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

Case IPR2025-00831
Patent 8,587,076

AUTHORIZED RESPONSE TO DIRECTOR REVIEW REQUEST

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Patent Owner AICP respectfully requests that the Director reject petitioner TSMC's Request for Director Review ("Request").

I. INTRODUCTION

TSMC's request that ***the Director's Office*** find that ***its own decision*** was an "abuse of discretion," Request at 15, is wrong. TSMC's burden here is Herculean and the Request falls far short. "The Director is free . . . to determine that for reasons of administrative efficiency an IPR will not be instituted," *Mylan Laboratories Ltd. v. Janssen Pharmaceutica, N.V.*, 989 F.3d 1375, 1382 (Fed. Cir. 2021). Here, the Director found, ***and TSMC does <u>not</u> challenge as clearly erroneous***, that TSMC "does not provide persuasive reasoning why an *inter partes* review is an appropriate use of Board resources." Paper 17 ("Decision") at 2 (incorporating by reference IPR2025-00682, Paper 17 at 2-3). TSMC's failure to challenge this factual finding on that efficiency issue as clearly erroneous, standing alone, is fatal to its Request.

Apparently cognizant that its abuse of discretion theories lack merit, TSMC resorts in desperation to arguing "new and changed facts." These arguments are frivolous. As discussed *infra*, TSMC's theory that the government shutdown "requir[es] reassessment of Fintiv factor 2" is built on layers of unfounded speculation and, if true, would require the Director to re-review numerous discretionary denial decisions. TSMC's tagalong theory that AICP should have produced the Patent Purchase Agreement ("PPA") earlier is flawed for many

reasons: (1) TSMC cannot identify any "inconsisten[cy]," 37 CFR § 42.51(b)(1)(iii), between the PPA and AICP's positions that would constitute "routine discovery"; (2) the PPA fully supports AICP's positions and the Director's finding that AICP has "strong settled expectations"; and (3) the PPA was produced in the Lawsuit in March and TSMC could have sought discovery long ago.

Like its other arguments, TSMC's "abuse of discretion" theories are deeply flawed. Rather than taking direct aim at the Director's findings and reasoning, TSMC instead parrots its prior rejected arguments, ignores settled precedent contrary to its position, and adds a bevy of new unsubstantiated factual assertions. The Director determined "based on a holistic assessment of all of the evidence and arguments presented" that discretionary denial is appropriate. Decision at 3. TSMC's disagreement with the Director does not establish an abuse of discretion; indeed, far from it, the Director correctly applied legal precedent to the undisputed facts.

First, the Director's rejection of TSMC's national security argument was not an abuse of discretion. The Director has repeatedly told TSMC that it must prove a close nexus between national security and ***both*** (1) the "particular products" accused in the Lawsuit ***and*** (2) the "specific patents challenged" in the IPRs. Despite this, TSMC has neither identified any specific military product (much less how that product supposedly impacts national security) nor attempted to explain how the '076 patent is specifically directed toward military products. Moreover, TSMC's concern

over national security is feigned: TSMC's alleged harm to national security is the supposed risk that TSMC's unidentified military products might be "enjoined," but TSMC ignores that AICP has already agreed that it "will ***not*** seek injunctive relief." Paper 13 at 5. AICP's waiver of injunctive remedies eviscerates TSMC's argument.

Second, the Director's finding that AICP has strong settled expectations was not an abuse of discretion; to the contrary, it was correct. The Director consistently assesses patent owners' settled expectations based on how long the patent has been "in force," not how long the current assignee has owned it. That makes sense, partly because patent challenges are public record and thus the public (including subsequent assignees) have constructive notice of any challenges to the relevant patent. It was not an abuse of discretion to consistently apply that precedent. And it was likewise not an abuse of discretion to reject TSMC's argument that it has a settled expectation to continue infringing the '076 patent without paying royalties. Although the Director has identified limited circumstances in which a petitioner may assert its own settled expectations, TSMC did not (and cannot) satisfy that precedent.

Third, the Director properly found that institution would likely lead to duplication, wasted expenses and inconsistent results. TSMC's Request does not dispute that TSMC's prospects for a stay were remote. Instead, TSMC relies on an untimely stipulation it filed only ***after*** AICP exposed TSMC's shenanigans. Under the circumstances, the Director was entitled to disregard that stipulation as AICP

requested. Moreover, as AICP argued (and TSMC did not dispute), the foreign discovery relevant to whether AICP can "swear behind" some of TSMC's references and thereby eliminate some of the Petition's grounds is available in the district court (through letters rogatory) but not through the Board's subpoena power. This undisputed fact gives rise to the likelihood of duplication and inconsistent results because, irrespective of whether IPR proceedings were instituted, AICP would need to continue litigating validity in the district court to secure that discovery.

