

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TAIWAN SEMICONDUCTOR MANUFACTURING COMPANY LTD.,
Petitioner,

v.

ADVANCED INTEGRATED CIRCUIT PROCESS LLC,
Patent Owner.

IPR2025-00828
U.S. Patent No. 7,579,227

PETITIONER'S DIRECTOR REVIEW REQUEST

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U.S. Patent & Trademark Office
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I. INTRODUCTION

The Director Discretionary Denial Decision (Paper-17; “Decision”) should be reversed because it fails to consider important issues of compelling public interest, is based on erroneous conclusions of law and clearly erroneous findings of material fact, and reflects significant inconsistency with discretionary denial decisions in other Board proceedings. IPR is appropriate because of at least (1) the significant national security and policy interests put at risk by the challenged patents, (2) the settled expectations of Petitioner and its customers versus any minimal “settled expectations” of the new patent owner, Advanced Integrated Circuits Process (“AICP”), asserting the patent for the first time just two days after acquiring it, (3) the lack of any overlap between the IPR and District Court proceedings due to the extraordinary stipulation offered by TSMC, (4) the Examiner’s material errors, and (5) Applicant’s unfair dealings with the Office during prosecution.

Additionally, new and changed facts require reassessment of the Director’s holistic assessment. *See Canadian Solar Inc. v. Solara Corp.*, IPR2025-00095, Paper 17, 7-8 (Sept. 24, 2021) (reversing denial “in light of the changed facts” and noting PTAB “possess[es] the inherent authority to reconsider [its] Decision Denying Institution”). First, after the Decision, AICP produced a “Patent Purchase Agreement” under seal in IPR2025-01302 to address an expected argument (also made here) that “AICP lacks settled expectations.” IPR2025-01302, Paper 9, 19-20. Given the

positions taken by AICP in its denial briefs, this agreement should have been produced here as Routine Discovery, so that TSMC could pursue discovery (as it is in IPR2025-01302) and advance arguments on commercialization, marking, and licensing. AICP's tactics highlight the lack of evidence of commercialization, licensing, or marking here weigh in favor of Petitioner's settled expectations and outweigh AICP's settled expectations. Second, the uncertain duration of the current U.S. government shutdown may impact the trial date, requiring reassessment of *Fintiv* factor 2's impact on the denial determination. (See, e.g., <https://www.uscourts.gov/data-news/2025/10/01/judiciary-still-operating-shutdown-starts> (indicating fees available to pay for operations until Friday, October 17)). Based on the above, TSMC respectfully requests reconsideration of the Decision.

First, semiconductors are the enablers that unleash innovation and drive the global economy. Petitioner, Taiwan Semiconductor Manufacturing Corporation Ltd. ("TSMC"), is the world's largest semiconductor manufacturer, reportedly providing around 90% of the world's most advanced chips. About 70% of its revenues are from U.S.-headquartered customers. AICP's allegations target TSMC-made chips that are essential for U.S. national security and to the health and wellbeing of the U.S. public and industry—they underlie advanced smartphones, communication networking, autonomous vehicles, robotics, artificial intelligence, and military/defense applications. Given this extraordinarily broad impact, it is difficult to imagine a case with

more compelling public interest. As Secretary Lutnick explained, “national security” is the “key” reason to “bring semiconductors home,” a goal of President Trump’s agenda: “Our national security depends on bringing our supply chain home. This is especially true when we are dealing with critical technology, computer chips that are not only important to our civilian world ... but also to our military.” (TSMC-1111, 44 of 128.) TSMC has committed \$165 billion to building manufacturing facilities in Arizona to fulfill this national security agenda. (TSMC-1119.)

AICP is asserting U.S. Patent Nos. 7,579,227 (“’227 patent”), 7,923,764; 8,198,686; 8,253,180; 8,587,076; 8,796,779; and 8,907,425 against Petitioner TSMC, seeking to enjoin all semiconductors made using TSMC’s 28nm-3nm process node technologies. (*See* Ex-2001, ¶¶29, 67, 70, 79, 97, 115, 129, 143, 163, 182.) It asserts the ’227 patent to enjoin all products made using TSMC’s 28nm HP (High Performance) technology (*id.*, ¶¶63-67)—the backbone of a wide range of “military-grade” devices used by the Department of War. AICP’s baseless litigation campaign threatens vital U.S. economic and national security interests. The Office should ensure patents asserted against this critical technology were correctly issued.

