

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TAIWAN SEMICONDUCTOR MANUFACTURING COMPANY LTD.,

Petitioner

v.

ADVANCED INTEGRATED CIRCUIT PROCESS LLC,

Patent Owner

Case IPR2025-00683

Patent 8,907,425

AUTHORIZED RESPONSE TO DIRECTOR REVIEW REQUEST

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Patent Owner AICP respectfully requests that the Director reject petitioner TSMC's Request for Director Review ("Request").

I. INTRODUCTION

TSMC seeks a finding *by the Director* that the *Director's own decision* was an "abuse of discretion," "fails to consider important issues," and applied "erroneous conclusions of law" to "clearly erroneous findings of material fact." Request at 1, 15. TSMC is not just wrong; it is dead wrong. TSMC's legal burden here is Herculean and the Request falls far short. As an initial matter, the Director found that TSMC "does not provide persuasive reasoning why an *inter partes* review is an appropriate use of Board resources." Paper 17 ("Decision") at 2. Because "the Director is free . . . to determine that for reasons of administrative efficiency an IPR will not be instituted," *Mylan Laboratories Ltd. v. Janssen Pharmaceutica, N.V.*, 989 F.3d 1375, 1382 (Fed. Cir. 2021), TSMC's failure to challenge the Director's factual determination on that efficiency issue, standing alone, is fatal to its Request.

Moreover, TSMC's "abuse of discretion" theories are deeply flawed. Rather than taking direct aim at the Director's findings and reasoning, TSMC instead parrots its prior rejected arguments, ignores settled precedent contrary to its position, and adds a bevy of new unsubstantiated factual assertions. The Director determined "based on a holistic assessment of all of the evidence and arguments presented" that discretionary denial was appropriate. Decision at 3. TSMC's disagreement with the

Director does not establish an abuse of discretion; indeed, far from it, the Director correctly applied legal precedent to the undisputed facts.

First, the Director's rejection of TSMC's national security argument was not an abuse of discretion. The Director has repeatedly told TSMC that it must prove a close nexus between national security and *both* (1) the "particular products" accused in the Lawsuit *and* (2) the "specific patents challenged" in the IPRs. Despite this, TSMC has neither identified any specific military product (much less how that product supposedly impacts national security) nor attempted to explain how the '425 patent is specifically directed toward military products. Moreover, TSMC's concern over national security is feigned: TSMC's alleged harm to national security is the supposed risk that TSMC's unidentified military products might be "enjoined," but TSMC ignores that AICP has already agreed that it "will not seek injunctive relief." Paper 14 at 5. Finally, even if AICP had not waived its injunctive remedies, TSMC has not shown how, under prevailing law, any colorable risk of an injunction exists.

Second, the Director's finding that AICP has strong settled expectations was not an abuse of discretion; to the contrary, it was correct. The Director consistently assesses patent owners' settled expectations based on how long the patent has been "in force," not how long the current assignee has owned it. That makes sense, partly because patent challenges are public record and thus the public (including subsequent assignees) have constructive notice of any challenges to the relevant

patent. It was not an abuse of discretion to consistently apply that precedent. And it was likewise not an abuse of discretion to reject TSMC's argument that it has a settled expectation to continue infringing the '425 patent without paying royalties. Although the Director has identified limited circumstances in which a petitioner may assert its own settled expectations, TSMC did not (and cannot) satisfy that precedent.

Third, the Director properly found that institution would likely lead to duplication, wasted expenses and inconsistent results. TSMC's Request does not dispute that TSMC's prospects for a stay were remote. Instead, TSMC relies on an untimely stipulation it filed only after AICP exposed TSMC's shenanigans. Under the circumstances, the Director was entitled to disregard that stipulation as AICP requested. Moreover, as AICP argued (and TSMC did not dispute), the foreign discovery relevant to whether AICP can "swear behind" some of TSMC's references and thereby eliminate some of the Petition's grounds is available in the district court (through letters rogatory) but not through the Board's subpoena power. This undisputed fact gives rise to the likelihood of duplication and inconsistent results because, irrespective of whether IPR proceedings were instituted, AICP would need to continue litigating validity in the district court to secure that discovery.

