

From: [Price, Jeffrey H.](#)
To: [Trials](#)
Cc: [Lisa K. Nguyen](#); [Fuller, Jenna](#); [Eng, Jeffrey](#); [PH-ResMed-CleveMed](#)
Subject: RE: [EXTERNAL] RE: IPR2025-00158, -00159, -00160, -00246, and -00247 - Request for Authorization to File Motions to Dismiss
Date: Tuesday, May 12, 2026 1:24:08 PM
Attachments: [image001.png](#)

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Your Honors,

As directed, the parties met and conferred regarding ResMed's inconsistent claim construction positions taken before the PTAB and District Court. Without CleveMed's agreement or the Board's authorization, ResMed filed its proposed stipulations. As CleveMed made known to ResMed, CleveMed does not agree that ResMed's Stipulations Regarding Claim Construction are aligned with *Caption Health*, timely, or and effective to resolve the inconsistencies between the positions ResMed has taken between the PTAB and the District Court. Furthermore, the stipulations are not comprehensive as they fail to address the inconsistent positions ResMed has taken regarding the '680 and '512 Patents.

As a result, CleveMed respectfully renews its requests to file a motion to strike the stipulation and terminate proceedings on the issue of ResMed's inconsistent claim construction positions according to the following schedule: a 7-page opening brief, a 7-page response brief, and a 5-page reply in each case, with the opening briefs due May 19, 2026, responses due one week later on, May 26, 2026, and replies due on June 1, 2026.

Kind Regards,

Jeff Price (Reg. No. 69,141)

Counsel for Patent Owner, Cleveland Medical Devices, Inc.

Jeffrey H. Price
Counsel

Herbert Smith Freehills Kramer (US) LLP
1177 Avenue of the Americas, New York, New York 10036
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From: Trials <Trials@USPTO.GOV>

Sent: Tuesday, March 31, 2026 8:39 AM

To: Price, Jeffrey H. <jprice@kramerlevin.com>; Trials <Trials@USPTO.GOV>

Cc: Lisa K. Nguyen <lisanguyen@paulhastings.com>; Fuller, Jenna <jfuller@kramerlevin.com>; Eng, Jeffrey <jeng@kramerlevin.com>; PH-ResMed-CleveMed <PH-ResMed-CleveMed@paulhastings.com>

Subject: RE: [EXTERNAL] RE: IPR2025-00158, -00159, -00160, -00246, and -00247 - Request for Authorization to File Motions to Dismiss

Counsel,

A conference call has been scheduled for Thursday, April 2 at 10:00 AM eastern. The dial in number is 540-566-5633 and the passcode is 790124206#

Regards,

Andrew Kellogg,
Deputy Chief Clerk, Trials
Patent Trial and Appeal Board
USPTO
andrew.kellogg@uspto.gov
(571) 272-5366



From: Price, Jeffrey H. <jeffrey.price@hsfkramer.com>

Sent: Monday, March 30, 2026 9:33 AM

To: Trials <Trials@USPTO.GOV>

Cc: Lisa K. Nguyen <lisanguyen@paulhastings.com>; Fuller, Jenna <jenna.fuller@hsfkramer.com>; Eng, Jeffrey <jeffrey.eng@hsfkramer.com>; PH-ResMed-CleveMed <PH-ResMed-CleveMed@paulhastings.com>

Subject: Re: [EXTERNAL] RE: IPR2025-00158, -00159, -00160, -00246, and -00247 - Request for Authorization to File Motions to Dismiss

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Your Honors

The parties are available this Thursday, April 2, from 9-11 AM and 4-5 PM ET.

Kind regards,

Jeff Price (Reg. No. 69,141)

Counsel for Patent Owner, Cleveland Medical Devices, Inc.

Jeffrey H. Price

Counsel

Herbert Smith Freehills Kramer (US) LLP
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On Mar 26, 2026, at 8:03 AM, Trials <Trials@uspto.gov> wrote:

Counsel,

The panel requests that the parties confer and propose times for a teleconference.