Second, a balanced settled-expectations analysis weighs **against** denial. TSMC and its customers had settled expectations this patent would not be enforced in view of the accused technologies predating the patent, and the prior owner’s lengthy inaction. AICP did not exist until June 2024, more than 15 years after the

accused technology was first announced. (TSMC-1116). It acquired the '227 patent only two days before asserting it against TSMC. And AICP must have expected to face invalidity challenges when it initiated litigation.

Third, TSMC proffered an extraordinarily broad stipulation removing all overlap between the IPR and parallel litigation by foregoing all Section 102 and 103 prior art challenges upon institution. United Microelectronics Corporation (“UMC”), which seeks to join this IPR, proffered a reciprocal stipulation. The Decision’s reliance on the decision in IPR2025-00682 and IPR2025-00683 finding that there would be “significant duplication of effort, additional expense for the parties, and a risk of inconsistent decisions” is clearly erroneous in view of these stipulations. *See, e.g., Taiwan Semiconductor Mfg. Co. v. Advanced Integrated Circuit Process LLC*, IPR2025-00682, Paper-17, 2 (Director Aug. 14, 2025).

Finally, as TSMC’s petition and discretionary denial opposition established and AICP fails to substantively contest, this patent issued as a result of material errors by the Patent Office and Applicant’s unfair dealings during prosecution.

The adjudication of whether these asserted patents were correctly issued has national economic and security consequences, and the Administration should make that determination. The Board is best suited to review the patentability of the '227 patent. There is no dispute that the underlying semiconductor technology is complex or that the technically trained PTAB judges are more capable than a lay jury of

assessing validity. Further, the district court case involves seven patents related to different aspects of semiconductor fabrication and design, and the PTAB can provide significant efficiencies. TSMC respectfully requests reconsideration of the Decision.

II. ARGUMENT

A. Compelling economic, national security, and other public interest considerations all warrant reconsideration and referral of the petition

The TSMC process technologies implicated by AICP’s litigation campaign include all products made using TSMC’s 28nm-3nm process technologies. (*See* EX-2001, ¶¶67, 70, 79, 97, 115, 129, 143, 163, 182.) These nodes are used to manufacture thousands of unique customer-designed semiconductor devices, accounting for 84% of TSMC’s annual revenue—the bulk of which are purchased by companies headquartered or with a substantial presence in the U.S. About 70% of TSMC’s revenues are from customers headquartered in the U.S., including AMD, Amazon, Apple, Broadcom, Google, Intel, Marvell, Meta, Microsoft, NVIDIA, Qualcomm, Tesla, and Xilinx. Indeed, AICP itself has recognized that “nationwide companies headquartered in the United States” and foreign companies with “substantial operations in the United States” rely on accused TSMC products for their U.S. operations and that TSMC’s accused 28nm chips currently play a significant and increasing role in meeting the needs of TSMC’s customers, as do TSMC’s newer and more advanced chips such as the accused 5nm products. (*See* EX-2001, ¶¶12, 17, 82-84, 166-168; TSMC-1135, 5-6; TSMC-1126, 2; TSMC-1130, 1-2.) Stripping these

companies of access to TSMC's accused process nodes and the accused products based on patents that should never have issued would be devastating, crippling leading U.S. semiconductor companies and the U.S. economy, and undermining the Administration's goals for U.S. semiconductor leadership. (Paper-12, 33-39.)

For national security, TSMC makes semiconductors for a wide range of "military-grade" devices used by the Department of War. TSMC offers technologies ranging from 28nm to 3nm, for applications including avionics, missile guidance, radar systems, radar electronic warfare, radiation-hardened systems, power systems, imaging for defense and aerospace, and secure communications. The U.S. Air Force estimates "90% of its precision-guided munitions rely on" TSMC-made chips; a similar calculus applies to warships, satellites, and communication systems. (TSMC-1093, 4.) AICP asserts the '227 patent against military-grade products manufactured by TSMC—e.g., defense-grade FPGA chips from AMD/Xilinx used for military avionics, missiles & munitions, and electronic warfare, like the F-35 Lightning II fighter jet, considered the most advanced, versatile U.S. military aircraft.

