Filed on behalf of: AX Wireless, LLC

Entered: April 4, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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INTEL CORPORATION,
Petitioner,

v.

AX Wireless, LLC,
Patent Owner.

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Case IPR2023-01138
Patent 10,554,459

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**PATENT OWNER'S OPPOSITION TO PETITIONER'S MOTION TO SUBMIT SUPPLEMENTAL INFORMATION**

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. ARGUMENT ..... 2

A. Petitioner's Supplemental Information Improperly Seeks to Respond to the POPR and the Institution Decision ..... 2

B. Petitioner's Supplemental Evidence Is Not Relevant ..... 8

III. Conclusion ..... 10

# TABLE OF AUTHORITIES

## CASES

*Am. Well Corpo. v. Teladoc Health, Inc.*,
IPR2021-00748, Paper 23 (PTAB Feb. 28, 2022).....8

*Hunter's Mfg. Co., Inc. v. Ravin Crossbows, LLC*,
IPR2023-00407, Paper 32 (PTAB Feb. 15, 2024).....2, 5

*Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*,
821 F.3d 1359 (Fed. Cir. 2016) .....2

*Merck Sharp & Dohme Corp. v. Microspherix LLC*,
IPR2018-00393, Paper 21 (PTAB Sept. 10, 2018).....6

*Mianyang Boe Optoelectronics Tech. Co. Ltd. V. Samsung Display Co., Ltd.*,
IPR2023-00941, Paper 27 (PTAB Feb. 15, 2024).....3

*Microsoft Corp. v. Corel Software, LLC*,
IPR2016-01083, Paper 14 (PTAB Dec. 1, 2016) .....8

*Ooma, Inc. v. Deep Green Wireless LLC*,
IPR2017-01541, Paper 14 (PTAB Jan. 23, 2018) .....3

*Redline Detection, LLC v. Star Envirotech, Inc.*,
811 F.3d 435 (Fed. Cir. 2015) .....2

*Triller, Inc. v. TikTok Pte. Ltd.*,
IPR2022-00180, Paper at 18 (PTAB Aug. 25, 2022).....3

## STATUTES

35 U.S.C. § 312(a)(3).....2

35 U.S.C. § 314(a) .....8

## REGULATIONS

37 C.F.R. § 42.123 .....*Passim*

37 C.F.R. § 42.20 .....8

**EXHIBIT LIST**

| Exhibit | Description |
|---|---|
| 2001 | Declaration of Zygmunt Haas, Ph.D. ("Haas" or "AXW-2001") |
| 2002 | *Curriculum Vitae* of Zygmunt Haas, Ph.D. ("AXW-2002") |
| 2003 | Institute of Electrical & Electronics Engineers ("IEEE"), *IEEE Standards Association – Documents 802.11* (Oct. 10, 2023), https://mentor.ieee.org/802.11/documents (excerpted) ("AXW-2003") |
| 2004 | IEEE, *IEEE Standards Association – Documents 802.11: Working Group* (Oct. 8, 2023), https://mentor.ieee.org/802.11/documents?is_dcn=DCN%2C%20Title%2C%20Author%20or%20Affiliation&is_group=0000 (screenshot excerpts) ("AXW-2004") |
| 2005 | IEEE, *IEEE Standards Association – Documents 802.11: TGn Working Group (inactive)* (Sept. 20, 2023), https://mentor.ieee.org/802.11/documents?is_group=000n (excerpted) ("AXW-2005") |
| 2006 | IEEE 802.11 Working Group of the 802 Committee, *IEEE P802.11n™/D1.0, Draft Amendment to STANDARD [FOR] Information Technology-Telecommunications and information exchange between systems-Local and Metropolitan networks-Specific requirements-Part 11: Wireless LAN Medium Access Control (MAC) and Physical Layer (PHY) specifications: Enhancements for Higher Throughput* (Mar. 2006) ("AXW-2006") |
| 2007 | IEEE, *IEEE Standards Association – Documents 802.11 (no search terms)* (Sept. 22, 2023), https://mentor.ieee.org/802.11/documents ("AXW-2007") |
| 2008 | IEEE, *IEEE Standards Association – Documents 802.11 (all groups; extended range activity)* (Sept. 20, 2023), https://mentor.ieee.org/802.11/documents?is_dcn=extended range ("AXW-2008") |

