

**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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PGR2026-00006

U.S. Patent No. 12,377,204

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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. 12,377,204 (“’204 Patent”)
1002	File History of the ’204 Patent
1003	Declaration of Dr. Gary D. Fletcher in Support of Petition
1004	U.S. Patent No. 4,898,675 (“Lavender”)
1005	U.S. Patent No. 7,072,769 (“Fletcher-Haynes”)
1006	“Calculations in Apheresis” (“Neyrinck”)
1007	“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.
1008	Curriculum Vitae (“CV”) of Dr. Gary D. Fletcher
1009	Bruce C. McLeod, MD, et al., “Apheresis: Principles and Practice,” 3rd Edition, AABB Press 2010.
1010	Japanese Patent Publication No. JP 2002-282352 A and certified Japanese to English translation (“Takagi”)
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	Search Disclosure Declaration (Filing Party and Board Only)
1013	Redacted Disclosure Declaration
1014	Prosecution History of U.S. Patent No. 12,186,474
1015	PTAB Notice of Decisions on Institution, Dec. 11, 2025
1016	PTAB Notice of Decisions on Institution, Jan. 9, 2026

## 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” 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. It does not.

*First*, Terumo complies with 37 C.F.R. § 42.104(b)(3) because the term “controller” is not in controversy. 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). As Terumo explains through its discussion of Fletcher-Haynes, a “controller” can be a computing device. *E.g.*, Paper 1 at 26, 28, 31, 38, 45, 51. There is no dispute that these “controllers” exist in the prior art, and Patent Owner does not dispute that the relied-upon prior art discloses a “controller.” *See generally* Paper 10. Thus, its construction is immaterial to this proceeding.

But the scope of the '204 patent does not limit a “controller” to *only* devices, and states it could encompass a human technician. EX1001, *e.g.*, 11:21–29, 11:58–67. While this scope would render the claims indefinite, Terumo's Petition would succeed regardless of the scope of “controller” and thus whether “controller” *also* encompasses humans does not create a controversy here. As such, Terumo was not

required to construe the term “controller” in its Petition.

This explanation satisfies *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 v. Intell. Ventures II*, IPR2025-00340, Paper 18 at 3–4 (Nov. 5, 2025). 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). But, *Tesla* recognizes that different positions would be permitted “if Petitioner had shown 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*, IPR2025-00340, Paper 18 at 3–4. This is precisely what we have here.

**Second**, Terumo's positions are consistent. While Patent Owner suggests it is improper for Terumo to not raise a “means-plus-function” invalidity ground, no rule requires a PGR petition to include every possible invalidity ground. Instead, the purpose is to present only the invalidity arguments best suited for Board review in the limited space provided. Terumo does that here by challenging the scope of the

## Petitioner's Authorized Preliminary Sur-Reply

'204 patent under § 101. This position is consistent with its § 112(f) construction position, that both a human technician and a generic processor can perform the claimed subject matter. *See, e.g.*, Pet. 59–72. Terumo states consistently that “controller” encompasses a human technician performing math, while Patent Owner attempts to contradict its specification by injecting structural limitations not found in the '204 patent. Patent Owner characterizes the claims as requiring a specialized, structural “controller” and asserts that the claimed operations cannot be performed mentally. *E.g.*, Paper 10 at 41–42. Patent Owner's litigation-driven attempt to recast the “controller” as a structural device while simultaneously omitting or minimizing the specification's discussion of the technician's role confirms the need for the District Court to assess the scope of “controller,” potentially under § 112(f).

Patent Owner also asks the Director to create a bright-line rule that petitioners cannot, in any circumstances, advance *any* legal theories in district court that are not identical to those raised in post-grant proceedings, regardless of whether the issues are in controversy in the post-grant proceeding and/or when they arose in the district court case. Paper 12 at 3. But not only, as discussed above, is § 42.204(b)(3) not as limiting as Patent Owner submits, but Terumo respectfully submits that such a bright-line rule 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

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 SUR-REPLY 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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