

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTEL CORPORATION,

Petitioner,

v.

BITMICRO, LLC,

Patent Owner.

PTAB Case No. IPR2023-00783

Patent No. 6,496,939

**REPLY SUPPORT OF PETITION FOR
INTER PARTES REVIEW**

The Supercap Manual (INTEL-1015, 62-103) is a prior art printed publication under pre-AIA 35 U.S.C. § 102(a) and (b). Paper 1 at 1-2. The Supercap Manual was submitted to the Patent Office (“PTO”) by the patent applicant during prosecution of U.S. Patent No. 5,608,684 (“Reasoner”) and appears in Reasoner’s file history (“Reasoner FH”). BiTMICRO argues that the Supercap Manual would not “have been sufficiently accessible to the public interested in the relevant art.” Paper 6 at 21. As with analogous art arguments (which resemble Intel’s argument here), Intel properly responds to BiTMICRO’s argument on reply. *Sanofi-Aventis Deutschland GmbH v. Mylan Pharms. Inc.*, 66 F.4th 1373, 1379 (Fed. Cir. 2023). The record shows that interested persons would have had access to and located the Supercap Manual before the September 1999 date of the alleged invention.

Public accessibility is the touchstone of the printed publication inquiry. *VidStream LLC v. Twitter, Inc.*, 981 F.3d 1060, 1065 (Fed. Cir. 2020). BiTMICRO cannot reasonably dispute that the Supercap Manual was publicly accessible as of September 1999. That is established by the record: (i) Reasoner described the Supercap Manual as “published Jun. 1992,” INTEL-1030, “References Cited”; (ii) the Reasoner applicant obtained a copy of the Supercap Manual and submitted it to the PTO in an Information Disclosure Statement (“IDS”) in October 1994, INTEL-1015, 61-103; and (iii) the IDS indicated the Supercap Manual was “published±6/92,” *id.*, 60-61. Further, pursuant to the 1995 version of 37 C.F.R.

§ 1.11(a) that applied at the time, as a part of the Reasoner FH the Supercap Manual was open for public inspection once Reasoner issued on March 4, 1997. Indeed, the Reasoner FH obtained for this IPR proceeding includes the Supercap Manual. INTEL-1015, 1-2, 62-103; *Duodecad IT Services Luxembourg S.A.R.L, et al. v. WAG Acquisition, LLC*, IPR2015-01036, Paper 17 at 19 (PTAB Oct. 20, 2016).

What is more, skilled artisans exercising reasonable diligence would have pursued and located the Supercap Manual. To begin, contrary to BiTMICRO's assertion (Paper 6 at 23), skilled persons interested in the subject matter of the '939 patent would have found and become familiar with Reasoner because its teachings parallel those of the '939 patent. *Duodecad*, IPR2015-01036, Paper 17 at 19. The '939 patent and Reasoner relate to the same field of endeavor: managing data during a power loss. INTEL-1001, 1:8-11; INTEL-1030, 1:8-13. They are also pertinent to the same particular problem: backing up volatile memory during a power outage without using a battery. INTEL-1001, 1:29-58; INTEL-1030, 1:15-2:15. The '939 patent describes activating "super capacitors to supply power" after external power loss so "data can be stored from the volatile memory to the non-volatile memory." INTEL-1001, Abstract. Likewise, Reasoner taught using "a ROM as a secondary backup device for backing up and restoring valid RAM data" and a "capacitor [that] can supply backup power" when power fails. INTEL-1030, Abstract; *see also id.*, 2:19-30, 3:45-57, 5:18-30. The capacitor was preferably a

“large capacity” “SUPERCAP.” INTEL-1030, 5:18-23. In addition, Reasoner—as an issued U.S. patent—was a printed publication accessible to skilled persons. *SmithKline Beecham Corp. v. Apotex Corp.*, 439 F.3d 1312, 1317 n. 5 (Fed. Cir. 2006). Reasoner was classified and indexed in search systems available to the public. INTEL-1030, [51], [52], [58]; MPEP §§ 902.03, 1730 (July 1998); <https://web.archive.org/web/19980128163454/http://www.uspto.gov/web/offices/ac/ido/ptdl/apsdef.htm>.

An interested person who obtained Reasoner also would have ordered the Reasoner FH. Doing so would have been customary: “File histories are commonly ordered by those performing reasonable diligence who have an interest in a patent.” *Duodecad*, IPR2015-01036, Paper 17 at 19. A file history is “easily requisitioned by any interested person from the USPTO.” *Id.* Further, Reasoner provides a roadmap for locating the Supercap Manual. *See Bruckelmyer v. Ground Heaters, Inc.*, 445 F. 3d 1374, 1379 (Fed. Cir. 2006) (issued Canadian patent served as roadmap to related patent application in file history). Reasoner lists the Supercap Manual as cited during prosecution. INTEL-1030, “References Cited.” It also incorporates a version of the Supercap Manual and directs a reader to that document for “[f]urther details” about “large capacity” “SUPERCAP[s].” *Id.*, 5:18-30. Based on these disclosures, an interested person would have ordered the Reasoner FH and reviewed the Supercap Manual described as a cited reference in Reasoner.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2023, true and correct copies of the foregoing PETITIONER'S REPLY TO PATENT OWNER'S PRELIMINARY RESPONSE were served via electronic mail upon the following counsel of record for Patent Owner:

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