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Subject: Request for Director Review in IPR2023-00724 (PROTECTIVE ORDER MATERIAL)
Date: Wednesday, September 25, 2024 9:32:52 PM
Attachments: [IPR2023-00724 - Patent Owner's Request for Director Review \[PROTECTIVE ORDER MATERIAL\].pdf](#)

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IPR2023-00724

PROTECTIVE ORDER MATERIAL

Patent Owner in the above-referenced proceeding requests Director Review of the Board's determination to grant institution in IPR2024-00631 (Pap.22) (now joined to IPR2023-00724) based on a copycat petition and joinder motion filed four months after the deadline for seeking joinder. Despite Board precedent confirming institution should be decided before joinder, the Board's decision presumed and gave Petitioner the benefit of having sought joinder in deciding institution. This error was compounded by excusing Apotex's late joinder motion for "special circumstances" and "good cause" based on Apotex's mere "business decision" to delay until it had greater business certainty. This decision is unprecedented and turns joinder into a tool for patent owner harassment: it used a four-month-late joinder motion to end-run the *General Plastic* analysis, and resulted in instituting Apotex's copycat petition after all briefing was complete and just five weeks before the original final written decision deadline. If it stands, this decision opens the door for any copycat petitioner to ignore the §42.122 deadline simply by declaring it eventually made a "business decision" to file at its leisure.

To the extent this request is interpreted to contain multiple issues, Patent Owner ranks them as follows (1) important issues of law and policy (relating to institution and joinder of copycat petitions) and (2) erroneous conclusions of law (relating to (a) whether institution must be decided before joinder under the Board's precedent and (b) what constitutes "special circumstances" and "good cause").

Patent Owner requests that this request be decided before the issuance of any final written decision involving Apotex in IPR2023-00724.

Respectfully,

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