UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MONOLITHIC POWER SYSTEMS, INC.,
Petitioner,

v.

GREENTHREAD, LLC,
Patent Owner.

IPR2024-00470
U.S. Patent No. 11,121,222

PATENT OWNER'S REPLY IN SUPPORT OF ITS MOTION TO EXCLUDE

Each of Petitioner's arguments in opposition (Paper 59, "Opp.") to Patent Owner's Motion to Exclude (Paper 56, "Mot.") utterly miss the mark and neglect the fact that "Ex. 1059" comprises two seemingly disjointed references. Pages 1-12 of the document appear to be an excerpt from a textbook, while pages 13-21 come from a slideshow presentation. It is unclear to PO—and almost certainly the Board—whether these two documents come from the same source. Tellingly, Petitioner ***only*** points to the first page of the PDF when arguing that the exhibit "is an excerpt" from a textbook section written by Dr. Sproul. Opp. at 2. Petitioner has no answer for the horizontal slide presentation pages in the PDF.

Further, PO is not alleging that Ex. 1059 is or is not "prior art." But Petitioner takes an additional leap to argue that the exhibit's "public availability [] is immaterial to this proceeding." Opp. at 1. Petitioner relies on this exhibit for a "technical proposition"—namely, what a POSITA would know about the "field effect from [] P-N junctions." *See* Pet. Reply (Paper 42) at 16. Not knowing a reference's public availability is hardly "immaterial" when considering a POSITA's knowledge at the time of invention. *See Spectrum Solns., L.L.C., v. DNA Genotek Inc.*, IPR2022-01347, Paper 43 at 26-28 (PTAB Feb. 7, 2024).

In *Spectrum*, the petitioner similarly argued that the authentication and the date of public availability did not matter because the exhibit was "not being asserted as prior art." *Id.* at 27. That distinction did not carry weight with the Board. Just as

there, "Petitioner seeks to use the [Sproul textbook] as evidence of what a POSITA would have understood." *Id.* at 28. But when the "applicable legal standard … evaluates what a POSITA would have understood to have been obvious 'at the time the invention was made,'" Petitioner must prove that the reference is what it is claimed to be and whether it was "accessible to a POSITA as of the earliest effective filing date" of the challenged patent. *Id.*

While the issue of authentication may be a "low bar," Petitioner has come forth with ***zero*** evidence of the textbook's public availability, ***zero*** evidence that the textbook and slideshow presentation form the same reference, and ***zero*** evidence of the slideshow presentation's public availability. It doesn't matter that the exhibit, "on its face[,] provides a rational basis to support that it is educational material describing the science of P-N junctions." Opp. at 2. What matters is whether the exhibit—"on its face"—or Petitioner can establish that it is "educational material describing the science of P-N junctions" as of the effective filing date. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007) (holding that obviousness is assessed from the perspective of a POSITA "at the time the invention was made"). In fact, Petitioner admits it "does not, and has not, relied on any date of Exhibit 1059's public availability." Opp. at 2. But when presenting a technical reference for Petitioner's purposes—that is, the knowledge of a POSITA at the time of the invention—the date of public availability is critical.

Neither do the cases cites in PO's Motion "miss the point." Opp. at 3. PO explained how, under PTAB precedent, Petitioner (a) must identify evidence sufficient to establish that the reference was publicly available and (b) that a copyright notice, on its own, is insufficient for that purpose. Mot. at 2-3. Petitioner contends that these case cites are "inapt," but offers no cases going the other way, *i.e.*, that either a bare copyright notice is sufficient for establishing public availability or the Board's "pre-institution" analysis of a printed publication is not applicable for assessing the relevance or authentication of technical references in the later stages of IPR proceedings. In fact, the petitioner in *Spectrum* at least put forth a declaration explaining *where* the reference was pulled from on the internet, but without sworn testimony regarding the date of public availability, such "evidence" is insufficient to establish the reference's public availability. *Spectrum* at 27. Here, Petitioner has done nothing of the sort.

Finally, Petitioner's policy argument that it would by "atypical" to for the Board to "[require] that a public availability date be proven for secondary technical papers" falls flat in light of the Board's precedent. Opp. at 3.

Thus, for at least the foregoing reasons and those presented in the underlying Motion, the Board should exclude Exhibit 1059.

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Respectfully submitted,

/Alan Whitehurst/

Alan Whitehurst
Reg. No. 43,263
awhitehurst@mckoolsmith.com
Arvind Jairam
Reg. No. 62,759
ajairam@mckoolsmith.com
MCKOOL SMITH, P.C.
1717 K St. NW, Suite 1000
Washington, DC 20006
Telephone: (202) 370-8300
Facsimile: (202) 370-8344

Scott W. Hejny
Reg. No. 45,882
shejny@mckoolsmith.com
MCKOOL SMITH, P.C.
300 Crescent Court, Suite 2100
Dallas, TX 75201
Telephone: (214) 978-4000
Facsimile: (214) 978-4044

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 **PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE** has been served on Petitioner via email on the following counsel of record for Petitioner:

Miguel Bombach
Bing Ai
John D. Esterhay
Runkum (Justin) Jiang
PERKINS COIE LLP
11452 El Camino Real, Ste. 300
San Diego, CA 92130-2080
T: (858) 720-5700

John P. Schnurer
Foley & Lardner LLP
11988 El Camino Real, Suite 400
San Diego, CA 92130
john.schnurer@foley.com

PerkinsServiceMPS-GreenthreadIPR@perkinscoie.com

Dated: May 9, 2025

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