UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COLLEGE PRODUCTS, INC.,

Petitioner,

v.

INTIRION CORPORATION,

Patent Owner.

Case No. PGR2024-00004

Patent No. 11,674,746

PATENT OWNER'S OBJECTIONS TO PETITIONER'S DEMONSTRATIVES

Patent Owner submits the following objections to Petitioner's demonstrative exhibits (attached hereto as Appendix A). The parties engaged in a good faith meet and confer on January 8 via phone and were unable to resolve this dispute.

Slide #	Objection
14	This slide contains waived invalidity arguments not presented in Petition.
15	This slide contains waived invalidity arguments not presented in Petition.
16	This slide contains waived invalidity arguments not presented in Petition.
17	This slide contains waived invalidity arguments not presented in Petition.
18	This slide contains waived invalidity arguments not presented in Petition.
19	This slide contains waived invalidity arguments not presented in Petition and not presented in the cited briefing pages.
20	This slide contains waived invalidity arguments not presented in Petition and not presented in the cited briefing pages.
21	This slide contains waived invalidity arguments not presented in Petition and not presented in the cited briefing pages.
22	This slide contains waived invalidity arguments not presented in Petition and not presented in the cited briefing pages.
23	This slide contains waived invalidity arguments not presented in Petition and not presented in the cited briefing pages.
24	This slide contains waived invalidity arguments not presented in Petition and not presented in the cited briefing pages.

Dated: January 10, 2025

/R. Scott Johnson/
R. Scott Johnson
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Counsel for Patent Owner Intirion Corporation

APPENDIX A

Indefiniteness of "Level [Amount] of Smoke"

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Claim Construction Timeline

Date	Event	Construction of "level [amount] of smoke"
Oct. 9, 2023	Petition	Patent Owner's interpretation in infringement contentions. ['745 Pat: Paper No. 1 at 13-14; '746 Pat: Paper No. 1 at 14.]
Jan. 17, 2024	Preliminary Patent Owner Response	plain and ordinary meaning ['745 Pat: Paper No. 7 at 5, fn. 2; '746 Pat: Paper No. 7 at 5, fn. 2.]
Apr. 10, 2024	Institution Decision	"predetermined level of smoke 'indicative of a **dangerous condition**'" • "To the extent there is a dispute as to the meaning of this limitation, the parties should address that issue during trial" ['745 Pat: Paper No. 10 at 11-12; '746 Pat: Paper No. 10 at 10-11.]
May 31, 2024	CJ Williams' *Markman* Order	Found Indefinite: • "dangerous condition," • "level of smoke" and "amount of smoke" [Ex. 1025 at 14-22.]
July 17, 2024	Patent Owner Response	Adopts Board's preliminary construction ['745 Pat: Paper No. 22 at 6-7; '746 Pat: Paper No. 23 at 6-7.]
Oct. 8, 2024	Petitioner Reply	Argues Board construction and underlying terms are indefinite in view of CJ Williams' *Markman* Order ['745 Pat: Paper No. 29 at 2-5; '746 Pat: Paper No. 30 at 2-5.]
Nov. 19, 2024	Patent Owner Sur-Reply	Disputes merits of CJ Williams' *Markman* Order ['745 Pat: Paper No. 34 at 3-9; '746 Pat: Paper No. 35 at 3-9]

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CJ Williams Held "Dangerous Condition" is Indefinite

- CJ Williams held "**dangerous condition**" is indefinite because:
  - Specification indicates unknown threshold where smoke turns from normal to "dangerous"
  - Specification discusses smoke point of oil, but
    - does not specify type of oil (there are numerous with different boiling points)
    - does not specify when smoke from unspecified oil turns from normal to "dangerous"
  - Extrinsic evidence shows "dangerous condition" may be based on
    - Individual manufacturer preferences based on microwave design
    - Subjective preference about what constitutes a "dangerous condition"
    - Possibly an unidentified industry standard
  - Intrinsic and extrinsic evidence does not indicate with reasonable certainty when smoke crosses a threshold from normal to "dangerous condition"

'745 Pat: Paper No. 29 at 2-3
'746 Pat: Paper No. 30 at 2-3
Ex. 1025 at 16-22

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Board's Construction Uses Indefinite Term "Dangerous Condition"

- Board *preliminarily* defined "level of smoke" and "amount of smoke" as a predetermined level of smoke "indicative of a ***dangerous condition***"
- Patent Owner, Petitioner, Board, and CJ Williams all agree the specification defines "level of smoke" and "amount of smoke" as some threshold that indicates a "dangerous condition"
- Board's preliminary construction uses the indefinite term "dangerous condition"

'745 Pat: Paper No. 7 at 5
'746 Pat: Paper No. 7 at 5
'745 Pat: Paper No. 10 at 11-12
'746 Pat: Paper No. 10 at 10-11
'745 Pat: Paper No. 29 at 2-5
'746 Pat: Paper No. 30 at 2-5
Ex. 1025 at 14-16

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CJ Williams Held "Level [Amount] of Smoke" are Indefinite

- CJ Williams held "*level of smoke*" and "*amount of smoke*" are indefinite because:
  - Terms of degree that are tied to some unspecified threshold when the microwave becomes "unsafe"
  - Like "dangerous condition," references to "oil" or "overcooked food" do not provide sufficient guidance
- There is no definite construction for the terms "level of smoke" and "amount of smoke", thus these underlying terms must also be indefinite

Ex. 1025 at 14-16
'745 Pat: Paper No. 29 at 2-5
'746 Pat: Paper No. 30 at 2-5

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Patent Owner's Sur-Reply Waiver Arguments are Meritless

- **Patent Owner Argument 1**: Petitioner cannot challenge the Board's construction as indefinite. That is wrong because:
  - Board *sua sponte* proposed construction with indefinite term "dangerous condition"
  - Board invited parties to address disagreements with construction
  - Petitioner adopted Board's construction and argued prior art does not show microwave shutting down before a "dangerous condition"
  - Indefiniteness is a claim construction issue.
  - Under Federal Circuit Law, "a petitioner is entitled under the APA to respond to new claim construction arguments made by a patent owner or adopted by the Board sua sponte and … both parties are entitled to respond to a new construction adopted by the Board sua sponte after an institution decision." *Axonics, Inc. v. Medtronic, Inc.,* 75 F.4th 1374, 1381-84 (2023).

