From: Best, Timothy P.
To: Director_PTABDecision_Review
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Subject: IPR2023-00731 and -00732
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Dear Deputy Director Brent:

Petitioners respectfully request review by the Director's Office of their Requests for Rehearing by the Director (Papers 24 in No. IPR2023-00731 and -00732) ("Requests"), and a reversal of the panel's institution denials. The panel's decisions denying institution of *inter partes* review in both IPR2023-00731 and -00732 (Papers 23) implicate an important issue concerning the purpose of the IPR process, and also amount to an abuse of discretion by the panel. Petitioners' Requests raise two bases for review, listed below in order of importance as required by Section 3A of the *Revised Interim Director Review Process*.

First, review is warranted because the panel denied institution of both petitions on the basis of a challenge raised by Patent Owner in the Patent Owner Preliminary Response ("POPR") to the evidence presented by Petitioners establishing the public availability of a prior art reference (Li), and not, as required by 35 U.S.C. § 314(a), on the basis of the invalidity grounds presented. Had Patent Owner raised this challenge post-institution, Petitioners would have been permitted to submit supplemental evidence conclusively establishing Li as prior art to the '243 Patent. *See, e.g.*, 37 C.F.R. § 42.64(b)(1)-(2). Petitioners requested, and were denied, two opportunities to respond to the POPRs to address Patent Owner's challenge and present evidence establishing Li as prior art to the challenged patents (Motions to Dismiss and re-file, and a request to file a Reply to the POPR).

Second, the panel abused its discretion by denying both Petitioners' Motions to Dismiss and requests to file Replies to the POPRs, and then denying institution on the basis of the evidentiary issue to which Petitioners were never allowed to respond. The panel should have granted one of Petitioners' two requests to submit additional evidence establishing Li as prior art prior to a final written decision.

Petitioners therefore respectfully request review of their Requests, and that the Director reverse the panel's institution denials.

Counsel for Patent Owner are copied on this email.

Respectfully submitted,
/s/ Timothy Best

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