PUBLIC VERSION

[redacted]

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CIRRUS LOGIC, INC.,
OMNIVISION TECHNOLOGIES, INC.,
Petitioners,

v.

GREENTHREAD, LLC,
Patent Owner.

IPR2024-00020
U.S. Patent No. 11,121,222

PATENT OWNER'S POST-HEARING BRIEF CONCERNING BOARD-ORDERED DISCOVERY

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I. INTRODUCTION

In response to the Board's issued discovery Order ("Order," Paper 80), Cirrus Logic ("CL"), OmniVision ("OV"), and GlobalFoundries ("GF") (collectively, "Petitioners") each offered a single declaration (EX2081 (CL), EX2082 (OV), EX2080 (GF)), unaccompanied by any other documents or evidence, of their employees, who each admitted they were not knowledgeable about—and had not investigated—many of the key issues addressed by the Board. In doing so, Petitioners paid lip service to Director Stewart's discovery instructions and did not comply with the directive and intent of the Order. Petitioners were given yet another opportunity to rebut PO's arguments that Petitioners' respective relationships with Intel give rise to a privity finding that bars this IPR,[1] and instead of offering definitive evidence, Petitioners merely repackaged attorney arguments found lacking by the Director. PO has been severely prejudiced by having to (i) litigate this full IPR proceeding that should have never been instituted, (ii) request Director Review in related IPRs on this identical issue, and finally (iii) receive the discovery it requested over a year-and-a-half ago. But even now, Petitioners' privity positions

[1] Should the Board find that *any* of Petitioners' investigations are lacking or otherwise violate the Board's Order, then Petitioners have not disproved Intel's status as an unnamed RPI and time-barred party.

still remain in question, and the Board should find that the Petition is time-barred and terminate this IPR.

II. BACKGROUND

A. Legal Standard

Petitioners must prove that (1) they properly identified all real-parties-in-interest and (2) the petition is not time-barred. *Worlds Inc. v. Bungie, Inc.*, 903 F.3d 1237,1246 (Fed. Cir. 2018). When PO "brings into question the accuracy of Petitioner's [RPI] identification," the Board can no longer rely on Petitioners' representations. *Id.* at 1242. This is a low bar for PO. *Id.* at 1244 (holding that "a patent owner must produce *some* evidence that *tends* to show that a particular third party should be named a real party in interest.") (emphasis original)[2]. Once PO has "put this issue into dispute," Petitioners have to produce "actual evidence" to prove lack of privity, rather than rely upon "attorney argument." *Id.* at 1244 n.8, 1246.

B. Evidence of Petitioners' Relationships with Intel

PO has presented far more than "some evidence" that time-barred parties, including Intel,[3] should have been named as RPIs. CL is a fabless semiconductor

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[2] All emphases added unless otherwise noted.

[3] PO maintains that Petitioners are in privity with both [redacted], two other time-barred parties. PO also maintains that discovery should have been granted as

[redacted]

company that sells component parts to Intel through distributors. EX2084 at 17:14-20, 26:12-13. CL "engineers work closely" with customers to make custom products. EX2025; *see also* EX2020; EX2084 at 32:22-33:2. CL's declarant confirmed that its Standard T&Cs, which indemnify its customers for infringement claims (EX2026), apply to *all* customers, including Intel. EX2084 at 55:10-16, 63:6-15.

OV has historically supplied "a variety of [OV] products, primarily image sensors," to Intel. EX2085 at 25:2-9, 27:19-21; *see also* EX2015 (Intel data sheet listing OV image sensors). OV's declarant confirmed that OV's T&Cs "include indemnification for patent infringement," and that he has historically "fielded [] indemnity requests" on behalf of OV. EX2085 at 39:12-17, 47:7-16.

Last, GF is a "custom manufacturer" touting Intel as one of its customers. EX2014 at 19; EX2083 at 19:6-8, 18:10-12. [redacted]

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to these parties for at least the reasons presented in the Joint Paper Concerning Additional Discovery in the Wave 1 (*onsemi*) IPRs. *See* IPR2023-01242, Paper 108 at 2-5.

