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Paper 20
Date: May 12, 2026

Patent Trial and Appeal Board
INFORMATIVE
Designated: 05/13/2026

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

TERUMO BCT INC.,
Petitioner,

v.

HAEMONETICS CORP.,
Patent Owner.

IPR2025-01374 (Patent 11,738,124 B2)
IPR2025-01391 (Patent 10,758,652 B2)[1]

Before JOHN A. SQUIRES, *Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office*.

ORDER
Granting Director Review, Vacating the Notices Granting Institution, and Denying Institution of *Inter Partes* Review

[1] This Order applies to each of the above-listed proceedings.

Haemonetics Corp. ("Patent Owner") filed a request for Director Review of the Notice granting institution ("Notice," Paper 13) in the above-captioned cases, and Terumo BCT, Inc. ("Petitioner") filed an authorized response. *See* Paper 17 ("DR Request"); Paper 18 ("DR Response").[2]

Patent Owner argues that in its Petitions, Petitioner states the claims "need no construction" and advances a plain and ordinary meaning for all claim terms, but that one week after institution, Petitioner argued in district court invalidity contentions that certain claims of the each of the challenged patents reciting a "controller" are indefinite. DR Request 1 (citing Paper 1, 20); Ex. 2022; IPR2025-01391, Paper 19, 1. Patent Owner contends that Petitioner's inconsistent positions are insufficiently explained and contrary to the Office's *Revvo* and *Tesla* decisions. *Id.* at 7–10 (citing *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20 (Director Nov. 3, 2025) (precedential) ("*Revvo*"); *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00340, Paper 18 (Director Nov. 5, 2025) (informative) ("*Tesla*")). Patent Owner also argues that Petitioner's conduct violates 37 C.F.R. § 42.104(b)(3), thereby confirming that it would be improper to maintain these *inter partes* reviews ("IPRs"). *Id.* at 10–13.

Petitioner responds that the claim term "controller" is not in controversy in these IPRs, and its construction is immaterial to the prior art analysis here. DR Response 1, 7–14. Therefore, according to Petitioner, it was not required to provide a construction for the term "controller" in the Petitions. *Id.* at 7. Petitioner also contends that Rule 42.104(b)(3) is not implicated here because that rule applies only to terms that are in

[2] Unless otherwise indicated, citations are to papers in IPR2025-001374. The parties filed similar papers in IPR2025-01391.

controversy. *Id*. at 7–8 (citing *Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019)).

For the reasons below, Patent Owner's requests for Director Review are granted.

Petitioner knew that, consistent with Board precedent, it cannot take different positions on claim construction in the district court and at the Board without an adequate explanation. Nonetheless, Petitioner did not heed that caution. Instead, at its first opportunity *after* institution was granted in these IPRs, Petitioner—whom I note is represented by the same counsel here and in district court—advanced indefiniteness contentions in the district court litigation that are different from Petitioner's proposed "plain and ordinary meaning" constructions in these IPRs. *See, e.g.*, DR Request 1; Ex. 2022, 21–42; Paper 2, 2 (counsel information); IPR2025-01391, Paper 19, 1. Specifically, Petitioner argued in its district court contentions that "'at least claims 11–20 of the '124 patent are indefinite' because the 'controller [is/further] configured to' terms are governed by means-plus-function interpretation pursuant to 35 U.S.C. § 112(f) and fail to recite sufficient structure." DR Request 1 (quoting Pet. 20 and Ex. 2022 (Joint Disputed Claim Chart), 21–42); *see also* IPR2025-01391, Paper 19, 1 ("Petitioner now argues that 'at least claims 11–19 of the '652 patent are indefinite.'").

Petitioner's assertion that the term "controller" is not in controversy in these IPRs and so it was not required to construe the term in the Petitions is an inadequate justification for the different positions. As I have stated repeatedly, a petitioner should present a single construction and apply that construction consistently before the Board and the district court. *See, e.g.*,

Infineon Techs. Am. Corp. v. Mosaid Techs. Corp., IPR2025-01456, Paper 27 at 3–4 (Director Mar. 17, 2026) ("[A] petitioner should pick one [construction], and one consistent with its asserted District Court position."). Failure to do so detracts from the Office's goal of "providing greater predictability and certainty in the patent system." *Revvo*, Paper 20 at 4–5.

I also disagree with Petitioner's assertion that these IPRs do not implicate Rule 42.104(b)(3). Rule 42.104(b)(3) requires a petition to "[p]rovide a statement of the precise relief requested for each claim challenged," and to identify how each challenged claim is to be construed. The rule continues to state that "[w]here the claim to be construed contains a means-plus-function or step-plus-function limitation as permitted under 35 U.S.C. 112(f), the construction of the claim must identify the specific portions of the specification that describe the structure, material, or acts corresponding to each claimed function." 37 C.F.R. § 42.104(b)(3). Petitioner's position in the district court that the term "controller" is a means-plus-function limitation undercuts its position that Rule 42.104(b)(3) does not apply here. Further, Petitioner's citation to *Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019) as support for its position is inapposite, as the holding in that case addresses when the Board is required to construe a claim term, not when a party is required to follow Board rules. DR Response 7–8.

Petitioner's conduct, which ensued following institution, demonstrates that this dispute is less about a litigation alternative, as Congress intended, and more about inconsistent positions to gain an upper hand in the overall litigation. *See, e.g.*, H.R. Rep. No. 112-98, at 48 (2011) (explaining that IPRs were intended to provide "quick and cost effective alternatives to

litigation"). Such conduct has negative consequences: It multiplies litigation expense, reduces patent value, discourages innovation, diminishes the integrity of the patent system, and depletes the Office's resources. Discretion is afforded to the USPTO Director to ensure fairness, efficiency, and predictability in patent disputes in a focused inter partes context—as Congress envisioned—as distinct from the broad adversarial context in district court litigation. The Office's review under Article I is ultimately regulatory; proceedings under Article III are adjudicatory. I would not have instituted these IPRs in the first instance had Petitioner engaged in this strategic litigation-style behavior before institution. Accordingly, the appropriate course of action is to grant Director Review, vacate the Notice granting institution of these IPRs, and deny institution.

It is:

ORDERED that Director Review is granted;

FURTHER ORDERED that the Notice granting institution of *inter partes* review (Paper 13; IPR2025-01391, Paper 15) is vacated; and

FURTHER ORDERED that the Petitions are denied, and no trials are instituted.

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