

From: [Karl Renner](#)
To: [Director PTABDecision Review](#)
Cc: xzhou@caldwellcc.com; [Karl Renner](#); [IPR15625-0037IP4](#); [Kenneth Weatherwax](#); [Neo](#)
Subject: IPR2023-00797 - Petitioners Request for Director Review - American Honda Motor Co. Inc. v. Neo Wireless, LLC.
Date: Thursday, October 3, 2024 11:28:08 PM
Attachments: [IPR2023-00797 Petitioner's Request for Rehearing by the Director.pdf](#)

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Honorable Director,

American Honda Motor Co., Inc., Petitioner Honda in IPR2023-00797 respectfully requests Director Review of the September 3, 2024 Institution Decision. To that end, concurrently herewith, Petitioner has filed the attached Petitioner's Request for Rehearing by the Director.

Director Review is a critical tool to, among other things, prevent a split of authority on questions of law implicating procedural due process rights. In this case, through Director Review, Petitioner Honda seeks review of an Institution Decision that diverges from Federal Circuit precedent and the Board's own jurisprudence, by failing to recognize a shifting burden of production that applies in disputes over a patent's priority date. *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1379 (Fed. Cir. 2015) (citing *Tech. Licensing Corp. v. Videotek, Inc.*, 545 F.3d 1316, 1329 (Fed. Cir. 2008)); *Microsoft Corp. v. Interdigital*, IPR2024-00537, Paper 10. In addressing Ground 1, the Board's denial of institution violated Petitioner Honda's procedural due process rights under this shifting burden of production by:

- (i) allocating an improper initial burden of production on Petitioner Honda as to the priority date of the '302 patent, and
- (ii) denying Petitioner Honda any opportunity to rebut Neo's evidence and argument on the same issue, which was nevertheless deemed dispositive.

These failures stem from a failed application of the shifting burden of production, and they resulted in a violation of Petitioner Honda's procedural due process rights.

Further, for Ground 2, the Board abused its discretion by rendering a decision that addressed a combination not advanced by the Honda petition, and by failing address the combination of references that was presented by the Honda petition. Specifically, the Honda petition advanced a combination that integrated into a mobile environment only a limited portion of WiMAX, namely its ranging feature. The Decision assessed instead assessed an integration of WiMAX not limited to its ranging feature, and criticized that combination for reasons relating to a broader WiMAX integration, despite evidence offered by Petitioner Honda demonstrating the viability of the more limited proposed WiMAX integration.

Accordingly, Petitioner Honda respectfully requests Director Review and reversal of the Institution

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Decision. Or, at a minimum, Petitioner Honda respectfully requests vacatur of the Institution Decision and remand to the Board for entry and consideration of Honda rebuttal briefing and evidence on the priority issue.

Respectfully,

Karl Renner

W. Karl Renner

Fish & Richardson P.C.

1000 Maine Ave., SW, Suite 1000 | Washington, D.C. 20024

Tel: (202) 626-6447 | renner@fr.com

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