TSMC is the undisputed world leader in the manufacture of FPGAs and military-grade chips that are durable, reliable, and radiation- and heat-tolerant. (*See* TSMC-1136, 2-3; TSMC-1147, 2; TSMC-1166, 655.) Semiconductors made with

TSMC’s accused 28nm nodes form the backbone of these chips.¹ (*See, e.g.*, TSMC-1093, 3 (“The Pentagon has even begun stockpiling legacy chips—because a 28nm processor you can trust is more valuable than a 5nm chip you can’t.”); TSMC-1153, 2-4, 7 (AMD’s “[l]arge portfolio of defense-grade devices” for FPGA chips, with “High-Density, Low-Power 28 nm Technology”); TSMC-1166, 181.) Indeed, U.S. reliance on TSMC process technologies is a matter of Congressional record. (*See* TSMC-1166, 181, 652; TSMC-1165, 13-15); *see also* 136 Stat. 1371 (CHIPS Act of 2022) §102. This was an important factor underlying U.S. government efforts to incentivize TSMC to move production to the U.S., including for military devices. (TSMC-1135, 5-6; TSMC-1166, 652; TSMC-1165, 13-15.) And it was the impetus for the CHIPS Act (136 Stat. 1371). (*See* TSMC-1093, 4.)

AICP is relying on erroneously-issued patents and the inherent uncertainty in lay jury patent decisions to seek an injunction against an expansive set of the same critical semiconductor technologies that President Trump and Congress sought to protect. The America Invents Act was designed to prevent precisely such scenarios.

¹ Any hypothetical 28 USC §1498(a) defense could not ensure an uninterrupted semiconductor supply for the U.S. government. TSMC has a multi-level supply chain and no direct supply relationship with the U.S. government, and could not identify all wafers used by the U.S. government to exclude from an injunction.

The Office has an interest in ensuring that the patents asserted against this critical technology were correctly granted, and is uniquely positioned to decide invalidity. This Office's mission and U.S. national security and economic interests uniformly point to one conclusion: this Office should review the merits of TSMC's petition.

B. Petitioner's "Settled Expectations" Heavily Outweigh Whatever "Settled Expectations" AICP Might Have Had

A settled expectations analysis that focuses only on the expectations of AICP, without regard for the expectations of TSMC, its customers, and the public is not balanced or fair. The settled expectations of TSMC, its customers, and the public heavily outweigh AICP's expectations. Indeed, prior decisions gave significant weight to the petitioner's economic activities that developed and expanded during an extended period of non-assertion after the patent issued.

1. *Petitioner's Settled Expectations Favor Referral*

TSMC commercialized the accused technology—its 28nm HP process—before the '227 patent even issued. For well over a decade, no one asserted the '227 patent against this technology. TSMC's and its customers' settled expectations during this lengthy period of inactivity weigh heavily against discretionary denial.

The accused TSMC 28nm HP process technology was first announced for commercialization in September 2008 and went into production soon after with volume production by at least October 2011. (TSMC-1116; TSMC-1117.) This commercialization was soon after the '227 patent issued in August 2009, and more than

a decade before AICP was formed in June 2024, acquired the '227 patent in July 2024, and sued TSMC without advance notice² in August 2024. (TSMC-1001 (45); TSMC-1088; TSMC-1089, 3-4; Ex-2009, 5 (Dkt. 1).) Meanwhile during this 13 plus years of inaction by the prior patent owner, TSMC invested billions of dollars on fabrication facilities to continuously manufacture millions of wafers per year using the accused 28nm technology, and its customers similarly invested significant resources into designs based on that technology. The '227 patent was enforced for the first time only after AICP acquired it nearly 15 years after issuance. TSMC's continuous manufacturing of accused chips (and extensive investments), soon after the '227 patent issued and with no enforcement after, show that TSMC—and customers relying on its accused technology—had settled expectations the patent would not apply. The Decision did not give these interests due consideration. *See Intel Corp. v. Proxense LLC*, IPR2025-00327, Paper-12, 2-3 (June 26, 2025).

2. AICP Has No Legitimate Settled Expectations

Contrary to the Decision, AICP had no “strong settled expectations.” AICP acquired the '227 patent in 2024, holding it for just two days before suing TSMC. Those two days cannot support any claim of “settled” expectations. As the Director has consistently found, less than a year is not long enough for a party to develop

² AICP does not allege TSMC was aware of the issued '227 patent itself.

“settled expectations.” *See, e.g., Cambridge Indus. USA, INC. v. Applied Optoelectronics, Inc.*, IPR2025-434, Paper-11, 2-3 (June 26, 2025).