Regards,

Andrew Kellogg,
Deputy Chief Clerk, Trials
Patent Trial and Appeal Board
USPTO
andrew.kellogg@uspto.gov
(571) 272-5366

<image001.png>

From: Nguyen, Lisa K. <lisanguyen@paulhastings.com>

Sent: Tuesday, March 24, 2026 12:58 PM

To: Price, Jeffrey H. <jeffrey.price@hsfkramer.com>; Trials <Trials@USPTO.GOV>; Fuller, Jenna <jenna.fuller@hsfkramer.com>; Eng, Jeffrey <jeffrey.eng@hsfkramer.com>; PH-ResMed-CleveMed <PH-ResMed-CleveMed@paulhastings.com>

Subject: RE: IPR2025-00158, -00159, -00160, -00246, and -00247 - Request for Authorization to File Motions to Dismiss

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Your Honors,

Petitioner expressly opposed Patent Owner sending the email below and requested that Patent Owner take out its argumentative chart or include Petitioner's position to provide a complete joint status report. Instead, Patent Owner selectively removed certain of Petitioner's positions while presenting its entire position. In view of the expansive request by Patent Owner for 5 IPRs, to the extent helpful, Petitioner's general position (the same that it sent to Patent Owner) applicable to the chart in Patent Owner's email is below:

Resmed opposes Patent Owner's requested relief. Patent Owner is not entitled to such relief under 37 C.F.R. § 42.25(b), and still has not justified its untimeliness, basis for relief, or proper procedural basis for any such motion practice for any of the proceedings nor provided any other reason

to be exempt from this rule. If the Board is nevertheless inclined to authorize any motion practice or other relief, Resmed respectfully requests a conference call before any such relief is granted.

Resmed's general positions are as follows:

1. Resmed opposes Patent Owner's request as untimely under 37 C.F.R. § 42.25(b) and prejudicial. Board precedent in cases like *Apple Inc. v. Omni MedSci, Inc.* and *Illumina, Inc. v. Trs. of Columbia Univ. in the City of N.Y.* following 37 C.F.R. § 42.25(b) prohibit late attempts to import outside material or recast positions once briefing has concluded. See *Apple*, IPR2019-00916, Paper 38 (P.T.A.B. Oct. 2, 2020); *Illumina*, IPR2012-00006, Paper 125 (P.T.A.B. Feb. 27, 2014). Although the *Tesla* and *Revvo* decisions were rendered in November 2025, Patent Owner waited until March 16, 2026, to first allege these issues. For IPR2025-00158, -00159, and -00160, briefing closed on February 3, 2026, while for IPR2025-00246 and -00247, briefing closed on February 25, 2026. Moreover, Patent Owner did not identify its theories until March 16, 2026, even though the underlying district court and PTAB positions had long been available. Having failed to raise these arguments in its PORs and Sur-Replies, Patent Owner is now seeking an improper expansion of the record in an untimely manner.
2. Further evidencing the untimeliness, the parallel litigation was stayed on March 7, 2025 pending these IPRs, and there has been no claim construction hearing or order. Notwithstanding, Patent Owner failed to allege these issues for over one year later after the stay.

Thank you for attention to this matter.

Lisa Nguyen
Lead Counsel for Petitioner

[<image002.png>](#)

Lisa Nguyen | Partner

Paul Hastings LLP | 1117 S. California Avenue, Palo Alto, CA 94304 | Direct: +1.650.320.1890 | Main: +1.650.320.1800 | Fax: +1.650.320.1990 | lisanguyen@paulhastings.com | www.paulhastings.com

From: Price, Jeffrey H. <jeffrey.price@hsfkramer.com>

Sent: Tuesday, March 24, 2026 9:34 AM

To: Trials <Trials@USPTO.GOV>; Fuller, Jenna <jenna.fuller@hsfkramer.com>; Eng, Jeffrey <jeffrey.eng@hsfkramer.com>; PH-ResMed-CleveMed <PH-ResMed-CleveMed@paulhastings.com>

Subject: [EXT] RE: IPR2025-00158, -00159, -00160, -00246, and -00247 - Request for Authorization to File Motions to Dismiss

Your Honors,

Pursuant to the Board’s March 6, 2026, email, the parties have conferred regarding Patent Owner’s requested motions concerning the alleged inconsistent claim construction positions taken by Resmed, and the parties’ positions on the terms Patent Owner has identified are identified in the chart below. Resmed’s specific positions are added below to Patent Owner’s chart.

