

Conservatives for Property Rights, a coalition of policy groups that view private property rights as fundamental to human flourishing, strongly supports Netlist's request for rehearing and Precedential Opinion Panel review of the decision instituting inter partes review.

POP should review this IPR institution decision and establish precedent at least on the question, "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." This question is exceptionally important as a matter of property rights, patent system integrity, patent reliability, agency efficiency and the rule of law.

The America Invents Act created PTAB as a faster, cheaper alternative to judicial litigation. AIA bestowed agency discretion to reject IPR petitions based on economic effects, patent system integrity and timely, efficient management of PTO and PTAB. These factors counterbalance the interests of challenging parties and are clearly present here.

In this case, Samsung petitioned IPR proceedings at Google's request for indemnification. Google is a time-barred real party in interest that failed in multiple proceedings to invalidate the challenged claim of Patent No. 7,619,912. The Federal Circuit upheld the claim unamended.

The AIA does not subordinate judicial rulings to PTAB. The Federal Circuit in *In re Vivint* disallowed considering inter partes reexamination differently from IPR regarding abusive patent challenges. PTAB has appropriately denied petitions in precedential opinions such as *General Plastic* exercising statutory authority in light of court rulings on the same patents.

"Most commenters" in PTO Executive Summary, Public Views on Discretionary Institution Proceedings said PTAB should "help ensure that patent owners are not subjected to repeated, costly litigation on the same issues." Samsung's IPR would extend repeated litigation of Netlist's '912 patent, adding substantial costs over issues already decided, on top of millions of dollars already spent litigating the "faster, cheaper" route.

The issues and the potential consequences at stake in this case are significant and compelling. If POP leaves them unresolved in the manner Netlist requests, a wide avenue will remain open for unlimited abuse by patent infringers and their collaborators. That conflicts with *Vivent*, Congress's intent and PTAB precedents.

The harms from ignoring these matters are sufficient to review this institution decision, in the interests of patent system integrity, patent reliability and the rule of law. CPR strongly urges the board to review, vacate IPR institution and make the denial precedential.