

From: [Devkar, Andrew V.](#)
To: [Director PTABDecision Review](#)
Cc: [Ryan, Andrew](#); [Coyle, Steve](#); [Geiger, Nicholas](#); [HID-IPRs](#)
Subject: IPR2022-01089: Request for Director Review
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Attachments: [IPR2022-01089 - 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 (IPR2022-01089) 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. 43. A copy is attached.

This request follows a request for Director review in IPR2022-01006 on a related patent involving identical issues.

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.*, IPR2020-00601, 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.
- 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 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, 91. 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,

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IPR2022-01089

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