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Paper 21
Date: May 1, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTEL CORPORATION,
Petitioner,

v.

AX WIRELESS, LLC,
Patent Owner.

IPR2023-01135, Patent 9,973,361 B2
IPR2023-01136, Patent 10,079,707 B1
IPR2023-01137, Patent 10,291,449 B2
IPR2023-01138, Patent 10,554,459 B2
IPR2023-01139, Patent 10,917,272 B2
IPR2023-01143, Patent 9,584,262 B2
IPR2023-01144, Patent 9,614,566 B2
IPR2023-01145, Patent 11,212,146 B2[1]

Before KRISTEN L. DROESCH, TERRENCE W. McMILLIN, JOHN D. HAMANN, and MICHAEL CYGAN, *Administrative Patent Judges*.[2]

CYGAN, *Administrative Patent Judge*.

ORDER GRANTING ENTRY OF SUPPLEMENTAL INFORMATION
37 C.F.R. 42.123(a)(1)

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[1] The parties are not authorized to use this caption.
[2] This is not an expanded panel, but represents the entirety of the members of the panels for each of the listed proceedings.

On February 14, 2024, trial was instituted in IPR2023-01135. Paper 10 ("Dec. on Inst."). On or around that date, trials were instituted in the other listed proceedings involving Petitioner Intel Corporation and Patent Owner AX Wireless, LLC. Subsequent to institution, Petitioner requested authorization to file a motion to submit supplemental information in each of the listed proceedings, which we granted. On March 25, 2024, Petitioner filed a motion to submit supplemental information in each of the listed proceedings. *See* Paper 16, IPR2023-01135 ("Mot.").[3] On April 4, 2024, Patent Owner filed an opposition to the motion in each of the listed proceedings. *See* Paper 19, IPR2023-01135 ("Opp.").

Petitioner seeks entry of Exhibits 1047, 1048, and 1049. Exhibit 1047 is a Supplemental Declaration of James Lankford. Exhibit 1048 is a transcript of a deposition of Dr. Christopher Hansen taken in reference to a matter between AX Wireless and Dell Inc. and Dell Technologies, Inc. in the U.S. District Court for the Eastern District of Texas. Exhibit 1049 is a Declaration of Matthew Hindman pertaining to the provenance of other exhibits filed by Petitioner in this proceeding.

Petitioner asserts that the proffered exhibits are relevant to this proceeding because they address the issue of whether the WWiSE reference, Exhibit 1006, qualifies as prior art. Mot. 1. Petitioner asserts that this issue

[3] Because the motion, exhibits, and opposition in each proceeding are identical, we cite only to IPR2023-01135 as representative.

remains relevant because our Institution Decision invited the parties to address "whether dissemination among authors in this case meaningfully differs from that in *Samsung* [*Elecs. Co. v. Infobridge Pte. Ltd.*, 929 F.3d 1363, 1369 (Fed. Cir. 2019)]." *Id.* (citing Paper 10 at 9). Petitioner further asserts that the exhibits do not "alter [Petitioner's] grounds of patentability or necessitate any scheduling changes . . . it simply provides additional support that WWiSE was publicly available." *Id.* at 2. With respect to the Hansen deposition testimony, Petitioner asserts that it was not available at the time the Petition was submitted. *Id.* at 10.

Patent Owner argues that the motion should be denied. First, Patent Owner argues that the proffered evidence is an improper "attempt to patch holes in the Petition." Opp. 1. Patent Owner points to various statements in the Motion that address the Board's institution decision. *Id.* at 3–4 (stating, "This information . . . bolster ***the Board's*** decision"). Patent Owner argues that the Motion seeks to add new theories and support. *Id.* at 7. For example, Patent Owner argues that portions of Exhibits 1047 and 1048 "attest that those in the industry or engineers would have sought out proposals in the 802.11n task group for product development purposes," and that this represents a new theory not in the petition. *Id.* Patent Owner further argues that portions of these exhibits add arguments regarding the public availability of a January 2005 TGn Sync proposal that the Board determined not to have been shown as prior art. *Id.* at 7–8.

Regarding Petitioner's assertion that the Board invited such additional evidence, Patent Owner argues that the Board did not seek such evidence outside the normal course of briefing. *Id.* at 5. Patent Owner further argues that the Board previously denied additional briefing on this issue. *Id.* (citing Paper 7, 4). Patent Owner further argues that all of the proffered information was available to Petitioner at the time the Petition was filed, except for the Hansen Declaration, for which Patent Owner states that "nothing precluded Petitioner from seeking an earlier deposition." *Id.* at 6.

Patent Owner further argues that portions of the proffered exhibits have no relevance to the issue of whether WWiSE is available as a prior art reference. *Id.* at 1–2. Patent Owner argues that the TGn Sync-related portions of the exhibits are not relevant because Petitioner does not include TGn Sync as a reference listed as part of the obviousness combination for any ground. *Id.* at 9. Patent Owner further argues that portions of the exhibits "directed to whether engineers and companies generally followed 802.11 proposals is not relevant to 'link[ing] WWiSE's contributors to the reference's public availability.'" *Id.* at 10 (quoting Mot. 1, 5)

We grant Petitioner's motion for entry of Exhibits 1047–1049. Petitioner's motion, authorized by the Board, satisfies the requirements of 37 C.F.R. § 42.123(a). Petitioner's motion was filed within the one month time period prescribed by 37 C.F.R. § 42.123(a)(1). Petitioner's motion also satisfies the relevance requirement of 37 C.F.R. § 42.123(a)(2). Both grounds in the Petition are based in part upon WWiSE. Pet. 4. Patent

Owner has contested the status of WWiSE as prior art. Paper 6, 3. Thus, evidence pertinent to the prior art status of WWiSE is relevant to the patentability issues in the proceeding. Moreover, because the Petition included statements as to teachings from TGn Sync in its obviousness grounds, which were discussed by Patent Owner and the Board, with both Petitioner and the Board specifically addressing its prior art status, evidence as to the prior art status of TGn Sync is also relevant. *See, e.g.,* Pet. 11 n.2; Paper 6, 45; Dec. on Inst. 30 n.6. With respect to Patent Owner's arguments that portions of the evidence do not support a showing of public availability about the WWiSE contributors, as discussed in the Decision on Institution, we determine that the facts are relevant to the contested issue of public availability. Relevance does not require that each proffered fact also be persuasive.

We further determine that granting the motion comports with "efficient administration of the Office and the ability of the Office to complete IPR proceedings in a timely manner." *Redline Detection, LLC v. Star Envirotech, Inc.*, 811 F.3d 435, 445 (Fed. Cir. 2015) (citing 35 U.S.C. § 316(b)). Patent Owner points to our pre-institution denial of evidence on this issue. However, in our pre-institution consideration we considered the need "to have a complete record to consider" and "our ability to issue our decision on institution within the three month deadline." Paper 7, 6. Because Petitioner's motion has been timely filed at the beginning of the trial phase of this proceeding, presentation of such evidence that may be

timely addressed by any Patent Owner's response weighs towards, not against, efficient administration of these proceedings. Although the parties disagree as to whether portions of the evidence attempt new theories of public availability, the weight given each portion of the evidence will be determined during trial, including regarding whether any patentability issue was not properly first raised in the Petition.

ORDER

It is:

ORDERED that Petitioner's motion for entry of Exhibits 1047–1049 as supplemental information is *granted*.

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