PUBLIC VERSION

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

GREENTHREAD, LLC,
Patent Owner.

_____

Case: IPR2024-00021
U.S. Patent No. 11,121,222

_____

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

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I. INTRODUCTION

Petitioners' Response Brief (Paper 93, "Response") doubles down on their tired (and already rejected) attorney arguments, despite being given the opportunity by the Board to produce evidence that would help them carry their burden of proof on the privity issue. Petitioners' so-called "evidence" and Response arguments are insufficient. Instead of addressing and investigating each charge in the Board's Discovery Order (Paper 82, "Disc. Order"), Petitioners narrowly focused on the supposed absence of specific agreements and direct indemnity requests for PO's previous litigation against Intel. Not only did Petitioners fail to corroborate any of the counsel-generated statements in the declarations, but the declarations failed to address the threshold question: *Do any of the Intel Accused Products (IAPs) include products or components sold by Petitioners (or GF)?*

Petitioners' declarants failed to conduct any semblance of an investigation into whether the IAPs include Petitioners' products or components. Despite Petitioners' protestation, this was not an oppressive task nor were Petitioners required to prove a negative. Petitioners could have easily contacted their best bet for exoneration—***Intel itself***—since each Petitioner has established business relationships and communication channels with Intel. Even worse, Petitioners never even contacted their ***own employees*** responsible for communicating with Intel and maintaining their Intel client relationship. Instead, Petitioners have left too many

questions unanswered and simply given short shrift to the Discovery Order by having corporate representatives rubber-stamp the points provided by counsel.

Petitioners' non-existent "investigations" completely ignore the spirit of the Director's decision and the Board's Order on remand. The process of seeking to obtain relevant discovery from Petitioners in this proceeding has been contentious and ultimately unsuccessful, and it has been expensive and time-consuming for PO and the Board. Moreover, had these IPRs been filed today, institution would have been denied in each and every case in view of the settled expectations of the parties. PO respectfully requests that this IPR be terminated because of Petitioners' repeated failure to provide any meaningful evidence of a lack of privity between them and time-barred parties, including Intel.

II. ARGUMENT

As explained in PO's Supplemental Brief, it is ***Petitioners***—not PO—that bear the burden of proving that (1) they properly identified all real-parties-in-interest and (2) the Petition is not time-barred. *See* Paper 88 ("PO Brief") at 2. The Director herself agreed that PO has done more than enough to challenge Petitioners' RPI identification. It is now up to the Board to consider Petitioners' supposed "evidence." But when given the chance, Petitioners merely focused on direct sales and indemnity agreements between Petitioners and Intel for the IAPs, and regurgitated the same attorney argument they have offered since filing the Petition.

Petitioners wrongly accuse PO of speculating whether Petitioners' products are incorporated into any Intel products (accused or otherwise). But it is *Petitioners* that failed comply with the Board's Order. Petitioners were given a final opportunity to disprove PO's privity allegations, but because they did not properly and adequately investigate whether the IAPs include products or components sold by Petitioners, this question is still unanswered. This uncertainty should count against Petitioners, who are (a) closer to the source of proof, *i.e.*, Intel, and (b) bear the burden of proof. This information is in Petitioners' possession—***not*** PO's.

A. Petitioners Submitted the Same Attorney Argument as "Evidence" that the Director Has Already Rejected

As explained in PO's Supplemental Brief, Petitioners' "discovery" (and their Response Brief) offers the same attorney argument that it has presented since opposing PO's original discovery motion in January 2024. *See* Paper 10. In repeating those same arguments now—while offering no further details, new information, or documentary support—Petitioners apparently believe that their previous arguments will meet their burden.

1. Petitioners' Witnesses Relied Entirely on Counsel's Representations

Petitioners' witnesses could not confirm that they themselves wrote their respective declarations (EX2081 (Cirrus Logic, "CL"), EX2081 (OmniVision, "OV"), EX2080 (GlobalFoundries, "GF")). Ms. Leach (CL) admitted she did not

draft any of the "wording" or "substance of the declaration," nor did she "make any comments" or "substantive input" into the declaration. EX2084 (Leach Tr.) at 11:10-16, 64:12-20, 72:9-18. Mr. Cleary (OV) testified that he was "involved in the drafting" of his declaration, but could not "recall exactly which portions" of the short document he actually wrote or whether certain documents he supposedly reviewed were even included in the declaration. EX2085 (Cleary Tr.) at 8:15-21, 14:5-15. Mr. Ng (GF) admitted that counsel provided him the declaration, EX2083 (Ng Tr.) at 11:6-11, 34:13-35:4, and that his only "role in preparing the declaration" was providing his experience and reviewing in-house counsel's work, *id.* at 11:12-20.