Patent Owner respectfully requests authorization to file a 5-page Motion to Terminate in each proceeding along with a 5-page Opposition, and a 3-page Reply.

Resmed opposes Patent Owner’s requested relief. Patent Owner is not entitled to such relief under 37 C.F.R. § 42.25(b). If the Board is nevertheless inclined to authorize any motion practice or other relief, Resmed respectfully requests a conference call before any such relief is granted.

Consistent with the Board’s rules and the Panel’s explicit instructions, CleveMed has not incorporated Resmed’s voluminous arguments about this issue into this communication. On that basis, Resmed informed CleveMed that it considers this email to be an “incomplete status report.”

IPR No.	Term(s)	District Court CC (Resmed’s District Court Position)	Resmed’s PTAB Constructions	Resmed’s Positions
IPR2025-00159 ('921 Patent)	“generating and outputting the data related to the subject's treatment and the treatment's	Indefinite	Pet at 13-15: Notwithstanding, for the purpose of this proceeding, this Petition adopts PO’s interpretation of the following terms as described in PO’s opening claim construction	The Petition was filed on December 6, 2024, before Resmed’s responsive district court

	<p>efficacy by receiving sensor data from the airflow sensor, and calculating both the quantified symptom data of the severity of the sleeping disorder symptoms and/or an index of a subject's symptoms measured during use of the PAP device, and data of usage of the PAP device”</p>		<p>brief in the parallel district court action:</p> <p>“generating and outputting the data related to the subject’s treatment and the treatment’s efficacy by receiving sensor data from the airflow sensor, and calculating both the quantified symptom data of the severity of the sleeping disorder symptoms and/or an index of a subject’s symptoms measured during use of the PAP device, and data of usage of the PAP device” (recited in claim limitation 1[a.iii]/7[a.iii]/12[a.iii])</p>	<p>claim construction brief on December 23, 2024, and no later PTAB merits paper placed this same term in dispute before the Board.</p>
<p>IPR2025-00159 ('921 Patent)</p>	<p>“measuring and calculating a data of a quantitative output of the severity of a subject's sleeping disorder symptoms during a treatment and further providing for a data related the subject's treatment and the treatment's efficacy”</p>	<p>Indefinite</p>	<p>Pet at 13-15:</p> <p>Notwithstanding, for the purpose of this proceeding, this Petition adopts PO’s interpretation of the following terms as described in PO’s opening claim construction brief in the parallel district court action:</p> <p>“measuring and calculating a data of a quantitative output of the severity of a subject’s sleeping disorder symptoms during a treatment and further providing for a data related the subject’s treatment and the treatment’s efficacy” (recited in limitation 1[a.vi]/7[a.vi]/12[a.vi])</p>	<p>The Petition was filed on December 6, 2024, before Resmed’s responsive district court claim construction brief on December 23, 2024, and the later PTAB merits dispute centered on “retransmit,” not on this term.</p>
<p>IPR2025-00247 ('029 Patent)</p>	<p>“calculating: i) the data of a severity of the sleep disorder</p>	<p>Indefinite</p>	<p>Pet at 4-7:</p> <p>Notwithstanding, for the purpose of this proceeding, this Petition adopts PO’s</p>	<p>Resmed’s responsive district court claim</p>

