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Subject:	Meta v. Jawbone, IPR2023-01083, IPR2023-01129: Petitioner"s Requests for Director Review
Date:	Thursday, February 8, 2024 11:52:27 PM
Attachments:	2024.02.08 Petitioner"s Request for Director Review - 1083.pdf 2024.02.08 Petitioner"s Request for Director Review - 1129.pdf

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Dear Director,

Petitioner Meta Platforms, Inc. ("Meta") respectfully submits this request concurrently with its Request for Director Review filed via P-TACTS.

This is a case of first impression concerning the Board's denial of institution of copycat petitions, which had been instituted previously. The denial reversed the Board's prior grants of institution of prior IPRs (filed by Amazon), which were terminated due to settlement prior to the decisions of institution in the current cases. This is counter to the PTAB's joinder policy and raises important issues of law.

Meta provides the following list of issues for which it seeks review, in order of priority. The first issue presents an abuse of discretion and is an important issue of law or policy. The second issue presents an abuse of discretion and an erroneous conclusion of law.

First, the Board's denial of Meta's petitions that copycatted earlier petitions that were granted institution is counter to joinder policy. The Board reversed its prior institution decisions based on new arguments by Patent Owner. Joinder policy promotes judicial economy, conserves resources, and preserves predictability for copycat petitions. Meta was unable to modify the copycat petitions without risking discretionary denial and denial of joinder, and Patent Owners should be subject to similar limitations. Further, the Board's denials risk encouraging gamesmanship by Patent Owners at the PTAB to settle prior IPR proceedings from which copycat petitions have been filed, so that Patent Owners can have a second bite at the apple and redo their arguments with the benefit of the prior institution decisions.

Second, the basis for the Board's denials of institution were a new and unexpected claim construction, which neither party raised nor addressed in their papers. The Board should have instituted trial so that Meta (and Patent Owner) had an adequate opportunity to respond to the Board's construction. Rather, the Board did not follow its standard practice and abused its discretion by denying institution and denying Meta an opportunity to be heard on the new claim construction. Specifically, neither party proposed a construction for the claim term "generating a first quantity by applying a calibration," yet the Board concluded the term requires (1) the first quantity must be generated only by applying a calibration, and (2) the calibration must exclude a minimum estimate. Neither requirement is supported by the record. In denying institution, the Board denied Meta the opportunity to respond to its incorrect construction.

Thank you.

Lisa Nguyen
Lead Counsel for Petitioner
Meta Platforms, Inc.

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