Fourth, TSMC's examiner error and candor arguments are frivolous. AICP explained why TSMC's examiner error theory is wrong, Paper 13 at 4, and the Director found that TSMC's "argument that the Office erred is insufficient to overcome the considerations favoring discretionary denial," Decision at 2. Rather than explain any alleged Director error, TSMC parrots its rejected theory. Request at 13-15. Re-parroting rejected arguments does not prove an abuse of discretion. TSMC's lack of candor argument has been expressly rejected by the Federal Circuit.

II. TSMC FACES AN EXTRAORDINARILY HIGH LEGAL BURDEN

TSMC's legal burden here is Herculean. The Director has "***complete discretion*** to decide not to institute review." *St. Regis Mohawk Tribe v. Mylan Pharms., Inc.*, 896 F.3d 1322, 1327 (Fed. Cir. 2018) (emphasis added). "If the Director decides not to institute, ***for whatever reason***, there is no [appellate] review." *Id.* (emphasis added); *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 273-

74 (2016). "For example, the Director is free . . . to determine that for reasons of administrative efficiency an IPR will not be instituted." *Mylan Laboratories*, 989 F.3d at 1382. Thus, "[t]he Director is permitted, but ***never compelled***, to institute an IPR. And ***no petitioner has a right to such institution***." *Id*. (emphasis added).

III. ARGUMENT

A. TSMC's Request Is Defective

Although the Director's decision was not an abuse of discretion—addressed *infra*—the Director can reject TSMC's Request outright. The Director found that TSMC "does not provide ***persuasive reasoning*** why an *inter partes* review is an ***appropriate use of Board resources***." Decision at 2 (incorporating by reference IPR2025-00682, Paper 17 at 2-3) (emphasis added). TSMC does not challenge this as clearly erroneous. *See* Request at 4 (only challenging one finding on a different issue as "clearly erroneous"). Because "the Director is free . . . to determine that for reasons of administrative efficiency an IPR will not be instituted," *Mylan Laboratories Ltd.*, 989 F.3d at 1382, TSMC's failure to challenge the Director's finding on the efficient use of Board resources is fatal to the Request.

B. TSMC's "New and Changed Facts" Arguments Are Meritless

TSMC's concocted "new and changed facts" argument, Request at 1-2, is meritless. <u>First</u>, TSMC's argument that the government shutdown "requir[es] reassessment of *Fintiv* factor 2's impact on denial" is nonsensical and predicated upon nested layers of speculation. TSMC ignores the impact of the shutdown on the

PTAB; TSMC's failure to show that its IPR is "an appropriate use of Board resources" is even more compelling given the shutdown. Even if "reassessment" were needed, the Director would need to reconsider numerous discretionary denial decisions. Moreover, TSMC's argument rests on levels of nested speculation. TSMC's first speculation is that the court system will shut down even though it has not. *See* https://www.uscourts.gov/data-news/judiciary-news/2025/10/01/judiciary-still-operating-shutdown-starts. Even assuming some impact on the courts, TSMC speculates that a shutdown will last long enough to delay the parties' *Markman* hearing—*i.e.*, the gating factor for trial—which is not until December 18. EX2008 at 5. Even if trial were delayed, TSMC speculates (offering no rationale) that the trial date would be delayed by ***five months more*** than any delay in the PTAB's final written decision ("FWD"), so as to flip their order. *See* Paper 8 at 22.

Second, the Patent Purchase Agreement ("PPA") does not constitute changed facts because the Director found that AICP has settled expectations, Decision at 2 (incorporating by reference IPR2025-00682, Paper 17 at 2-3), and the PPA only further buttresses AICP's position, IPR2025-01210, Paper 9, at 20. TSMC's argument that AICP should have produced the PPA as "routine discovery" is incorrect because the PPA is not "inconsistent with a position advanced by [AICP]." 37 C.F.R. 42.51(b)(1)(iii). TSMC's failure to identify any inconsistency is fatal to its argument. Further, TSMC does not dispute that the PPA was produced in the

Lawsuit in March 2025, many months ago. AICP did not rely on the PPA in these proceedings only because AICP did not foresee TSMC's nonsensical settled expectations argument that ignores contrary precedent. Now that TSMC advanced its flawed theory in this proceeding, AICP foresees the same flawed theory in TSMC's newest IPRs and accordingly relied on the PPA. TSMC could have sought discovery on the settled expectations issue had it so desired, with or without the PPA.