Additionally, the declarations are entirely devoid of any detail concerning the declarants' "investigations" or other steps taken to confirm that Petitioners have never sold any component of the IAPs. For example, CL's declaration does not reference Ms. Leach's purported search of CL's business tracking system. EX2084 at 44:20-45:11. In fact, all Ms. Leach's declaration details is that she "consulted with [CL's] legal department," *i.e.*, the very team that drafted her declaration. The same could be said for Mr. Ng, since GF's counsel provided him the entire declaration and "[n]o additional information." EX2083 at 34:13-35:4. Lastly, all Mr. Cleary provided was brief mention of his "personal knowledge." *See* EX2082 at ¶11. Weeks later, he discussed supposed communications with OV's CFO, including

receiving a document summarizing sales to Intel, yet *none* of this is mentioned in the declaration. *See* EX2085 at 7:18-8:4, 10:14-20, 11:2-21.

2. Petitioners' Declarations Reveal a Concerted Effort Among Counsel for Greenthread Petitioners

Even more telling that this is the same attorney argument is the fact that each of the declarations (offered by Onsemi, Cirrus Logic, OmniVision, GlobalFoundries, and MPS) closely track one another, are approximately the same, *short* length, and are presented in the same form with the issues discussed in nearly identical order. Then, during depositions two weeks later, each witnessed discussed various details of their supposed investigation and drafting process. But as explained above, none of these details that would differentiate the declarations are found in the declarations themselves. Not only do these boilerplate declarations simply parrot the very same attorney argument rejected by the Director, but they show that counsel drafted these declarations, and then asked their respective witnesses to "confirm" what was already written. The similarity between the declarations is uncanny, reflecting each petitioner's effort to substitute attorney argument for "investigation" and to again deny PO the discovery it was granted by the Director and ordered by the Board.

3. Petitioners Have Provided No Documents to Support Their Arguments

Finally, the fact that Petitioners have produced ***zero*** accompanying documents with these declarations indicates that Petitioners did the bare minimum by simply

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giving a new face to their attorney arguments. But as the parties with the burden of proof on the issue, the parties performing the actual "investigation," and the parties in control of any documentary evidence that would prove or disprove their privity position, Petitioners have offered no evidence whatsoever. The underlying litigations between the parties has been stayed since September (CL) and November (OV) 2024, which only heightens the role of the discovery process in this IPR proceeding. PO has had no other means to acquire the evidence the Board needs to make a complete RPI/privity determination. But now that the Director and the Board have ordered this discovery, Petitioners have offered nothing besides these unsubstantiated declarations.

Ms. Leach had no explanation for why the declaration did not mention her supposed search into CL's billing system. *See* EX2084 at 23:10-24:2, 44:20-45:8, 64:8-17. Mr. Cleary testified about sending Intel-related documents to outside counsel and a "sales summary" document received from OV's CFO. EX2085 at 11:15-21; 14:5-15. However, none of these supposed documents were cited in OV's declaration. [redacted] As explained in PO's

Post-Remand Brief (pp. 14-15), these are just a few instances where a reasonable investigation would have yielded documents responsive to the Board's Order.

Petitioners lambast PO for requiring that it "prove the negative." Response at 2, 15. While PO disagrees, *see infra*, §II.C, even if it were true, Petitioners have offered nothing that would help disprove Intel's status as an RPI to this IPR. They have not produced a shred of documentary evidence in connection with this dispute, and, as the parties bearing the burden of proof, they cannot prevail.

B. Petitioners Have Failed to Prove that They Do Not Supply Any Components of the IAPs

As explained at length in PO's Supplemental Brief, any investigation into Petitioners' supplier relationships with Intel was cabined solely to whether or not there are direct sales or indemnity agreements for the complete IAPs themselves. Once those "investigations" turned up empty, Petitioners irrationally concluded that it has never supplied any *components* of the IAPs. But when this was held up to the light, Petitioners seemingly attacked PO for suggesting that there may be some unidentified components of Petitioners in the IAPs. It was not PO who put this focus on "components" of the IAPs. The Board's Order required that Petitioners produce "[d]ocuments sufficient to show the asserted privity relationship between Petitioner and Intel," including "whether Petitioner was the supplier of any … component of a product[] accused of infringement in the Intel Litigation." Disc. Order at 6. Petitioners were given the opportunity to investigate the truth of these assertions, but

failed to do so. These conclusory, attorney-generated statements are insufficient to meet Petitioners' burden of proof, and Petitioners' minimal (at best) investigations demonstrates Petitioners' disregard for this portion of the Board's Order.

