

**From:** [Cutri, Gianni](#)  
**To:** [Director PTABDecision Review](#); [Herman, K. Patrick](#); [P52PTABDocket](#); [Caridis, Alyssa](#); [Lionel.lavenue@finnegan.com](mailto:Lionel.lavenue@finnegan.com); [Bell, Cory](#); [Aguilar, Safiya](#); [Coverstone, Caitlin](#); [Alper, Adam R.](#); [De Vries, Mike W.](#); [Li, Kat](#); [#CST-Kirkland-Carbyne](#); [CentralSquare-Carbyne-IPR](#)  
**Subject:** RE: (Director Review Rehearing Request) IPR2025-01179 (Request for Good Cause Extension for Director Review) - Response  
**Date:** Monday, March 2, 2026 9:16:34 PM  
**Attachments:** [image002.png](#)

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Dear Director,

As authorized by the Director via email on February 27 in IPR2025-1179, Petitioner CentralSquare Technologies / TriTech Software Systems (collectively, “CST”) submits this opposition to Carbyne’s contingent request for leave. The request potentially seeks leave to seek Director Review in IPR2025-1179, but only “[i]n the event the Director denies” Carbyne’s recently filed Request for Rehearing in IPR2025-0959. Pursuant to the February 27 email authorization of the Director in IPR2025-0959, CST’s forthcoming opposition to Carbyne’s Request for Rehearing will be filed by March 6.

The Director should deny Carbyne’s contingent request for leave because: 1) Carbyne has not established good cause for relief from the now-expired December 26, 2025 deadline to seek Director Review; 2) Carbyne, unlike CST, intentionally chose not to seek Director Review in the time allotted; and 3) there is no claim construction inconsistency issue in IPR2025-1179.

**I. Carbyne Has Not Established Good Cause for Relief from the Director Review Request Deadline.**

In IPR2025-1179, Carbyne made a strategic decision to delay a Director Review Request while it waited for the outcome of CST’s Director Review Request in IPR2025-0959. Carbyne’s reasons were purely self-interested: it wanted to see whether it could get away with maintaining inconsistent claim construction positions in this proceeding and in the District Court. That is the opposite of good cause, and Carbyne has no excuse for its delay.

Carbyne’s contingent Director Review Request is now untimely by a full two months and counting. The institution decision in IPR2025-1179 was issued December 11, 2025. Under 37 C.F.R. § 42.71(d)(1), a party has 14 days from institution to request rehearing or Director Review. Thus, Carbyne was required to file any request for Director Review by December 26, 2025 (hereinafter “December 26, 2025 Director Review Deadline”) but chose not to do so.

Carbyne’s choice was intentional. Carbyne was well-aware of the allegedly inconsistent claim construction positions long before the December 26, 2025 Director Review Deadline. CST submitted its opening claim construction brief (in which Carbyne alleged that CST had set forth claim construction positions on Carbyne’s ’383 Patent that were inconsistent with its positions in IPR2025-1179) to the District Court on October 13, 2025—nearly two months before IPR2025-1179 was even instituted. Confirming there is no doubt that Carbyne was aware of this alleged inconsistency before the December 26, 2025 Director Review Deadline, in its December 5, 2025 Response to CST’s Director Review Request in IPR2025-0959,

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Carbyne claimed that “[i]n district court, CST argues that several terms in Carbyne’s [’383] patent must be afforded a particular meaning or, in the alternative, are indefinite. But CST made none of those arguments—and discussed none of those positions—in its own IPR petition.” IPR2025-0959, Paper 16, at 5. Thus, there is no dispute that weeks before the December 26, 2025 Director Review Deadline, Carbyne contended that CST was advancing inconsistent claim construction positions on the ’383 Patent between the PTAB and District Court. But Carbyne intentionally chose *not* to raise this alleged inconsistency in IPR2025-1179, neither before nor after institution, nor before or after the December 26, 2025 Director Review Deadline.

