

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.

IPR2025-00832
U.S. Patent No. 8,796,779

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-16; “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 associated with the technologies put at risk by the challenged patents, (2) the settled expectations of Petitioner and its customers versus whatever settled expectations the new patent owner, Advanced Integrated Circuits Process (“AICP”) might have had when it asserted the patent for the first time ever 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 material errors by the Examiner in issuing the ’779 patent, 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 TSMC’s argument (also made here) that

“AICP lacks settled expectations.” IPR2025-01302, Paper 9, 19-20. Given positions taken by AICP in its denial briefs, this agreement should have been produced here as Routine Discovery, so 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 denial. (See, e.g., <https://www.uscourts.gov/data-news/2025/10/01/judiciary-still-operating-shutdown-starts> (indicating fees available for operations until 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. These chips are responsible for today’s artificial intelligence, advanced smartphones, communication networking, autonomous vehicles, robotics, and military/defense applications. Given the extraordinarily broad impact of TSMC’s

technology on the U.S. economy and national security, 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.) President Trump’s executive order stated: “It is the policy of the United States to sustain and enhance America’s global AI dominance in order to promote human flourishing, economic competitiveness, and national security.” 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 No. 7,579,227, 7,923,764; 8,198,686; 8,253,180; 8,587,076; 8,796,779; and 8,907,425 against Petitioner TSMC. (Ex-2001, ¶¶29.) Based on these patents, AICP asks the Eastern District of Texas to enjoin the sale of all semiconductors made using TSMC’s 28nm, 22nm, 16nm, 12nm, 10nm, 7nm, 6nm, 5nm, 4nm, and 3nm process node technologies. (See Ex-2001, ¶¶67, 70, 79, 97, 115, 129, 143, 163, 182.) And it asserts the ’779 patent to enjoin sale and distribution of all FinFET products made using TSMC’s 16nm, 12nm, 10nm, 7nm, 6nm, 5nm, 4nm, and 3nm process technologies (collectively, “FinFET Nodes”)—the backbone of a wide range of critical applications, ranging from

artificial intelligence to “military-grade” devices. If AICP is successful in its litigation despite strong reason and evidence to the contrary, it will harm 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 does not weigh in favor of discretionary denial; it weighs against denial. TSMC and its customers have settled expectations that this patent would not be enforced in view of the accused technologies predating the issuance of the patent application date and the lengthy period of the inaction. By contrast, AICP did not exist until June 2024, years after the accused technologies were in use; it acquired the ’779 patent only two days before suing TSMC; and it must have expected invalidity challenges when it initiated litigation.

Third, TSMC proffered an extraordinarily broad stipulation that removes 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 consolidate this IPR, proffered a reciprocal stipulation. AICP does not challenge the effect of the stipulations, and the Decision’s finding that there would be “significant duplication of effort, additional expense for the parties, and a risk of inconsistent decisions” is clearly erroneous.

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 and Applicant's unfair dealings during prosecution. (*See* Paper-11, §§III-IV.)

The adjudication of these patents has national economic and security consequences, and the Administration should determine whether these patents were correctly issued. The Board is best suited to review the patentability of the '779 patent. There is no dispute that the underlying technology, involving complicated semiconductor processing, is complex or that the technically trained PTAB judges are more capable than a lay jury to assess this patent's validity. Further, the district court involves seven patents related to different aspects of semiconductor technology, and the PTAB can provide significant efficiencies in reviewing this patent.

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 process technologies ranging from 28nm to 3nm. (*See* Ex-2001, ¶¶67, 70, 79, 97, 115, 129, 143, 163, 182.) These accused 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. These companies are at the forefront of the

development and adoption of AI—a key technology that will “tip the balance of power” between the superpowers “far into the 21st century.” (Paper-11, 32.)

Artificial intelligence is a key stated priority for the U.S.: “It is the policy of the United States to sustain and enhance America’s global AI dominance in order to promote human flourishing, economic competitiveness, and national security.” (Paper-11, 31) Congressional record shows AI dominance is expected to “alter the character of warfare.” (Paper-11, 32.) And to understand how this issue is viewed within the administration, one need look only to the appointment of the Honorable David Sacks as the first AI Czar—more than a month before the President was even sworn-in. The U.S. currently holds a lead in artificial intelligence, but competition remains fierce, and continuing that lead requires access to TSMC’s FinFET Nodes.

