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| **From:** | Kenneth Weatherwax |
| **To:** | Director_PTABDecision_Review |
| **Cc:** | Anderson, Kevin; McPherson, Patrick D.; Nathan Lowenstein; Dennis Courtney; Robert Pistone |
| **Subject:** | IPR2024-00476: Notification Email for Request for Director Review of Decision Granting Institution |
| **Date:** | Wednesday, August 21, 2024 11:57:24 PM |

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To the Honorable Director:

ICPillar LLC, the patent owner in IPR2024-00476, hereby notifies the Director in accordance with Section 3.A. of the Revised Interim Director Review Guidance that it filed today a timely request for Director review of the August 7, 2024 decision to institute trial in this case.

List of the Issues

The Request for Director Review identifies two issues raised by the decision granting institution that merit Director Review, as explained in the Request.

1. In the decision granting institution, the assigned panel abused the discretion to deny institution provided by the AIA by misinterpreting the Director's 2022 guidance on discretionary denials in AIA post grant proceedings with parallel District Court litigation (*i.e.*, the Director's June 21, 2022 Memorandum and 2022 precedential *NXP* decision) as mandating that a so-called "*Sotera*" stipulation filed before institution always moots the *Fintiv* factors and forecloses discretionary denial regardless of the other facts supporting discretionary denial, even where the *Fintiv* factors otherwise all support denial, and even when the prejudicial circumstances of the stipulation's belated submission support denial.

2. Furthermore, the decision's application of the *Fintiv* inquiry and the Director's 2022 guidance raise important issue of law and policy, because (a) many other panels have similarly abused the statutory discretion to deny institution based on this misinterpretation of the 2022 guidance; and (b) the 2022 guidance does not satisfactorily reflect current law, under which *Sotera* stipulations, and indeed the other *Fintiv* factor 4 stipulations addressed by the guidance, have no potential effect on the grounds that the petitioner may pursue after the IPR concludes, as they formerly did prior to the 2022 change of law brought about by *California Instititute of Technology v. Broadcom Ltd.*, 25 F.4th 976 (Fed. Cir. 2022), *cert. denied*, 143 S. Ct. 2658 (2023).

Issues Of First Impression

Patent Owner respectfully notes that it believes that each issue in the request for Director Review presents an issue of first impression.

This is one of two concurrent, substantially similar requests for review, of two materially similar

decisions to institute entered in IPR2024-00476 and -00566.

For the reasons above and explained in the filed Request, review by the Director is respectfully requested.

Respectfully submitted,

Lead Counsel for Patent Owner

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