From:	Director_PTABDecision_Review
To:	"rbembe-PTAB@sternekessler.com"; jchagnon-ptab@sternekessler.com; "rkim@netlist.com"; eliot.williams@bakerbotts.com; ted.chandler@bakerbotts.com; ferenc.pazmandi@bakerbotts.com; mark.speegle@bakerbotts.com; DL Samsung Netlist IPRs
Subject:	RE: PGR2025-00071 - Guidance RE Inconsistent Claim Constructions
Date:	Monday, June 1, 2026 2:06:00 PM
Attachments:	image001.png image002.png image003.png

Counsel,

Petitioner may respond with its position as to the issue raised by Patent Owner via email by Tuesday, June 2nd.

Thank you.

From: Richard M. Bemben <RBEMBEN@sternekessler.com>
Sent: Monday, June 1, 2026 9:12 AM
To: Director_PTABDecision_Review <Director_PTABDecision_Review@uspto.gov>; Williams, Eliot D. <Eliot.Williams@BakerBotts.com>; 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: PGR2025-00071 - Guidance RE Inconsistent Claim Constructions

CAUTION: This email has originated from a source outside of USPTO. **PLEASE CONSIDER THE SOURCE** before responding, clicking on links, or opening attachments.

Re: PGR2025-00071

Honorable Director,

Netlist seeks your guidance on how to raise the issue that Samsung is taking inconsistent claim construction positions in this PGR and the co-pending ITC investigation. The status of this PGR is that Netlist's Request for Director Review was filed March 4 and is currently pending, and Netlist's POR is due June 8.

Netlist's previous attempt to raise this issue was denied, see email chain below. But since then, new facts confirm that Samsung is advancing inconsistent positions. For example, claim 1 of the '087 patent recites: "wherein the control die further includes control logic configurable to control respective states of the first and second conduits in response to one or more C/A signals received via one or more of the C/A terminals, wherein the one or more C/A signals do not include any chip select signal." Samsung labeled this element 1.k1 and 1.k.2 in its PGR petition.

Seeking to avoid infringement, Samsung argued before the ITC: "This limitation requires that the C/A signals (not including a chip select signal) select between the first and second conduit." Samsung's March 25 non-infringement contentions at 109. But seeking invalidity at the PTAB, Samsung argues the opposite. Specifically, Samsung's expert in this PGR was deposed on May 22. When asked whether this limitation requires that the C/A signals select

between the first and second conduit, he testified "No. [objection from counsel] Only to control their respective state." See below. Samsung is plainly advancing different constructions. This is not a factual disagreement about infringement. Netlist will provide a public copy of Samsung's non-infringement contentions and Dr. Wolfe's May 22 deposition transcript, if requested.

Excerpt of Transcript of May 22 Deposition of Dr. Wolfe in PGR2025-00071, 79:16-22:

```
     Q    But don't the claim limitations 1(k)(1)
and 1(k)(2) require the CA signals, not including
the chip select signal, to select between the
first and second conduit?
     A    No.
          MR. CHANDLER:  Objection.  Form.
     A    Only to control their respective state.
```

The parties conferred on this issue. Counsel for Samsung provided the following response: The Director already denied Netlist's request on this issue on 5/11. *See* EX3104. Nothing has changed since then that would justify yet another email to the Director. Dr. Wolfe's deposition testimony on 5/22 simply applied the plain and ordinary meaning of the claim language, reiterating the same analysis present in his declaration (EX1003), which was filed over 9 months ago with the Petition, neither of which identified any terms for construction. And in the ITC, Netlist and Samsung agreed no terms require construction, as explained in EX3104. Netlist is merely pointing to an interrogatory response in the ITC identifying ***factual*** disagreements about alleged ***infringement***, not claim construction positions (which were due in the ITC on 2/13), and thus Netlist has not identified any claim construction dispute either here or in the ITC, as explained in EX3104.

Respectfully,
Richard Bemben
Lead Counsel for Netlist

Richard M. Bemben
Director, Co-Chair of PTAB Practice
Direct: 202.772.8549

Administrative Assistant: Maya Bennett
Main: 202.371.2600 **Direct:** 202.772.8843

From: Director_PTABDecision_Review <Director_PTABDecision_Review@uspto.gov>
Sent: Monday, May 11, 2026 1:15 PM
To: Williams, Eliot D. <Eliot.Williams@BakerBotts.com>; Richard M. Bemben

<RBEMBEN@sternekessler.com>; 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: PGR2025-00071 & IPR2025-01431 - Request for Supplemental Briefing

EXTERNAL EMAIL: Use caution before clicking links or attachments.

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.

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

CAUTION: This email has originated from a source outside of USPTO. **PLEASE CONSIDER THE SOURCE** before responding, clicking on links, or opening attachments.

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

BAKER BOTTS LLP
+1 202 639-1334 (Direct Dial)

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: 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: Request for Supplemental Briefing

CAUTION: This email has originated from a source outside of USPTO. **PLEASE CONSIDER THE SOURCE** before responding, clicking on links, or opening attachments.

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
Direct: 202.772.8549

Administrative Assistant: Maya Bennett
Main: 202.371.2600 **Direct:** 202.772.8843

Notice: The information in this electronic transmission (including any attachments) may contain confidential or legally privileged information and is intended solely for the individual(s) or entity(ies) named above. If you are not an intended recipient or an authorized agent, you are hereby notified that reading, distributing, or otherwise disseminating or copying, or taking any action based on the contents of this transmission is strictly prohibited. Any unauthorized interception of this transmission is illegal under the law. If you have received this transmission in error, please immediately notify the sender by return email and then destroy all copies of the transmission.

Confidentiality Notice:

The information contained in this email and any attachments is intended only for the recipient[s] listed above and may be privileged and confidential. Any dissemination, copying, or use of or reliance upon such information by or to anyone other than the recipient[s] listed above is prohibited. If you have received this message in error, please notify the sender immediately at the email address above and destroy any and all copies of this message.

Notice: The information in this electronic transmission (including any attachments) may contain confidential or legally privileged information and is intended solely for the individual(s) or entity(ies) named above. If you are not an intended recipient or an authorized agent, you are hereby notified that reading, distributing, or otherwise disseminating or copying, or taking any action based on the contents of this transmission is strictly prohibited. Any unauthorized interception of this transmission is illegal under the law. If you have received this transmission in error, please immediately notify the sender by return email and then destroy all copies of the transmission.