PUBLIC VERSION

[redacted]

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SEMICONDUCTOR COMPONENTS INDUSTRIES, LLC,
Petitioner

v.

GREENTHREAD, LLC,
Patent Owner

Case: IPR2023-01243
U.S. Patent No. 10,510,842

PATENT OWNER'S PRELIMINARY SUR-REPLY

[redacted]

TABLE OF AUTHORITIES

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CASES

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OTHER AUTHORITIES

Restatement (Third) Of Agency § 8.09 cmt. (a) (2006) 9

[redacted]

EXHIBIT LIST

Exhibit No.	Description	Submitted Previously?
Ex. 2001	*Greenthread, LLC v. Intel Corp.*, No. 6:22-cv-00105-ADA, Dkt. 7 (summons returned executed) (W.D. Tex. Feb. 7, 2022)	X
Ex. 2002	Email communication from Petitioner's counsel to Patent Owner's counsel October 16, 2023	X
Ex. 2003	Presentation entitled "Accelerating the Journey Towards a Sustainable Ecosystem" (2023) available at Petitioner's website at https://www.onsemi.com/site/pdf/2023_Analyst_Day_Presentation.pdf	X
Ex. 2004	"Clock Devices for Servers" (Aug. 2020) available at https://cdrdv2-public.intel.com/620306/620306_Clock_Devices_For_Server_Rv1p3.pdf	X
Ex. 2005	On Semiconductor Corporation Form 10-K filing with U.S. Securities and Exchange Commission for the fiscal year ended December 31, 2016	X
Ex. 2006	ON Semiconductor data sheet entitled "NCP81248 Three-Rail Controller with Intel Proprietary Interface for IMVP8 CPU Applications" (Feb. 2018) available at https://www.onsemi.com/pdf/datasheet/ncp81248-d.pdf	X
Ex. 2007	onsemi data sheet entitled "+ 1 Phase Output Controller with SVID Interface for Computer CPU Applications" (May 2023) available at https://www.onsemi.com/download/data-sheet/pdf/ncp81566-d.pdf	X
Ex. 2008	Onsemi data sheet entitled "+ 2 Phase Output Controller with SVID Interface for Computer CPU Applications (May	X

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Exhibit No.	Description	Submitted Previously?
	2023) available at https://www.onsemi.com/download/data-sheet/pdf/ncp81567-d.pdf	
Ex. 2009	Article entitled "If You Invested $1000 in ON Semiconductor Corp. a Decade Ago, This is How Much It'd Be Worth Now," May 8, 2023 available at https://finance.yahoo.com/news/invested-1000-semiconductor-corp-decade-123012312.html	X
Ex. 2010	Onsemi Standard Terms and Conditions of Sale, Rev.08102021 available at https://www.onsemi.com/site/pdf/ONSEMI_T&C.pdf	X
Ex. 2011	Plaintiff's First Set of Common Interrogatories to Defendants ON Semiconductor Corporation and Monolithic Power Services, Inc., Et Al., *Greenthread, LLC v. ON Semiconductor Corp.*, No. 23-443-RGA (D. Del.) (served Sept. 27, 2023)	X
Ex. 2012	Plaintiff's First Set of Common Requests for the Production of Documents to Defendants ON Semiconductor Corporation and Monolithic Power Services, Inc., Et Al., *Greenthread, LLC v. ON Semiconductor Corp.*, No. 23-443-RGA (D. Del.) (served Sept. 27, 2023)	X
Ex. 2013	Definition of "privity" in Black's Law Dictionary (11th ed. 2019) available from Westlaw at westlaw.com	X
Ex. 2014	Email communication from Petitioner's counsel to Patent Owner's counsel October 11, 2023	X
Ex. 2015	Plaintiff's Identification of Accused Products and Asserted Patents, *Greenthread, LLC v. ON Semiconductor Corp.*, No. 23-443-RGA (D. Del.) (served Oct. 12, 2023)	X
Ex. 2016	Petition (Paper 2) in *Sony Group Corp. v. Greenthread, LLC*, IPR2023-00324	X