| Exhibit | Description |
|---|---|
| 2009 | IEEE, *IEEE Standards Association – Documents 802.11: TGn Working Group (inactive; range search)* (Sept. 20, 2023), https://mentor.ieee.org/802.11/documents?is_dcn=range&is_group=000n ("AXW-2009") |
| 2010 | IEEE, *IEEE Standards Association – Documents 802.11: TGn Working Group (inactive; extended range activity)* (Sept. 20, 2023), https://mentor.ieee.org/802.11/documents?is_dcn=extend&is_group=000n ("AXW-2010") |
| 2011 | IEEE, *IEEE Standards Association – Documents 802.11 (all groups; extended and range search activity)* (Oct. 9, 2023), https://mentor.ieee.org/802.11/documents?is_dcn=extended AND range ("AXW-2011") |
| 2012 | IEEE, *IEEE Standards Association – Documents 802.11 (all groups; range search activity)* (Oct. 10, 2023), https://mentor.ieee.org/802.11/documents?is_dcn=range (excerpted) ("AXW-2012") |
| 2013 | Bruce Kraemer & Adrian Stephens, *TGn Proposed Draft Revision Notice* (Doc. No. IEEE 802.11-06/1061r0) (July 18, 2006), https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fmentor.ieee.org%2F802.11%2Fdcn%2F06%2F11-06-1060-00-000n-tgn-draft-revision-with-additions-and-deletions.ppt&wdOrigin=BROWSELINK ("AXW-2013") |
| 2014 | Gérald Chouinard, *Bringing broadband access to rural and remote areas: The Canadian Experience*, ITU NEWS (commem. ed. 3) (Apr. 2006) ("AXW-2014" or "ITU News") |
| 2015 | Matthew S. Gast, *802.11 Wireless Networks: The Definitive Guide* (2d ed. 2005) ("AXW-2015" or "Gast") |

| Exhibit | Description |
|---|---|
| 2016 | Syed Aon Mujtaba, *TGn Sync Response to Questions* (Doc. No. IEEE 802.11-05/182r2) (Mar. 16, 2005), https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fmentor.ieee.org%2F802.11%2Fdcn%2F05%2F11-05-0182-02-000n-tgnsync-response-to-atlanta-questions.ppt&wdOrigin=BROWSELINK ("AXW-2016") |
| 2017 | Third Amended Docket Control Order, *AX Wireless LLC v. Dell Inc.*, No. 2:22-cv-00277 (E.D. Tex. Oct. 23, 2023), ECF No. 136 ("AXW-2017") |
| 2018 | Third Amended Docket Control Order, *AX Wireless LLC v. Lenovo Grp. Ltd.*, No. 2:22-cv-00280 (E.D. Tex. Oct. 31, 2023), ECF No. 130 ("AXW-2018") |
| 2019 | RESERVED |
| 2020 | *Time to Milestones – Judge Robert W. Schroeder, III: Case Filing Date: On or After Jan. 1, 2008*, Docket Navigator ("AXW-2020") |
| 2021 | Civil Docket, *AX Wireless LLC v. Dell Inc.*, No. 2:22-cv-00277 (E.D. Tex.) (through Nov. 15, 2023) ("AXW-2021") |
| 2022 | Civil Docket, *AX Wireless LLC v. Lenovo Grp. Ltd.*, No. 2:22-cv-00280 (E.D. Tex.) (through Nov. 15, 2023) ("AXW-2022") |
| 2023 | Defendants' P.R. 3-3 Invalidity Contentions and Ineligibility Contentions, *AX Wireless LLC v. Dell Inc. & HP Inc.*, Nos. 2:22-cv-00277, 2:22-cv-00279 (E.D. Tex. Jan. 23, 2023 [served]) ("AXW-2023") |
| 2024 | RESERVED |