Fourth, TSMC's examiner error argument is frivolous. As an initial matter, TSMC's petition did not assert examiner error; indeed, the words "examiner" and "error" are absent from the petition. *See* Petition. Only after TSMC determined that

it could not meaningfully refute AICP's discretionary denial brief did TSMC pivot to arguing examiner error. Moreover, TSMC's argument is frivolous: While TSMC argues that the examiner found that "the prior art disclosed all elements of claim 1 except [one]," Request at 14, TSMC ignores that claim 1 was *subsequently amended* to add yet another limitation that fully distinguished the references before the examiner, EX1002 at 17-18, 22-23. The fact that TSMC's Petition does not even rely on the primary references at issue during the prosecution history speaks volumes. Finally, AICP provided strong merits arguments explaining why TSMC's grounds are flawed. Those merits arguments, which TSMC's Request does not dispute, establish that the examiner got it right.

II. TSMC FACES AN EXTRAORDINARILY HIGH LEGAL BURDEN

TSMC's legal burden here is Herculean. The Director has "*complete discretion* to decide not to institute review." *St. Regis Mohawk Tribe v. Mylan Pharms., Inc.*, 896 F.3d 1322, 1327 (Fed. Cir. 2018) (emphasis added). "If the Director decides not to institute, *for whatever reason*, there is no [appellate] review." *Id.* (emphasis added); *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 273-74 (2016). "For example, the Director is free . . . to determine that for reasons of administrative efficiency an IPR will not be instituted." *Mylan Laboratories*, 989 F.3d at 1382. Thus, "[t]he Director is permitted, but *never compelled*, to institute an

IPR. And *no petitioner has a right to such institution.*” *Id.* (emphasis added). The Director’s decision is “final and nonappealable.” *Cuozzo*, 579 U.S. at 271.

III. ARGUMENT

A. *TSMC’s Request Is Defective*

Although the Director’s decision was not an abuse of discretion—addressed *infra*—TSMC’s Request is defective for two reasons that entitle the Director to reject it outright. First, the Director found that TSMC “does not provide *persuasive reasoning* why an *inter partes* review is an *appropriate use of Board resources.*” Decision at 2 (emphasis added). TSMC does not challenge this finding as clearly erroneous. *See* Request at 4 (only challenging one finding relating to a different issue as “clearly erroneous”). Because “the Director is free . . . to determine that for reasons of administrative efficiency an IPR will not be instituted,” *Mylan Laboratories Ltd.*, 989 F.3d at 1382, TSMC’s failure to challenge the Director’s finding regarding the efficient use of Board resources is fatal to the Request.

Second, TSMC misapprehends the appropriate legal standard. TSMC appears to believe that the analysis is a simple “abuse of discretion” standard under 37 CFR § 42.71(c). However, that section, by its own terms, only applies to “[a] decision *by the Board.*” *Id.* (emphasis added). Here, the Decision was issued *by the Director*. As such, to secure relief, TSMC must not only show an abuse of discretion but also “specifically identify all matters” that TSMC believes were “misapprehended or

overlooked and the place where each matter was previously addressed,” 37 CFR § 42.71(d) (emphasis added). TSMC has not satisfied these stringent requirements.

B. TSMC’s Arguments Fail to Establish an Abuse of Discretion

1. National Security

The Director did not abuse her discretion by rejecting TSMC’s national security argument. The Request is no less than TSMC’s sixth argument that national security favors referral because some *unspecified* military products with some *unspecified* relationship to national security are allegedly implicated in a patent owner’s infringement theory. Paper 10 at 53-62 (July 18, 2025); Paper 15 at 5 (July 31, 2025); *Taiwan Semiconductor Mfg. Co. Ltd. v. Marlin Semiconductor Ltd.*, IPR2025-00847, Paper 11 at 3 (U.S. Pat. & Trademark Off. Sept. 3, 2025) (Acting Dir. C.M. Stewart) (discussing TSMC’s argument); *Taiwan Semiconductor Mfg. Co., Ltd. v. Advanced Integrated Circuit Process LLC*, IPR2025-00828, Paper 12, at 33-40 (U.S. Pat. & Trademark Off. Aug. 13, 2025) (Acting Dir. C.M. Stewart); *id.*, Paper 14, at 5 (Aug. 22, 2025). In each instance, the Director correctly rejected TSMC’s argument.

First, the Director has twice told TSMC that, to advance its theory, it would need to establish a close nexus between national security interests and *both* (1) “particular products or manufacturing methods” accused in the parallel litigation *and* (2) the “specific patents challenged” in the IPR proceeding. *Taiwan Semiconductor*

Mfg. Co., Ltd., IPR2025-00828, Paper 17, at 2-3; *Taiwan Semiconductor Mfg. Co. Ltd.*, IPR2025-00847, Paper 11, at 3. Despite the Director’s clear guidance, TSMC still refuses to (1) identify specific accused products or manufacturing methods; (2) state how those particular unidentified products and methods allegedly impact national security; or (3) address how the ’425 patent’s invention focuses specifically on military applications.

