

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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TERUMO BCT INC.,

Petitioner

v.

HAEMONETICS CORP.,

Patent Owner

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IPR2026-00046

U.S. Patent No. 10,980,926

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**PETITIONER'S AUTHORIZED PRELIMINARY SUR-REPLY**

**TABLE OF AUTHORITIES**

| <b>Cases</b>  | <b>Page(s)</b> |
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| 37 C.F.R. § 42.104(b)(3) .....  | 1              |

**EXHIBIT LIST**

| <b>Exhibit</b> | <b>Reference</b>  |
|----------------|---|
| 1001           | U.S. Patent No. 10,980,926 (“’926 Patent”)  |
| 1002           | File History of the ’926 Patent   |
| 1003           | Declaration of Dr. Gary D. Fletcher in Support of Petition  |
| 1004           | U.S. Patent No. 7,072,769 (“Fletcher-Haynes”)   |
| 1005           | U.S. Patent No. 4,898,675 (“Lavender”)  |
| 1006           | U.S. Patent No. 8,075,468 (“Min”)   |
| 1007           | U.S. Patent Publication No. 2003/0125881 (“Ryan”)   |
| 1008           | “Membrane versus centrifuge-based therapeutic plasma exchange: a randomized prospective crossover study,” Carsten Hafer et al., <i>Int. Urol. Nephrol</i> (2016) 48:133-138; Springer Science+Business Media Dordrecht 2015.  |
| 1009           | “Volume Limits – Automated Collection of Source Plasma,” November 4, 1992, Memorandum issued by the FDA Center for Biologics Evaluation and Research, Docket Number FDA-2013-S-0613.  |
| 1010           | Bruce C. McLeod, MD, et al., “Apheresis: Principles and Practice,” 3rd Edition, AABB Press 2010.  |
| 1011           | Sergent SR, Ashurst JV. Plasmapheresis. [Updated 2023 Jul 10]. In: StatPearls [Internet]. Treasure Island (FL): StatPearls Publishing; 2025 Jan-. Available from: <a href="https://www.ncbi.nlm.nih.gov/books/NBK560566/?report=printable">https://www.ncbi.nlm.nih.gov/books/NBK560566/?report=printable</a> |
| 1012           | Curriculum Vitae (“CV”) of Dr. Gary D. Fletcher   |
| 1013           | U.S. Patent No. 9,283,316 (“Flexman”)   |
| 1014           | Japanese Patent Publication No. JP 2002-282352 A and certified Japanese to English translation (“Takagi”)   |
| 1015           | Search Disclosure Declaration (Filing Party and Board Only)   |
| 1016           | Redacted Disclosure Declaration   |
| 1017           | PTAB Notice of Decisions on Institution, Dec. 11, 2025  |
| 1018           | PTAB Notice of Decisions on Institution, Jan. 9, 2025   |

## Petitioner's Authorized Preliminary Sur-Reply

Patent Owner incorrectly asserts that (i) Terumo violates 37 C.F.R. § 42.104(b)(3) and (ii) takes irreconcilable claim construction positions for the term “controller” and “control system” in *Haemonetics Corp. v. Terumo BCT, Inc.*, Case No. 1:25-cv-01409-RMR-SBP (D. Colo. filed May 5, 2025) (the “District Court Litigation”) and in this proceeding. Terumo does not.

*First*, Terumo complies with 37 C.F.R. § 42.104(b)(3) because the terms “controller” and “control system” are not in controversy here. 37 C.F.R. § 42.104(b)(3) requires “a statement of the precise relief,” including “[h]ow the challenged claim is to be construed,” that applies to “only those terms . . . that are in controversy, and only to the extent necessary to resolve the controversy.” *Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019).