C. TSMC's Arguments Fail to Establish an Abuse of Discretion

1. National Security

The Director properly rejected TSMC's national security argument. TSMC has ***repeatedly*** argued that national security favors referral because some ***unspecified*** military products with ***unspecified*** functions are allegedly implicated in a patent owner's infringement theory. *Taiwan Semiconductor Mfg. Co., Ltd. v. Advanced Integrated Circuit Process LLC*, IPR2025-00682, Paper 20, at 5-6 (recounting occasions when TSMC has made the argument). And the Director has ***repeatedly*** told TSMC it needs to show a close nexus between national security interests and ***both*** (1) "particular products or manufacturing methods" accused in the parallel litigation ***and*** (2) the "specific patents challenged" in the IPR proceeding. Decision at 2 (incorporating by reference IPR2025-00682, Paper 17 at 2-3); *Taiwan Semiconductor Mfg. Co. Ltd. v. Marlin Semiconductor Ltd.*, IPR2025-00847, Paper 11 at 3 (U.S. Pat. & Trademark Off. Sept. 3, 2025) (Acting Dir. C.M. Stewart).

Despite this guidance, TSMC still refuses to (1) identify specific products and manufacturing methods; (2) state how they allegedly impact national security; or (3) address how the ’076 patent focuses specifically on military applications.

Moreover, TSMC’s concern over national security is feigned. Cognizant that a *money judgment against TSMC* for infringing another’s intellectual property could not possibly undermine *United States national security*, TSMC erroneously states that AICP is “seek[ing] an injunction against an expansive set” of TSMC’s products. Request at 5-8. This argument is frivolous because AICP has already agreed that it “will not seek injunctive relief.” Paper 13 at 5. AICP’s agreement to waive injunctive remedies in the Lawsuit eviscerates TSMC’s national security argument.

2. Settled Expectations

TSMC has not shown any abuse of discretion regarding the Director’s settled expectation finding. First, TSMC’s argument that AICP lacks settled expectations merely because it was not the original assignee, Request at 10, has been rejected. The Director has repeatedly held that an assignee like AICP steps into the assignor’s shoes. *Datadome S.A. v, Arkose Labs Holdings, Inc.*, IPR2025-00693, Paper 13, at 2, 2 n.2 (U.S. Pat. & Trademark Off. Aug. 14, 2025) (Acting Dir. C.M. Stewart) (crediting a patent owner with “strong settled expectations” even though it had only “acquired the challenged patents in 2021”); Decision at 2 (incorporating by reference IPR2025-00682, Paper 17 at 2-3, which rejected TSMC’s argument). The Director’s

settled expectations analysis focuses on "the [length of time] the patent has been ***in force***," *Dabico Airport Solutions Inc. v. AXA Power APS*, IPR2025-00408, Paper 21, at 3 (U.S. Pat. & Trademark Off. June 18, 2025) (Acting Dir. C.M. Stewart) (emphasis added), not the length of time ***the current patent owner has owned it***.

The Director's reasoning is sound and certainly not an abuse of discretion. Challenges to patents—whether in the courts or PTO—are a matter of public record and are thus just as accessible to successive assignees as to the original assignee. Logic therefore dictates that subsequent assignees (like AICP) acquire a patent with constructive notice of the history of any challenges mounted against it (or lack thereof). Moreover, the policy underlying settled expectations is to encourage "early [patent] challenges" because they "favor robust, predictable patent rights." *Sun Pharmaceuticals Indus. Inc. v. Nivagen Pharms, Inc.*, IPR2025-00893, Paper 18, at 2 (U.S. Pat. & Trademark Off. Sept. 19, 2025) (Acting Dir. C.M. Stewart); *Murata Mfg. Co., Ltd v. Georgia Tech Research Corp.*, IPR2025-00383, Paper 14, at 3 (U.S. Pat. & Trademark Off. July 29, 2025) (Acting Dir. C.M. Stewart) ("A failure to seek early review of the patent favors denial and outweighs [other] considerations.").

Here, irrespective of who owned the '076 patent over time, TSMC failed to seek early review, justifying denial. TSMC's Request does not deny it had notice of the '076 patent long ago. And "actual notice of a patent or of possible infringement is not necessary to create settled expectations," in part because "patent applications

(after 18 months) and issued patents are almost always publicly available to provide notice to the public." *Dabico*, IPR2025-00408, Paper 21, at 3.