[redacted]

Exhibit No.	Description	Submitted Previously?
Ex. 2017	Petition (Paper 1) in *Sony Group Corp. v. Greenthread, LLC*, IPR2023-00376	X
Ex. 2018	*Greenthread, LLC v. Intel Corp.*, No. 6:22-cv-00105-ADA, Dkt. 1 (Complaint) (W.D. Tex. Jan. 27, 2022)	X
Ex. 2019	*Greenthread, LLC v. Dell Inc.*, No. 6:22-cv-105-ADA, Dkt. 120 (Second Amended Complaint)	X
Ex. 2020	*Greenthread, LLC v. ON Semiconductor Corp.*, No. 23-443-RGA, Dkt. 1 (Complaint with accompanying exhibits) (D. Del. Apr. 21, 2023)	X
Ex. 2021	*Greenthread, LLC v. ON Semiconductor Corp.*, No. 23-443-RGA, Dkt. 24 (Scheduling Order) (D. Del. Sept. 11, 2023)	X
Ex. 2022	Confidential agreement	X
Ex. 2023	Petition (Paper 1) in *Intel Corp. v. Greenthread LLC*, IPR2023-00308	X
Ex. 2024	Petition (Paper 1) in *Intel Corp. v. Greenthread LLC*, IPR2023-00420	X
Ex. 2025	Petition (Paper 1) in *Intel Corp. v. Greenthread LLC*, IPR2023-00552	X
Ex. 2026	Petition (Paper 1) in *Dell Techs. Inc. v. Greenthread LLC*, IPR2023-00506	X
Ex. 2027	Petition (Paper 1) in *Dell Techs. Inc. v. Greenthread LLC*, IPR2023-00509	X
Ex. 2028	Confidential declaration	X

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Exhibit No.	Description	Submitted Previously?
Ex. 2029	Email communication from Patent Owner's counsel to Petitioner's counsel between May 26 to June 1, 2023	X
Ex. 2030	Web pages from websites of Onsemi (www.onsemi.com), Mouser Electronics, Inc. (www.mouser.com), Rochester Electronics (www.rocelec.com), and DigiKey Corporation (www.digikey.com) (URLs for web pages are indicated on respective pages)	X
Ex. 2031	*Greenthread, LLC v. Intel Corp.*, No. 6:22-cv-00105-ADA, Dkt. 113 (Redacted Memorandum Opinion and Order) (W.D. Tex. Dec. 27, 2022)	X
Ex. 2032	*Greenthread, LLC v. Intel Corp.*, 6:22-cv-00105-ADA, Dkt. 38 (First Amended Complaint for Patent Infringement) (W.D. Tex., filed Apr. 29, 2022)	X
Ex. 2033	*Greenthread, LLC v. Intel Corp.*, 6:22-cv-00105-ADA, Dkt. 38-8 (Greenthread's Amended Preliminary Infringement Contentions) (W.D. Tex., filed Apr. 29, 2022)	X
Ex. 2034	*Greenthread, LLC v. Intel Corp.*, 6:22-cv-00105-ADA, Dkt. 38-12 (Exs. D-1, D-2, D-3, D-6 to Greenthread's Preliminary Infringement Contentions) (W.D. Tex., filed Apr. 29, 2022)	X
Ex. 2035	Plaintiff's Supplemental Identification of Asserted Patents and Accused Products in *Greenthread, LLC v. ON Semiconductor Corp.*, No. 23-443-RGA (served to Petitioner's counsel on Nov. 10, 2023)	X
Ex. 2036	Webpage regarding iFixIt, PlayStation 5 Teardown (https://www.ifixit.com/Teardown/PlayStation+5+Teardown/138280)	X
Ex. 2037	Webpage from Mouser Electronics, Inc. for NCP252160 (https://www.mouser.com/ProductDetail/onsemi/NCP252160MNTWG?qs=sPbYRqrBIVkc9klNZ2pXbg%3D%3D)	X

