

From: [Director_PTABDecision_Review](#)
To: "Lou H. Sitler"; [Baker, W. Todd](#); [Brett Schatz](#); [Trials](#); [#BWHITTLE_PGR_KE](#)
Subject: RE: PGR2025-00025 — Request for Extension of Time to Seek Director Review Under Exceptional Circumstances
Date: Friday, July 10, 2026 4:36:00 PM

Counsel,

Patent Owner's request for extension of time to seek Director Review of the Board's Decision granting institution in the above identified proceeding is denied.

Thank you.

From: Lou H. Sitler <lsitler@whe-law.com>
Sent: Monday, June 29, 2026 12:44 PM
To: Director_PTABDecision_Review <Director_PTABDecision_Review@uspto.gov>; Baker, W. Todd <todd.baker@kirkland.com>; Brett Schatz <bschatz@whe-law.com>; Trials <Trials@USPTO.GOV>; #BWHITTLE_PGR_KE <BWHITTLE_PGR_KE@kirkland.com>
Subject: RE: PGR2025-00025 — Request for Extension of Time to Seek Director Review Under Exceptional Circumstances

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Dear Director Squires,

Petitioner Multi-Color Corporation ("Multi-Color") responds to Patent Owner's request for Director Review of the Board's Decision granting institution (Paper 14) in PGR2025-00025. Respectfully, Patent Owner's argument is not accurate and does not justify Director Review. It is simply not accurate to suggest that trial has not progressed meaningfully or that this case presents the "exceptional circumstances" necessary to warrant Director Review. What Patent Owner complains about is nothing more than proper rebuttal to Patent Owner's Response, and the cases cited by Patent Owner in support of its argument do not apply here. First, Patent Owner refers to *Light & Wonder, Inc. v. Evolution Malta Ltd.*, IPR2025-01072, Paper 30 (Director June 22, 2026) ("*Light and Wonder*"), which requires that "the trial has not progressed meaningfully." In *Light & Wonder*, the patent owner sought Director Review soon after the Board's Decisions granting inter partes review and denial of the patent owner's motion to terminate. In *ASUSTeK Computer Inc. v. Nokia Techs. OY*, IPR2025-01153, cited in *Light & Wonder*, the patent owner sought Director Review shortly after the patent owner's response. Unlike those cases, here, the trial has progressed meaningfully. Multi-Color filed its Reply on June 17, Patent Owner's Sur-Reply is due in just a few weeks, and the final Oral Hearing is also just a month away, on August 7. Second, Patent Owner's argument that "exceptional circumstances" warrant review is also incorrect. As background, examples of "exceptional circumstances" identified in *Light & Wonder* include dismissal of all or substantially all claims in a co-pending litigation, findings of fact and conclusions of law that render all or substantially all challenged claims invalid in litigation, and a violation of a Sotera

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Ex. 3101

stipulation. *Light & Wonder*, Paper 30. None are present here.

Patent Owner argues that Multi-Color adopted irreconcilable claim construction positions between institution and its Reply brief, citing *Revvo Technologies, Inc. v. Cerebrum Sensor Technologies, Inc.*, IPR2025-00632, Paper 20 (Director Nov. 3, 2025) (precedential) (“*Revvo Technologies*”), and *Ford Motor Co. v. AutoConnect Holdings LLC*, IPR2025-01342, Paper 27 (Director May 12, 2026) (informative) (“*Ford Motor*”). Neither *Revvo Technologies* nor *Ford Motor* has any relevance here. In both cases, the petitioner took inconsistent positions in a district court litigation and before the Office. Here, Multi-Color has not done so. Indeed, there is no district court litigation in which Multi-Color could possibly have taken an inconsistent position.

Recognizing that *Revvo Technologies* and *Ford Motor* have no applicability here, Patent Owner argues that “Multi-Color adopted irreconcilable claim construction positions between institution and its Reply brief.” Patent Owner argues that Multi-Color, in its Petition, argued that a prior art Gatorade Label met or exceeded the APR’s Critical Guidance Protocol and therefore meets the “recyclable” limitation recited in the ‘422 patent, and also argued that the challenged claims are indefinite because the ‘422 patent defines what makes a label recyclable in several disparate ways. Patent Owner argues that Multi-Color, in its Reply, argued that the APR recognition is subjectively administered.

However, 35 U.S.C. § 321 expressly contemplates that a petitioner may simultaneously challenge the same claims on both prior-art and indefiniteness grounds in a post-grant review. Specifically, 35 U.S.C. § 321(b) authorizes a PGR petitioner to request cancellation of claims “on any ground that could be raised under paragraph (2) or (3) of section 282(b),” which include both indefiniteness under 35 U.S.C. § 112(b) and prior-art invalidity under 35 U.S.C. §§ 102 and 103. Consistent with the statute, the Board routinely institutes and adjudicates prior-art and indefiniteness grounds in the same proceeding. See, e.g., *Simpson Strong-Tie Co. v. Columbia Insurance Co.*, PGR2021-00109 (Paper 73). Relatedly, the Federal Circuit has rejected the notion that applying a disputed claim term in a prior-art analysis forecloses an indefiniteness challenge. *Sonix Technology Co. v. Publications International, Ltd.*, 844 F.3d 1370, 1380–81 (Fed. Cir. 2017) (quoting *Interval Licensing LLC v. AOL, Inc.*, 766 F.3d 1364, 1369 (Fed. Cir. 2014)).

