

IPR2025-01593
Patent 10,278,961

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BONERGE LIFESCIENCE (HUNAN) CO., LTD.,
Petitioner,

v.

NANJING NUTRABUILDING BIO-TECH CO., LTD.,
Patent Owner.

IPR2025-01593
Patent 10,278,961

Before KAREN I. SWEENEY, *Trial Paralegal*

PATENT OWNER'S AUTHORIZED RESPONSE BRIEFING

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	ARGUMENT	1
A.	Term 1: “A method of managing glucose tolerance in an individual, the method comprising:”	2
B.	Term 2: “administering, to an individual, a pharmaceutically effective amount of dihydroberberine”	3
C.	Term 3: “approximately 25 mg to approximately 800 mg of dihydroberberine”	4
D.	Term 4: “reduces fasting glucose levels”	4
III.	CONCLUSION	5

I. INTRODUCTION

Patent Owner, Nanjing Nutrabuilding Bio-Tech Co., Ltd. (“Patent Owner”) respectfully submits the requested additional briefing in light of *Revvo Technologies, Inc. v. Cerebrum Sensor Technologies, Inc.*, IPR2025-00632 (“*Revvo*”), and *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00340 (“*Tesla*”). Opening claim construction briefs in the district court are due on March 12, 2026. Exhibit 1017 shows the parties’ claim construction positions in the district court. Based on what follows, *Revvo* and *Tesla* adversely impact the institution of IPR2025-01593.

II. ARGUMENT

In its Petition, Petitioner stated, “except for the claim term ‘reduces fasting glucose levels,’ no formal claim construction is necessary because the Challenged Claims are invalid under their plain and ordinary meanings” (*Id.* at 9). Even assuming this complies with 37 C.F.R. 42.104(b)(3), Petitioner adopted different claim constructions – narrow in the district court and broad to the Board. In *Revvo*, the Board stated that “the rules discourage petitioners from seeking broader constructions at the Board to support a patentability challenge while seeking narrower constructions in litigation to avoid infringement liability.” *See Revvo* at 4. This is precisely the scenario here for each term at issue.

A. Term 1: “A method of managing glucose tolerance in an individual, the method comprising:”

Petitioner’s PTAB Construction	Petitioner’s D. Ct. Construction
No construction necessary/plain and ordinary meaning (Paper 2 at 9); Preamble may be limiting (Paper 2 at 27, 49 – “To the extent the preamble is limiting”).	Preamble is limiting: “enhancing an individual’s ability to process glucose that is measurable via a glucose tolerance test” <i>See</i> Exh. 1017, p. 3.

Even assuming Petitioner asserted to the Board that the preamble is limiting (which is questionable in light of Petitioner’s “to the extent” language), it did not propose a construction for *how* the preamble is limiting. In the district court, however, Petitioner’s construction is narrower than and conflicts with Petitioner’s “construction” to the Board – precisely the concern in *Revvo* and *Tesla*.

Here, Petitioner stated that managing glucose tolerance can mean, *inter alia*, decreasing fasting glucose, *or* increasing the ability to process glucose (Paper 2 at 9; Exh. 1003 at ¶ 29); *whereas*, in the district court, Petitioner proposed a very narrow construction requiring use of a glucose tolerance test (GTT). A GTT, however, only measures a response to a glucose load and not fasting glucose. *See* Exh. 1017 at 92. Petitioner’s district court construction would effectively limit the scope of “managing glucose tolerance” to effects on processing ingested glucose, which is narrower than and conflicts with Petitioner’s assertions in Paper 2 at page 9.

Additionally, Petitioner’s thrice-made statement in its additional brief that the “upcoming district court claim construction brief will show ...” (Paper 10 at 2, 3, 4)

is precisely the problem – Petitioner taking inconsistent positions and playing “hide the ball” with the Board. Thus, *Revvo* and *Tesla* warrant a denial of institution.

B. Term 2: “administering, to an individual, a pharmaceutically effective amount of dihydroberberine”

Petitioner’s PTAB Construction	Petitioner’s D. Ct. Construction
No construction necessary/plain and ordinary meaning (Paper 2 at 9).	“Administering to an individual an amount of dihydroberberine that improves the individual’s ability to process glucose that is measurable via a glucose tolerance test” <i>See</i> Ex. 1017, p. 3.

