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To: [Director PTABDecision Review](#)
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Subject: IPR2023-00861 - Petitioner's Second Request for Director Review
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Attachments: [Petitioner's Second Request for Director Review - IPR2023-00861.pdf](#)

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Dear Director Vidal,

Petitioner in the above-captioned IPR respectfully requests Director Review of the second decision not to institute review.

Petitioner hereby provides the following priority-ranked list of the issues for which Petitioner seeks Director Review:

Abuse of Discretion

The second decision failed to follow the guidance the Director provided in its first Director Review as to the proper application of the law. First, as to Int'l Patent App. Pub. No. 03/100337 to Godefroy et al. ("Godefroy," EX1008), the second decision erroneously characterized Petitioner's argument as one of inherency rather than explicit disclosure. Within this erroneous inherency framework, the Board concocted an impossible scenario where the diameter of the hot liquid inlet in Godefroy's motor vehicle radiator would be greater than 20 inches such that its sacrificial anode at the inlet is more than 10 inches from the center axis of the inlet (and therefore outside of the claimed range). Second, as to Japanese Patent App. Pub. No. H1-217196 ("Hanazaki-196," EX1006), the Board completely disregarded Petitioner's expert testimony as to why a POSITA would understand the distance between the anode and the center axis of the inlet in Hanazaki-196 to be less than 10 inches.

This Request presents the following questions:

1. Whether the second decision is an abuse of discretion for erroneously treating Petitioner's argument as to Godefroy as one of inherency rather than explicit disclosure and requiring Petitioner to prove that "radiator inlet pipes necessarily have diameters less than 20 inches" (Second Decision, 12) based upon an impossible scenario where the diameter of the hot liquid inlet in Godefroy's motor vehicle radiator would be greater than 20 inches such that its sacrificial anode at the inlet is more than 10 inches from the center axis of the inlet (and therefore outside of the claimed range).

2. Whether the second decision is an abuse of discretion for discounting expert testimony as to what Figure 1 of Godefroy reasonably suggests to a POSITA (which is the standard the Director previously instructed the Board to apply).
3. Whether the second decision is an abuse of discretion for failing to consider expert testimony regarding the known dimensions of Hanazaki-196 and the conclusions that can be drawn from them.

Best regards,

-Roberto

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