From:	Paquette, Ian G.
To:	Director_PTABDecision_Review
Cc:	Gasparo, Frank M.; Sheng, Philip T.; Williams, Eliot D.; Dhanani, Ali; Carter, Thomas; Guy, Hop; DishvMindGeek
Subject:	IPR2024-00512, -00513, -00514, -00515, -00516, -00517, -00518, -00519 -- Requests for Director Review
Date:	Friday, September 6, 2024 5:51:28 PM
Attachments:	2024-09-06 IPR2024-00515 Petitioner"s Request for Director Review.pdf 2024-09-06 IPR2024-00516 Petitioner"s Request for Director Review.pdf 2024-09-06 IPR2024-00517 Petitioner"s Request for Director Review.pdf 2024-09-06 IPR2024-00518 Petitioner"s Request for Director Review.pdf 2024-09-06 IPR2024-00519 Petitioner"s Request for Director Review.pdf 2024-09-06 IPR2024-00512 Petitioner"s Request for Director Review.pdf 2024-09-06 IPR2024-00513 Petitioner"s Request for Director Review.pdf 2024-09-06 IPR2024-00514 Petitioner"s Request for Director Review.pdf 2024-09-06 IPR2024-00515 Petitioner"s Request for Director Review.pdf

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Dear Honorable Director,

Petitioner in IPR2024-00512, -00513, -00514, -00515, -00516, -00517, -00518, and -00519 respectfully notifies the Parties and the Director of its filing of the attached Requests for Director Review (the "Requests") of the Board's decisions to discretionarily deny institution on August 7, 2024 (IPR2024-00515, -00516, and -00517) and August 13, 2024 (IPR2024-00512, -00513, -00514, -00518, and -00519), pursuant to the Revised Interim Director Review Process (https://www.uspto.gov/patents/ptab/decisions/revised-interim-director-review-process).

The Requests raise the following issues in order of priority:

First, the Requests seek Director Review of the Board's decisions in part based on an important issue of law and policy: whether the Board is required to consider the merits of a Petition as part of the General Plastic analysis. Based on the Board's decision in *General Plastic*, the Consolidated Trial Practice Guide, and the Director's Guidance in her June 21, 2022 Memorandum on discretionary denials under the *Fintiv* factors, Petitioner respectfully submits that it is error to treat the *General Plastic* factors alone as dispositive—as the Board did here—and not consider the merits.

Second, the Requests seek Director Review based on multiple errors in material fact and conclusions law while weighing the *General Plastic* factors, including:

1. that the Board required Petitioner to submit testimony concerning its own search methodologies for the Board to determine whether Petitioner "should have known of" the primary reference;
2. that nearly 20 years of fruitless search efforts of others do not bear on whether Petitioner "should have known of" the primary reference;
3. that receiving Patent Owner's Preliminary Responses 13 days before filing the instant petitions, without any road-mapping, weighs against institution; and
4. that there is no "substantive reason why Petitioner would have been compelled to file an early IPR petition to respond to [a] PI motion in district court" that was filed the same day Petitioner was served with the district court complaint.

Petitioner respectfully submits that absent these errors, the Board would not have denied institution. Rather, it would have performed "a balanced assessment of all relevant circumstances in the case, including the merits." *See* Consolidated Trial Practice Guide at 58.

Petitioner thanks the Director for her consideration.

Respectfully submitted,

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