Second, TSMC’s concern over national security is feigned. Presumably cognizant that a *money judgment against TSMC* for infringing another’s intellectual property rights could not possibly undermine *United States national security*, TSMC focuses on the alleged “harm that would arise from an injunction.” Request at 15; *see also id.* at 5-6, 8. This argument is frivolous because AICP has already agreed that it “will not seek injunctive relief.” Paper 14 at 5. AICP’s agreement to waive injunctive remedies in the Lawsuit eviscerates TSMC’s national security argument.

Third, even assuming that AICP had not waived an injunction, TSMC’s theory would require it to establish that AICP has some likelihood of securing an injunction, thereby causing the harm TSMC purportedly fears. To do that, AICP would need to “demonstrate [*inter alia*] that the public interest would not be disserved by a permanent injunction.” *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006). If TSMC’s national security argument had any force, then an injunction would be unattainable under *eBay*, rendering impossible the very harm TSMC alleges it fears.

2. Settled Expectations

TSMC has not shown any abuse of discretion with respect to the Director’s finding of settled expectations. First, TSMC’s argument that AICP lacks settled expectations merely because it was not the original assignee, Request at 11, has been rejected. The Director has repeatedly held that an assignee like AICP steps into the assignor’s shoes with respect to settled expectations. *Datadome S.A. v. Arkose Labs Holdings, Inc.*, IPR2025-00693, Paper 13, at 2, 2 n.2 (U.S. Pat. & Trademark Off. Aug. 14, 2025) (Acting Dir. C.M. Stewart) (crediting a patent owner with “strong settled expectations” even though it had only “acquired the challenged patents in 2021”); Decision at 2-3 (rejecting TSMC’s argument). The Director’s settled expectations analysis focuses on “the [length of time] the patent has been *in force*,” *Dabico Airport Solutions Inc. v. AXA Power APS*, IPR2025-00408, Paper 21, at 3 (U.S. Pat. & Trademark Off. June 18, 2025) (Acting Dir. C.M. Stewart) (emphasis added), rather than the length of time *the current patent owner has owned it*.

The Director’s reasoning is sound and certainly not an abuse of discretion. As an initial matter, challenges to patents—whether in the courts or in the PTO—are a matter of public record and are thus just as accessible to successive assignees as to the original assignee. Logic therefore dictates that subsequent assignees (like AICP) acquire a patent with constructive notice of the history of any challenges mounted against it (or lack thereof). Moreover, the policy underlying settled expectations is

to encourage “early [patent] challenges” because they “favor robust, predictable patent rights.” *Sun Pharmaceuticals Indus. Inc. v. Nivagen Pharms, Inc.*, IPR2025-00893, Paper 18, at 2 (U.S. Pat. & Trademark Off. Sept. 19, 2025) (Acting Dir. C.M. Stewart). Here, irrespective of who owned the ’425 patent over time, it is undisputed that TSMC failed to seek early review, justifying denial.

Second, and relatedly, the Request does not dispute that TSMC was aware of the ’425 patent “no later than March 2017,” Paper 6 at 39, and yet declined to challenge it for eight years, until March 26, 2025, Petition at 114. This is compelling because “[a] failure to seek early review of the patent favors denial and outweighs [other] considerations.” *Murata Mfg. Co., Ltd v. Georgia Tech Research Corp.*, IPR2025-00383, Paper 14, at 3 (U.S. Pat. & Trademark Off. July 29, 2025) (Acting Dir. C.M. Stewart). This only further confirms the Director’s Decision is correct. In any event, “actual notice of a patent or of possible infringement is not necessary to create settled expectations” in part because “patent applications (after 18 months) and issued patents are almost always publicly available to provide notice to the public.” *Dabico*, IPR2025-00408, Paper 21, at 3.

Third, TSMC’s argument that, because “no one asserted the ’425 patent against those technologies” for years TSMC has a settled expectation to continue infringing for free, Request at 9, disregards well settled law to the contrary. It is well settled that the mere fact that a patent owner “did not previously assert the challenged

patent against Petitioner does not defeat Patent Owner’s settled expectations,” *Kahoot! AS v. Interstellar Inc.*, IPR2025-00696, Paper 12, at 2 (U.S. Pat. & Trademark Off. July 31, 2025) (Acting Dir. C.M. Stewart); *Kangxi Comms. Techs. v. Skyworks Solutions Canada, Inc.*, IPR2025-00912, Paper 9, at 2-3 (U.S. Pat. & Trademark Off. Sept. 12, 2025) (Acting Dir. C.M. Stewart). Only when a patent owner fails to assert its patent *coupled with* “a concession of non-infringement by a patent owner” might it “constitute settled expectations for a petitioner.” *Datadome*, IPR2025-00693, Paper 13, at 2. TSMC lacks any such evidence.

