PUBLIC VERSION

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CIRRUS LOGIC, INC.;
OMNIVISION TECHNOLOGIES, INC.;
AND AMS SENSORS USA INC.,
Petitioner,
v.

GREENTHREAD, LLC,
Patent Owner.

IPR2024-00018
U.S. Patent No. 9,190,502

PATENT OWNER'S REPLY IN SUPPORT OF ITS MOTION FOR ADDITIONAL DISCOVERY PURSUANT TO 37 C.F.R. § 42.51(B)(2)(I)

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EXHIBIT LIST

Exhibit No.	Description
Ex. 2001	*Greenthread, LLC v. Intel Corp.*, No. 6:22-cv-00105-ADA, Dkt. 7 (summons returned executed) (W.D. Tex. Feb. 7, 2022) (previously submitted)
Ex. 2002	Definition of "privity" in Black's Law Dictionary (11th ed. 2019) available from Westlaw at westlaw.com (previously submitted)
Ex. 2003	*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) (previously submitted)
Ex. 2004	*Greenthread, LLC v. Intel Corp.*, No. 6:22-cv-00105-ADA, Dkt. 113 (Redacted Memorandum Opinion and Order) (W.D. Tex. Dec. 27, 2022) (previously submitted)
Ex. 2005	*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) (previously submitted)
Ex. 2006	*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) (previously submitted)
Ex. 2007	*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) (previously submitted)
Ex. 2008	Petition (Paper 1) in *Sony Group Corp. v. Greenthread, LLC*, IPR2023-00376 (previously submitted)
Ex. 2009	*Greenthread, LLC v. Dell Inc.*, No. 6:22-cv-105-ADA, Dkt. 120 (Second Amended Complaint) (previously submitted)
Ex. 2010	*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) (previously submitted)

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Exhibit No.	Description
Ex. 2011	**[SEALED]** Email communication from Patent Owner's counsel to Petitioner's counsel dated October 20, 2023 (previously submitted)
Ex. 2012	Email Attachment – Cirrus Logic Technical Support Article Number 000207340 (previously submitted)
Ex. 2013	Email Attachment - Cirrus Logic Investor Presentation as of April 28, 2015 (previously submitted)
Ex. 2014	Email Attachment - GlobalFoundries 2022 Capital Markets Day, available at https://investors.gf.com/static-files/65f5f1b9-2aea-47a3-8455-10413c6560f4 (previously submitted)
Ex. 2015	Email Attachment - Intel RealSense Product Family D400 Series, dated 2019 (previously submitted)
Ex. 2016	**[SEALED]** Email communication from Petitioner's counsel to Patent Owner's counsel dated October 24, 2023 (previously submitted)
Ex. 2017	Email communication from Patent Owner's counsel to Board, copying Petitioner's counsel dated November 1, 2023 (previously submitted)
Ex. 2018	*Greenthread, LLC v. Intel Corp.*, No. 6:22-cv-00105-ADA, Dkt. 1 (Complaint) (W.D. Tex. Jan. 27, 2022) (previously submitted)
Ex. 2019	*Greenthread, LLC v. Cirrus Logic, Inc.*, No. 1:23-cv-00369, Dkt. 29 (Scheduling Order) (W.D. Tex. Aug. 18, 2023) (previously submitted)
Ex. 2020	Article entitled "Cirrus Logic Helps Ease PC Industry Transition to New MIPI SoundWire® Interface" available at https://investor.cirrus.com/news-and-events/investor-news/news-details/2023/Cirrus-Logic-Helps-Ease-PC-Industry-Transition-to-New-MIPI-SoundWire-Interface/default.aspx (previously submitted)