C. Director Review and the Board's Discovery Order

PO was granted Director Review of the Board's FWDs in the Wave 1 IPRs ("DR," *e.g.*, IPR2023-01242, Paper 94) based on the Board's denial of PO's original discovery motion that was virtually identical to the one submitted in this IPR (Paper 9). Director Stewart found, based on PO's evidence, that additional "discovery would yield useful information on the privity issue." DR at 3. In effectuating the Director's directive, the Board ordered Petitioners to produce "documents sufficient to show the asserted privity relationship between Petitioner and Intel," including, but not limited to, a declaration. Order at 6. Petitioners offered only declarations.

III. ARGUMENT

Director Stewart ordered discovery that would "yield useful information on the privity issue." DR at 3. Instead, each Petitioner submitted a boilerplate declaration that parrots attorney argument and falls short of any plausible definition of an investigation. Petitioners did not comply with the directive or intent of the Director's—and the Board's—discovery orders, and as a result, have failed to present any meaningful evidence disproving Intel's status as an RPI to this IPR.

A. Petitioners' Declarations are Nothing More Than Repackaged Attorney Argument

"Attorney argument is not evidence." *Icon Health & Fitness, Inc. v. Strava, Inc.*, 849 F.3d 1034, 1043 (Fed. Cir. 2017). Nor is declaration testimony submitted by a witness that merely repeats its previously-offered attorney argument without

providing any additional detail, documentation, or substantiation. These declarants act as nothing more than corporate mouthpieces for attorney argument.

CL's declarant, Elizabeth Leach, did not draft any of the "wording" or "substance of the declaration." EX2084 at 11:10-16, 64:12-20. CL's declaration was drafted entirely by a member of its in-house legal team. *Id.* at 64:12-20, 62:2-7 (admitting that she "***didn't ask [counsel] any questions***" related to indemnity, and instead accepted the "information" counsel provided). Throughout her deposition, she testified that she supposedly searched CL's business tracking system (discussed below), but none of those details are present in CL's declaration. CL's entire argument concerning sales agreements for the IAPs is based on Leach's purported review of this system, yet CL provides no records whatsoever on this matter, and the declaration does not even reference that search. *Id.* at 44:20-45:11. On redirect, she tried to distance herself from these admissions by claiming she "reviewed the substance" and "commented" on the declaration drafted by in-house counsel. *Id.* at 71:20-72:1. But immediately afterward, she admitted she "***did not make any comments***" and "***didn't make any substantive input***." *Id.* at 72:9-18.

GF's declarant, Terence Ng, noncommittally testified that GF's declaration "was prepared with help" of counsel. EX2083 at 11:6-11. He admitted that attorneys provided him the list of IAPs, "***this declaration***"—seemingly already finished—and "[n]o additional information." *Id.* at 34:13-35:4. He did not choose any language,

including that "GF has never manufactured or sold any [IAPs] to Intel" (¶8), when, in fact, he was only "***pretty certain*** they never made it." *Id.* at 44:7-45:6. Ng's only "role in preparing the declaration," aside from providing his experience (¶4), was reviewing in-house counsel's work *with* in-house counsel. *Id.* at 11:12-20.

OV's declaration, despite being "authored" by its General Counsel, Robert Cleary, is similarly unavailing. He could not definitively state that he drafted the declaration; he was merely "involved in the drafting, yes." EX2085 at 8:15-15. But when asked if he wrote "certain portions," he could not "recall exactly which portions" of a 3.5 page document he wrote. *Id.* at 8:17-21. Cleary later testified that he "collect[ed] all the documents … relate[d] to Intel in legal's databases," but then was unsure if "those documents [were] cited to or attached to [OV's] declaration" and had to take time to review the short declaration. *Id.* at 14:5-15.

Petitioners have taken the same attorney arguments the Director has previously ruled are insufficient to rebut PO's offered evidence and repackaged them, submitting boilerplate declarations that fail to address the Board's concerns. Their declarants said nothing beyond what Petitioners' IPR counsel have previously argued to the Board, and this "evidence" should not be considered in the Board's determination whether the Petition is time-barred.

B. Petitioners' Declarants Conducted Superficial "Investigations"

The Board ordered Petitioners to produce documents "sufficient to show the

asserted relationship between [them] and Intel." Order at 6. Nothing Petitioners did in response would qualify as "sufficient." At every step of their respective investigations, the declarants testified to doing the bare minimum. These declarants did not contact anybody within their companies (save for one *uncorroborated* assertion from Cleary) or, more importantly, at Intel to discuss whether any Intel parts (accused or otherwise) include any of Petitioners' components. All these declarants "confirmed" was that Petitioners do not sell the Intel Accused Products (IAPs) *to* Intel, something that PO has never alleged.

