

From: [Director_PTABDecision_Review](#)
To: [Kenneth Weatherwax](#); [Director_PTABDecision_Review](#)
Cc: [Nathan Lowenstein](#); [Robert Pistone](#); [Parham Hendifar](#); [xzhou@caldwellcc.com](#); [FPGP0138IPR@brookskushman.com](#)
Subject: RE: IPR2023-00763 - Request to respond in Director Review
Date: Wednesday, January 3, 2024 2:48:54 PM

Counsel,

Thank you for your email. Your request to file a response to the pending Director Request is denied at this time. *See Revised Interim Director Review Process*, available at <https://www.uspto.gov/patents/ptab/decisions/revised-interim-director-review-process> at Section 5.A.ii.b (“Director Review decisions are generally made based on the existing record, without the need for responsive or amici curiae briefing. Responsive or amici curiae briefing may only be submitted if requested by the Director.”). If the Director determines that briefing is necessary, counsel will be informed.

Your email and this response will be entered into the public record. *See id.* at Section 3.G (“All communications will be entered into the record of the proceeding.”).

Thank you.

From: Kenneth Weatherwax <weatherwax@lowensteinweatherwax.com>
Sent: Friday, December 22, 2023 3:05 PM
To: Director_PTABDecision_Review <Director_PTABDecision_Review@uspto.gov>
Cc: Nathan Lowenstein <lowenstein@lowensteinweatherwax.com>; Robert Pistone <pistone@lowensteinweatherwax.com>; Parham Hendifar <hendifar@lowensteinweatherwax.com>; xzhou@caldwellcc.com; FPGP0138IPR@brookskushman.com
Subject: IPR2023-00763 - Request to respond in Director Review

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Honorable Director Vidal,

Neo Wireless LLC, the Patent Owner in IPR2023-00763, respectfully requests authorization to file a 15-page response to the arguments in the Petitioner’s Request for Director Review, within 30 days of yesterday’s Order granting Director Review.

On 12/21/2023, in response to the Petitioner’s Director Review Request, your Order granted Director Review of the assigned panel’s decision denying institution in this matter. Paper 19. (Similar orders were issued in two other cases involving similar issues, IPR2023-00797 and IPR2023-00962. The Petitioners’ briefing requesting Director Review differs among these cases.) Patent Owner is barred from filing a response to the arguments in the Director Review Request, unless authorized by the Director. *Revised Interim Director Review Process* § 3.E. Patent Owner

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respectfully requests that this request for authorization be entertained, and that the Patent Owner be allowed to respond to Petitioner's Request subject to the same page limit as the Request, within 30 days of the Order.

Good cause exists to consider this request and grant this authorization. The Order states that Director Review "is initiated" and "an order or decision will issue in due course" and does not discuss a briefing procedure. Petitioner has set forth arguments in its Request subject to a length limit of 15 pages, as is its right under the Revised Interim Procedure. *Id.* § 3.C. Petitioner's submissions introduce substantial new arguments and law not previously part of the record and allege the presence of issues of first impression. Allowing Patent Owner to respond will help provide "the information necessary" to correctly decide the questions at issue. *See Honeywell Int'l Inc. v. Arkema Inc.*, 939 F.3d 1345, 1349-1350 (Fed. Cir. 2019); *see also Ultratec, Inc. v. Captioncall, LLC*, 872 F.3d 1267, 1273-1275 (Fed. Cir. 2017). Furthermore, Director Review was granted based on review of the contentions in Petitioner's Request. As part of the due process of review, Patent Owner should be permitted to fairly respond to those contentions. For these reasons, authorization to respond subject to the limits set forth above is respectfully requested.

Petitioner has been asked whether it will oppose, and has not responded as of the time that it was advised that this request would be submitted.

Respectfully submitted,
Kenneth Weatherwax
Lead Counsel for Patent Owner

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