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Exhibit No.	Description	Submitted Previously?
Ex. 2038	Webpage from DigiKey for NCP252160 (https://www.digikey.com/en/products/detail/onsemi/NCP252160MNTWG/15859992)	X
Ex. 2039	Webpage from Mouser Electronics, Inc. for NB3L202K (https://www.mouser.com/ProductDetail/onsemi/NB3L202KMNTXG?qs=z6PAvqrnkvR8PcLN2EnUzg%3D%3D)	X
Ex. 2040	Webpage from DigiKey for NB3L202K (https://www.digikey.com/en/products/detail/onsemi/NB3L202KMNTXG/7220446)	X
Ex. 2041	Definition of "agent" in Black's Law Dictionary (11th ed. 2019) available from Westlaw at westlaw.com	X
Ex. 2042	*Greenthread, LLC v. Intel Corp.*, 6:22-cv-00105-ADA, Dkt. 135 (Motion for Admission Pro Hac Vice of L. Popovski on Behalf of Sony) (W.D. Tex., filed January 30, 2023)	X
Ex. 2043	[RESERVED]	
Ex. 2044	Email communication from Patent Owner to Petitioner's litigation counsel dated September 13, 2023	X
Ex. 2045	*Greenthread, LLC v. Intel Corp.*, 6:22-cv-00105-ADA, Dkt. 49 (Notice of Appearance of Additional Counsel) (W.D. Tex., filed June 9, 2022)	X
Ex. 2046	[RESERVED]	
Ex. 2047	[RESERVED]	

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Exhibit No.	Description	Submitted Previously?
Ex. 2048	*Greenthread, LLC v. Intel Corp.*, 6:22-cv-00105-ADA, Dkt. 120-8 (Greenthread's Amended Preliminary Infringement Contentions) (W.D. Tex., filed Jan. 23, 2023)	X
Ex. 2049	Email communications between Petitioner's counsel and Patent Owner's counsel, dated Oct. 31, 2023 - Nov. 1, 2023	X
Ex. 2050	Email communications between Petitioner's counsel and Patent Owner's counsel, dated Nov. 2-7, 2023	X
Ex. 2051	Email communications between Petitioner's counsel and Patent Owner's counsel, dated Nov. 14-15, 2023	X
Ex. 2052	Email communications between Petitioner's counsel and Patent Owner's counsel, dated Dec. 12-13, 2023	X
Ex. 2053	Web page from website of Onsemi (https://www.onsemi.com/products/custom-assp/soc-sip-custom-products)	
Ex. 2054	Greenthread, LLC v. ON Semiconductor Corp., No. 23-443-RGA, Dkt. 36 (Second Amended Complaint) (D. Del. Nov. 22, 2023)	
Ex. 2055	*Greenthread, LLC v. ON Semiconductor Corp.*, No. 23-443-RGA, Dkt. 42 (Defendants' Answer, Affirmative Defenses, and Counterclaims to Plaintiff's Second Amended Complaint) (D. Del. Dec. 20, 2023)	
Ex. 2056	Email communications between the Board, Petitioner's counsel and Patent Owner's counsel dated November 27, 2023	

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In its email of November 27, 2023, the Board invited Petitioner to file "a preliminary reply *and supporting evidence*." (emphasis added). Petitioner chose not to submit any evidence regarding its relationships with Intel and [redacted] ("Licensees"). Instead, Petitioner's *attorney* repeatedly asserts that Petitioner and Licensees have a merely "standard relationship." Paper 21 ("Prelim. Reply"), 6. Petitioner does not say what a "standard" relationship is, much less prove that its relationships are "standard." "[A]ttorney argument that itself fail[s] to cite evidence" cannot satisfy Petitioner's burden under § 315(b). *Worlds Inc. v. Bungie, Inc.*, 903 F.3d 1237, 1246 (Fed. Cir. 2018). Thus, the Petition (Paper 1) should be denied for the pedestrian reason that Petitioner failed to carry its burden of proof.