There is likewise no debate that Carbyne was also aware of the legal basis underpinning its now-untimely (and moot) contingent Director Review Request well before the December 26, 2025 Director Review Deadline. The Director’s Order de-instituting IPR2025-0959 was premised primarily on decisions in *Revvo* and *Tesla* that were issued on November 3 and November 5, 2025, respectively. *See* IPR2025-0632, Paper 20; IPR2025-0340, Paper 18. Nonetheless, Carbyne intentionally did not file a Director Review Request, letting months pass while many intervening decisions reaffirmed the principles from *Revvo* and *Tesla*. *See, e.g., TikTok, Inc. v. Shopsee, Inc.*, IPR2025-1485, Paper 13 (dated Jan. 16, 2026); *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-0632, Paper 36 (dated Jan. 26, 2026, reaffirming de-institution on remand in *Revvo*); *Generac Power Sys., Inc. v. Champion Power Equip., Inc.*, IPR2025-0805, Paper 40 (dated Feb. 3, 2026, de-instituting IPR under *Revvo* and *Tesla*).

Carbyne offers no explanation as to why it did not raise any supposed inconsistent claim construction positions within the time required by § 42.71(d)(1). Its choice not to do so reveals that Carbyne’s failure to seek Director review in a timely fashion was a strategic “wait and see” approach. The Director should deny Carbyne’s request for rehearing in IPR2025-0959 and thereafter reject Carbyne’s contingent request to seek Director Review in IPR2025-1179, because an intentional choice to let a deadline lapse, followed by an additional 60-day (and growing) delay, is the antithesis of good cause.

Furthermore, Carbyne’s own framing of its request as “contingent” based on the Director’s decision on a Rehearing Request in IPR2025-0959 reaffirms that Carbyne is acting opportunistically, not with good cause. Carbyne’s primary goal is to reinstate IPR2025-0959 so that it can advance inconsistent claim construction positions. *See* IPR2025-0959, Paper 21 (Carbyne’s request for rehearing). Thus, Carbyne is purposefully not seeking Director Review in IPR2025-1179, unless “the Director denies the attached rehearing request.” Carbyne’s strategic, intentional delay is not good cause to reinstate a deadline that was missed months ago.

## **II. Carbyne’s Argument Regarding Supposed Changes in Waiver Rules Ignores that Carbyne Did Not Act Diligently.**

Recognizing that it still has not yet actually sought Director Review, Carbyne claims that in the future, good cause will arise because “the Director’s decision in IPR2025-00959—if maintained—will affect an unforeseeable change in the law regarding the waiver and timeliness of arguments.” Not so. As will be addressed in CST’s forthcoming opposition to Carbyne’s Request for Rehearing, the Director’s decision in the IPR2025-0959 was not a change in the law and does not excuse Carbyne’s intentional delay.

The Director correctly rejected Carbyne’s assertion that, based on its September 8 email to

CST, CST should have raised Carbyne's inconsistent positions in its POPR filed on September 15. Significantly, Carbyne's September 8 email did not contain the ultimate positions Carbyne asserted in District Court and even if they had, what Carbyne described as its "preliminary" emailed positions would still not be an inconsistency that had to be raised in CST's September 15 POPR. This is because as of that date Carbyne had not yet "advance[d] a claim construction before the Board" while making "inconsistent indefiniteness arguments *in district court.*" *Tesla*, IPR2025-0340, Paper 18, at 4 (emphasis added). After Carbyne actually presented an inconsistent position to both the District Court and the PTAB (and continued to advocate those positions), CST properly and timely sought Director review within 14 days of institution (as required by the rules). The Director correctly concluded that Petitioner did not present its different position to the District Court until October 13, nearly a month after Patent Owner already filed its Preliminary Response. IPR2025-0959, Paper 20, at 4 n.2. Therefore, that ruling is not a change in the law, but a straightforward application of the principles in *Tesla*.

These facts stand in stark contrast to Carbyne's contingent request for Director Review in IPR2025-1179. Carbyne received CST's opening claim construction brief on the '383 Patent on October 13, and filed its POPR four days *after* on October 17. Thus, Carbyne unquestionably had seen CST's assertion in District Court of allegedly inconsistent claim construction positions before its Preliminary Response was due. However, Carbyne did not raise the supposed inconsistency prior to institution, and has never sought Director Review in IPR2025-1179. Carbyne's intentional choices do not permit it to seek Director Review well out of time.