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Exhibit No.	Description
Ex. 2021	*Greenthread, LLC v. Intel Corp.*, 6:22-cv-00105-ADA, Dkt. 120-8, Greenthread's Amended Preliminary Infringement Contentions (previously submitted)
Ex. 2022	**[SEALED]** Confidential agreement (previously submitted)
Ex. 2023	CS42L42, Low Power Audio Codec with SoundWire and Audio Processing, available at https://www.cirrus.com/pubs/proBulletin/cs42l43-cs36l56-bulletin.pdf (previously submitted)
Ex. 2024	Cirrus Logic Immersive PC Audio Solution, available at https://www.cirrus.com/pubs/proBulletin/cs42l43-cs36l56-bulletin.pdf (previously submitted)
Ex. 2025	Cirrus Logic – What Drives Our Success, available at https://investor.cirrus.com/company-overview/what-drives-our-success/default.aspx (previously submitted)
Ex. 2026	Cirrus Logic, Inc. Terms and Conditions of Sale, available at https://www.cirrus.com/legal/productterms/ (previously submitted)
Ex. 2027	*Greenthread, LLC v. Omnivision Technologies Inc.*; 2:23-cv-212, Dkt. 1 (Complaint) (E.D. Tex May 10, 2023) (previously submitted)
Ex. 2028	**[SEALED]** Confidential declaration (previously submitted)
Ex. 2029	*Greenthread, LLC v. Omnivision Technologies Inc.*, 2:23-00212, Preliminary Infringement Contentions for OmniVision Technologies Inc. (previously submitted)
Ex. 2030	Deep Dive Teardown of the PlayStation VR2 CFIZVR1 VR Headset, available at https://www.techinsights.com/blog/deep-dive-teardown-playstation-vr2-cfi-zvr1-vr-headset (previously submitted)

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Exhibit No.	Description
Ex. 2031	Intel RealSense Product Family D400 Series, dated September 2023 (previously submitted)
Ex. 2032	**[SEALED]** Confidential declaration (previously submitted)
Ex. 2033	GlobalFoundries Annual Report on Form 20-F for the fiscal year ended December 31, 2022, available at https://investors.gf.com/static-files/cc73efd0-09c1-442a-b4dd-0bcb74610e31 (previously submitted)
Ex. 2034	**[SEALED]** Confidential agreement (previously submitted)
Ex. 2035	TechInsights Report on Sony Xerpia 5111 (previously submitted)
Ex. 2036	TechInsights Report Ad (previously submitted)
Ex. 2037	**[SEALED]** Email communication from Petitioner's counsel to Patent Owner's counsel dated between January 9, 2024 through January 10, 2024
Ex. 2038	**[SEALED]** Email communication from Petitioner's counsel to Patent Owner's counsel dated between October 20, 2023 through October 31, 2023

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In spite of Petitioners having the burden to prove the timeliness of their petitions, none of the Petitions address timeliness with more than a conclusory statement. Even after PO pointed out the time bar, Petitioners filed additional petitions (IPR2024-0018, 0019, 0020, and 0021) with *no explanation* of their timeliness. Ex. 2011, 1. "Failure to prove [a] matter … means that the party with the burden of persuasion loses on that point." *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378–79 (Fed. Cir. 2015). PO has sought discovery to prevent Petitioners from later producing cherrypicked evidence to save their obviously deficient Petitions. However, based on the undisputed facts and the Petitions' complete slience on timeliness, the Board need not address PO's discovery motion if it simply denies the Petitions, as it should. If the Board does not dismiss the Petitions for their facial deficiency, PO's request for discovery should be granted.

Petitioners' argument fails to apply their own standard to undisputed facts: Petitioners argue that "privity in the context of the § 315(b) bar refers to whether … the act of one [party] should be attributed to the other." Op.3, citing *WesternGeco, LLC v. ION Geophysical Corp.*, 889 F.3d 1308, 1317 n.5 (Fed. Cir. 2018). Petitioners' acts of manufacturing accused products "should be attributed" to Licensees, because Petitioners do not dispute that they make custom products and collaborate on the design of accused products with Licensees. *Id.* For example, GF says it is a "pure-play foundry" which is "focuse[d] on producing ICs for other

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companies, rather than those of its own design." Ex. 2033 at 12, 35. CL makes "custom" products. Mot.11. In other words, Petitioners make the products Licensees tell them to make. Petitioners do not mention this evidence in their opposition. Therefore, Petitioners' acts with respect to licensed or accused products "should be attributed" to Licesnsees. *WesternGeco*, 889 F.3d at 1317 n.5.

These facts establish privity, *irrespective of the Licenses*. *See In re Google LLC*, 949 F.3d 1338, 1345 (Fed. Cir. 2020). Petitioners exercising Licensees rights under the License underscores the importance of the privity relationship here. But the Licenses are hardly the fact "on which [PO's] entire motion is premised." Op.1.

Petitioners' argument is circular: Petitioners say discovery is unwarranted, because—according to their *attorneys*—Petitioners have only "standard, arms-length relationships" with Licensees; that they sell "'general market' parts"; and their indemnity oblitagions "are often vague." Op.7-8. Petitioners do not say what they mean by "standard," "general market, or "vague," except that they mean no-privity. Petitioners' argument, in essence, is that discovery is unnecessary because Petitioners' *attorneys* have seen the documents and determined that they only help Petitioners. Since the documents only help Petitioners, PO and the Board do not need to see them. That is circular. The purpose of discovery is to enable both parties (not to mention the fact-finder) to evaluate documents only one party possesses.

