

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ADVANCED MICRO DEVICES INC.,
Petitioner,

v.

REALTEK SEMICONDUCTOR CORPORATION,
Patent Owner.

CASE: IPR2023-00788
U.S. PATENT NO. 9,590,582

PATENT OWNER'S PRELIMINARY SUR-REPLY

EXHIBIT LISTING

Exhibit No.	Description
2001	<i>In the Matter of Certain Integrated Circuits, Components thereof, and Products Containing the Same</i> , Inv. No. 337-TA-1350, Order No. 21: Construing Terms of the Asserted Patents (July 25, 2023)
2002	Deposition Testimony of. Dr. Hall-Ellis (August 10, 2023)

Petitioner's preliminary reply did not provide the Board with Dr. Hall-Ellis's inconsistent deposition testimony. Dr. Hall-Ellis explained that, contrary to the position Petitioner advances, indexing by subject headings is necessary for a member of the relevant public to find a piece of prior art in a library unless that person already knows information about the work. Ex.2002 (Hall-Ellis Deposition) at 35:12-36:11.

Instead, Petitioner's preliminary reply reiterates the same arguments from the Petition, relying on the same evidence in Dr. Hall-Ellis's declaration (Ex.1036). This fails to rebut or meaningfully respond to Patent Owner's ("PO") argument in its Preliminary Patent Owner Response that the Petition fails to establish that the Muh thesis is prior art, as is its burden. *In re Wyer*, 655 F.2d 221, 227 (CCPA 1981).

Muh is (and was) only indexed within the University of California Berkley library system by the author's name, the title of the work, and the institution that conferred a master's degree upon Mr. Muh. Ex.2002 at 87:10-88:23; Ex.1036 at 553 (Attachment 6A at entry #245); Ex.1036 at 555 (Attachment 6B at entry #245). This is contrary to the accepted library practices where works are indexed by subject matter classifications. Ex.2002 at 36:21-38:23 ("You could find by any or all of those subject headings that they're indexed in the catalog."). AMD fails to establish that any member of the *relevant public* could have actually found the Muh thesis.

Indexing by name and title **does not** establish public accessibility, even if the title is "descriptive." *See In re Cronyn*, 890 F.2d 1158, 1161 (Fed. Cir. 1989)

(holding that student theses indexed by *author name and title*, and available “[i]n the main library,” were “not accessible to the public because they had not been either cataloged or indexed in a meaningful way”). That is exactly the case here.

The letters VCO (rather than the term “voltage controlled oscillator”) in the title are not sufficient to lead a member of the relevant public to Muh. The other terms in the title, such as FinFET or CMOS, similarly have little to no bearing on any member of the relevant public. Muh, as Dr. Hall-Ellis confirmed, is not one known to the relevant public, such that no member of that relevant public would search for information using his name. Ex.2002 at 82:12-15.

AMD has no evidence that any interested member of the relevant public could have found Muh if it wanted to. *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1569 (Fed. Cir. 1988). Instead, Dr. Hall-Ellis confirmed that she was only able to identify Muh through searches performed already having Muh in her possession, using phrases from Muh itself. Ex.2002 at 80:14-17. The inquiry is not whether a POSITA with Muh in-hand could find the publication, but rather an interested member of the relevant public could have found Muh.

While not a requirement that Dr. Hall-Ellis have personal knowledge of Muh, the absence of any testimony or evidence from anyone with such knowledge is indicative of AMD’s inability to meet its burden. AMD lacks any evidence of the availability of Muh in the prior art period, and establishing that a reference is

available today does not establish that it constitutes prior art. Dr. Ellis provides no evidence of when Muh was first available, only that it is available today. Ex.2002 at 81:18-82:15 (explaining that, by Googling the title and author *today*, she was able to find the thesis). That is insufficient to establish Muh as prior art.

The evidence AMD relies upon, MARC data, is only evidence of *how* a POSITA may find a reference, not *when* the reference is available. Ex.2002 at 61:24-62:8. AMD's evidence fails both to establish when the reference was available as well as that a member of the relevant public could have found Muh. *Blue Calypso*, 815 F.3d at 1349.

While indexing is not “a necessary condition for a reference to be publicly accessible”; it is a factor that is decidedly relevant. *Voter Verified, Inc. v. Premier Election Sols., Inc.*, 698 F.3d 1374, 1380 (Fed. Cir. 2012) (citing *In re Lister*, 583 F.3d at 1312). AMD has not made any argument or advanced any evidence that Muh was publically available beyond its limited presence, with deficient indexing, in a single library within the University of California Berkley Library system.

AMD argues that because Dr. Hall-Ellis was able to find the MARC record using the OCLC database, that somehow Muh is prior art. Paper 9 at 3 (citing Ex.1036 at ¶¶ 32-33, 75-77). This is not the relevant inquiry. Accordingly, AMD has not met its burden to show that Muh is prior art.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2023, I caused a true and correct copy of the foregoing to be served on the following counsel for Petitioner by electronic mail to the following email address:

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