Fourth, TSMC’s two cases are readily distinguishable. TSMC’s reliance on *Intel v. Proxense*, IPR2025-00327, Paper 12 (June 26, 2025), Request at 10-11, is misplaced. *Intel* recognizes the commonsense principle that, when a patent is not directed to “a petitioner’s particular technology space,” IPR2025-00327, Paper 12, at 2-3 (June 26, 2025), a lawsuit may have been unforeseeable, thereby providing the petitioner a justification for not having challenged the patent earlier. But this logic only applies, if at all, when “the challenged patents are directed to technology that is fundamentally different from what Petitioner uses in its products.” *Cf. BOE Tech. Grp Co., Ltd. v. Optronix Sciences LLC*, IPR2025-00238, Paper 11 at 2 (U.S. Pat. & Trademark Off. Jul. 29, 2025) (Acting Dir. C.M. Stewart) (granting discretionary denial). Here, TSMC admits that all asserted patents are directed to “semiconductor fabrication and design,” Request at 4, which TSMC also admits is

directly in its technology space, *id.* at 1 (asserting that TSMC “is the world’s largest semiconductor manufacturer”).

Equally misplaced is TSMC’s reliance on *Shenzhen Tuozhu Tech. Co., Ltd. v. Stratasys, Inc.*, IPR2025-00438, Paper 10 (Stewart July 17, 2025). *See* Request at 12. As an initial matter, as the Director made clear in *Shenzhen*, the patent at issue was not “applied” in the petitioner’s “particular technology space.” *Shenzhen*, IPR2025-00438, Paper 10, at 3. This case is readily distinguishable from *Shenzhen* because, *inter alia*, TSMC does not dispute that (1) the ’425 patent is directly squarely at TSMC’s technology space and (2) TSMC had good reason to know that the ’425 patent covers its products.¹ Also, TSMC’s argument that, in *Shenzhen*, “years of non-enforcement weighed against the patent owner’s claim to ‘settled expectations,’” Request at 12, is incorrect. As *Shenzhen* explained, the accused product (of its subsidiary) “launched on Kickstarter in May 2022.” *Id.*, Paper 9 at 5. Thus, *Shenzhen* “could not have known to challenge the [] patent sooner” and did

¹ TSMC’s assertion that “the PTO is judicially estopped” from considering a patent owner’s settled expectations in the *Fintiv* analysis, Request at 12-13, is frivolous. The PTO brief TSMC relies upon never even addressed settled expectations, particularly in the context of a discretionary denial analysis under *Fintiv*.

not have “any reason to believe the [] patent covered their products.” *Id.* TSMC, in sharp contrast, knew of both the patent and the likelihood that its products infringe.

3. Likelihood of Duplication, Expenses and Inconsistent Results

The Director correctly found that, “it is unlikely that a final written decision in these proceedings will issue before district court trial occurs, resulting in significant duplication of effort, additional expense for the parties, and a risk of inconsistent decisions.” Decision at 2. TSMC does not challenge the Director’s finding that trial will likely occur before a final written decision would have issued; instead, TSMC asserts that, in view of TSMC’s and UMC’s “extraordinarily broad” and “reciprocal stipulation[s],” the Director clearly erred in finding a likelihood of duplication, additional expense and inconsistent decisions. Request at 3-4.

The Director’s finding was correct, and certainly not an abuse of discretion. To prove an “abuse of discretion” based on fact error, the proponent must demonstrate that the “factual finding[] [is] not supported by substantial evidence.” *Star Fruits S.N.C. v. United States*, 393 F.3d 1277, 1281 (Fed. Cir. 2005). Here, substantial evidence supports the Director’s finding. First, the Director was justified in discounting TSMC’s and UMC’s untimely stipulations as AICP requested. Paper 14 at 2. As AICP explained, TSMC and UMC filed late stipulations to “game the outcome of the discretionary denial process.” *Id.* TSMC initially offered a narrow stipulation that did not cover its system art theories; as a result, TSMC’s stipulation

entitled it to present essentially the same prior art theories in the district court, in parallel with the IPR proceedings, under the guise of “‘public use’ or ‘on sale’ prior art.” Paper 6, at 30. And UMC’s corresponding petition offered no stipulation at all. *Id.* at 32. Only after AICP exposed their gamesmanship in its opening brief did TSMC and UMC submit untimely stipulations designed to blunt AICP’s arguments. ***TSMC’s Request does not dispute that the Director was entitled to discount these untimely stipulations in rendering her discretionary denial decision.***