| Exhibit | Description |
|---|---|
| 2025 | R. Kennedy, *Amendment to IEEE Standard 802.11-2007 (Project No. P802.11af): Standard for Information Technology - Telecommunications and Information Exchange Between Systems - Local and Metropolitan Area Networks - Specific Requirements - Part 11: Wireless LAN Medium Access Control (MAC) and Physical Layer (PHY) Specifications; Amendment: TV White Spaces Operation* (PAR Request Oct. 2, 2009; PAR Approval Dec. 9, 2009) ("AXW-2025") |
| 2026 | Bruce Kraemer, *Amendment to IEEE Standard 802.11-2007 (Project No. P802.11ah): Standard for Information Technology - Telecommunications and Information Exchange Between Systems - Local and Metropolitan Area Networks - Specific Requirements - Part 11: Wireless LAN Medium Access Control (MAC) and Physical Layer (PHY) Specifications; Amendment: Sub 1 GHz License-Exempt Operation* (PAR Request July 26, 2010; PAR Approval Sept. 30, 2010) ("AXW-2026") |
| 2027 | Xuemei Ouyang et al., *Optimal Antenna Diversity Combining for IEEE 802.11A System*, 48 IEEE TRANSACTIONS CONSUMER ELECS. 738 (Aug. 2002) ("AXW-2027") |
| 2028 | Cenk Kose & Bruce Edwards, *WWiSE Proposal: High Throughput Extension to the 802.11 Standard* (Doc. No. IEEE 802.11-04/0886r6) (Jan. 6, 2005), https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjJq5fyur-CAxUROUQIHan7D4IQFnoECBkQAQ&url=https%3A%2F%2Fmentor.ieee.org%2F802.11%2Fdcn%2F05%2F11-05-0149-00-000n-wwise-proposal-high-throughput-extension-to-802-11-standard.doc&usg=AOvVaw2ryBNHlH79Ugg8pE4IzPVE&opi=89978449 ("AXW-2028" or "March 2005 WWiSE Proposal") |
| 2029 | Mohammad Hossein Manshaei & Thierry Turletti, *Simulation-Based Performance Analysis of 802.11a Wireless LAN*, PROC. INT'L SYMP. TELECOMMS. 758 (Aug. 2003) ("AXW-2029") |

| Exhibit | Description |
|---|---|
| 2030 | IEEE, *IEEE P802.11 – Task Group N – Meeting Update: Status of Project IEEE 802.11n: Standard for Enhancements for Higher Throughput*, https://www.ieee802.org/11/Reports/tgn_update.htm (printed 11/10/2023) ("AXW-2030") |
| 2031 | RESERVED |
| 2032 | RESERVED |
| 2033 | Docket Control Order, *AX Wireless LLC v. Acer Inc.*, No. 2:23-cv-00041-JRG-RSP (E.D. Tex. Oct. 13, 2023), ECF No. 35 ("AXW-2033") |
| 2034 | Defendant Acer Inc.'s Initial Disclosures Pursuant to Paragraphs 1 and 3 of the Discovery Order, *AX Wireless LLC v. Acer Inc.*, No. 2:23-cv-00041-JRG-RSP (E.D. Tex. Oct. 19, 2023) ("AXW-2034") |
| 2035 | Defendant's P.R. 3-3 Invalidity Contentions and Ineligibility Contentions, *AX Wireless LLC v. Acer Inc.*, No. 2:23-cv-00041-JRG-RSP (E.D. Tex. Nov. 30, 2023) ("AXW-2035") |
| 2036 | Defendant HP Inc.'s Rule 72(a) Objections to Order Denying Motion to Transfer to the Northern District of California, *AX Wireless LLC v. HP Inc.*, No. 2:22-cv-00279-JRG-RSP (E.D. Tex. Dec. 21, 2023), ECF No. 101 ("AXW-2036") |
| 2037 | Fourth Amended Docket Control Order, *AX Wireless LLC v. Dell Inc.*, No. 2:22-cv-00277-RWS-RSP (E.D. Tex. Jan. 2, 2024), ECF No. 161 ("AXW-2037") |
| 2038 | Third Amended Docket Control Order, *AX Wireless LLC v. HP Inc.*, No. 2:22-cv-00279-JRG-RSP (E.D. Tex. Jan. 2, 2024), ECF No. 102 ("AXW-2038") |
| 2039 | Declaration of Amit Makker In Response to Petitioner's Objections to Patent Owner's Evidence ("AXW-2039") [*served, not filed*] |

| Exhibit | Description |
|---|---|
| 2040 | Amended Docket Control Order, *AX Wireless LLC v. Lenovo Group Limited*, No. 2:22-cv-0280-JRG-RSP (E.D. Tex. Feb. 24, 2023), ECF No. 58 ("AXW-2040") |
| 2041 | Docket Control Order, *AX Wireless LLC v. Dell Inc.*, No. 2:22-cv-00277-JRG-RSP (E.D. Tex. Dec. 10, 2022), ECF No. 48 ("AXW-2041") |