Throughout the Response, Petitioners are seemingly taken aback by PO's suggestion that Petitioners should have reached out to Intel to confirm their understanding of what is or is not included as components of the IAPs. Not only do Petitioners maintain communication with Intel, but Intel is the "best source of proof" to confirm or deny the matter. *See* EX2084 at 62:12-15 ("***Intel know[s] best*** about what is included and not included in its own products."). However, Petitioners, as the parties with the burden of proof and with close ties to Intel, refused to ask this simple question. This begs the question: ***Why?***

Cirrus Logic: Ms. Leach never contacted Intel during her investigation or check "whether the IAPs contain any [CL] amps, DACs, codecs[,] or any other [CL] products." EX2084 at 19:14-17, 40:11-21, 73:2-5. Nobody 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 [IAPs] include [CL] products?
>
> A. No.

EX2084 at 46:1-9. Ms. Leach never asked or directed anyone else to request a parts list or other evidence that might disprove Intel's RPI status. *Id.* at 40:5-15, 41:9-42:3, 72:19-73:5. She admitted to not "contact[ing] anyone internally at [CL] to find out who regularly interfaces with Intel" and never "ask[ing] them to e-mail or call Intel to try and confirm the substance of [her] testimony." *Id.* at 65:2-15, 37:16-38:1.

OmniVision: Mr. Cleary also never reached out to Intel or asked for a parts list. EX2085 at 19:13-15, 52:13-22. Yet, he admitted that Intel is best able to confirm whether OV products are incorporated into Intel products. *See id.* at 46:7-19:

> [Q.] My question is are you generally aware of whether module integrators make sales to Intel of products that accused of [OV] chips? …
>
> [A.] No. ***You'd have to ask Intel.*** I don't know what the relationship is with a module integrator.
>
> Q. ***You didn't contact Intel in connection with your investigation; correct?***
>
> A. ***Correct.***

GlobalFoundries: Mr. Ng admitted that he "still ha[s] a relationship with contacts at Intel" and that there is still "currently [a] relationship manager for Intel." EX2083 at 16:20-17:9. However, neither he nor the current manager reached out to their known contacts at Intel regarding the IAPs. *Id.* at 17:1-6, 18:6-9.

Further, nobody at GF ever "contact[ed] anyone at Intel to find out whether [they] could get access to a parts list for any of the [IAPs]." *Id.* at 47:12-48:4, 48:18-49:5.

Rather than taking the straightforward step of contacting Intel itself (or even the salespeople and engineers who work with Intel) to discern the true answer to the Board's inquiry, Petitioner took the head-in-the-sand approach. This bare minimum "investigation" leaves too many questions unanswered and does not help Petitioner satisfy its burden on the RPI/privity issue. Moreover, these actions fail to properly respond to the discovery ordered by the Director and to the Order issued by the Board.

C. Greenthread is Not Demanding that Petitioners "Prove a Negative"

Petitioner criticizes PO for trying to make it "prove a negative." Response at 2, 15. But that is premised on a few fundamental flaws. ***One***, PO is not imposing this burden on Petitioners; that comes from case law and the Discovery Order issued by the Board. ***Two***, to try and prove a negative means: there is no conceivable (or discoverable) proof available to show that none of Petitioners' products are included in an IAP. That just simply is not the case here. Petitioners try meet their burden by offering boilerplate declaration statements, but as explained above, that is insufficient for the task at hand. Instead, PO has offered a handful of other sources of documentary proof that would shed more light on the issue: agreements or communications between Petitioners and Intel for non-accused products, documents reviewed or created as part of these so-called investigations, internal correspondence

related to Petitioners' investigations, or other documents mentioned by the declarants. *See* PO Brief at 14-15. Further, PO has already explained (and various declarants agreed) that ***Intel itself*** is the best source of proof on this issue. Petitioners could have put this issue to rest and proven whether any of them supply Intel with any IAP components—by contacting Intel. Petitioners could have done this at a much earlier point in the proceeding, but even when given the chance now, they have failed to do so.

D. Petitioners' Indemnity-Related Arguments Are Misplaced

Petitioners devote a substantial portion of the Response to arguing whether or not they ever received specific indemnity requests during the pendency of PO's previous litigation against Intel. But just because Intel never tendered an indemnity request does not excuse Petitioners for their conduct or any contractual obligations. Intel was not bound to tender indemnity to Petitioners if it believed it was in the best position to defend the case. In fact, Petitioners tacitly agree with how Intel defended that litigation, since the later petitions offered by Petitioners nearly mirror the petitions, asserted references, and arguments offered by Intel's counsel. Notably, one of the petitions submitted by another Greenthread petitioner includes a massive transcription error from Intel's petitions. *See* IPR2023-01244, Paper 1 at 4 ("Intel concurrently submits a Power of Attorney…").