TSMC is an important part of American AI-dominance strategy. (*See* TSMC-1130 (Ansys); TSMC-1131 (Cadence collaboration); TSMC-1166, 181, 655 (NVIDIA).) TSMC manufactures all of NVIDIA’s AI chips, and NVIDIA is a global leader “dominat[ing] the design of advanced [AI] chips.” (TSMC-1166, 181, 655; *see* TSMC-1147, 2 (Companies like “Nvidia rely on TSMC to make their chips because no other company can provide its capacity or level of technology”).) Demand for TSMC’s latest chips is so high TSMC’s first facility in Arizona is “already fully booked by heavyweights like Nvidia and Qualcomm.” (TSMC-1126, 2.)

AI applications require high-performance chips that provide immense

computational power. TSMC is the only company in the world that has successfully implemented the cutting-edge process technologies that can produce AI chips at scale, and it is widely credited with “steering” the AI wave that “[m]any tech giants are currently riding.” (Paper-11, 32.) In addition to TSMC’s irreplaceable role in producing chips that are critical to AI, TSMC-built chips also unleash and enable innovations by its customers, including through smartphones, laptops, computer servers, autonomous vehicles, and other high-tech devices (including military applications) that secure U.S. leadership in high-tech competition.

For national security, TSMC makes semiconductors for a wide range of “military-grade” devices used by the Department of War. TSMC offers multiple technologies, ranging from 28nm to 3nm, to power widespread applications that include avionics, GPS, missile guidance, radar systems, radiation-hardened systems, power systems, and secure communications. The U.S. Air Force estimates “90% of its precision-guided munitions rely on” TSMC-made chips. (TSMC-1093, 4.) And a similar calculus applies to warships, satellites, and communication systems. (*Id.*) AICP asserts the ’779 patent against military-grade products manufactured by TSMC—for example, defense-grade FPGA chips from AMD/Xilinx used for military avionics, missiles & munitions, and electronic warfare, including for example, the F-35 Lightning II fighter jet, considered the most advanced and versatile U.S. military aircraft. It would be devastating for the economy and armed forces, and to its semiconductor

leadership ambitions, for the U.S. to be denied access to TSMC's FinFET Nodes based on patents that should never have issued. (Paper-11, 58-61.)

Indeed, U.S. reliance on TSMC 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. efforts to incentivize TSMC to move production to the U.S., including for AI applications and 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 to seek an injunction against an expansive set of the same critical semiconductor technologies President Trump and Congress sought to protect, hoping to exploit the uncertainty that is inherent in having lay jurors decide issues of patent validity. The AIA was designed to prevent scenarios precisely like this one, and the Office has an interest in ensuring patents asserted against this critical technology were correctly granted. This Office, with professionally trained Judges, is uniquely positioned to decide the invalidity of this patent. The 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. TSMC, its customers, and the public have “settled expectations,” and they 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 oldest of the technologies originally accused by AICP—TSMC’s 28nm HP process technology—before the ’779 patent was filed. For a decade after that commercialization, no one asserted the ’779 patent against this technology. This lengthy period of inactivity weighs heavily against discretionary denial. Subsequent to the Decision, AICP informed TSMC that it was dropping accusations against the planar 28nm technology, leaving only FinFET products. Notably, the ’779 patent only discloses planar MISFETs, not the distinctly different three-dimensional FinFETs.

The originally 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 before the ’779 patent issued in August 2014, and more than a decade before AICP was formed in June 2024, acquired the ’779 patent in July 2024, and sued TSMC without advance notice in August 2024. (TSMC-1001

(cover, item 45); TSMC-1088 (June 12, 2024 Certificate of Formation); Ex-2009, 5 (Dkt. 1, identifying the August 1, 2024 Complaint). Meanwhile during this decade plus of inaction by the prior patent owner, TSMC had invested billions of dollars to build fabrication facilities to continuously manufacture millions of wafers per year using the accused technology, and its customers had similarly invested significant resources into designs that work with TSMC's technology. The '779 patent was enforced for the first time only after AICP acquired it almost 10 years after its issuance. TSMC's continuous manufacture of the accused chips (requiring billions in investments), beginning before the '779 patent had even issued and with no enforcement after, show that TSMC—and its customers—had settled expectations that the '779 patent would not apply to the originally accused planar technology. The Decision did not give due consideration to these factors. *See Intel Corp. v. Proxense LLC*, IPR2025-00327, Paper-12, 2-3 (June 26, 2025) (explaining it “weigh[s] against a patent owner's claim of settled expectation” when patent “may not have been ... applied in a petitioner's particular technology space”).

