

From: [Director_PTABDecision_Review](#)
To: [Williams, Eliot D.](#); [Richard M. Bemben](#); [DL Samsung Netlist IPRs](#); [Jennifer Chagnon](#); [Richard Kim](#); [Raymond Chan](#); [Francisco Rubio](#); [PTAB Account](#)
Subject: PGR2025-00071 & IPR2025-01431 - Request for Supplemental Briefing
Date: Monday, May 11, 2026 1:14:00 PM
Attachments: [image001.png](#)
[image002.png](#)

Counsel,

Patent Owner's request for authorization to file a supplemental brief in support of its pending Request for Director Review in the above identified proceedings is denied.

Thank you.

PGR2025-00071
IPR2025-01431
Ex. 3104

From: Williams, Eliot D. <Eliot.Williams@BakerBotts.com>
Sent: Wednesday, May 6, 2026 11:03 AM
To: Director_PTABDecision_Review <Director_PTABDecision_Review@uspto.gov>; Richard M. Bemben <RBEMBEN@sternekessler.com>
Cc: DL Samsung Netlist IPRs <dlsamsungnetlistiprs@BakerBotts.com>; Jennifer Chagnon <JChagnon@sternekessler.com>; Richard Kim <rkim@netlist.com>; Raymond Chan <rchan@netlist.com>; Francisco Rubio <frubio@netlist.com>; PTAB Account <PTAB@sternekessler.com>
Subject: RE: Request for Supplemental Briefing

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Honorable Director,

Netlist's request is untimely. Trial was instituted February 18th, and Netlist's requests for Director Review were filed March 4th — over two months ago. Netlist's requests for Director Review did not raise claim construction, and thus Netlist's request now for a 5-page supplemental brief about claim construction is nothing more than an untimely *second* request for Director Review. See 37 C.F.R. §§ 42.71(d)(1), 42.75(c)(1) (requiring a request for Director Review within 14 days of entry of an institution decision "unless an extension is granted by the Director upon a showing of good cause").

Nor is there good cause for Netlist's untimely request. Netlist's email below concedes that Samsung's petitions here rely on the "ordinary and customary meaning" of the claims," and Netlist concedes that "Samsung did not present any terms for construction at the ITC for either the '087 or '731 patents during the *Markman* process." But Netlist contends that Samsung supposedly is being inconsistent because allegedly on "March 25, 2026, Samsung advanced claim constructions at the ITC that are inconsistent with its claim constructions before the PTAB.

“ However, all that Samsung did on March 25th in the ITC was serve an interrogatory response identifying *factual* disagreements about *infringement*, not claim construction positions (which were due in the ITC on February 13th, before Netlist’s requests for Director Review here). Indeed, two days later, on March 27th, Netlist admitted to the ITC that “there are no disputed terms in asserted United States Patent Nos. . . . 10,025,731; and 12,308,087.” See <https://edis.usitc.gov/external/search/document/876876>. And then on April 1st, Netlist filed a claim construction brief in the ITC that again did not identify any claim construction disputes for the 731 or 087 patents. See <https://edis.usitc.gov/external/search/document/878104>. The *Markman* hearing in the ITC was held on April 21st, and then on May 1st the parties filed a joint statement with their final claim construction positions, which again did not identify any claim construction disputes for the 731 or 087 patents. See <https://edis.usitc.gov/external/search/document/881002>.

Netlist is merely pointing to a factual dispute in the ITC about infringement, not a claim construction dispute either here or in the ITC. The rules permit the PTAB to consider “[a]ny prior claim construction determination” in a parallel proceeding, not factual disputes about infringement. See 37 C.F.R. §§ 42.100(b), 42.200(b). Factual disputes about infringement in a parallel proceeding are common and are not “good cause” for untimely requests for Director Review of institution decisions. See *Savant Techs. LLC v. Feit Elec. Co.*, IPR2024-01357, Paper 69, at 6 (PTAB Apr. 9, 2026) (citing EX3101 and EX3102, emails from the Director denying untimely requests for Director Review under *Revvo*). If they were, there would be no end to the number of requests for Director Review that either party could bring, contrary to the goal in the PTAB of “the just, speedy, and inexpensive resolution of every proceeding.” 37 C.F.R. § 42.1(b).