## I. INTRODUCTION

The Board should deny Petitioner's Motion to Submit Supplemental Information (Paper 16) ("Motion" or "Mot.") for two reasons. First, by its own terms, the Motion's supplemental information—a supplemental Dr. Lansford declaration (INTEL-1047), a prior art inventor's deposition transcript (INTEL-1048), and an Internet Archive declaration with Wayback Machine printouts (INTEL-1049)[1]— is an attempt to patch holes in the Petition and is thus an improper application of 37 C.F.R. § 42.123(a). As the Board already held, Petitioner "anticipated the issue" of public availability by filing "a lengthy declaration including a number of evidentiary appendices (1124 pages long)," and the "proposed new evidence … ***could have and should have been included in the Petition***[]." Paper 7 at 4.[2] Petitioner offers no reason for Board to reverse course now.

Second, even ignoring that the Board has already ruled on this issue, portions of Petitioner's supplemental information have no relevance to the alleged

[1] Patent Owner specifically objects to INTEL-1049's Appendices A-D and the corresponding paragraphs 38, 23, 30, 32.

[2] All emphasis added and internal quotations and citations omitted unless noted.

availability of the July 2005 WWiSE reference, and thus fail to meet the requirements of 37 C.F.R. § 42.123(a). The Board should deny the Motion.

## II. ARGUMENT

### A. Petitioner's Supplemental Information Improperly Seeks to Respond to the POPR and the Institution Decision

Petitioner improperly attempts to use the supplemental information procedure to refine and bolster its arguments in response to the Patent Owner Preliminary Response ("POPR") and the Institution Decision ("ID"). *See Hunter's Mfg. Co., Inc. v. Ravin Crossbows, LLC*, IPR2023-00407, Paper 32 at 3 (PTAB Feb. 15, 2024). That is not what the supplemental information procedure is for and the Board did not invite otherwise.

A motion to submit supplemental information is not automatically granted even if 37 C.F.R. § 42.123(a)'s timeliness and relevancy requirements are satisfied. *Redline Detection, LLC v. Star Envirotech, Inc.*, 811 F.3d 435, 444–45 (Fed. Cir. 2015). Instead, the Board evaluates motions under § 42.123(a) "within the overarching context of the PTAB's regulations governing IPR and general trial proceedings." *Id.* at 446. This includes the requirement that "the initial petition identify 'with particularity' the 'evidence that supports the grounds for the challenge to each claim.'" *Hunter's Mfg. Co., Inc.*, IPR2023-00407, Paper 32 at 3 (quoting *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016) (quoting 35 U.S.C. § 312(a)(3))).

Where a petitioner "seeks to provide arguments via the supplemental [information] for issues addressed by Patent Owner in its Preliminary Response or by [the Board] in the Decision on Institution," the Board "view[s] [the supplemental information] as unwarranted." *Triller, Inc. v. TikTok Pte. Ltd.*, IPR2022-00180, Paper at 18, 3–4 (PTAB Aug. 25, 2022). That is because "[s]upplemental information is not intended to provide a petitioner an advantageous 'wait-and-see' opportunity to use a patent owner's preliminary response and [the Board's] decision on institution in order to refine or bolster petitioner's position." *Ooma, Inc. v. Deep Green Wireless LLC*, IPR2017-01541, Paper 14 at 3–4 (PTAB Jan. 23, 2018); *Mianyang Boe Optoelectronics Tech. Co. Ltd. V. Samsung Display Co., Ltd.*, IPR2023-00941, Paper 27 at 3–4 (PTAB Feb. 15, 2024) (citing various cases).

Here, Petitioner admittedly seeks to use the supplemental information procedure as an opportunity to "bolster" and "address" issues discussed in the Board's Institution Decision:

- "Intel provides three proposed exhibits that buttress ***the Board***'s conclusion and address the issue it raised." (Mot. at 4–5 (citing ID at 21));
- "***The Board*** suggested that the parties consider whether the list of WWiSE contributors supports public availability. *Id*. Intel seeks to submit supplemental evidence relating to that issue

based on the rule in 37 C.F.R. § 42.123(a)." (Mot. at 9-10 (citing ID at 21));

- "This information speaks directly to an issue ***the Board*** invited the parties to address." Paper 10 at 21. It also bolsters ***the Board's*** decision …." (Mot. at 6 (citing ID at 21));
- "Intel's supplemental information is relevant to this IPR. First, it reinforces ***the Board's*** conclusion that WWiSE was publicly available …." (Mot. at 1 (citing ID at 21, 36–38));
- "Second, the proposed exhibits link WWiSE's contributors to the reference's public availability—an issue ***the Board*** suggested that the parties explore." (Mot. at 1 (citing ID at 21));
- "The ***institution decision*** recognized that WWiSE . . . ***The decision*** then invited Intel and Patent Owner AX Wireless to address this information going forward …." (Mot. at 1 (citing ID at 21));
- "And like Dr. Lansford, Dr. Hansen explained that engineers paid attention to submissions to TGn during the 802.11 standardization process, which is relevant to the issue ***the Board*** invited the parties to address." (Mot. at 6–7).

