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To: [Precedential Opinion Panel Request](#)
Subject: Precedential Opinion Panel (POP) Amicus Request Form
Date: Monday, November 14, 2022 8:44:31 PM

Name = Matthew J. Dowd

Affiliation = Dowd Scheffel PLLC

Client represented = Honorable Paul R. Michel, ret.

Case number = IPR2022-00615

Case name = Samsung Elecs. v. Netlist

Paper number = 25

Type of amicus = Supporting POP Review

Brief description = I, Hon. Paul R. Michel (ret.), write in support of Patent Owner Netlist, Inc. regarding IPR2022-00615 for U.S. Patent No. 7,619,912. I encourage the POP to reconsider the institution decision in view of established precedent on Netlist's Question 1:

Whether the Office should clarify the scope of the precedential General Plastic test under § 314(a) for evaluating serial patent challenges—consistent with Vivint—to include previously filed post-grant examination requests, particularly where those requests were inter partes reexamination requests that were filed by a party related to the IPR petitioner and resulted in a decision on the merits affirmed by the Federal Circuit.

The POP Request provides the Board with an important opportunity to clarify that all serial patent challenges by related parties must be scrutinized under 35 U.S.C. § 314(a). Such serial patent challenges should include reexamination requests, as well as IPR or PGR petitions. Thus, in my view, the framework of General Plastic Industrial Co. v. Canon Kabushiki Kaisha, IPR2016-01357, Paper 19, at 17 (PTAB Sept. 6, 2017), should apply to the present case.

I understand from the case documents that Netlist has been trying to obtain a remedy for Google's alleged infringement since 2009. During the past thirteen years, the patent at issue was apparently subjected to multiple challenges, including a reexamination requested by an accused infringer. Such serial challenges are precisely the type of conduct that must not be permitted, lest they perniciously erode confidence in the U.S. patent system.

As a first point, the Federal Circuit has explained that a reexamination proceeding is a relevant consideration when seeking to avoid serial attacks on a patent. In re Vivint, Inc., 14 F.4th 1342, 1353 (Fed. Cir. 2021). That approach is consistent with the America Invents Act, which expressly recognizes the importance of avoiding duplicative proceedings. See, e.g., 35 U.S.C. § 315(d) (authorizing the Board to “stay, transfer, consolidat[e], or terminat[e]” related PTO proceedings).

In view of the need to avoid duplicative and multiple attacks on U.S. patents, a reasonable approach is to apply the General Plastic factors. The PTAB precedent provides a framework that can be applied when the prior proceeding is an inter partes reexamination, as occurred here.

I note that the Board offered no reason why General Plastic cannot be applied to the case at issue. All the Board stated was that Netlist “point[ed] to no authority that General Plastic has ever been applied to deny institution of a petition based on a prior reexamination.” Paper No. 20, at 21. But that observation indicates only that the right fact-pattern has not occurred previously. The Board's conclusion overlooks the objective of discretionary denials under § 314(a).

IPR2022-00615
Ex. 3009

Please note that my support for Netlist's first question should not be viewed as non-support for Netlist's second question.

Relationship to a party to the proceeding = None

I certify that I am submitting this amicus form within seven business days of entry of the Notification of POP request into the case docket or patent application file = Yes

Signature = /Matthew J Dowd/

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