PO's evidence shows that Petitioner is in privity with Licensees, but the Board need not decide whether Petitioner and Licensees are actually privies. To dispose of the Petition, the Board only needs to determine that Petitioner failed to come forward with any evidence when given the opportunity. The outcome here that—to use Petitioner's phrase—would "be legally groundbreaking and have widespread ramifications beyond this IPR proceeding"—would be to institute trial in the total absence of evidence supporting Petitioner. Prelim. Reply 7.

Failure to produce agreements with Licensees is fatal: There is no "standard" relationship that evades privity. Privity "is a 'highly fact-dependent

question.'" *Apps. in Internet Time, LLC v. RPX Corp.*, IPR2015-01750, Paper 128 at 7 (PTAB Oct. 2, 2020) ("*AIT*") (precedential). Customer-supplier relationships *can* and *do* create privity. *Ventex Co., Ltd. v. Columbia Sportswear N. Am., Inc.*, IPR2017-00789, Paper 148 at 14, (PTAB Jan. 24, 2019) (precedential); *Volkswagen Grp. of Am. Inc. v. Argina Tech. Ltd.*, IPR2021-01263 Paper 16 (PTAB Jan. 21, 2022).

A petitioner's failure to produce pertinent documents regarding its customer-supplier relationships precludes institution. For example, in *Volkswagen*, the Board said that when a customer "has not produced its agreement with" its supplier, the Board can infer "that the agreement does not support [the petitioner] in meeting its burden." IPR2021-01263, Paper 16 at 10 n.4. In *Ventex* the Board said that failure to produce the agreements "cuts against the party bearing the burden of proof on these issues." IPR2017-00789, Paper 148 at 14. Similarly, in *Bungie Inc. v. Worlds Inc.*, on remand, the Board said that "making any findings [regarding communications between the petitioner and putative privy] would require us to speculate because Petitioner has not produced evidence." IPR2015-01264, Paper 64 at 40 (PTAB Jan. 14, 2020). Petitioner cannot prevail on a "fact-dependent question" when it offers no evidence to support a finding of facts. *AIT*, IPR2015-01750, Paper 128 at 7.

Instead of producing the relevant contracts, Petitioner analyzes its "Standard Terms & Conditions." Petitioner argues that *those* terms are "standard," and therefore do not create privity. Prelim. Reply, 5-6. But it is Petitioner's contracts *with Licensees* that matter. Petitioner does not even assert, much less prove, that its contracts with Licensees are the same as the "Standard Terms & Conditions."

Further, Petitioner does not dispute that "an indemnity relationship is the type of relationship that can establish privity." *Ericsson Inc. v. Regents of Univ. of Minn.*, IPR2017-01197, Paper 56 at 8, 10 (PTAB Sept. 18, 2020). Petitioner simply claims that it has no indemnity obligation "with respect to PO's long-resolved lawsuit," but does not deny owing an indemnity obligation, even one related to accused products. Prelim. Reply, 6. Petitioner chose not to produce any contracts that would support its claim regarding the nature of its undisputed indemnity obligation.

Petitioner's refusal to produce documents also prevents PO or the Board from determining whether there are *other terms* that would create privity. For example, Licensees may be involved in the design of Petitioner's products (e.g., Intel's "proprietary interface," Ex. 2006). There may be "exclusivity" provisions as in *Ventex.* IPR2017-00789, Paper 148 at 10. There could also be IP clearance representations or warranties as in *Bungie*. IPR2015-01264, Paper 64 at 30.

Petitioner claims that *Ventex* and *Ericsson* are distinguishable, but fails to produce the evidence that would supposedly distinguish them. Prelim. Reply, 6. In

that respect, this case is just like *Ventex* (and *Volkswagen* and *Bungie*), where the "lack of evidence" counted against the Petitioner. IPR2017-00789, Paper 148 at 14.