It cannot seriously be argued AICP had settled expectations merely because the '227 patent issued in 2009. What matters is AICP's expectations for its 2024 investment: when AICP acquired the patent in 2024, it had never been litigated, and AICP surely understood that asserting it for the first time would invite invalidity challenges. *See Anaheim Gardens, L.P. v. United States*, 953 F.3d 1344, 1350-51 (Fed. Cir. 2020) (“timing” of a property purchase and “knowledge of the purchaser” are relevant in determining whether purchaser had reasonable investment-backed expectations). Nor could the prior owners have had “settled expectations” of enforceability, given their inaction. The Decision is inconsistent with the Director's finding in *Shenzhen Tuozhu Technology*, where years of non-enforcement weighed against “settled expectations” of enforceability. *See* IPR2025-00438, Paper-10, 3 (July 17, 2025) (referring partly because challenged patents, in force for approximately 10 years, had “never been commercialized, asserted, marked, licensed, or otherwise applied” in petitioner's “technology space”).

Moreover, as the Federal Circuit has held, patent owners know and expect that their patents may be subject to post-issuance reconsideration proceedings by the PTO, including IPRs. *See Celgene Corp. v. Peter*, 931 F.3d 1342, 1361-63 (Fed. Cir. 2019). The PTO intervened in *Celgene*, and advanced the position patent owners

lack a settled expectation that their patents will not be subject to post-issuance challenges, including IPRs. *See* Intervenor Brief, 42-43, *Celgene Corp. v. Iancu*, No. 2018-1167 (Fed. Cir. Aug. 30, 2018) (Doc. No. 43). Having prevailed by making this argument in *Celgene*, the PTO is estopped from taking the opposite position in later proceedings, including this one. *See Trs. in Bankr. of N. Am. Rubber Thread Co. v. United States*, 593 F.3d 1346, 1353 (Fed. Cir. 2010).

The settled expectations of TSMC, its customers, and the public, spanning over a decade, cannot be overridden merely based on AICP's acquisition of the '227 patent. AICP acquired it subject to prior third-party expectations, which were reasonable in view of the prior owner's inaction. Other analysis of a property owner's extended periods of inaction routinely finds the equities favor innocent actors such as TSMC. *See* Restatement (First) of Prop. § 459 cmt. a (1993) ("Through lapse of time old rights become obscure. A long continued use raises reasonable expectations of its continuance."); *Anaheim Gardens*, 953 F.3d at 1350-51; *Nordlinger v. Hahn*, 505 U.S. 1, 12-13 (1992) ("[A]n existing owner rationally may be thought to have vested expectations in his property or home that are more deserving of protection than the anticipatory expectations of a new owner at the point of purchase.").

C. The Decision Did Not Consider Material Errors, Applicant's Admission of Relevant Prior Art During Foreign Prosecution, or Applicant's Unfair Dealings During U.S. Prosecution, All Favoring Referral

A holistic assessment of **all evidence and arguments**, including Applicant's

acquiescence to the determination in two foreign jurisdictions that limitations also present in U.S. claim 1 were unpatentable and Applicant's unfair dealings by selectively concealing material information during U.S. prosecution should warrant reconsideration and referral. The Office should use its resources to correct the Examiner's error. See *Taiwan Semiconductor Mfg. Co. Ltd. v. Marlin Semiconductor Ltd.*, IPR2025-00847, Paper-11, 4 (Sept. 3, 2025) ("Although the challenged patent has been in force for fifteen years, Petitioner appears to show a material error by the Office, and it is an appropriate use of Office resources to review the potential error."); *Microsoft Corp. v. Partec Cluster Competence Ctr. GmbH*, IPR2025-00318, Paper-9, 3 (June 12, 2025) ("Petitioner appears to show a material error by the Office and it is an appropriate use of Office resources to review the potential error").

There can be no dispute the Office erred in issuing the '227 patent. The Examiner allowed the '227 patent, determining that limitations [1E]-[1H] directed to the first/second sidewalls and the relative thickness of the gate insulating film under these sidewalls were not found in the prior art. (TSMC-1002, 164.) However, two different foreign examiners determined these limitations **were disclosed** by at least three separate prior art references, JP-Ono, Kajiyama, and JP-Matsumoto. Applicant **acquiesced** to these determinations by amending the foreign claims to be narrower than U.S. claim 1. JP-Ono, Kajiyama, and JP-Matsumoto are stronger than the "striking similar" prior art sufficient to establish error in *Anthony* and *Microsoft* and justify

referral to the merits panel. *See* IPR2025-00559, Paper-9 (May 27, 2025); IPR2025-00253, Paper-13 (June 25, 2025); *see also, e.g.*, Paper-12, 10-11, 23-26.

Moreover, the Decision does not consider Applicant's unfair dealings during prosecution, additionally justifying referral. *See Tessell, Inc. v. Nutanix, Inc.*, IPR2025-00322, Paper-14, 2 (June 12, 2025) (finding Office "may consider unfair dealings as a factor" in discretionary denial). Here, Applicant violated its duty of candor to the Office by concealing material information from CN prosecution.