1. Petitioner's Declarants Reviewed the List of Intel Accused Products and Nothing Else

Petitioners failed to comply with the directive and intent of the Board's discovery Order and opted to follow the most literal reading possible. The declarants testified that they spent no more than a few hours each conducting their entire investigations. *See* EX2084 at 11:22-12:7 (Leach explaining that it took "[a]bout an hour" to "complete [the] investigation" and "complete and sign [the] declaration"); EX2085 10:8-13, 11:22-13:5 (Cleary explaining that his investigation and declaration took "like three hours total, if [he] had to guess").

Further, the declarants cabined their "investigations" to just reviewing the list of IAPs. Leach testified that all she was asked to do was "review the declaration and [go] over the list of products." EX2084 at 11:4-9, 22:14-23:14 (confirming that all she did was "log[] into [CL's] financial system to determine whether or not [CL] has

sold any of these processors to Intel"). Unsurprisingly, this "search" was unavailing, since she did not suspect that CL actually sold Intel processors back to Intel. *Id.* at 42:18-21. But PO has never accused CL—or OV/GF—of selling the literal, actual IAPs *to* Intel. Similarly, Cleary "reviewed PDF pages … of [EX2021]" and "scratched his head." EX2085 at 13:3-16. This took him no more than "10, 15 minutes," which he contended was part of his "extremely thorough investigation." *Id.* at 15:9-11, 36:11-37:19. Finally, Ng "examined the product list in [EX2021]," knew that GF doesn't "sell nor make Intel processors," and determined that it was "case closed." EX2083 at 13:3-7, 45:13-46:2 ("we don't make processor for Intel, nor NAND flash"). But *PO has never accused Petitioners of selling the complete IAPs*, and for the declarants to focus their entire investigations on this hyper-literal point does not "yield useful information" or provide a "full record" for the Board to consider regarding privity. Basically, the declarants briefly looked at the list of IAPs, concluded "we are not Intel and do not sell final Intel parts," and stopped there.

None of the Petitioners have established whether or not they were the "supplier of any … ***component*** of a product[] accused in the Intel litigation," as required by the Board. Order at 6. When asked why she could "state … that [CL] has never sold any component of the [IAPs] to Intel," Leach testified that CL's "[redacted] would have identified that." EX2084 at 43:14-20, 70:5-18. But all she admitted to checking for was whether the system product

numbers or "their project names, like the Atom … was included," *id.* at 43:14-20, but never explained why ***components*** sales would be marked by the end project's name rather than the product name or number as sold by CL. Leach admitted that she ***did not investigate*** whether any amplifiers of DACs manufactured by CL fabs or foundries are included in Intel products. *Id.* at 29:22-30:21. However, she did investigate CL codecs (like the CL42L43 identified by PO (*see* EX2020)) and confirmed that these are components of Intel products. EX2084 at 31:2-11. Had she investigated amps and DACs, she likely would have uncovered those records, since "all the [CL] chip sales [] are tracked." *Id.* at 48:17-50:2.

Ng admitted outright that he did not do "any investigation" into whether GF parts are incorporated into Intel products. EX2083 at 14:17-21. He could not answer "why [GF] chose to use the word '***unaware***' as opposed to '*has never'* in connection with ***components*** of IAPs." *Id.* at 44:7-45:6. Of course, Ng *could* confirm that GF "has never" sold the IAPs to Intel, since that would be nonsensical. But when discussing components of IAPs, he and GF had to soften the language since they did not adequately investigate that issue.

OV and Cleary similarly equivocated on the IAP/component distinction. EX2085 at 34:18-35:8. Cleary then tried to rewrite OV's declaration on the fly, stating he could "definitely say that [OV has never supplied any components to Intel for any IAPs] *now*." *Id.* at 35:9-12. He had no answer for why he did not use this

type of language in OV's declaration. *Id.* at 35:13-36:10.