Second, as AICP explained, TSMC’s invalidity theories implicated foreign third-party discovery that was not available pursuant to the Board’s subpoena power and which could only be obtained in the district court. Paper 6, at 40-42; Paper 14, at 1. TSMC did not dispute this. Paper 10 at 52-53. As a result, AICP would have been required to litigate that issue in the district court in parallel with any instituted IPR proceedings. This in turn would have led to duplication, additional expenses, and the likelihood that, if AICP secured favorable foreign third-party evidence in the district court, the district court and Board could reach conflicting decisions.

4. Examiner Error

TSMC’s argument that alleged examiner error favors referral is not merely unmerited, it is frivolous. First, unlike some of TSMC’s other petitions, the Petition did not assert examiner error with respect to the ’425 Patent; indeed, the words “examiner” and “error” are absent from the Petition. *See* Petition. Only after AICP

filed its discretionary denial brief, Paper 6, did TSMC deem its discretionary denial position weak enough to justify concocting an examiner error argument, Paper 10 at 46-49. TSMC's belated decision to raise this theory cannot be the basis for an abuse of discretion and, in any event, speaks volumes.

Second, TSMC's examiner error argument is flawed. TSMC says "the Examiner found that the prior art disclosed all elements of claim 1 except [one]" and "the Examiner failed to recognize that this feature was widely used in the prior art." Request at 14. The examiner conceded that the primary reference—Fujimoto, Published U.S. Application 2009/0065807—failed to teach a single limitation in claim 1. EX1002 at 5 (¶ 5). Subsequently, the applicants *narrowed* claim 1. *Id.* at 18. Thereafter, the examiner conceded that Fujimoto "fails" to teach two limitations in claim 1. *Id.* at 30 (¶ 8). Then, the applicants *further narrowed* the claim by adding yet another limitation. *Id.* at 42. TSMC thinks the examiner should have added *yet another* allegedly "well-known" reference to the multi-reference obviousness rejection. But TSMC offers no rationale for that combination. Moreover, TSMC's recognition that the examiner's references did not support a proper rejection is evidenced by TSMC's failure even to include Fujimoto as an exhibit in this IPR.

Third, the examiner did not err because the merits of the '425 patent are strong. While TSMC disingenuously argues that "AICP fail[ed] to substantively contest" that the '425 patent "issued as a result of material errors by the Patent

Office,” Request at 4, TSMC ignores AICP’s merits arguments in its discretionary denial brief and preliminary response, *see* Paper 6, at 36-38; Paper 9 at *passim*.

C. TSMC Request Fails to Challenge the Director’s Holistic Analysis

Even assuming *incorrectly* that TSMC proved that the Director abused her “complete discretion,” *St. Regis Mohawk Tribe*, 896 F.3d at 1327, with respect to the above issues, TSMC’s Request would still fail. To read TSMC’s Request, one might mistakenly believe that the Director’s decision was grounded solely on a few issues. But as the Director explained, her discretionary denial decision was “based on the totality of the evidence and arguments the parties have presented,” Decision at 2, and “on a holistic assessment of all of the evidence and arguments presented,” *id.* at 3. TSMC’s Request fails to explain how, even assuming it established error as to a particular issue, the totality of the evidence favors referral.

D. TSMC Unsubstantiated Factual Assertions Are Entitled to No Weight

TSMC’s Request makes numerous *new* factual assertions that are *devoid of any citation to the record*. *See, e.g.*, Request at 5-6, 10-13. These assertions amount to nothing more than attorney argument, which “‘is not evidence’ and cannot rebut other admitted evidence.” *Elbit Sys. of Am., LLC v. Thales Visionix, Inc.*, 881 F.3d 1354, 1359 (Fed. Cir. 2018). TSMC’s unsubstantiated factual assertions, especially the new ones, are entitled to no weight.

IV. CONCLUSION

AICP respectfully requests that the Director deny TSMC’s Request.

Dated: October 7, 2025

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CERTIFICATE OF SERVICE

The undersigned certifies that pursuant to 37 C.F.R. § 42.6(e), a copy of the foregoing PATENT OWNER’S AUTHORIZED RESPONSE TO PETITIONER’S DIRECTOR REVIEW REQUEST was served via email to lead and backup counsel of record for Petitioner as follows:

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