<u>The cases on "standard relationships" examined actual evidence:</u> Petitioner cites "countless Board panels" and Federal Circuit opinions supposedly finding that "standard" relationships do not create privity. Prelim. Reply, 5. In each of those cases, the Board characterized the petitioner's relationships with putative RPIs or privies *after examining the relevant documents*. In *WesternGeco LLC v. ION Geophysical Corp*., "the Board reviewed the purchase agreements as well as relevant business correspondence." 889 F.3d 1308, 1321 (Fed. Cir. 2018). The panel in *Samsung Electronics Co. Ltd. v. Netlist Inc.*, likewise examined "indemnification correspondence" and the actual contracts. IPR2022-00615, Paper 64 at 14-15 (PTAB Jun. 30, 2023). Petitioner cites *Wi-Fi One, LLC v. Broadcom Corp.* 887 F.3d 1329, 1340 (Fed. Cir. 2018), but that case is irrelevant, as it was decided before *Worlds Inc. v. Bungie, Inc.*, 903 F.3d 1237, 1244 (Fed. Cir. 2018) and the Director's decision in *Samsung v. Netlist*, IPR2022-00615, Paper 40 (Dir. Vidal Feb. 3, 2023), emphasizing the importance of actual evidence in § 315(b) analysis. Even in *Wi-Fi One*, the Federal Circuit held that the "Board's decision was supported by *substantial evidence*." *Wi-Fi One*, F.3d at 1340 (emphasis added).

Here, Petitioner does not point to any specific similarity between its contracts with Licensees and the contracts in *WesternGeco*, *Samsung*, or *Wi-Fi One*.

Petitioner only asserts that the contracts in those cases were "standard" and that its contracts are also "standard." E.g., Prelim. Reply, 5-7. Setting aside the fact that Petitioner does not say what it means by "standard," the claim is completely unsupported, because Petitioner has not produced its contracts.

Petitioner's citations to *Assa Abloy AB v. CPC Patent Tech. Pty., Ltd.*, IPR2022-01093, Paper 20 at 25-27 (PTAB Feb. 2, 2023) are likewise unavailing. **First**, the Petitioner in *Assa* introduced actual evidence, including interrogatory responses. **Second**, the "88-page agreement" creating a relationship between the petitioner and the putative privy (Apple) was part of the record. *Id.* at 18. Here, Petitioner has not produced any agreements with Licensees or even claimed that those agreements match its standard terms. The *Assa* panel distinguished *Bungie* based on specific terms in the agreements. Petitioner does not attempt to do that. **Third**, Apple was merely the distributor of the product in the case. There was no suggestion that Asa sought to avail itself of a license held by Apple or that Apple did anything more than distribute a product off-the-shelf. Here, Petitioner is "a leading supplier of … other custom solutions" seeking to benefit from its customers' license. Ex. 2053; *see also* Ex. 2010, 9 (referring to "Custom Product[s]").

Petitioner's purported lack of knowledge or control regarding the prior litigation is irrelevant: Petitioner spends several pages arguing that "PO's agreement with RPX is meaningless" because Petitioner is not a party, "was not even

aware of the agreement," is not a "proxy" for Licensees, and the RPX agreement "could not have provided Petitioner the ability to litigate patent validity." Prelim. Reply, 4, 8. All of this misses the point.

First, Petitioner mischaracterizes PO's argument. The Licenses do not establish privity between Petitioner and its customers. *The contracts between Petitioner and its customers do that*. Petitioner only benefits from the Licenses, because of the contracts *Petitioner* signed.

Second, the Board has rejected the argument that § 315(b) "should not apply if a petitioner was not placed on notice of the [prior] infringement allegation" or if the petitioner lacked "the opportunity to participate in and control the District Court litigation." *Bungie*, IPR2015-01264, Paper 64 at 44. To the extent that control is relevant, "the lack of evidence [on that point] also precludes [the Board] from being able to find that Petitioner has met its burden." *Id.* at 35. Furthermore, outside of the context of a "patent aggregation entity, the issues of control and funding … carry less weight" in the privity analysis. *Volkswagen*, IPR2021-01263 Paper 16 at 13. Here, control over the prior litigation should carry no weight, because Petitioner is trying to seek the benefit of the prior litigation's license. Petitioner does not need to have controlled the prior litigation, because it is already benefiting from the License.