### **III. There Is No Basis for Director Review in IPR2025-1179 Because No Claim Construction Inconsistency Exists.**

Even if Carbyne establishes good cause to excuse its untimeliness at some point in the future, the Director should nonetheless decline Director Review in IPR2025-1179 because there are no inconsistencies. Prior to Carbyne's contingent request, CST had already withdrawn all of its proposed claim constructions for the '383 Patent in District Court such that the court need not hold a *Markman* hearing on the '383 Patent. *See CentralSquare*, No. 24-CV-1497, at Dkt. 64. As a result, CST's claim construction positions are completely aligned between the District Court and IPR2025-1179. Accordingly, the rationale for de-institution in IPR2025-0959—that a petitioner should not be able to simultaneously advance inconsistent claim construction positions between an IPR and District Court proceedings—is not present in IPR2025-1179. In fact, Carbyne concedes as much by acknowledging CST's District Court claim construction positions. *See* IPR2025-0959, Paper 21, at 7 n.3. Thus, Carbyne's contingent request is moot.

Carbyne's only basis for seeking Director Review at some point in the future is its unsupported claim that CST will "presumably continue to interpret the claims the very same way," IPR2025-0959, Paper 21, at 7 n.3. This speculative "presumption" that contradicts the actual state of affairs is no basis to institute Director Review. It is indisputable that CST has the same claim construction positions in both forums, furthering "the Office's goal of providing greater predictability and certainty in the patent system," *Tesla*, Paper 18, at 4 (citations and quotes omitted), such that thus there is no basis for Director Review.

\* \* \*

Carbyne's contingent request for leave to file a Director Review Request in IPR2025-1179

should be denied. If Carbyne's request for leave is granted, CST respectfully reserves the right to file a response in opposition to Carbyne's Request for Director Review.

## Gianni Cutri

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**From:** Director\_PTABDecision\_Review <Director\_PTABDecision\_Review@uspto.gov>

**Sent:** Friday, February 27, 2026 11:10 AM

**To:** Herman, K. Patrick <pherman@orrick.com>; P52PTABDocket <P52PTABDocket@orrick.com>; Caridis, Alyssa <acaridis@orrick.com>; Lionel.lavenue@finnegan.com; Bell, Cory <cory.bell@finnegan.com>; Aguilar, Safiya <safiya.aguilar@finnegan.com>; Coverstone, Caitlin <caitlin.coverstone@finnegan.com>; Cutri, Gianni <gcutri@kirkland.com>; Alper, Adam R. <aalper@kirkland.com>; De Vries, Mike W. <michael.devries@kirkland.com>; Li, Kat <kat.li@kirkland.com>; #CST-Kirkland-Carbyne <CST-Kirkland-Carbyne@kirkland.com>; CentralSquare-Carbyne-IPR <centralsquare-carbyne-ipr@finnegan.com>

**Subject:** (Director Review Rehearing Request) IPR2025-01179 (Request for Good Cause Extension for Director Review) - Response

Counsel,

Petitioner in IPR2025-01179 may respond with its position as to Patent Owner's request via email by Monday, March 2, 2026.

Thanks

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**From:** Herman, K. Patrick <[pherman@orrick.com](mailto:pherman@orrick.com)>

**Sent:** Thursday, February 26, 2026 10:21 PM

**To:** Director\_PTABDecision\_Review <[Director\\_PTABDecision\\_Review@uspto.gov](mailto:Director_PTABDecision_Review@uspto.gov)>

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**Subject:** IPR2025-00959 (Director Review Rehearing Request) and IPR2025-01179 (Request for Good Cause Extension for Director Review)

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Dear Director,

This message addresses two proceedings involving the same parties. In IPR2025-00959 Carbyne is Petitioner and Central Square/Tritech is Patent Owner. In IPR2025-01179 Central Square/Tritech is Petitioner and Carbyne is Patent Owner. Counsel in both proceedings have been copied.

IPR2025-00959:

As required by Section 5.C.ii of the Director Review Process, Petitioner Carbyne attaches a copy of a rehearing request it filed addressing the Director's recently issued decision (Paper 20) in IPR2025-00959.

IPR2025-01179:

In the event the Director denies the attached rehearing request, Patent Owner Carbyne separately requests leave to file its own Director Review request highlighting Petitioner Central Square's/Tritech's own inconsistent claim interpretations in IPR2025-01179. While the deadline for filing such a request has passed, Carbyne submits that pursuant to Section 3.B of the Director Review Process good cause exists for an extension (as the Director's decision in IPR2025-00959—if maintained—will affect an unforeseeable change in the law regarding the waiver and timeliness of arguments).

Respectfully,

K. Patrick Herman

Reg. No. 75,018

Counsel for Carbyne in IPR2025-00959 and IPR2025-01179

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