

**From:** [Jennifer Bailey](#)  
**To:** [Ghavimi, Darlene F.](#)  
**Cc:** [Director PTABDecision Review](#); [Bacchus, Raquel A.](#); [Summerfield, George](#); [Adam P. Seitz](#); [Heemstra, Jonah B.](#); [Jennifer Bailey](#)  
**Subject:** Re: Patent Owner Request for Director Review, IPR2022-00602  
**Date:** Tuesday, October 10, 2023 2:45:43 PM  
**Attachments:** [2023.10.04 IPR2022-00602 - Patent Owner Request for Director Review.pdf](#)

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To the Director:

The undersigned is lead counsel for Petitioner, Apple Inc. in the referenced IPR. Petitioner requests leave to file a Reply (not to exceed five pages) to Patent Owner's Request for Director Review. Petitioner requested Patent Owner's position on this request, and Patent Owner's counsel indicated it opposes the Request.

Should the Director need further information, please let me know.

Sincerely,

Jennifer C. Bailey  
Lead Counsel for Petitioner Apple Inc.



**Jennifer Bailey (she/her)**

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On Oct 4, 2023, at 6:16 PM, Ghavimi, Darlene F. <Darlene.Ghavimi@klgates.com> wrote:

Director of the United States Patent and Trademark Office, Katherine K. Vidal:

Patent Owner in the afore-referenced *inter partes* review proceeding respectfully requests that the Final Written Decision in that proceeding receive Director Review pursuant to the *interim* rules governing such review. The Request has been filed and assigned Paper No. 34. A copy is attached.

Ranked in order of importance are the following issues for which review is sought:

- 1) After it adopted for institution purposes a construction of the limitation "accessibility attribute" previously urged by the Petitioner before the district court, the Panel changed that construction materially to capture the prior art without

providing notice to the Patent Owner sufficient for due process under the Administrative Procedures Act (“APA”), thereby prejudicing Patent Owner. *See, e.g., Qualcomm Inc. v. Intel Corp.*, 6 F.4th 1256, 1265 (Fed. Cir. 2021). This is both an abuse of discretion and an important issue of law and policy.

- 2) The proposed modification of the Mathiassen reference with the non-biometric teachings of Anderson does not result in a series of received biometric signal entries that are mapped into an instruction used to populate the database as part of an enrollment process, as required by the challenged claims. This was an abuse of discretion and an erroneous finding of material fact.
- 3) The Panel misapplied the law regarding the motivation to combine references in recognizing the combination of the Mathiassen reference, on the one hand, and the McKeeth and Anderson references, on the other hand, as valid combinations. This was an abuse of discretion and a misapplication of the law.

Respectfully submitted,  
Darlene Ghavimi



**Darlene F. Ghavimi**

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