." Indeed, Tesla's counsel certified the contentions by signing them, undercutting any claim of "error."

Tesla's history also matters. Less than a year ago, the Director denied Tesla's petition for this same conduct. *Tesla*, IPR2025-00340, Paper 18, 3–4. A petitioner with such specific notice cannot plausibly attribute a recurrence to inadvertence; this heightened notice makes leniency inappropriate. Accepting the "error" excuse would reward a failure to take basic precautions against repeating conduct the Director ***has already found*** warrants denial. The denial in *Tesla* was clearly inadequate deterrence. Thus, even if there were an "error," denying institution is warranted to compel Tesla's compliance with *Revvo*, *Tesla*, and *Ford* going forward.

Dated: October 13, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e)(4), the undersigned certifies that on October 13, 2026, the foregoing document and all exhibits were served via electronic mail at the following e-mail addresses, where Petitioner has previously consented to electronic service:

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