

From: [Devkar, Andrew V.](#)
To: [Director PTABDecision Review](#)
Cc: [Ryan, Andrew](#); [Coyle, Steve](#); [Geiger, Nicholas](#); [HID-IPRs](#)
Subject: IPR2022-01006: Request for Director Review
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Attachments: [Petitioners Request for Director Review.pdf](#)

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

Petitioners in the above-referenced *inter partes* review proceeding (IPR2022-01006) respectfully request 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. 48. A copy is attached.

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

- 1) The same Panel construed the term “biometric signal” inconsistently in this proceeding and in a parallel *inter partes* review proceeding concerning the same challenged patent. *See Apple Inc. v. CPC Patent Technologies PTY, Ltd.*, IPR2020-00602, Final Written Decision (PTAB Sept. 27, 2023) [Paper No. 31] (“Apple FWD”). The Panel’s inconsistent findings concerning the same challenged patent and limitation in two different proceedings presents an important issue of law or policy. In the parallel proceeding on the same patent, IPR2022-00602, Patent Owner has likewise requested reconsideration of its earlier Director review request (previously denied) based on the Board’s inconsistent findings regarding “biometric signal.” This is an exceedingly rare situation in which both Petitioners and Patent Owner argue that a specific IPR of the same patent should be reviewed based on the same Panel’s inconsistent treatment of the same term.
- 2) The Panel’s claim construction in this proceeding is also inconsistent with the claim language and specification and would lead to indefinite claims. The Panel’s claim construction therefore constitutes an erroneous conclusion of law and erroneous finding of material fact.
- 3) In its Final Written Decision, the Panel failed to consider the express teachings in Mathiassen as well as both side’s expert testimony supporting that the “biometric signal” limitations are disclosed in Mathiassen under any reasonable construction, including Petitioners’ construction, Patent Owner’s construction and the construction from the earlier Apple FWD. Specifically, in finding all claims not unpatentable, the Panel concluded that Mathiassen does not teach receiving a series of biometric signals because it stops “functioning as a fingerprint sensor.” FWD, 85. This is directly contradicted by Mathiassen itself and is acknowledged by both side’s experts, which the Board failed to consider. This was an abuse of discretion and an erroneous finding of material fact.

Regards,

IPR2022-01006
Ex. 2100

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