Moreover, PO has demonstrated that Petitioners' terms and conditions include indemnity provisions for sales made to Intel. Ms. Leach confirmed that sales to Intel would be "subject to" CL's standard T&Cs, EX2084 at 63:6-15, 55:1-16, which require CL to defend or indemnify infringement claims for "Products supplied by [CL] to [a] Buyer," EX2026 at ¶10(a). Mr. Cleary [redacted] has "fielded [] indemnity requests" on OV's behalf. EX2085 at 39:12-17, 47:7-16. [redacted]

Further, PO and the Board have no way of knowing whether indemnity would come into play in this case because ***Petitioners did not truly investigate whether their products were incorporated into the IAPs***. *See* § II.B, *supra*. Petitioners have failed to produce any documentary evidence as to this threshold issue. Without fully knowing whether any of Petitioners supplied components of the IAPs, the Board cannot make a correct determination as to Petitioners' indemnity obligations to Intel. That Petitioners' declarants asserted that Intel never tendered indemnity requests is inconsequential given Petitioners' failure to comply with other prongs of the Order.

E. Greenthread Maintains that the Time-Bar Issue Could Be Decided on the Existing Record, *Before* the Ordered Discovery

Petitioners' wrongly criticize PO for contending that, after the Director's remand order, further discovery into Petitioners' relationships with Intel (and other

time-barred parties) was unnecessary. Response at 2. At that juncture, having been vindicated that its original discovery motions were not improper and should have been granted, the window of opportunity for Petitioners to produce meaningful, actual evidence should have been shut. Given the evidence PO offered to dispute Petitioners' RPI identification under *Worlds* and the undisputed fact that, by then, Petitioners had offered nothing but attorney argument on their side of the ledger, PO maintained that the Board could decide the RPI/privity on the exiting (lack of) record.

Before the Board's Discovery Order (June 2025), Petitioners refused to produce any "actual evidence": **(1)** when requested by PO after the first petitions were filed; **(2)** when opposing PO's original discovery motions; **(3)** when authorized to file Preliminary Replies; **(4)** when filing their later, post-institution Replies; **(5)** when responding to PO's Director Review requests in IPR2024-00001 and -00016; or **(6)** at any other time during the pendency of these IPRs. This was never a burdensome endeavor, as Petitioners' declarations spanned no more than 3.5 pages and each took a matter of a few hours to "investigate" and prepare. But now that Petitioners have been gifted a final opportunity by the Director and the Board to produce documents sufficient to disprove Intel's status as RPI to this proceeding, Petitioners have thumbed their nose at the Order. Thus, Petitioners have *still* failed to carry their burden on this issue.

F. Policy Considerations and Fairness Support Greenthread

Finally, basic policy considerations and notions of fairness support PO's position that Petitioners have not complied with the Discovery Order. At the end of the day, Petitioners submitted a self-serving declarations from unprepared witnesses—nothing else. The Director and the Board have ordered Petitioners to produce responsive documentary evidence, and instead of doing so, Petitioners took the narrowest possible reading of the Order, addressed each point in a matter of a few lines, and attached nothing to support those statements.

The extent of "discovery" offered here defies the entire rationale and motivation behind a meaningful discovery process at the PTAB. If this is considered "sufficient," it will have a chilling effect on parties making privity and time bar arguments under § 315(b). In instances like this, it is ***petitioners***, not patent owners, that have access to the evidence. This would set precedent for allowing petitioners to flout well-reasoned discovery requests, like PO has done in these IPRs, and drive up the costs to the parties and the Board by litigating a full IPR when it may very well should have never been instituted in the first place. Here, PO sought to resolve this issue ***early*** in the case. PO made substantiated arguments to Petitioners' counsel and requested counter-evidence just one week after the first Cirrus petition was filed. *Compare* IPR2024-00001, Paper 1 (10/12/2023) *with* EX2011 (10/20/2023). When these requests proved futile, PO was authorized to file discovery motions—

all before its POPRs were due. Those requests were wrongly denied, but even still, Petitioners waited until the eleventh hour to provide any evidence whatsoever to disprove the time-barred parties' status as RPIs to this proceeding.

Petitioners should have been more forthcoming with evidence along the way. If the district court case had not been stayed, PO would have filed motions to compel compliance and Petitioners ordered to produce responsive documents. PO does not have that option here. This supposedly efficient alternative to district court litigation has been anything but, and if the Board accepts this minimal level of "evidence" to overcome an allegation of privity, then there will never be a finding of privity in similar circumstances.

III. CONCLUSION

The "discovery" that Petitioners were ordered to produce revealed nothing more than the same attorney argument that they has touted over the past two years. Petitioners' superficial "investigations" into the threshold question of whether any of them have supplied any component of the IAPs has left too many questions unanswered at this stage of the IPR proceeding. Petitioners have not carried their burden of proof on the RPI/privity issue, despite being given a final chance to do so, and as a result, this proceeding should be terminated.

[redacted]

Dated: September 2, 2025

Respectfully submitted,

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CERTIFICATION OF SERVICE

The undersigned hereby certifies that a copy of this **PATENT OWNER'S REPLY 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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