Finally, each of Petitioners' declarants admitted that they did not actually review which components comprise the IAPs. Leach has never seen a parts list for the IAPs, never asked for a parts list, and did nothing to confirm with Intel if the IAPs contain any CL products. EX2084 at 40:1-15, 41:9-42:3, 43:10-13, 72:19-73:5. Cleary also failed to conduct an exacting review of the IAPs and their components. EX2085 at 51:2-52:1, 52:13-22 ("I do not have access to a parts list for any Intel product," and did not "contact Intel regarding any of these products"). Ng accepted the fact that Intel has a parts list for each of the IAPs, but confirmed that he did not review them or ask Intel to confirm whether or not GF supplied any component of the IAPs. EX2083 at 16:4-12, 46:21-48:4.

2. Petitioners' Declarants Did Not Consult With the Parties or People Who Would Possess Relevant Information

Petitioners selected Leach, Cleary, and Ng, respectively, to serve as the spokespersons for Petitioners' attorney arguments, even though each declarant did hardly anything to inform themselves of the facts. None of the declarants (1) contacted Intel to determine whether the IAPs include components sold or manufactured by Petitioners, (2) contacted distributors, manufacturing fabs, or corporate affiliates as part of their investigation, or (3) confirmed statements made in the declarations with other employees more knowledgeable on the subjects.

Leach never contacted Intel during her investigation, EX2084 at 19:14-17,

and didn't check "whether the IAPs contain any [CL] amps, DACs, codecs[,] or any other [CL] products." *Id.* at 40:11-21, 73:2-5. Nobody else from CL did either:

> [Q.] Is there someone on the sales team that communicates with Intel?
>
> A. Yes.
>
> Q. And did you ask that ***Intel liaison*** to reach out to Intel to find out if they could give you a definitive answer as to whether or not any of the products listed on pages [5-8] of [EX2021] include [CL] products?
>
> A. No.

EX2085 at 46:1-9. Likewise, Cleary did not contact Intel as part of his investigation into its relationship with OV or to determine whether any OV parts are incorporated into the IAPs. *See* EX2085 at 19:13-20, 46:17-19, 52:20-22. Ng similarly did not reach out to known contacts at Intel to investigate whether the IAPs incorporate GF parts, or even just to acquire parts lists of the IAPs so that he could perform that review himself. *See* EX2083 at 17:1-6, 47:12-48:4, 48:18-49:5. Ng admitted that he still has a "relationship with contacts at Intel," since he served as GF's "Intel account manager between 2022 and 2024." *Id.* at 16:16-22, 12:13-16. He also did not instruct the *current* Intel account manager to "reach out … regarding any of the [IAPs]." *Id.* at 17:7-18:9, 22:1-4. It was imperative that Petitioners' declarants inquire of Intel because, as Leach admitted, "***Intel know[s] best about what is included and not included in its own products***." EX2084 at 62:12-15.

In addition to not confirming the accuracy of their statements with Intel, none of Petitioners' declarants contacted their company's distributors, resellers, affiliates,

or the fabs and foundries that manufacture Petitioners' parts. Leach admitted to not (a) contacting any of CL's distributors, (b) knowing any "details … about the specific products the distributors sell to Intel," or (c) "investigat[ing] whether any of [these] third-party distributors have sales agreements with Intel." EX2084 at 13:19-14:3, 17:1-4, 18:20-19:7, 56:9-12. Relatedly, she did not investigate whether any CL's fabs or foundries sell products directly to Intel since CL does not "track sales made by third-party fabs and foundries in its financial system." *Id.* at 28:15-29:2, 29:14-21, 50:16-19. And, she did not investigate any CL affiliates that may sell products to Intel. *See id.* at 33:20-34:3. Cleary also did not contact any third-party distributors and had "no idea" whether these companies "have sold products to Intel indirectly." EX2085 at 25:14-17, 27:1-4, 29:9-18. He was unaware if "module integrators" sell products with OV chips to Intel, *id.* at 45:16-46:15, and did not know whether OV's parent company has made any sales to Intel, *id.* at 32:4-16. Ng also failed to investigate whether any resellers (EX2083 at 20:10-18) or GF affiliates (*id.* at 27:15-18, 28:2-13, 29:22-30:6) have sold GF parts to Intel.

Finally, none of the declarants confirmed their declarations with the employees and teams that had more knowledge about the issues as part of their supposed investigations. For example, Ng did not communicate with GF's *current* sales manager for Intel accounts and never instructed this person to contact Intel regarding GF components incorporated in Intel products (accused or otherwise).