Third, TSMC's argument that, because "no one asserted the '076 patent against this technology," TSMC has a settled expectation to continue infringing for free, Request at 8, disregards precedent holding that the fact that a patent owner "did not previously assert the challenged patent against Petitioner does not defeat Patent Owner's settled expectations," *Kahoot! AS v. Interstellar Inc.*, IPR2025-00696, Paper 12, at 2 (U.S. Pat. & Trademark Off. Jul. 31, 2025) (Acting Dir. C.M. Stewart); *Kangxi Comms. Techs. v. Skyworks Solutions Canada, Inc.*, IPR2025-00912, Paper 9, at 2-3 (U.S. Pat. & Trademark Off. Sept. 12, 2025) (Acting Dir. C.M. Stewart).

Fourth, TSMC's two cases are readily distinguishable. TSMC's reliance on *Intel Corp. v. Proxense LLC*, IPR2025-00327, Paper 12 (U.S. Pat. & Trademark Off. June 26, 2025) (Acting Dir. C.M. Stewart), Request at 9, is misplaced. *Intel* recognizes the commonsense principle that, when a patent is not directed to "a petitioner's particular technology space," IPR2025-00327, Paper 12 at 2-3, a lawsuit may have been unforeseeable, thereby providing the petitioner a possible excuse for not having challenged the patent earlier. But this logic only applies, if at all, when "the challenged patents are directed to technology that is fundamentally different from what Petitioner uses in its products." *Cf. BOE Tech. Grp Co., Ltd. v. Optronic Sciences LLC*, IPR2025-00238, Paper 11 at 2 (U.S. Pat. & Trademark Off. Jul. 29,

2025) (Acting Dir. C.M. Stewart) (granting discretionary denial). Here, TSMC admits that the ’076 patent relates to “semiconductor technology,” Request at 4, which TSMC also admits is directly in its technology space, *id*. at 2.

Equally misplaced is TSMC’s reliance on *Shenzhen Tuozhu Tech. Co., Ltd. v. Stratasys, Inc.*, IPR2025-00438, Paper 10 (U.S. Pat. & Trademark Off. Jul. 17, 2025) (Acting Dir. C.M. Stewart). Request at 10. As the Director made clear in *Shenzhen*, the patent at issue was not “applied” in petitioner’s “particular technology space.” *Shenzhen*, IPR2025-00438, Paper 10, at 3. This case is readily distinguishable because, *inter alia*, TSMC does not dispute that (1) the ’076 patent is directed squarely at TSMC’s technology space and (2) TSMC had good reason to know that the ’076 patent covers its products.[1] Also, TSMC’s argument that, in *Shenzhen*, “years of non-enforcement weighed against ‘settled expectations,’” Request at 10, is incorrect. As Shenzhen explained, the accused product (of its subsidiary) “launched on Kickstarter in May 2022.” *Id*., Paper 9 at 5. Thus, Shenzhen “could not have known to challenge the [] patent sooner” and did not have “any reason to believe the [] patent covered their products.” *Id*. TSMC, in sharp contrast, knew of

[1] TSMC’s assertion that “the PTO is estopped” from considering a patent owner’s settled expectations, Request at 11, is frivolous. The PTO brief TSMC relies upon never addressed settled expectations, particularly in the *Fintiv* context.

both the patent and the likelihood that its products infringe.

3. Likelihood of Duplication, Expenses and Inconsistent Results

The Director correctly found that, "it is unlikely that a final written decision in these proceedings will issue before district court trial occurs, resulting in significant duplication of effort, additional expense for the parties, and a risk of inconsistent decisions." Decision at 2 (incorporating by reference IPR2025-00682, Paper 17 at 2-3). TSMC does not challenge the Director's finding that trial will likely occur before a final written decision would have issued; instead, TSMC asserts that, in view of TSMC's and UMC's "extraordinarily broad" and "reciprocal stipulation[s]," the Director clearly erred in finding a likelihood of duplication, additional expense and inconsistent decisions. Request at 4.

The Director's finding was correct, and certainly not an abuse of discretion. To prove an "abuse of discretion" based on factual error, the proponent must demonstrate that the "factual finding[] [is] not supported by substantial evidence." *Star Fruits S.N.C. v. United States*, 393 F.3d 1277, 1281 (Fed. Cir. 2005). Here, substantial evidence supports the Director's finding. First, the Director was justified in discounting TSMC's and UMC's untimely stipulations as AICP requested. Paper 13 at 2-3. As AICP explained, TSMC and UMC filed late stipulations to "game the discretionary denial process." *Id*. TSMC initially offered a narrow stipulation. Paper 8 at 30. And UMC's corresponding petition offered no stipulation at all. *Id*. at 30-

31. Only ***after*** AICP exposed their gamesmanship did TSMC and UMC submit untimely stipulations designed to blunt AICP's arguments. ***TSMC's Request does not dispute that the Director was entitled to discount these untimely stipulations in rendering her discretionary denial decision.***

Second, as AICP explained, TSMC's invalidity theories implicated foreign third-party discovery that was not available pursuant to the Board's subpoena power and which could only be obtained in the district court. Paper 8 at 41-44; Paper 13 at 2. TSMC did not dispute this. Paper 12 at 67-68. As a result, AICP would have been required to litigate that issue in the district court in parallel with any instituted IPR proceedings. This in turn would have led to duplication, additional expenses, and the likelihood that, if AICP secured favorable foreign third-party evidence in the district court, the district court and Board could reach conflicting decisions.