Petitioner relies heavily on the Board's statement that "[t]he parties may want to consider during trial" how the alleged dissemination of the July 2005 WWiSE proposal among its contributors is sufficient to establish public availability as the basis for its supplemental information. *See, e.g.*, Mot. at 1, 4–5, 6-7, 9–10 (citing ID at 21). But "[s]tatements in the institution decision (e.g.,

Paper 10 at 9), to the effect that the parties should consider addressing certain issues during trial" are not an invitation for a "motion under 37 C.F.R. § 42.123." *Hunter's Mfg. Co., Inc.*, IPR2023-00407, Paper 32 at 10–11. Rather, "such statements . . . are directed to the normal briefing process and do not justify allowing supplemental information." *Id.* This is especially true here, where the Board merely suggested evaluating whether the alleged distribution of the July 2005 WWiSE proposal among its contributors—citing evidence already in the record (*see* ID at 21)—supports public availability—i.e., a run-of-the-mill evaluation for briefing.

Indeed, the Board already rejected Petitioner's prior request to submit a supplemental Lansford Declaration on the public availability of the July 2005 WWiSE reference finding that the evidence "could have and should have been included in the Petition[]." Paper 7 at 4. Specifically, the Board found that "Petitioner has already filed a lengthy declaration including a number of evidentiary appendices (1124 pages long)" and "anticipated the issue of whether this [WWiSE] reference qualifies as prior art." *Id.* Petitioner thus had (and took) the opportunity to submit evidence in the Petition as to the availability of the July 2005 WWiSE reference making the supplemental Lansford declaration improper then. *Id.*

So too now. Although 37 C.F.R. § 42.123(a) does not require a movant show that the supplemental information could not have been obtained earlier, "[t]he Board may take into account . . . whether the supplemental information was reasonably available to the Petitioner at the time the Petition was filed." *Merck Sharp & Dohme Corp. v. Microspherix LLC*, IPR2018-00393, Paper 21 at 4 (PTAB Sept. 10, 2018). It was here. The information in the Supplemental Lansford Declaration—how industry participants allegedly tracked draft 802.11 proposals for product development (INTEL-1047 ¶¶ 6-9), the composition of WWiSE and TGn Sync contributors (*id.* ¶ 10), and the functioning of the Mentor website at the relevant time period (*id*. ¶ 11)—was all available at the time of the Petition. So were the Internet Archive webpage printouts of previously submitted exhibits and the corresponding Internet Archive Declaration. INTEL-1049 Appendices A-D. And although Mr. Hansen's deposition (INTEL-1048) did not occur until November 29, nothing precluded Petitioner from seeking an earlier deposition or declaration from Mr. Hansen. Petitioner knew he was an inventor on the primary prior art in the Petition and discovery in the underlying district court litigations had long been open. AXW-2040 and AXW-2041 at 4. Petitioner chose to wait until after the POPR was submitted to depose Mr. Hansen.

Moreover, Petitioner's supplemental information does not "simply provide[] additional support that WWiSE was publicly available," as argued by Petitioner.

Mot. at 2. In addition to patching holes in the Petition, as described above, it seeks to add new theories and support. A majority of the supplemental Lansford declaration (INTEL-1047) and a portion of the Hansen transcript (INTEL-1048) attest that those in the industry or engineers would have sought out proposals in the 802.11n task group for product development purposes. INTEL-1047 ¶¶ 6–9; INTEL-1048 at 22:2–25:21. But neither the Petition nor Dr. Lansford's Declaration include this public availability theory. As the POPR pointed out, Petitioner provided no reason as to why a POSA would have been aware of the July 2005 WWiSE proposal or why a general desire to combine proposals from WWiSE and TGn Sync would have led to a POSA plucking July 2005 WWiSE's ER header bits out of that proposal and dropping them into Hansen. POPR at 10. Petitioner's inclusion of this new theory now is a not-so-veiled attempt to use supplemental information to refine and bolster arguments in its Petition in view of the POPR and the Institution arguments.