	<p>symptoms of the subject, ii) the data of usage of the PAP device by the subject, and/or iii) the index based in whole or in part on either i) or ii) or both i) and ii)”</p>		<p>interpretation of the following terms as described in PO’s opening claim construction brief in the parallel district court action:</p> <p>“calculating: i) the data of a severity of the sleep disorder symptoms of the subject, ii) the data of usage of the PAP device by the subject, and/or iii) the index based in whole or in part on either i) or ii) or both i) and ii)” (recited in limitation [1.b.iii])</p>	<p>construction brief was filed on December 23, 2024, and the Petition was filed on January 10, 2025. PO nevertheless did not identify any theory as to this term until March 16, 2026.</p>
<p>IPR2025-00247 (’029 Patent)</p>	<p>“related to the subject’s treatment and the treatment’s efficacy”</p>	<p>Indefinite</p>	<p>Pet at 4-7: Notwithstanding, for the purpose of this proceeding, this Petition adopts PO’s interpretation of the following terms as described in PO’s opening claim construction brief in the parallel district court action:</p> <p>related to the subject’s treatment and the treatment’s efficacy” (recited in limitation [1.c])</p>	<p>Resmed’s responsive district-court claim-construction brief was filed on December 23, 2024, and the Petition was filed on January 10, 2025, yet PO did not identify any theory as to this term until March 16, 2026.</p>
<p>IPR2025-00246 (’333 Patent)</p>	<p>“transmitting, in either order, both 1) the collected data and/or the quantified level of severity data to a cellular phone via a radio frequency wireless link; and 2) the collected data and/or the quantified level of</p>	<p>Indefinite</p>	<p>Pet at 4-6: Notwithstanding, for the purpose of this proceeding, this Petition adopts PO’s interpretation of the following terms as described in PO’s opening claim construction brief in the parallel district court action:</p> <ol style="list-style-type: none"> 1. The “transmitting” limitation (as recited in claim limitation [15.d]). 2. “therapy efficacy data” (as recited in 	<p>Resmed’s district-court position concerned the broader transmitting limitation; PO’s chart does not identify a same-term inconsistency as to that limitation. Furthermore, to emphasize the belated new argument raised, PO’s Sur-Reply</p>

	<p>severity data to the remote station from either a) the PAP or CPAP device via a cellular system, or b) the cellular phone to a remote station via the cellular system or the Internet for further analysis with a second processor or a server at the remote station and review of the collected data, the quantified level of severity and/or this analysis by a clinician, technician or physician”</p>		<p>limitation [15.e.1])</p>	<p>newly alleged an inconsistent construction that differs from the one alleged here. Although Resmed requested leave to respond to that new argument, the Board declined to grant that request indicating that it “is capable of identifying new issues or belatedly presented evidence.” See Board’s email dated March 6, 2026.</p>
<p>IPR2025-00246 ('333 Patent)</p>	<p>“the therapy efficacy data”</p>	<p>Indefinite</p>	<p>Pet at 4-6: Notwithstanding, for the purpose of this proceeding, this Petition adopts PO’s interpretation of the following terms as described in PO’s opening claim construction brief in the parallel district court action:</p> <ol style="list-style-type: none"> 1. The “transmitting” limitation (as recited in claim limitation [15.d]). 2. “therapy efficacy data” (as 	<p>Resmed disputes any effort to equate this phrase with “quantified level of severity data.” For avoidance of doubt, Resmed did not contend that “quantified level of severity data” was indefinite. Furthermore, to emphasize the belated new argument raised, PO’s Sur-Reply newly alleged an inconsistent</p>

			recited in limitation [15.e.1])	construction that differs from the one alleged here. Although Resmed requested leave to respond to that new argument, the Board declined to grant that request indicating that it “is capable of identifying new issues or belatedly presented evidence.” See Board’s email dated March 6, 2026.
IPR2025-00160 ('680 Patent)	“the PAP therapy efficacy data”	Indefinite* Petitioner argument that the term “therapy efficacy data” in the '921 Patent is indefinite and the “the PAP therapy efficacy data” also appears to apply to the '680 Patent’s “PAP therapy efficacy data.”	Pet at 18 The Board construes the claims “using the same claim construction standard that would be used” in district courts. 37 C.F.R. 42.100(b). This Petition establishes the prior art meets each of the claim limitation under any reasonable construction. Thus, no express construction is required.	PO identifies no actual district court claim construction position for any '680 term.
IPR2025-00158 ('512 Patent)	“respiratory ventilation”	“the amount of air into the lungs during	Pet. at 9 - The Board construes the claims “using the same claim construction standard that would be used” in district	No same-term inconsistency exists; Resmed did not argue indefiniteness as