Elsewhere, by contrast, Petitioners claim that PO's evidence is missing

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"important context." Op.8. PO disagrees that "context" would help Petitioners, but if context is required, "attorney argument" is not a substitute. *Worlds Inc. v. Bungie, Inc.*, 903 F.3d 1237, 1246 (Fed. Cir. 2018). Petitioners should produce the documents reflecting the purportedly missing "context."

The only record evidence all favors a finding of privity. For example, Petitioners do not dispute that CL "collaborat[es]" with Intel or that GF makes products at Intel's direction. Ex. 2020, 1; Ex. 2033 at 12, 35. Indeed, Petitioners *confirm* that they have indemnity obligations to Licensees. Op.8. The possibility that these obligations are not "straightforward" or "often vague" is all the more reason to produce the contracts. If Petitioners' indemnity obligations are "*often* vague," they are not *always* vague and therefore can create privity. *Ericsson Inc. v. Regents of Univ. of Minnesota*, IPR2017-01197, Paper 56 at 8, 10 (PTAB Sept. 18, 2020).

Accused products overlap between the current and prior litigation: Petitioners do not dispute that CL products were components of accused products in the prior litigation. Mot.11. Petitioners' claim that OV products were not part of the litigation is clearly incorrect. Ex. 2021, 18 ("[redacted] Accused products … include [redacted]"); Ex. 2030 ([redacted] contains "cameras by Omnivision"). Finally, Petitioners do not dispute that GF products were accused in the prior litigation. Only Petitioners' non-public information would confirm that fact.

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Petitioners are playing fast and loose with the Board: Petitioners' opposition admits that they plan on "changing their positions" to suit the exigencies of the moment. Op.11. Here and now, according to Petitioners, the Licenses are irrelevant, *but maybe* in district court they can provide a defense. Regardless, CL has already demanded that PO withdraw claims on the basis of the Licenses. Ex. 2037, 1 (stating "the product is clearly licensed" through a wholly owned subsidiary of a licensee from the RPX license, and that PO should "drop[] its infringement allegations" due to its "licensed status"). The Board should not allow Petitioner's constant shifting of positions.

Petitioners' "notice" and "control" arguments have been rejected: Petitioners' purported lack of notice or control over the prior litigation is irrelevant. 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, Inc. v. Worlds Inc.*, IPR2015-01264, Paper 64 at 44 (PTAB Jan. 14, 2020). In all events, Petitioners did not need to control the prior litigation, because they are benefiting from the resulting license.

PO's Requests are straightforward: During the meet and confer process, Petitioners never claimed that they did not understand what documents PO was seeking or requested clarification. *See, generally,* Ex. 2038. Petitioners could have

asked for clarification, but did not. The Board should not reward Petitioners' failure to seriously meet and confer by denying PO relief.

Regardless, PO's requests are very clear. It is difficult to see what Petitioner cannot understand about "communications between engineers working for a Petitioner and engineers working for a Licensee" or "specifications, plans, [or] drawings" for accused products. Paper 9, Appendix A, RFP 2. PO's request for the relevant contracts is even more straightforward. Surely Petitioners know what agreements they have with Licensees.

Any discovery burden is due to Petitioners' actions: Petitioners bear the burden of proving the timeliness of their Petitions. *Samsung Electronics Co. Ltd. v. Netlist Inc.*, IPR2022-00615, Paper 40 (Director Vidal Feb. 3, 2023). Petitioners cannot, on the one hand claim that their petitions are timely, but then claim it is too burdensome to produce the documents that would substantiate their claims.

Since Petitioners have chosen not to produce documents necessary to carry their burden, the proper course is to deny institution. For example, in *Volkswagen Grp. v. Argina Tech. Ltd.*, IPR2021-01263 Paper 16 at 10 n.4. (PTAB Jan. 21, 2022), 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" regarding timeliness. In the alternative, the Board should not permit Petitioners to hide behind the burden of producing relevant documents.

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Dated: January 12, 2024

Respectfully submitted,

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CERTIFICATION OF SERVICE

The undersigned hereby certifies that a copy of this **PATENT OWNER'S REPLY IN SUPPORT OF ITS MOTION FOR ADDITIONAL DISCOVERY PURSUANT TO 37 C.F.R. § 42.51(B)(2)(I)** has been served on Petitioner via email on the following counsel of record for Petitioner:

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