Regarding “controller,” Terumo explains that Lavender’s “controller” can be a computing device like a microprocessor. *E.g.*, Paper 1 at 15, 51, 55–57, 59–60, 62. There is no dispute that these “controllers” exist in the prior art and Patent Owner does not dispute that Lavender discloses a “controller.” *See generally* Paper 11. But the ’926 patent does not limit a “controller” to *only* devices, stating it could encompass a human technician. EX1001, *e.g.*, 8:17–26, 8:55–64. While this scope would render the claims indefinite, Terumo’s Petition would succeed regardless of whether “controller” *also* encompasses humans. As there is no controversy, Terumo was not required to construe the term “controller” in its Petition.

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For “control system,” Patent Owner does not dispute Terumo’s mapping of the term to generic prior art features used to control apheresis procedures. Thus, it is not in controversy here. *E.g.*, Paper 1 at 51; *see also generally* Paper 11. But “control system” does not appear in the ’926 patent’s specification and its scope is unclear. While the outer bounds of the term “control system” may be unclear, its construction is not relevant to the instant proceeding and it need not be construed here. Such positions are permitted because Terumo “show[s] that, notwithstanding the alleged indefiniteness of the claim term, an ordinarily skilled artisan would understand that the asserted art satisfies the claim limitation (such as if the limitation prescribed a range and only the outer bounds of the range were unclear).” *Tesla v. Intell. Ventures II*, IPR2025-00340, Paper 18 at 3–4 (Nov. 5, 2025).

These explanations satisfy *Revvo* and its progeny. The mere fact that Terumo has raised different issues in different forums does not preclude institution. *10X Genomics v. President & Fellows of Harv. Coll.*, IPR2023-01299, Paper 15 at 11 (Mar. 7, 2024); *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20 at 3–4 (Nov. 3, 2025); *Tesla*, IPR2025-00340, Paper 18 at 3–4. Patent Owner’s cited post-*Tesla* and post-*Revvo* decisions deny institution only where a petitioner takes irreconcilable positions. *Generac Power Sys. v. Champion Power Equip., Inc.*, IPR2025-00951, Paper 38 at 4–5 (Feb. 3, 2026). That is not the case.

***Second***, Terumo’s positions have been consistent. Terumo states that a

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“controller” encompasses a human technician performing math and challenges the scope of the '926 patent's family members before the Board under § 101, consistent with its § 112(f) construction position that a controller can be a human or a computer. *See, e.g.*, PGR2026-00009, Paper 5 at 69–82. Likewise, since the term “control system” lacks any specification support, Terumo maps it to generic prior art features used to control apheresis procedures, which are undisputedly found in the prior art.

Further, these positions were driven by Patent Owner's own litigation antics. Patent Owner characterizes the claims as requiring a specialized, structural “controller” and asserts the claimed operations cannot be performed mentally, ignoring the specification's express discussion of a technician being a “controller.” *E.g.*, PGR2026-00009, Paper 11 at 45. Likewise, Patent Owner defines “control system” in a way to manufacture written description support despite none being present in the '926 patent. *E.g.*, PGR2025-00078, Paper 11 at 61. These antics drove the need for the District Court to assess the scope of both terms, potentially under § 112(f). § 42.204(b)(3) is not as limiting as Patent Owner submits, and a bright-line rule prohibiting new, rebuttal arguments made in response to Patent Owner's arguments is not contemplated in the Director's *Revvo* and *Tesla* decisions.

For at least the foregoing reasons and for the reasons Terumo outlined in its Petition (Paper 1), institution of a trial is warranted.

Petitioner's Authorized Preliminary Sur-Reply

Respectfully submitted,

Date: February 26, 2026

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**CERTIFICATE OF SERVICE**

The undersigned certifies service pursuant to 37 C.F.R. §§ 42.6(e) and 42.105(b) on the Patent Owner on February 26, 2026 by filing a copy of this PETITIONER'S AUTHORIZED PRELIMINARY SUR-REPLY TO PATENT OWNER'S PRELIMINARY RESPONSE through the P-TACTS platform and served a true and correct copy of the foregoing by electronic mail on the following counsel for Patent Owner:

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