Respectfully,
Eliot Williams
Lead Counsel for Samsung

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From: Director_PTABDecision_Review <Director_PTABDecision_Review@uspto.gov>
Sent: Tuesday, May 5, 2026 1:39 PM
To: Richard M. Bemben <RBEMBEN@sternekessler.com>
Cc: DL Samsung Netlist IPRs <dlsamsungnetlistiprs@BakerBotts.com>; Jennifer Chagnon <JChagnon@sternekessler.com>; Richard Kim <rkim@netlist.com>; Raymond Chan <rchan@netlist.com>; Francisco Rubio <frubio@netlist.com>; PTAB Account <PTAB@sternekessler.com>
Subject: RE: Request for Supplemental Briefing

[EXTERNAL EMAIL]

Counsel,

Petitioner may respond with its position as to Patent Owner's request via email by Wednesday, May 6th.

Thanks.

From: Richard M. Bemben <RBEMBEN@sternekessler.com>

Sent: Tuesday, May 5, 2026 11:49 AM

To: Director_PTABDecision_Review <Director_PTABDecision_Review@uspto.gov>

Cc: dlsamsungnetlistipsr@bakerbotts.com; Jennifer Chagnon <JChagnon@sternekessler.com>; Richard Kim <rkim@netlist.com>; Raymond Chan <rchan@netlist.com>; Francisco Rubio <frubio@netlist.com>; PTAB Account <PTAB@sternekessler.com>

Subject: Request for Supplemental Briefing

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Re: PGR2025-00071 (US 12,308,087) & IPR2025-01431 (US 10,025,731)

Honorable Director,

Netlist requests authorization to file a 5-page supplemental brief in support of its pending Requests for Director Review of the institution decisions in the above-captioned proceedings. De-institution of these proceedings is warranted based on inconsistent claim constructions that Samsung advanced in co-pending ITC investigation 1337-TA-1472 *after* Netlist filed its Requests for Director Review on March 4, 2026.

On March 25, 2026, Samsung advanced claim constructions at the ITC that are inconsistent with its claim constructions before the PTAB. Although Samsung did not present any terms for construction at the ITC for either the '087 or '731 patents during the *Markman* process, its recent discovery responses tell a different story. Specifically, Samsung's non-infringement contentions advance narrow express and implied constructions of certain claim terms to allege Samsung's products do not infringe. While Netlist does not agree with Samsung's assertions at the ITC, Samsung's express and implied constructions are clearly inconsistent with its assertions before the PTAB that no constructions are needed and that Samsung's challenges apply the "ordinary and customary meaning" of the claims.

Samsung served its contentions under the ITC's protective order, preventing Netlist from providing an unredacted copy to the PTAB. Since then, Netlist has been diligent in seeking a version of Samsung's contentions that it can submit at the PTAB, exchanging multiple communications with Samsung's PTAB counsel and Samsung's ITC counsel (who are different).

Only yesterday (May 4) did Samsung's ITC counsel provide a redacted version of the contentions sufficient to show Samsung's inconsistent claim constructions. Accordingly, Netlist requests authorization to file the redacted version of Samsung's contentions as an exhibit and a 5-page supplemental brief in support of its pending Requests for Director Review addressing these changed circumstances.

Finally, it is Netlist's understanding that this request is appropriate for the Director because PTAB panels do not have authority to grant the relief that Netlist is requesting. *See Savant Techs. LLC v. Feit Elec. Co., Inc.*, IPR2024-01357, Paper 69 at 8-10 (PTAB April 9, 2026).

Respectfully,
Richard Bemben
Lead Counsel for Netlist



Richard M. Bemben

Director, Co-Chair of PTAB Practice

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