Third, even if Petitioner was unaware of the prior litigation, the result here was entirely predictable from Petitioner's preexisting relationships. A supplier like

Petitioner would ordinarily expect to benefit from any IP licenses of its customer, particularly when the supplier makes custom products for the customer. *See* Ex. 2010, 9; Ex. 2053. For example, it is impossible to imagine that Petitioner's agreements with Intel do not include Intel's IP rights on Intel's "proprietary" interface and any other Intel IP rights necessary to manufacture the products for Intel. Ex. 2006. The possibility that Petitioner did not know *precisely* what IP rights it was getting does not matter. Petitioner fully expected to have the protection of Intel's IP rights when it contracted with Intel and plans to take advantage of those rights in district court against PO. Petitioner is happy to step into Intel's shoes in district court, but wants to step out of them here.

Petitioner's position is unfair: Petitioner offers no explanation why it is fair or lawful for it to claim the benefit of the License in district court, but here say that the same agreement is "meaningless." Prelim. Reply, 8. Petitioner asks "Is there a basis to bind Petitioner to the prior cases involving Intel?" *Id.* Absolutely there is. Petitioner is getting the benefit of Intel's license, plus Petitioner will *still* get to challenge the patent in district court. There is no possibility that Petitioner will be prevented from "enforcing its legal right[]" to challenge the patents. *Id.*, 9. Petitioner will do that in district court regardless of the outcome here.

Petitioner's claim that PO is taking inconsistent positions is bizarre. Prelim. Reply, 9. PO's Preliminary Response (POPR) expressly says that Petitioner is a

"sublicensee of Licensees." Paper 17, 15. In district court PO has specifically alleged that sales to Intel and [redacted] are "covered by a license to Greenthread's Patents." Ex. 2054, 17 (¶75). Petitioner's answer in district court is that Greenthread's allegations are "incomprehensible." Ex. 2055, 12 (¶74). PO is being perfectly consistent. Petitioner talks out of both sides of its mouth.

Petitioner is Licensees' Agent: Petitioner argues that it is not Licensee's agent, but does not produce the contracts that would confirm or refute its claim. Prelim. Reply, 7. The Board should not "speculate because Petitioner has not produced evidence." *Bungie*, IPR2015-01264, Paper 64 at 40. Furthermore, both the evidence in the record and the case Petitioner cites support a finding that Petitioner is Licensees' agent. "The essential elements of agency are (1) the principal's 'right to direct or control' the agent's actions, (2) 'the manifestation of consent by [the principal] to [the agent] that the [agent] shall act on his behalf,' and (3) the 'consent by the [agent] to act.'" *In re Google LLC*, 949 F.3d 1338, 1345 (Fed. Cir. 2020) (alterations in original). Petitioner is a manufacturer of "Custom Product[s]" and "leading supplier of … custom solutions," therefore its relationships with Licensees clearly meet these elements. Ex. 2010, 5; Ex. 2053. Licensees pick the products Petitioner makes and Licensees dictate how they are designed (i.e., "right to direct or control," *Google*, 949 F.3d at 1345). Both parties consent to the arrangement in the purchase contract (i.e., "manifestation of consent" by the principal and "consent"

by the agent, *id.*). To be sure, an agent can "act only within the scope of actual authority." Restatement (Third) Of Agency § 8.09 cmt. (a) (2006). Here, Petitioner's authority may be limited to making particular goods for Licensees, but Petitioner is no less an agent, because the scope of the agency is small. What matters is whether the scope of the agency relationship is relevant to these proceedings, not its scope.