Here, Petitioner proposes a broad or essentially no construction, while advancing a narrow construction in the district court that imports the means of measuring a result (the GTT) into the claim. Petitioner references effects on fasting blood glucose **and** post-ingestion glucose levels as being within the scope of the claim (Paper 2 at 9; Exh. 1003 at ¶ 29), but Petitioner’s district court construction of “administering” to require a GTT effectively narrows the construction to cover only what GTT can measure – effects on post-ingestion glucose – to the exclusion of effects on fasting glucose. Thus, Petitioner’s district court construction is narrower than its Board construction. These inconsistent positions implicate *Revvo* and *Tesla*.

In its additional briefing, Petitioner resorts to sleight of hand by asserting that, “PO contends that this claim element should be given its plain and ordinary meaning and provides its understanding of the plain and ordinary meaning” Paper 10 at 2. This is inaccurate. Patent Owner’s position is, “Plain and ordinary meaning (does

not require construction). **In the alternative**, if plain and ordinary meaning is not adopted, then construe as” Exh. 1017 at p. 4 (emphasis added). Patent Owner did not equate plain and ordinary meaning with its alternative construction, as Petitioner claims.

C. Term 3: “approximately 25 mg to approximately 800 mg of dihydroberberine”

Petitioner’s PTAB Construction	Petitioner’s D. Ct. Construction
No construction necessary/plain and ordinary meaning (Paper 2 at 9).	Indefinite. <i>See</i> Ex. 1017, p. 4.

Here, Petitioner proposes no construction, or a plain and ordinary meaning construction, for “approximately.” In district court, Petitioner asserts this same language is indefinite, despite expressing no difficulty with such language in its Petition. *See e.g.* Paper 2 at 24, 27, 29, 47-48, 51; Exh. 1003 ¶¶ 88-89.

Notably, Petitioner mentioned indefiniteness in its Petition as to “reduces fasting glucose levels” (Paper 2 at 33 n.13), but *failed* to do so as to the present “approximately ...” limitation. This failure should defeat Petitioner’s claimed entitlement to the *Tesla* exception inasmuch as indefiniteness was not flagged as a potential issue by Petitioner or its expert as to “approximately”

D. Term 4: “reduces fasting glucose levels”

Petitioner’s PTAB Construction	Petitioner’s D. Ct. Construction
“where the administration of dhBBR would keep blood glucose levels closer to fasting blood glucose levels than BBR would.” (Paper 2 at 11).	“Lowers fasting blood glucose levels that may be satisfied via a comparative glucose tolerance test.” <i>See</i> Ex. 1017, at 5.

Petitioner argued “claim 2 would be satisfied if a prior art reference (or a combination of prior art references) demonstrates via a glucose challenge test or similar type of glucose tolerance tests where the administration of dhBBR would keep blood glucose levels closer to fasting blood glucose levels than BBR would.” Paper 2 at 11; Exh. 1003 at ¶ 35. This construction is broader than Petitioner’s construction in the district court of “lowers **fasting blood glucose** levels.” The construction before the Board is not limited to *fasting* glucose levels, but covers “blood glucose levels” *generally*, while in the district court, Petitioner’s construction limits this element to fasting glucose only, thus narrowing it. Therefore, again, Petitioner has taken conflicting claim construction positions between the Board and the district court, where the Board constructions are broader and the district court constructions narrower, precisely against what *Revvo* and *Tesla* counsel.

III. CONCLUSION

For the aforementioned reasons, the Board should follow *Revvo* and *Tesla* and deny institution.

Date: March 9, 2026

Respectfully submitted,

/s/ Mark D. Nielsen

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.105(b), the undersigned hereby certifies that a copy of this **PATENT OWNER'S AUTHORIZED RESPONSE BRIEFING** has been served on March 9, 2026 upon the following litigation counsel via electronic means:

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**CERTIFICATE OF COMPLIANCE WITH PAGE/WORD COUNT
REQUIREMENTS UNDER 37 C.F.R. § 42.24**

Under 37 C.F.R. § 42.24(d), the undersigned certifies that this **PATENT OWNER'S AUTHORIZED RESPONSE BRIEFING** complies with the page count limitation in that it contains five (5) pages or less of argument.

This paper also complies with the typeface requirements of 37 C.F.R. § 42.6(a)(2)(ii) and the type style requirements of 37 C.F.R. § 42.6(a)(2)(iii) and (iv).

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