

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD**

CAPTION HEALTH, INC.
Petitioner

v.

UNIVERSITY OF BRITISH COLUMBIA
Patent Owner

U.S. PATENT NO. 10,751,029

Inter Partes Review No.: IPR2025-01422

**PETITIONER'S SUPPLEMENTAL BRIEF OPPOSING PATENT
OWNER'S REQUEST FOR DISCRETIONARY DENIAL**

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I. INTRODUCTION

Petitioner submits this brief in response to the Director’s grant of supplemental briefing to address the impact of *Revvo Tech., Inc. v. Cerebrum Sensor Tech., Inc.*, IPR2025-00632, Paper 20 (Nov. 3, 2025), on this proceeding. *Revvo* seeks to “further the Office’s goal of ‘providing greater predictability and certainty in the patent system’” by clarifying that where petitioners present “different claim construction positions before a district court and the Board” they should “explain sufficiently why the different positions were warranted.” IPR2025-00632, Paper 20 at 4-5. As detailed in Petitioner’s Opposition to Patent Owner’s Request for Discretionary Denial (Paper 11), none of the discretionary denial considerations that the Director has identified in his previous guidance support discretionary denial here. Indeed, the Director¹ already denied Petitioner’s request for discretionary denial in a related IPR (IPR2025-01066) on substantially overlapping facts. *Revvo* should not impact the Director’s discretionary denial analysis here, much less support discretionary denial. Unlike in *Revvo*, Petitioner has not offered substantively different claim constructions with identifiably different scopes. As explained in Petitioner’s discretionary denial brief (Paper 11), and further below, the construction of “quality assessment value” offered by Petitioner to the district court is not a

¹ See Ex1037 (Order by then-acting Director Stewart)

narrower interpretation than the one applied by Petitioner before the Board. The Director should decline discretionary denial and proceed to the merits of the Petition.

II. ARGUMENT

A. *Revvo* is Distinguishable on the Facts.

The petitioner in *Revvo* offered distinctly different claim constructions in the district court and the parallel IPR. *See* IPR2025-00632, Paper 20, 2 (citing Ex. 1017, Exhibit A at 5-7, Exhibit B at 10-15). For example, the petitioner in *Revvo* interpreted the claim term “(a) housing” as merely “a protective cover” at the Board. IPR2025-00632, Paper #13 at 6 (Sept. 15, 2025). At the district court, however, the petitioner presented a vastly different construction of “(a) housing” as being “a protective casing that surrounds the sensor device and constructed to provide an ‘internal cavity’ that is configured with surface features that mechanically fix and retain the placement position of the sensor device and does not use or require the use of any coating or filing agents or materials to fix and retain the placement position of the electrical sensor device therein.” IPR2025-00632, Ex. 1017, Exhibit A at 5.² The material differences in scope are plain and undeniable.

² Likewise, the petitioner interpreted the claim term “internal cavity” as merely “an open space inside of the housing” at the Board (IPR2025-00632, Paper #13 at 6), but presented the district court with a vastly different construction: “a hollow or ‘open

In the present proceeding, Petitioner has not urged different constructions with different scopes in different forums. In the district court, Petitioner offered an express claim construction of the term “quality assessment value.” In its IPR Petition, Petitioner simply stated that no construction was required. Paper 1 at 10. These are not two different constructions as in *Revvo*, and there is no identifiable difference between Petitioner’s interpretation of the term “quality assessment value” before the district court and the Board.

B. Petitioner Has Provided a Sufficient Explanation for Its Positions.

No claim construction was deemed necessary in the Petition because the primary prior art reference on which Petitioner’s challenge is based, *i.e.*, Krishnan (Ex1005), repeats, almost *verbatim*, the claim language “quality assessment value.” Specifically, Krishnan states that “methods can be implemented for determining a quality measure within a predefined range of values” (Ex1005 at [0020] (emphasis added)) and, “for image quality assessment, the medical images may include a quality score (within a predetermined range) that provides an indication [of] a diagnostic quality level of the medical images” (*id.* at [0036] (emphasis added)).

space’ surrounded by and inside (but not included as part of) the housing” (IPR2025-00632, Ex. 1017, Exhibit A at 5-6).

Tellingly, Patent Owner does not challenge Krishnan’s disclosure of a “quality assessment value” in Patent Owner’s Preliminary Response.

In the district court, Petitioner presented a construction to resolve an apparent infringement dispute that does not bear on this proceeding. Petitioner was forced to offer an express claim construction because the parties appear to disagree over the plain and ordinary meaning of “quality assessment value.” Although Patent Owner states that no construction is needed, and purports to be using the plain and ordinary meaning of the claim language (Ex1039 at 1), Patent Owner is plainly using a much broader meaning as the basis for its infringement allegations. While irrelevant to this proceeding, Patent Owner’s infringement position is incompatible with the known functionality of Petitioner’s accused product. If Petitioner merely acquiesced to Patent Owner’s proposal that the district court provide no construction, the parties’ dispute over the scope of the claim would go unresolved and each party would argue a different “plain and ordinary” meaning to the jury. Instead, Petitioner offered a construction that is intended to be an express statement of the *correct* plain and ordinary meaning.

Most importantly, the express construction offered by Petitioner to the district court is not a narrower interpretation than the one applied by Petitioner before the Board. Instead, the construction provided to the district court is an express statement of the same interpretation Petitioner is applying in the Petition. Indeed, Krishan also

repeats, almost *verbatim*, the express construction of “quality assessment value” offered by Petitioner in the district court, which is a “score of diagnostic image quality.” Specifically, Krishnan states that “for image quality assessment, the medical images may include a quality score (within a predetermined range) that provides an indication [of] a diagnostic quality level of the medical images.” Ex1005 at [0036] (emphasis added). Thus, whether the Board foregoes an express construction as unnecessary, or applies the express construction Petitioner offered to the district court, Krishnan plainly discloses the determination of a “quality assessment value.”

C. Petitioner is Willing to Accept the Same Claim Construction Expressly Stated in the District Court.

To remove any perceived discrepancy and any doubt regarding Petitioner’s motives, if the Director or the Board believes that claim construction is required to resolve Petitioner’s challenge, then Petitioner consents to use before the Board the same construction that was expressly stated to the district court.

III. CONCLUSION

For all the foregoing reasons, review of the ’029 patent claims on the merits would be an appropriate use of the Board’s resources. Petitioner requests the Director to decline discretionary denial and institute review.

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CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2025, I served a true and correct copy of the following materials:

- PETITIONER’S SUPPLEMENTAL BRIEF OPPOSING PATENT OWNER’S REQUEST FOR DISCRETIONARY DENIAL

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