Patent Owner argues that Multi-Color, in its Reply, argued that APR recognition is subjective. Patent Owner’s argument is incomplete. In addition, Multi-Color’s argument is not inconsistent with Multi-Color’s prior-art and indefiniteness arguments presented in its Petition. Multi-Color’s argument regarding subjectiveness is in direct rebuttal to the positions taken by Patent Owner and Patent Owner’s expert. To explain, Patent Owner argues in its Response that “[t]he specification provides multiple characterizations” regarding under what circumstances a label is “recyclable” and thereby purportedly renders that claim limitation definite. (POR, 13-14). In rebuttal, Multi-Color properly noted in its Reply that, with respect to one of these “multiple characterizations,” Patent Owner’s expert admits that there is no objective test for a label to be “recyclable.” EX1048, 92:17-93:9. With regard to another of these “multiple characterizations,” which calls for an evaluation of “good results” and

“poor results,” Multi-Color properly noted in its Reply that Patent Owner’s expert admits that a POSITA does not know what “good results” or “poor results” are. EX1048, 166:17-168:12. With regard to yet another of these “multiple characterizations,” which calls for an evaluation of material recovered in a recycling process, when asked how much of the material can be lost for the label to still be deemed “recyclable,” Patent Owner’s expert testified that “[t]here’s no number on that. That’s not something I can answer.” EX1048, 144:8-15; EX1049, 31:5-32:2. When asked whether all of these tests have to be passed for a label to be determined “recyclable,” Patent Owner’s expert testified that “[w]ell, it’s really dependent. The answer is that it will depend on the results of each test.” EX1048, 19:11-20:5. In sum, Patent Owner argued in its Response that the specification provides multiple characterizations that are evaluated in order to assess whether a label is “recyclable,” and that purportedly renders the claim limitation “recyclable” definite. Multi-Color properly rebutted Patent Owner’s argument in its Reply, and did so largely through the admissions of Patent Owner’s expert by eliciting testimony directly related and in rebuttal to Patent Owner’s argument.

For these reasons, Multi-Color respectfully submits that Patent Owner’s request for Director Review should be denied.

Brett Schatz
Counsel for Petitioner

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From: Director_PTABDecision_Review <Director_PTABDecision_Review@uspto.gov>
Sent: Friday, June 26, 2026 11:28 AM
To: Baker, W. Todd <todd.baker@kirkland.com>; Brett Schatz <bschatz@whe-law.com>; Lou H. Sitler <lsitler@whe-law.com>; Trials <Trials@USPTO.GOV>; #BWHITTLE_PGR_KE <BWHITTLE_PGR_KE@kirkland.com>
Subject: RE: PGR2025-00025 — Request for Extension of Time to Seek Director Review Under Exceptional Circumstances

Counsel,

Petitioner may respond with its position as to Patent Owner’s request via email by Monday, June 29th.

Thank you.

From: Baker, W. Todd <todd.baker@kirkland.com>

Sent: Friday, June 26, 2026 10:26 AM

To: Director_PTABDecision_Review <Director_PTABDecision_Review@uspto.gov>

Cc: bschatz@whe-law.com; lsitler@whe-law.com; Trials <Trials@USPTO.GOV>; #BWHITTLE_PGR_KE <BWHITTLE_PGR_KE@kirkland.com>

Subject: PGR2025-00025 — Request for Extension of Time to Seek Director Review Under Exceptional Circumstances

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Dear Director Squires,

Pursuant to footnote 5 of *Light & Wonder, Inc. v. Evolution Malta Ltd.*, IPR2025-01072, Paper 30 (Director June 22, 2026), Patent Owner Brook + Whittle Limited respectfully submits that exceptional circumstances warrant an extension of the deadline to request Director Review of the Board's Decision granting institution (Paper 14) in PGR2025-00025.

The exceptional circumstance is Petitioner Multi-Color Corporation's adoption of irreconcilable claim construction positions between institution and its Reply brief, in violation of *Revvo Technologies, Inc. v. Cerebrum Sensor Technologies, Inc.*, IPR2025-00632, Paper 20 (Director Nov. 3, 2025) (precedential), and *Ford Motor Co. v. AutoConnect Holdings LLC*, IPR2025-01342, Paper 27 (Director May 12, 2026) (informative). Trial has not progressed meaningfully—the Reply was filed June 17, 2026—and Patent Owner's sur-reply has not yet been filed.

The following three-sentence summary describes the basis for the request:

In an attempt to establish that the Gatorade Label applied in Ground 1 is "recyclable," Petitioner relied upon a recognition from the Association of Plastic Recyclers ("APR") that "this label" met or exceeded the APR's Critical Guidance Protocol (Pet. at 31), while simultaneously arguing in Ground 4 (indefiniteness) that the "'422 patent defines what makes a shrink label recyclable, but does so in several disparate ways," including the APR protocol (Pet. at 53-54). Adopting the very framework Petitioner advanced, the Board determined that a label is "recyclable" if it meets any of the standards or discussions of recyclability set forth in the Specification including the APR Protocol relied upon by Petitioner for Ground 1. (Paper 14 at 17 and 18) ([preliminarily] agreeing with Petitioner that "the Gatorade Label is an SKC Ecolabel sleeve label that meets or exceeds the 'APR's Critical Guidance Protocol for Clear PET Articles with Labels and Closures Document requirements"). In its Reply (Paper 54, at 18 and section VII.D), Petitioner for the first time repudiates that construction—arguing that APR recognition is subjectively administered and that the very caustic wash performance it relied on for anticipation/obviousness in Grounds 1-3 does not establish recyclability—which

directly contradicts the basis on which the Board instituted those Grounds; under *Revvo* (precedential) and *Ford* (informative), this inconsistency warrants vacatur because Petitioner cannot satisfy its institution burden under its current position on the scope of "recyclable."

Respectfully submitted,

Todd Baker
Counsel for Patent Owner

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