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Subject: IPR2019-00914: Request for Precedential Opinion Panel Review
Attachments: REQ for rehearing & POP - 286.PDF

Dear Precedential Opinion Panel:

Patent Owner in IPR2019-00914 recommends review by the Precedential Opinion Panel of the attached rehearing request, filed today.

Based on my professional judgment, I believe this case requires an answer to the following precedent-setting question of exceptional importance:

- When the obviousness combinations asserted in the district court substantially overlap the combinations asserted in the IPR, and estoppel would not apply to the district court combinations, should the Board exercise its discretion to deny institution to avoid duplicative analysis and promote efficiency?

The POP may be convened to address issues of exceptional importance regarding statutes or issues of broad applicability to the Board. PTAB Standard Operating Procedure 2, Rev. 10 at Section II(A).

The question above is appropriate for POP review because it focuses on the factors the PTAB should consider when exercising its discretion to deny institution of an IPR for efficiency reasons. To Patent Owner's knowledge, the question has never before been addressed and a precedential resolution would be important to helping the public and the Board know (1) what factors should be considered to determine whether an IPR is inefficient, and (2) how the factors should be weighed.

It makes no sense to institute an IPR where, if the patentability of any claim is confirmed by the PTAB, most of Petitioner's prior art invalidity arguments will remain in the litigation after the IPR ends.

/s/ Thomas A. Lewry

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