See EX2083 at 17:7-18:9, 21:17-22:6. Ng did not confirm other statements in GF's declaration, admitting that he did not "know that definitively, or [] ask anyone in the legal department" or the current account manager if Intel has ever requested indemnity from GF. *Id.* at 49:6-50:7. Finally, and worst of all for Petitioners, he admitted that

Leach similarly failed to confirm statements made in the declaration with other CL departments. First, she admitted "[t]here ***are*** sales representatives that work with Intel," but did not speak with any of them as part of her investigation. EX2084 at 19:22-20:8. Second, she did not "look into" whether any CL engineers "communicate with Intel in connection with product sales or [] development." *Id.* at 37:16-38:1, 19:18-21. Third, she did not talk to anyone at sales or engineering about the specific IAPs. *Id.* at 41:22-42:3. Fourth, she did not contact "***anyone*** internally at [CL] to find out who regularly interfaces with Intel," and "didn't ask them to e-mail or call Intel to confirm the substance of [her] testimony." *Id.* at 65:2-11.

Cleary, on the other hand, *did* supposedly communicate with OV's CFO, and asked this person to provide a "summary of all records of all sales to Intel." EX2085 at 7:18-8:4, 10:14-20. The CFO allegedly sent back a "document reflecting the sales

summary," however, Cleary decided not to include it in OV's declaration because he thought "[i]t was not relevant." *Id.* at 11:2-7, 11:15-21. The Board should not reward Petitioners for collectively sticking their heads in the sand.

C. Petitioners Failed to Preset Any Documentary Evidence Supporting Their Declarants' Statements

The Board ordered Petitioners to produce "[d]ocuments sufficient to show the asserted privity relationship between [it] and Intel." Order at 6. Not only do these conclusory declaration fail to satisfy the Order, but Petitioners have offered no accompanying documents to substantiate their claims. The Order mentions "documents" *separate from*, and in addition to, "declarations[] and deposition transcripts." *Id.* at 7. Further, any documents reviewed or created as part of any investigation into Petitioners' relationship with Intel should have been produced to substantiate or corroborate any assertions made in the declarations.

The entire basis for much of Leach's testimony was her review of CL's "billings." *See* EX2084 at 31:2-11, 32:11-18, 45:4-11. However, she admitted to not providing any of these, *id.* at 23:21-24:2, 64:4-13, and could not explain why there was no "reference [redacted]" in CL's declaration, *id.* at 44:20-22. For OV, Cleary explained (a) he "searched legal's database for anything related to Intel," and (b) commissioned OV's CFO to run a sales summary." EX2085 at 9:15-10:17. He admits to collecting and sending "all the documents that [he] found in any way relate to Intel in legal's databases" to outside counsel, *id.* at 14:5-10, and

testified that the CFO returned a "document reflecting the sales summary," *id.* at 10:18-11:4. However, he did not believe the sales summary was "relevant" and was unsure whether the documents he gathered for outside counsel were "cited to or attached to the declaration." *Id.* at 11:54-7, 11:15-21, 14:11-15. Finally, Ng did not review or provide any Intel purchase orders as part of GF's investigation and declaration. EX2083 at 25:1-26:5. These are just a few examples where Petitioners' "investigations" would have yielded documents to corroborate the declarations. Instead, Petitioners provided zero responsive documents and relied entirely on their boilerplate, attorney-generated declarations.

IV. CONCLUSION

PO has sufficiently put the privity issue into dispute, and Petitioners have now had more than enough opportunities to prove that their products are not included in the IAPs, or that their relationships with Intel do not give rise to a privity finding. Petitioners have failed at every step of the process. This has caused a lengthy and expensive sideshow that should have been resolved in PO's favor at the institution phase. For these reasons, the Board should terminate this proceeding as time-barred if it finds that *any* Petitioner has *still* failed to meet its burden of complying with the

Director's remand instructions and the Board's Discovery Order.

Dated: August 12, 2025

Respectfully submitted,

/Alan Whitehurst/

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CERTIFICATION OF SERVICE

The undersigned hereby certifies that a copy of this **PATENT OWNER'S POST-HEARING BRIEF CONCERNING BOARD-ORDERED DISCOVERY** has been served on Petitioner electronically via email on the following counsel of record for Petitioner:

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