

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RESMED CORP.,
Petitioner,

v.

CLEVELAND MEDICAL DEVICES, INC.,
Patent Owner.

IPR2025-00158 (Patent 11,690,512 B1)
IPR2025-00159 (Patent 11,375,921 B1)
IPR2025-00160 (Patent 11,786,680 B1)
IPR2025-00246 (Patent 11,857,333 B1)
IPR2025-00247 (Patent 11,872,029 B1)

Before SHERIDAN K. SNEDDEN, NEIL T. POWELL, and
CYNTHIA M. HARDMAN, *Administrative Patent Judges*.

SNEDDEN, *Administrative Patent Judge*.

ORDER

Denying Patent Owner Authorization to File Motions to Terminate
37 C.F.R. § 42.5

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BACKGROUND

In an email sent to the Board on March 5, 2026, counsel for Patent Owner requested a conference call seeking authorization to file motions to dismiss the petition in each of these proceedings for failure to disclose contradictory claim construction positions taken in parallel district court litigation. The relevant portion of the email reads as follows:

CleveMed respectfully requests authorization to file Motions to Dismiss in Case Nos. IPR2025-00158, -00159, -00160, -00246, and -00247 because Petitioner has advanced different claim construction positions before the PTAB and District Court without any explanation, which violates *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20 (Director Nov. 3, 2025) (precedential) (“[*Revvo*]”) and *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00340, Paper 18 (Director Nov. 5, 2025) (informative). Good cause exists to grant authorization to file these motions because ResMed has concluded its briefing on the merits of its case without providing the requisite explanations.

In each Motion to Dismiss, Patent Owner will show that Petitioner has advanced a different claim construction position in the District Court case, including advancing arguments that certain terms are indefinite, and it has not acknowledged its inconsistent positions or explained why those different positions are warranted. [*Tesla*], IPR2025-00340, Paper 18 at 3.

Ex. 3006. Petitioner opposed the request because Patent Owner “failed to address these proceedings individually or provide a specific basis for its request during meet-and-confers, effectively precluding Petitioner from meaningfully evaluating the proposal.” *Id.* We agreed with Petitioner and,

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in an email dated March 5, 2026, we responded to Patent Owner's request with the following:

The requested motions to terminate potentially involve different issues across different proceedings and patent claims, such that each case potentially requires a distinct analysis. As such, and because the upcoming oral hearings occur in less than two weeks, the panel will not order expedited briefing at this time. The parties shall continue to meet and confer in attempt to crystalize and potentially narrow (or obviate) the issues in each case. The parties shall conclude the meet and confer process and update the panel (by sending an email to Trials@uspto.gov) no later than noon ET on March 18, 2026.

Ex. 3006.

In an email sent to the Board on March 26, 2026, Patent Owner represented that the parties had conferred as to the details of each proceeding and renewed its request for authorization to file a motion to terminate. *Id.* A conference call was held between counsel for the parties and the Board on April 2, 2026 to discuss Patent Owner's request specific to each proceeding. During the call, Petitioner indicated a willingness to stipulate as to certain claim constructions so as to remove any perceived inconsistent claim construction positions between these proceedings and the parallel litigation and Patent Owner agreed to confer with Petitioner to attempt to resolve the dispute between the parties.

In an email sent to the Board on May 12, 2026, Patent Owner informed us that "the parties met and conferred regarding ResMed's inconsistent claim construction positions taken before the PTAB and District Court" and that an agreement had not been reached. *Id.* Patent Owner also

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renewed its request to file a motion to terminate these proceedings on the issue of Petitioner’s inconsistent claim construction positions, which we now address below.

ANALYSIS

We have considered Patent Owner’s request and find that we lack authority to grant the relief Patent Owner requests. *See Berkshire Hathaway Energy Co. v. Birchtech Corp.*, IPR2025-00274, Paper 76 (PTAB Mar. 4, 2026) (denying motion to terminate because the Board lacked authority to decide discretionary issues), cited with approval in *Berkshire Hathaway Energy Co. v. Birchtech Corp.*, IPR2025-00274, Paper 81, at 3 (Director Mar. 27, 2026) (noting “the Board correctly determined that it lacked the authority in these IPRs to terminate parallel proceedings challenging the same patents because, under current policy, the Director makes determinations on discretionary issues”); *see also Savant Techs. v. Feit Elec. Co., Inc.*, IPR2024-01357, Paper 69 (PTAB Apr. 9, 2026) (same). Accordingly, we deny Patent Owner’s request for authorization to file a motion to terminate on the issue of alleged inconsistent claim construction positions taken before the Board and parallel litigation. Our reasoning follows.

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On March 26, 2025, the Acting Director issued a Memorandum on Interim Processes for PTAB Workload Management (“Interim Process Memo”).¹ The Acting Director stated:

[D]ecisions on whether to institute an IPR or PGR will be bifurcated between (i) discretionary considerations and (ii) merits and other non-discretionary statutory considerations. Under this interim procedure, the Director, in consultation with at least three PTAB judges, will determine whether discretionary denial of institution is appropriate. If it is appropriate, the Director will issue a decision denying institution. If it is not appropriate, the Director will issue a decision regarding that determination and refer the petition to a three-member panel of the PTAB assigned according to Standard Operating Procedure (SOP) 1 (Rev. 16). The three-member panel will then handle the case in the normal course.

Interim Process Memo, 1. Although the Interim Process Memo only applies to “proceedings where the deadline to file a preliminary repose has not yet passed” (*id.* at 2), in a subsequent memorandum, the Director restored his authority to exclusively determine discretionary institution issues in all proceedings. Director Institution of AIA Trial Proceedings (Oct. 17, 2025), available at https://www.uspto.gov/sites/default/files/documents/Director_Institution_of_AIA_Trial_Proceedings.pdf (“Director Institution Memo”).

The Interim Process Memo and Director Institution Memo, thus, reserve consideration of discretionary issues to the Director. The relief

¹ *Interim Processes for PTAB Workload Management* (Mar. 26, 2025), available at: <https://www.uspto.gov/sites/default/files/documents/InterimProcesses-PTABWorkloadMgmt-20250326.pdf>.

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Patent Owner requests is that we exercise discretion to terminate these proceedings based on *Revvo* and *Tesla*. Because the basis for Patent Owner’s requested relief is discretionary, we lack the authority to grant Patent Owner’s request. In this regard, the present situation is different from that in *Revvo*. In that case, the Director explicitly instructed the Board “to determine whether Petitioner has provided a sufficient reason why different claim construction positions are warranted.” *Revvo*, at 5. The Director has not made such a determination or delegated such authority to the panel in these proceedings.

ORDER

Accordingly, it is

ORDERED that Patent Owner’s request for authorization to file a motion to terminate is each proceeding is *denied*.

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