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To: [Director PTABDecision Review](#)
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Subject: Request For Director Review of the Institution Decision in IPR2023-01349
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Attachments: [2024-04-11 Request For Director Review for 660 Patent IPR-Filed.pdf](#)

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Honorable Director Vidal,

Petitioner Amperex Technology, Ltd. hereby notifies Patent Owner and the USPTO of the filing of the attached Request for Director Review (“Request”) of the Institution Decision in IPR2023-01349 (“Decision”). The Request is being filed pursuant to the Revised Interim Director Review Process (<https://www.uspto.gov/patents/ptab/decisions/revised-interim-directorreview-process>). A copy of the Request is attached.

The Request presents the following issue in which the Board abused its discretion:

1. Whether the Board failed to perform the proper obviousness inquiry under *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007). In particular, whether the Decision contravenes the Director’s recent “Updated Guidance for Making a Proper Determination of Obviousness” (the “Notice”), which “serves as a reminder for USPTO personnel of the flexible approach to obviousness under *KSR* and Federal Circuit precedent” and emphasizes that Federal Circuit case law since *KSR* “follows the mandate of the Supreme Court to understand the prior art—including combinations of the prior art—in a flexible manner that credits the common sense and common knowledge of a PHOSITA.” Notice, 89 Fed. Reg. 14449 (Feb. 27, 2024).

The Decision’s erroneous application of obviousness law include, but are not limited to:

- The Decision incorrectly required that proposed options in the Petition be the “best” option rather than a “suitable” option.
- The Decision admits that rock-salt forms of MgO and LiF were known in the art and compatible with the selected references, and yet ignored that concession in finding non-obviousness.
- The Decision applied a rigid analysis that improperly ignored evidence from the Petition and Declaration that Blangero (the primary prior-art reference) disclosed a rock-salt form of MgO.
- The Decision’s rigid analysis also improperly ignored evidence from the Petition and Declaration that Blangero would have suggested to a POSITA to use MgO in rock-salt

form.

This issue further implicates an important issue of law or policy—namely, whether the obviousness standard the Board applied in IPR2023-01349 is contrary to Supreme Court precedent, Federal Circuit precedent, and the recently-issued Director’s Notice.

Respectfully submitted,

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