Here, the scope could not be more relevant. In *Google*—the very case Petitioner cites—the Federal Circuit said that contracts to "install[] … servers," and "[a]ssembl[e] equipment based on information and instructions provided by Google" were "suggestive of an agency relationship" between Google and its contractors. 949 F.3d at 1346. Petitioner makes no attempt to distinguish "assembling equipment" from the manufacturing it performs for Licensees.[1]

Petitioner ignores the overlap in the prior and instant litigation: Petitioner claims there is "no evidence" its products "were 'at issue' … in any previous case." Prelim. Reply, 5. That statement is incorrect. As the POPR explains, products accused in the current litigation are components of products accused in the prior litigation. POPR at 14. Even if Petitioner's products were not at issue in the prior litigation, there is "no requirement that the triggering complaint [for § 315(b)] also

[1] The contractors were not "conducting Google's business within the meaning of the [venue] statute," but that is irrelevant for purposes of agency. *Id.* at 1346.

[redacted]

must specifically allege infringement by a petitioner's product." *Bungie*, IPR2015-01264, Paper 64 at 44.

Petitioner's proffer of "testimonial evidence" is irrelevant: Petitioner's proffer of testimonial evidence (Prelim. Reply, 10) is unavailing, because Petitioner has refused to provide the relevant documents. Hearsay about those documents would not cure this defect. Further, Petitioner has filed additional IPRs against PO's similarly situated patents, without providing any evidence regarding their timeliness. *See, e.g.* IPR2024-00263, -00264, -00265, -00266.

Suit against [redacted] creates a time bar: Petitioner does not dispute that [redacted] is time-barred and that [redacted] was an RPI to the [redacted] case. Thus, Petitioner's relationship with [redacted] creates a time bar. *Kofax Inc. v. Uniloc USA Inc.*, IPR2015-01207 Paper 24 at 4-5 (Jul. 20, 2016).

PO has met its burden under *Worlds*: Petitioner argues that that PO has not proffered "any" evidence tending to show privity. Prelim. Reply, 10. That is incorrect. It is undisputed that Petitioner manufactures custom products for Licensees, owes them indemnity obligations, and is seeking to cloak itself in their rights under the license. Petitioner either ignores this evidence or discounts it based entirely on attorney argument. PO has more than satisfied its burden. Petitioner has had multiple opportunities to do the same, but has not even tried to do so.

[redacted]

Dated: January 10, 2024

Respectfully submitted,

/Alan Whitehurst/

Alan Whitehurst
Reg. No. 43,263
awhitehurst@mckoolsmith.com
Nicholas T. Matich
Reg. No. L1,373
nmatich@mckoolsmith.com
Arvind Jairam
Reg. No. 62,759
ajairam@mckoolsmith.com
Stuart McCommas
Reg. No. 71,834
smccommas@mckoolsmith.com
McKool Smith, P.C.
1999 K St. NW, Suite 600
Washington, DC 20006
Telephone: (202) 370-8300
Facsimile: (202) 370-8344

Archis "Neil" Ozarkar
Reg. No. 71,265
nozarkar@mckoolsmith.com
McKool Smith, P.C.
600 Travis Street, Suite 600
Houston, TX 77002
Telephone: (713) 485-7300
Facsimile: (713) 485-7344

CERTIFICATION OF SERVICE

The undersigned hereby certifies that a copy of this **PO'S PRELIMINARY SUR-REPLY** and supporting exhibits have been served on Petitioner via email on the following counsel of record for Petitioner:

Roger Fulghum
Roger.Fulghum@BakerBotts.com
BAKER BOTTS L.L.P.
One Shell Plaza
910 Louisiana Street
Houston, TX 77002
T.: (713) 229-1234

Mark Speegle
Mark.Speegle@BakerBotts.com
BAKER BOTTS L.L.P.
401 South First Street, Suite 1300
Austin, TX 78704
T: (512) 322-2536

Daniel Anderson
Daniel.Anderson@andersonpatents.com
1930 S. Alma School Road, Suite A200
Mesa, AZ 85210
T: (602) 516-8265

dlgreenthreadvonsemi@bakerbotts.com

Dated: January 10, 2024

By: */Alan Whitehurst/*
Alan Whitehurst, Reg. No. 43,263