JP-Ono. The Examiner erred by failing to identify the relevant teachings of JP-Ono, cited during U.S. prosecution. Applicant's Chinese counterpart application was filed with substantially identical claims as the '227 patent—e.g., as-filed CN dependent claim 2 is the same as issued '227 claim 1. (*Compare* TSMC-1156, 2-3, 7-8 *with* TSMC-1002, 44-48.) The CN Examiner rejected CN claim 2 as unpatentable over JP-Ono. In response, Applicant amended CN claim 1 to further include the limitations of claim 2 (first/second sidewalls and gate insulating film thickness under first sidewall is smaller than under the gate electrode) **and** the thickness of the gate insulating film under the second sidewall is smaller than under the first, **making it narrower than '227 patent-claim 1.** (TSMC-1156, 18-24). That is, Applicant determined it was necessary to add the narrower thickness limitation to the independent claim to overcome JP-Ono. The relevance of JP-Ono to the U.S. claims was further confirmed by the JP Examiner's rejection of the as-filed JP independent claim

encompassing U.S. claim 1 based on JP-Ono. Applicant acquiesced to the JP-Examiner's rejection over JP-Ono and later over Kajiyama by twice narrowing the JP independent claim, such that the finally approved JP claim included the same thickness limitations added to CN claim 1 to obtain allowance. (TSMC-1005, 4-7, 14-16, 18.)

Applicant also engaged in unfair dealings by selectively concealing material information regarding the CN prosecution from the U.S. Examiner. The CN rejection and Applicant's acquiescing amendments occurred while the U.S. application was pending. (*See* TSMC-1156, 2-3, 18-26.) Applicant told the U.S. Examiner it had provided an "English Translation" of that CN Office Action and that "the relevance" of the Chinese Office Action was "discussed therein" (TSMC-1002, 158):

References CN 1610129, JP 2004-356576 and JP 2005-064190 were cited in a Chinese Office Action and the relevance is discussed therein. A copy of the Chinese Office Action, together with an English language version thereof, is attached for the Examiner's information.
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However, Applicant provided only a partial translation, excluding the CN Examiner's mapping of JP-Ono's disclosures to the claims—including the key limitations leading to U.S. allowance—and entirely withheld its own acquiescing amendment. (TSMC-1156, 2-3, 18-26; TSMC-1157.) Applicant's selective, incomplete, and misleadingly characterized disclosures violated its duty of candor. (Paper-12, 26; MPEP §§2001.04, 2001.06.) The JP Examiner's rejections and Applicant's acquiescence post-date the issuance of the '227 patent, but further confirm the U.S. claims' invalidity, the Examiner's error, and Applicant's unfair dealings.

Kajiyama and Matsumoto: The Examiner further erred by failing to identify either Kajiyama, presented in the IPR as a §102 ground, or Matsumoto, presented as a single-reference §103 ground. (*See* Paper-2, 19-35 (Matsumoto), 53-61 (Kajiyama); Paper-12, 13 (showing side-by-side figures.) The JP Examiner determined Kajiyama and JP-Matsumoto (having an overlapping disclosure to Matsumoto) each discloses the limitations of a JP claim nearly identical to issued U.S. claim 1. Applicant acquiesced to this determination, narrowing the JP claim to include the same thickness limitation as added to the CN claim (not present in the U.S. claim 1). Applicant's acquiescence in both CN and JP prosecution that claims of nearly identical scope to U.S. claim 1 were unpatentable is incontrovertible evidence the U.S. Examiner erred when issuing the U.S. claims. (*See* Paper-12, 7-11, 23-26; Paper-14, 1-3; TSMC-1156, 2-3, 18-24; TSMC-1005, 4-7, 14-16, 18 (acquiescing amendment).)

The Examiner's clear and explicit material error and Applicant's unfair dealings should warrant reconsideration and referral.

III. CONCLUSION

Discretionary denial here unnecessarily risks essential U.S. economic and national security interests, and was based on an abuse of discretion and erroneous findings of material fact. Circumstances have also changed due to the government shutdown and AICP's belated document production. Petitioner respectfully requests the Director withdraw the Discretionary Denial and refer the matter to a panel.

Date: October 3, 2025

Respectfully submitted,

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The undersigned hereby certifies that the foregoing **Petitioner's Director Review Request** was served on October 3, 2025, via e-mail directed to counsel of record for Patent Owner at the following:

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