4. Alleged Examiner Error and Lack of Candor

The Director's rejection of TSMC's "examiner error" and "duty of candor" arguments cannot be an abuse of discretion because TSMC's theories are meritless. First, TSMC's assertion that there is "no dispute the Office erred in issuing the '076 patent," Request at 12, is nonsensical. AICP has ***three times*** explained critical flaws in TSMC's invalidity theories based on Guha, Kamata and Matsumoto. Paper 8 at 34-37; Paper 10 at *passim*, Paper 13 at 4. Because TSMC's Request does not rebut AICP's arguments, TSMC's argument based on Guha and Kamata, Request at 12, is

frivolous. Equally specious is TSMC's theory based on JP-Ono, Henson, Kajiyama and JP-Matsumoto. *See id.* at 13-14. The Petition does not rely on these four references. Petition at 3. TSMC has not explained how they would have supported a proper rejection. TSMC's inability to do so is fatal to its theory. Also, TSMC points to typos in the Office action, Request at 12, but the substance of the Office action shows the Examiner reviewed the correct claim language. EX1002 at 129-34. Moreover, TSMC makes no argument that those typos are material (and it cannot).

Second, TSMC's "duty of candor" argument is frivolous. As an initial matter, the Petition did not assert this theory. *See* Petition (no reference to "candor," "unfair dealings," or "inequitable conduct"). TSMC concocted this theory in Paper 12 ***after*** seeing the strength of AICP's discretionary denial position in Paper 8. Moreover, TSMC's legal theory is flawed. ***TSMC does not dispute that all material prior art was disclosed.*** Instead, TSMC says that some portions of a Chinese and Japanese examiners' office actions were not translated or withheld. Request at 14-15. But "it is the reference itself, ***not*** the information generated in prosecuting foreign counterparts, that is material to prosecution in the United States. ***The details of foreign prosecution are not an additional category of material information***." *ATD Corp. v. Lydall, Inc.*, 159 F.3d 534 (Fed. Cir. 1998) (emphasis added). In any event, the inferences TSMC draws about the '076 patent based on purported "explicit admissions" (that AICP cannot find) in foreign prosecution are unmerited because

"the theories and laws of patentability vary from country to country, as do examination practices." *Heidelberger Druckmaschinen AG v. Hantscho Commer. Prods.*, 21 F.3d 1068, 1072 (Fed. Cir. 1994). TSMC references the "JP Examiner's later rejections and Applicant's subsequent admissions and acquiescence" but does not explain any purported misconduct. In any event, for the reasons set forth in *ATD Corp*. and *Heidelberger*, they are not material to U.S. prosecution.

D. TSMC Fails to Challenge the Director's Holistic Analysis

To read TSMC's Request, one might mistakenly believe that the Director's decision was grounded solely on a few issues. But, as the Director explained, her decision was "based on the totality of the evidence and arguments the parties have presented," Decision at 2, and "on a holistic assessment of all of the evidence and arguments presented," *id*. at 3. TSMC's Request fails to explain how, even assuming it established some error, the totality of the evidence favors referral.

E. TSMC's Unsubstantiated Factual Assertions Have No Weight

TSMC's Request makes numerous ***new*** factual assertions that are ***devoid of any citation to the record*** and are not entitled to any weight. *See, e.g.*, Request at 2, 5-6, 9-11, 15. These assertions amount to nothing more than "attorney argument," which "'is not evidence' and cannot rebut other admitted evidence." *Elbit Sys. of Am., LLC v. Thales Visionix, Inc.*, 881 F.3d 1354, 1359 (Fed. Cir. 2018).

IV. CONCLUSION

AICP respectfully requests that the Director deny TSMC's Request.

Dated: October 13, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that pursuant to 37 C.F.R. § 42.6(e), a copy of the foregoing AUTHORIZED RESPONSE TO DIRECTOR REVIEW REQUEST was served via email to lead and backup counsel of record for Petitioner as follows:

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