2. AICP Has No Legitimate Settled Expectations

Contrary to the findings in the Decision, AICP could not have had “strong settled expectations.” AICP acquired the '779 patent in 2024, just two days before suing TSMC for infringement. The two days in which AICP held the '779 patent 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 “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 that AICP had settled expectations merely because the ’779 patent issued in 2011. At the time AICP acquired the ’779 patent in 2024, the patent had never before been litigated. AICP surely understood that asserting the patent for the first time would invite invalidity challenges. What matters is AICP’s expectations for its 2024 investment. *See Anaheim Gardens, L.P. v. United States*, 953 F.3d 1344, 1350-51 (Fed. Cir. 2020) (“timing” of a property purchase and the “knowledge of the purchaser” are relevant considerations in determining whether a purchaser had reasonable investment-backed expectations). Indeed, given their inaction, the prior owners could not have had “settled expectations” the ’779 patent is enforceable. The Decision’s statement to the contrary is also inconsistent with *Shenzhen Tuozhu Technology*, where years of non-enforcement weighed against the patent owner’s claim to “settled expectations” of enforceability. *See* IPR2025-00438, Paper-10, 3 (July 17, 2025) (referring based in part on evidence the challenged patents had “never been commercialized, asserted, marked, licensed, or otherwise applied” in petitioner’s “technology space”—a factor that “weigh[ed] against Patent Owner’s claim of strong settled expectations”).

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 that patent owners lack a settled expectation that their patents will not be subject to post-issuance challenges, including IPRs. *See* Brief for Intervenor at 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).

Settled expectations of TSMC and its customers, spanning over a decade, cannot be overridden merely by AICP's acquisition. AICP acquired the patent subject to TSMC's, its customers', and the public's expectations, which were reasonable in view of the prior owner's inaction. Other areas of law that have analyzed a property owner's extended periods of inaction routinely find 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 (Fed. Cir. 2020) ("timing of the purchase and knowledge of the purchaser"—especially "a sophisticated investor"—"are relevant considerations in determining whether a purchaser had reasonable investment-backed expectations" in the takings context); *Nordlinger*

v. Hahn, 505 U.S. 1, 12-13 (1992) (“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 Japan that the sole limitation leading to allowance of U.S. claim 1 was disclosed by multiple prior art references, the Examiner’s failure to identify material teachings of Gilmer, cited by the Applicant in an IDS, **and** Applicant’s unfair dealings of withholding information regarding Japanese prosecution, including its narrowing claim amendments, and withholding the anticipatory Torii reference from the U.S. Examiner—should warrant reconsideration and referral. Indeed, the facts here are stronger than the errors determined to be sufficient to justify referral in other proceedings. (*See, e.g.*, Paper-11, 10-11, 17-22.) 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) (referring,

despite a later trial date, because “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 ’779 patent. Applicant obtained allowance of the U.S. claims based on the limitation that a “first interface layer ha[ving] a thickness larger than that of the second interface layer.” Torii, presented as a § 102 ground, and Gilmer, presented as a single-reference § 103 ground, each discloses all limitations of the ’779 patent’s issued claim 1, including the limitation that led to allowance. (Paper-2, 17-27 (Torii), 55-66 (Gilmer).) Gilmer, in the form of its pre-issuance publication, was cited in an IDS but the Examiner overlooked and failed to appreciate the teachings of Gilmer. (*See* Paper-2, 85-86.). The Examiner also overlooked other material references included in the file wrapper—three JP references that the JPO Examiner found disclose all limitations of US claim 1 as filed, including the above limitation. (*See* Paper-11, 7-11; Paper-13, 1-3.) Prior to the issuance of the ’779 patent, Applicant narrowed the JP claims in response to JPO’s rejection based on the above JP references, acquiescing at least U.S. claim 1 as filed was unpatentable over the JP references. The Examiner erred by failing to appreciate the disclosures of these references, though each was cited in an IDS by Applicant. The Examiner further failed to identify and consider the anticipatory Torii reference, despite Torii having a nearly identical claim as the ’779 patent’s claim 1. (Paper-2, 14-28.) Notably, AICP did not challenge the merits of either Gilmer or

Torii in its Discretionary Denial briefs and did not file a Preliminary Response.

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). Applicant was aware of the anticipatory Torii reference during U.S. prosecution because it was cited to reject a claim having similar claim elements in another of Applicant's application. (Paper-11, 21.) Despite the rejection by JPO and Applicant's acquiescence occurring during active prosecution of the '779 patent, Applicant ***did not*** bring either to the attention of the U.S. Examiner. (Paper-11, 19-20.) Applicant's failures to disclose Torii and the material information from the JP prosecution violated Applicant's duty of candor.

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. Here, the discretionary denial 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. To avoid the harm that would arise from an injunction of TSMC's technologies, Petitioner respectfully requests that the Director refer the matter to a panel.

Date: October 3, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

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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