		<p>inspiration and out of the lungs during expiration”</p>	<p>courts. 37 C.F.R. ?42.100(b). This Petition establishes the prior art meets each of the claim limitation under any reasonable construction. Thus, no express construction is required.</p>	<p>to this term in district court, and the later PTAB merits dispute concerned a different term, “a computer at one or more sites.”</p>
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Kind regards,
 Jeff Price (Reg. No. 69,141)
 Counsel for Patent Owner, Cleveland Medical Devices, Inc.

Jeffrey H. Price
 Counsel

Herbert Smith Freehills Kramer (US) LLP
 1177 Avenue of the Americas, New York, New York 10036
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jeffrey.price@hsfkramer.com
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From: Trials <Trials@USPTO.GOV>

Sent: Friday, March 20, 2026 10:08 AM

To: Price, Jeffrey H. <jprice@kramerlevin.com>; Fuller, Jenna <jfuller@kramerlevin.com>; Eng, Jeffrey <jeng@kramerlevin.com>; PH-ResMed-CleveMed <PH-ResMed-CleveMed@paulhastings.com>

Cc: Trials <Trials@USPTO.GOV>

Subject: [EXTERNAL] RE: IPR2025-00158, -00159, -00160, -00246, and -00247 - Request for Authorization to File Motions to Dismiss

Counsel,

Counsel are authorized to submit the join status report by Tuesday, March 24.

Regards,

Andrew Kellogg,
Deputy Chief Clerk, Trials
Patent Trial and Appeal Board
USPTO
andrew.kellogg@uspto.gov
(571) 272-5366

<image001.png>

From: Price, Jeffrey H. <jeffrey.price@hsfkramer.com>

Sent: Wednesday, March 18, 2026 10:36 AM

To: Trials <Trials@USPTO.GOV>; Fuller, Jenna <jenna.fuller@hsfkramer.com>; Eng, Jeffrey <jeffrey.eng@hsfkramer.com>; PH-ResMed-CleveMed <PH-ResMed-CleveMed@paulhastings.com>

Subject: RE: IPR2025-00158, -00159, -00160, -00246, and -00247 - Request for Authorization to File Motions to Dismiss

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Your Honors,

CleveMed and Resmed have been working to resolve their positions regarding CleveMed's requests to file Motions to Terminate in Case Nos. in IPR2025-00158, -00159, -00160, -00246, and -00247. On the morning of March 16, 2026, CleveMed identified alleged inconsistent claim construction positions for each IPR. Due to professional obligations, including travel for the upcoming hearings in IPR2025-00158, -00159, -00160, and limited time until the March 18 submission deadline, the parties have not fully met and conferred and respectfully request approval to submit the joint status report to the Board by Tuesday, March 24.

Kind regards,
Jeffrey Price
Counsel for Patent Owner, Cleveland Medical Devices, Inc.

Jeffrey H. Price
Counsel

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Further information is available on our website www.HSFKramer.com, including our privacy policy which describes how we handle personal information.

From: Trials <Trials@USPTO.GOV>

Sent: Friday, March 6, 2026 3:24 PM

To: Price, Jeffrey H. <jprice@kramerlevin.com>; Fuller, Jenna <jfuller@kramerlevin.com>; Eng, Jeffrey <jeng@kramerlevin.com>; PH-ResMed-CleveMed <PH-ResMed-CleveMed@paulhastings.com>

Cc: Trials <Trials@USPTO.GOV>

Subject: [EXTERNAL] RE: IPR2025-00158, -00159, -00160, -00246, and -00247 - Request for Authorization to File Motions to Dismiss

Counsel,

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.

