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Subject: Request For Director Review of the Institution Decision in IPR2023-01393
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Attachments: [2024.03.28 PETITIONER'S REQUEST FOR DIRECTOR REVIEW.pdf](#)

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Director Vidal,

Petitioner, TP-Link, hereby notifies Patent Owner and the USPTO of the filing of the attached Request For Director Review ("Request") of the Institution Decision in IPR2023-01393 ("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>).

The Request seeks review of two issues (ranked below):

1. The first issue is the Board's denial of Petitioner's request to submit for the Board's consideration prior to rendering its Decision a short reply presenting non-confidential post-Petition deposition testimony from Patent Owner's technical expert in the parties' parallel ITC proceeding (Investigation No. 337-TA-1361), which is inconsistent with the positions Patent Owner and its separate IPR expert took in Patent Owner's Preliminary Response ("POPR") concerning the prior-art presented in the Petition grounds and the only claim limitation in dispute, "at the same time." Petitioner believes the Board's preclusion of this highly relevant, non-confidential deposition testimony was an abuse of discretion. It also implicates an important policy issue: patent owners should be held in PTAB proceedings to the inconsistent positions taken by their litigation experts in parallel litigation proceedings.
2. The second issue is the Board's failure to address and resolve a claim-construction dispute concerning the "at the same time" limitation that is the subject of the inconsistent deposition testimony discussed above. Petitioner became aware of this dispute after reading the POPR, and thereafter notified the Board that the POPR raised new claim construction dispute. The Board denied Petitioner's request to submit a short reply on this issue, but then in the Decision did not acknowledge the dispute or render a construction of "at the same time." Petitioner believes the Board's failure to construe "at the same time" in these circumstances was an abuse of discretion.

Petitioner believes that the Decision raises an issue of first impression, namely whether the Board's denial of Petitioner's request to supplement the record due to a purported Protective Order issue was an abuse of discretion. In order for the Director to have a more complete record to evaluate this issue, Petitioner requests leave to file the deposition transcript and the ITC Protective Order as new exhibits. Patent Owner confirmed to Petitioner on March 27, 2024 that the deposition transcript does not contain any of its confidential information, resolving the confidentiality issues.

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