Additionally, Petitioner uses both the supplemental Lansford declaration (INTEL-1047) and the Hansen transcript (INTEL-1048) to add arguments regarding the public availability of a January 2005 TGn Sync proposal (INTEL-1012) that are entirely absent from the Petition. INTEL-1047 ¶¶9–10; INTEL-1048 at 32:23–33:1. The POPR demonstrated that the Petition did not rely on the January 2005 TGn Sync Proposal as part of any of its grounds. POPR at 20–21.

Petitioner should not be permitted to use supplemental information as a backdoor for new arguments on the public availability of the January 2005 TGn Sync Proposal. *See Microsoft Corp. v. Corel Software, LLC*, IPR2016-01083, Paper 14 at 13 n.5 (PTAB Dec. 1, 2016) (quoting 35 U.S.C. § 314(a)) (the petitioner must "provide a threshold showing" on the "fundamental element" of public availability "'in the petition'").

Because Petitioner seeks to use the supplemental information procedure to refine or bolster the positions in the Petition, its motion should be denied. *See Am. Well Corpo. v. Teladoc Health, Inc.*, IPR2021-00748, Paper 23 at 6–7 (PTAB Feb. 28, 2022) (citing cases).

**B. Petitioner's Supplemental Evidence Is Not Relevant**

Moreover, portions of Petitioner's supplemental information are not relevant to a claim for which trial has been instituted as required by 37 C.F.R. § 42.123(a)(2). Petitioner bears the burden to establish that the supplemental information is relevant. *See* 37 C.F.R. § 42.20; 37 C.F.R. § 42.123(a)(2). Here, Petitioner argues that its supplemental information "reinforces the Board's conclusion that WWiSE was publicly available" and "link[s] WWiSE's contributors to the reference's public availability—an issue the Board suggested that the parties explore." Mot. 1. Putting aside the impropriety of using supplemental information as an avenue to address issues raised in an Institution

Decision (*see* Section II.A, *supra*), large swaths of Petitioner's supplemental information are irrelevant to Petitioner's cited issues.

For starters, portions of Petitioner's supplemental information relate to the alleged availability of a ***TGn Sync***—not WWiSE—proposal. In his supplemental declaration, Dr. Lansford attests that "[i]n the 2005 time frame," the "TGN Sync" proposal was "publicly available from the IEEE website" and "widely discussed in wireless networking industry circles." INTEL-1047 ¶ 9. He also discusses the authors and contributors of the "January 2005 TGn Sync proposal … Exhibit 1012." INTEL-1047 ¶ 10. Similarly, Mr. Hansen's deposition transcript includes testimony regarding the "TGnSync proposal," including its submission process (INTEL-1048, 32:23–33:1), whether engineers would be reviewing the proposal (*id.*, 24:23–25:5), and expectations that the proposal would be incorporated into the 802.11n standard (*id.*, 25:7–21). Supplemental information on the alleged public availability of a TGn Sync proposal has no relevance to the public availability of the July 2005 WWiSE proposal as alleged by Petitioner.

Moreover, contrary to Petitioner's arguments, portions of Petitioner's supplemental information directed to whether engineers and companies generally followed 802.11 proposals for product development purposes is not relevant to "link[ing] WWiSE's contributors to the reference's public availability." Mot. at 1, 5 (citing ID at 21, 36–38); *see also* Mot. 5–7 (citing INTEL-1047 ¶¶ 6–7; INTEL-

1048 23:4–25). Product development activities of persons or companies at large has no bearing on the facts surrounding the distribution of proposals among ***the WWiSE contributors*** and whether that distribution satisfies the public availability requirements. Indeed, the supplemental Lansford declaration separately discusses the WWiSE contributors and general companies' alleged product development activities. INTEL-1047 ¶ 10 (WWiSE Contributors), ¶¶ 5–8 (product development).

Because Petitioner failed to establish the relevance of this supplemental information, its Motion, at least as to these portions, should be denied.

## III. Conclusion

For the reasons set forth above, the Board should deny Petitioner's Motion.

Respectfully submitted,

Dated: April 4, 2024

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**CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 4th day of April, 2024, a true and correct copy of the foregoing **Patent Owner's Opposition to Petitioner's Motion to Submit Supplemental Information and all Exhibits** were served by electronic mail on Petitioner's lead and backup counsel at the following email addresses:

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