From: Warrick, Philip
To: Director_PTABDecision_Review
Cc: Trials; DL Samsung Netlist IPRs; Winston-IPR-Netlist@winston.com; #NetlistIPR [Int]
Subject: FW: IPR2022-00996 - Patent Owner"s Request for Rehearing by the Director
Date: Wednesday, February 21, 2024 1:08:13 PM
Attachments: IPR2022-00996 PO"s Request for Director Review.pdf

Dear Director Vidal,

As requested by the Director Review Team, Patent Owner Netlist, Inc. forwards this Request for Rehearing by the Director of the Final Written Decision by the Board (Paper 49) in IPR2022-00996.

On January 5, 2024, pursuant to Section 3.A of the Revised Interim Director Review Process, Netlist timely: (1) filed the attached Request in P-TACTS (Paper 52), and (2) emailed the Director at Director_PTABDecision_Review@uspto.gov, copying counsel for all parties to the proceeding as shown below. Netlist followed the same procedure to submit a timely Request for Rehearing by the Director in IPR2022-00999 on January 4, 2024 (Paper 53), which raises substantively identical issues.

Having received no response to either Request and observing that neither Request appeared on the "Director Review requests spreadsheet" (https://www.uspto.gov/patents/patent-trial-and-appeal-board/status-director-review-requests), counsel for Netlist called the PTAB on February 20, 2024, to inquire about their status pursuant to Section E of the Revised Interim Director Review Process. Earlier today, February 21, 2024, the PTAB responded by phone, indicating that the "Director Review Team" had requested that Netlist forward its original Requests to the Director Review email address and copy the PTAB Trials email address.

Accordingly, Netlist now forwards this Request and concurrently forwards its Request in IPR2022-00999 by separate email.

Respectfully submitted,
Philip Warrick

From: Warrick, Philip
Sent: Friday, January 5, 2024 4:28 PM
To: Director_PTABDecision_Review@uspto.gov
Cc: DL Samsung Netlist IPRs <dlsamsungnetlistiprs@BakerBotts.com>; Winston-IPR-Netlist@winston.com; #NetlistIPR [Int] <NetlistIPR@irell.com>
Subject: IPR2022-00996 - Patent Owner's Request for Rehearing by the Director

Dear Director Vidal,

IPR2022-00996

Patent Owner Netlist, Inc. respectfully notifies the parties and the USPTO of its filing of the attached Request for Rehearing by the Director ("Request"), filed pursuant to 37 C.F.R. § 42.71(d) and the Revised Interim Director Review Process adopted on July 24, 2023, of the Final Written Decision by the Board (Paper 49) in IPR2022-00996.

The Request presents the following issues, listed in order of priority, for which Patent Owner seeks review:

1. Whether the Board abused its discretion by making a case dispositive finding that altered the grounds in the Petition and which effectively absolved Petitioners of their obligations under 37 C.F.R. § 42.104.

2. Whether the Board abused its discretion by making a case dispositive finding that is contrary to the testimony of two corporate representatives of one of the Petitioners that the Board declined to enter into the record.

These are important issues of policy and practice that implicate the Board's obligation to decide *inter partes* reviews based on the evidence of record and not on personal expertise or experience, as well as the Petitioners' obligation to specify in the Petition where each element of the claim is allegedly found in the prior art pursuant to 37 C.F.R. § 42.104(b)(4) and 35 U.S.C. § 312(a)(3). In this case, the Board's Final Written Decision rests on a finding that a) is inconsistent with the arguments presented in the Petition, b) lacks support in the evidence of record, and c) is contrary to the sworn testimony of two of Petitioner Micron's corporate representatives in parallel district court litigation that the Board declined to enter into the record.

This Request raises substantively identical issues to those raised in the Request for Rehearing by the Director in IPR2022-00999 (Paper 53) filed on January 4, 2024.

Respectfully submitted,

Philip Warrick
(for Patent Owner Netlist, Inc.)

Philip Warrick
Irell & Manella LLP
(202) 777-6512