Regards,

Tina Williams
Supervisory Paralegal Specialist
Patent Trial and Appeal Board

From: Price, Jeffrey H. <jeffrey.price@hsfkramer.com>
Sent: Thursday, March 5, 2026 8:41 PM
To: Trials <Trials@USPTO.GOV>
Cc: Fuller, Jenna <jenna.fuller@hsfkramer.com>; Eng, Jeffrey <jeffrey.eng@hsfkramer.com>; PH-ResMed-CleveMed <PH-ResMed-CleveMed@paulhastings.com>
Subject: RE: IPR2025-00158, -00159, -00160, -00246, and -00247 - Request for Authorization to File Motions to Dismiss

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Your Honors,

CleveMed understands that Petitioner's updated position is as follows:

Petitioner opposes Patent Owner's request for categorical relief across all five IPRs, as each proceeding involves distinct facts and timelines that necessitate individual evaluation, including potential denial for delay under 37 CFR § 42.25(b). Patent Owner has 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. For instance, Petitioner does not understand Patent Owner's request in IPR2025-00160 (regarding the '680 Patent) given that the parties did not proffer any claim construction for terms in the '680 Patent in the parallel litigation. Patent Owner has offered no cogent justification to support its extraordinary request. Furthermore, Petitioner opposes the proposed compressed briefing schedule for these dispositive motions, maintaining that any authorized briefing must follow the standard periods set forth in 37 CFR § 42.25(a). Patent Owner improperly conflates the timing for RPI briefing with the present request, as motions involving substantive issues across different patents require distinct analysis and do not justify the same expedited schedule used for identical facts in the RPI briefing.

Thank you,
Jeff Price (Reg. No. 69,141)
Counsel for Patent Owner, Cleveland Medical Devices, Inc.

Jeffrey H. Price
Counsel

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From: Price, Jeffrey H.

Sent: Thursday, March 5, 2026 8:29 PM

To: Trials <trials@uspto.gov>

Cc: Fuller, Jenna <JFuller@KRAMERLEVIN.com>; Eng, Jeffrey <JEng@KRAMERLEVIN.com>; PH-ResMed-CleveMed <PH-ResMed-CleveMed@paulhastings.com>

Subject: IPR2025-00158, -00159, -00160, -00246, and -00247 - Request for Authorization to File Motions to Dismiss

Your Honors,

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 I”) 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. In each case, Patent Owner requests that the Board grant the parties a similar briefing schedule it granted to address the pending real-party-in-interest issue, which is a 5-page Motion to Dismiss, a 5-page Opposition, and a 3-page Reply. So that the parties may address these issues during the upcoming Oral Hearings, Patent Owner proposes the following briefing schedule:

Monday, March 9: CleveMed’s Motions to Dismiss

Friday, March 13: ResMed’s Oppositions

Tuesday, March 17: CleveMed’s Replies

The parties have conferred, and Petitioner’s position follows:

Petitioner opposes Patent Owner’s request for extraordinary relief across all five IPRs. Patent Owner’s significant delay in seeking this relief varies by IPR and justifies a denial under 37 CFR § 42.25(b) (“Delay in seeking relief may justify a denial of relief sought.”). During meet-and-confers, Petitioner requested that Patent Owner identify the specific alleged “inconsistent positions” and the “good cause.” Patent Owner refused, instead asserting that it is Petitioner’s burden to “identify [alleged] inconsistent claim construction positions and to explain why they were warranted.” Petitioner disagrees; the moving party bears the burden of identifying the basis for its requested relief. Finally, Petitioner opposes Patent Owner’s proposed compressed briefing schedule for these dispositive motions. Any authorized briefing should follow the standard periods set forth in 37 CFR § 42.25(a).

If the Board feels a conference call is necessary, Petitioner and Patent Owner are available on the following days and times (Eastern):

- Friday, March 6, 11 AM – 4 PM;

- Monday, March 9, 11 AM – 4 PM; and
- Tuesday, March 10, 11 AM – 2 PM and 3:30 PM – 5 PM.

Kind regards,

Jeff Price (Reg. No. 69,141)

Counsel for Patent Owner, Cleveland Medical Devices, Inc.

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