'745 Pat: Paper No. 34 at 1-3
'746 Pat: Paper No. 35 at 1-3
'745 Pat: Paper No. 29 at 2-5
'746 Pat: Paper No. 30 at 2-5

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Patent Owner's Sur-Reply Waiver Arguments are Meritless

- **Patent Owner Argument 2:** Board cannot cancel the claims as indefinite based on its *sua sponte* construction. However,
  - In *Axonics*,
    - Patent Owner raised a new construction after institution, and the Board adopted that construction in its Final Written Decision.
    - The Board did not allow Petitioner to raise a new ground of invalidity based on the adopted construction.
    - The Federal Circuit held that "a petitioner must be given the opportunity in its reply to argue and present evidence of anticipation or obviousness under the new construction, at least where it relies on the same embodiments for each invalidity ground as were relied on in the petition."
  - While the circumstances here are slightly procedurally different than *Axonics*, the same principles apply –
    - The Board's *sua* sponte construction and the Patent Owner's adoption of it entitles petitioner to challenge the validity of the claims on an unraised indefiniteness ground

'745 Pat: Paper No. 34 at 1-3
'746 Pat: Paper No. 35 at 1-3
'745 Pat: Paper No. 29 at 2-5
'746 Pat: Paper No. 30 at 2-5

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Patent Owner's Sur-Reply Mischaracterizes CJ Williams' Stay Order

- Patent Owner alleges CJ Williams stayed the litigation to "reconsider [his] claim construction in light of the Board's guidance." He did not say that. For clarity:
  - Pending before CJ Williams is Petitioner's Motion for Partial Summary Judgment of Invalidity Based on Indefiniteness and Patent Owner's Motion for Reconsideration of Indefiniteness
  - CJ Williams stayed his decisions on these two motions pending the Board's Final Written Decision because:
    - He values the expertise of the USPTO and could benefit from the Board's final written decision before he rules on the pending Motions
    - The stay can avoid the risk of inconsistent rulings

'745 Pat: Paper No. 34 at 3
'746 Pat: Paper No. 35 at 3
Ex. 2037 at 10-13

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Patent Owner's Sur-Reply Disagreements with CJ Williams are Meritless

- **Patent Owner Argument 1:** claims are merely directed to using well-known smoke sensors that detect "burning food". This argument demonstrates the claims are indefinite, because:
  - Patent Owner is attempting to offer a new construction with the term "burning food"
  - "burning food" is ***not*** a term found in the specification or claims
  - "burning food" is a made-up term and yet another boundless and subjective term:
    - Is food "burning" when it starts to smoke?
    - Is food "burning" when the food is on fire?
    - Is food "burning" when the food is charring like toast?
    - Smoke detectors detect smoke, not "burning food"
  - Patent Owner still cannot find a definite way to describe its claims
  - The claims do not merely recite a microwave with a known smoke sensor; they claim some unspecified threshold indicative of a dangerous condition

'745 Pat: Paper No. 34 at 4-8
'746 Pat: Paper No. 35 at 4-8

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Patent Owner's Meritless Disagreements with CJ Williams

- **Patent Owner Argument 2:** specification discloses smoke point of oil
  - CJ Williams has rejected this argument based on well-reasoned findings.

- **Patent Owner Argument 3:** claims are flexible, not limited to burning of a specific food, microwave configuration, or particular smoke sensor
  - these are not claim terms, they are evidence that shows why the claim is indefinite
  - Patent Owner is ignoring the claim language, which recites some unspecified threshold indicative of a dangerous condition

'745 Pat: Paper No. 34 at 4-8
'746 Pat: Paper No. 35 at 4-8
Ex. 1025 at 17-18

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Patent Owner's Meritless Disagreements with CJ Williams

- **Patent Owner Argument 4:** CJ Williams improperly relied on *Teva* by requiring "mathematical precision". Patent Owner mischaracterizes CJ Williams' reliance on *Teva* because:
  - *Teva* claims recited term "molecular weight," which was found ambiguous because evidence showed the term could be different types of molecular weights
  - Here, similar to *Teva*, the claims recite an ambiguous threshold, and the evidence does not provide an objective boundary for that term

- **Patent Owner Argument 5:** CJ Williams ran afoul of various patent doctrines, including requiring Intirion disclose well-known prior art and limit claims to specific embodiments
  - Patent Owner is confusing several inapplicable §112 doctrines
  - Indefiniteness is whether claims are amenable to construction – here they are not

'745 Pat: Paper No. 34 at 7-9
'746 Pat: Paper No. 35 at 7-9

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CERTIFICATE OF SERVICE

Per agreement of the parties and pursuant to 37 C.F.R. ¶ 42.105(b), the undersigned certifies that a copy of this Patent Owner's Objections to Petitioner's Demonstratives was served on January 10, 2025, by email on the following:

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