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Subject: IPR2024-00319 Request for Director Review
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Attachments: [IPR2024-00319 Request for Director Review.pdf](#)

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Dear Honorable Director Vidal,

I am lead counsel for Petitioners Samsung Electronics America, Inc. and Samsung Electronics Co., Ltd. in IPR2024-00319. As required by the Revised Interim Director Review Process, Petitioners notify the Director that Petitioners have filed a Request for Director Review of the Board's decision not to institute. Pursuant to the *Interim Guidance*, §3 ¶15, Petitioner notifies the Director that it believes this request presents an issue of first impression. A courtesy copy of the request is attached.

Petitioners respectfully submit that review is warranted because the Panel's decision implicates an important issue of law and policy on which there is a split of authority. The Panel in this case adopted a ruling from a six-year old decision that is contrary to both current Board practice and recent PTAB authority. Specifically, the ID rejects the Board's current practice of allowing petitioners to rely on patent owner's litigation claim constructions. The ID would allow a petitioner to do so only if it concedes those constructions are correct. This is contrary to both current Board practice and recent decisions that have held precisely the opposite, that Petitioners **are** permitted to rely on Patent Owner's litigation constructions, **even if** Petitioner believes they are incorrect. Petitioners respectfully submit that the Board's current practice and more recent line of authority are correct, and that allowing petitioners to rely on a patent owner's broad infringement positions would prevent patent owners from applying a broad construction in litigation for purposes of infringement while simultaneously arguing for denial when a petitioner attempts to apply those same constructions in an IPR. Given the important issue of law and policy presented here, the *de novo* standard of review should be applied. Thus, this issue is ripe for the Director's definitive guidance to resolve this panel split.

Petitioners also respectfully submit that Review is warranted because the Board abused its discretion as: (1) the Board's decision is manifestly unfair to Petitioners and inconsistent with the bulk of recent Board decisions as well as Congressional intent and the policy goals for *inter partes* review, and (2) the Board had no basis to deny institution on the merits without first construing the scope of the claims and analyzing the prior art.

Petitioners respectfully request that the decision be vacated, and this IPR instituted.

Respectfully submitted,

IPR2024-00319
Ex. 3100

James Glass
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