PUBLIC VERSION

[redacted]

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 SUPPLEMENTAL BRIEF CONCERNING BOARD-ORDERED DISCOVERY

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I. INTRODUCTION

In response to the Board's issued discovery Order ("Order," Paper 69), Monolithic Power Systems ("Petitioner" or "MPS") offered a single declaration (EX2086), unaccompanied by any other evidence, of MPS in-house counsel, Carly Summers, who admitted she was not knowledgeable about—and had not investigated—many of the issues addressed in the Order. In doing so, Petitioner paid lip service to Director Stewart's discovery instructions and did not comply with the directive and intent of the Board's Order. Petitioner was given yet another opportunity to rebut PO's arguments that Petitioner's relationship with Intel gives rise to a privity finding that bars this IPR, and instead of offering definitive evidence, Petitioner merely performed a perfunctory search for a narrow set of documents that do not speak to the commercial realities of its business. PO has been severely prejudiced by having to litigate this full IPR proceeding that should have never been instituted, request Director Review in related IPRs on this identical issue, and now finally receive the discovery it requested almost a whole year-and-a-half ago. But even now, Petitioner's privity positions *still* remain unsubstantiated, and the Board should find that the Petition is time-barred and terminate this IPR.

II. BACKGROUND

A. Legal Standard

Petitioner ultimately bears the burden to prove that (1) it properly identified all real-parties-in-interest and (2) its petition is not time-barred. *Worlds Inc. v.*

Bungie, Inc., 903 F.3d 1237,1246 (Fed. Cir. 2018). But when PO "brings into question the accuracy of Petitioner's [RPI] identification," the Board can no longer rely on Petitioner's representations. *Id.* at 1242. This is a low bar for patent owners. *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).[1] Once PO has "put this issue into dispute," Petitioner has to produce "actual evidence" to prove lack of privity, rather than rely upon "attorney argument." *Id.* at 1244 n.8, 1246.

B. Evidence of MPS' Relationship with Intel

To this point, PO has presented far more than "some evidence" that time-barred parties, including Intel,[2] should have been named as RPI in the Petition. PO served Intel with an infringement complaint on February 1, 2022, which is more than one year before the present Petition was filed. EX2001. Petitioner has admitted that it is a "component supplier" to Intel. *See* Pet. Prelim. Reply (Paper 16) at 5.

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[1] All emphases added unless otherwise noted.

[2] PO maintains that Petitioner is in privity with both [redacted] and [redacted] two other time-barred parties. PO also maintains that discovery should have been granted as 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.

PO's evidence confirms this. *See* EX2017-2019. As a result, Petitioner received a sublicense as a "have made vendor" to make and sell products to Intel under Intel's license with PO. EX2011 at 3. Ms. Summers, Petitioner's declarant and Senior Corporate Counsel, testified that "MPS sells some custom products," EX2087 at 34:11-17, and PO has previously submitted evidence that Petitioner "maintains a staff of applications engineers who work directly with [] customers' engineers," EX2022 at 6. Furthermore, Ms. Summers confirmed PO's longstanding belief that Petitioner's sales "contract include an indemnity clause against patent infringement." EX2087 at 31:11-15.

C. Director Review and the Board's Discovery Order

PO was granted Director Review of the Board's Final Written Decisions 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 8). 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 in this proceeding, the Board ordered Petitioner to produce "documents sufficient to show the asserted privity relationship between Petitioner and Intel," including, but not limited to, a declaration. Order at 7. Petitioner offered nothing beyond a declaration.

III. ARGUMENT

Director Stewart ordered discovery that would "yield useful information on the privity issue." DR at 3. Instead of doing so, Petitioner opted to submit a standalone, boilerplate declaration that purports to comply with the Board's Order, but instead demonstrates Petitioner's misunderstanding of the scope of the Board-ordered discovery. Petitioner did not comply with the directive or intent of the Director's—and the Board's—discovery orders, and as a result, has failed to present any meaningful evidence disproving Intel's status as an RPI to this IPR.

A. Ms. Summers Conducted an Incomplete Investigation Into Petitioner's Relationship with Intel

The Board ordered Petitioner to produce documents "sufficient to show the asserted privity relationship between [it] and Petitioner." Order at 7. But what Petitioner submitted is far from "sufficient." Ms. Summers's declaration and deposition testimony superficially appear compliant with the Board's Order; however, upon closer review, it is apparent that Ms. Summers's investigation into Petitioner's relationship with Intel was never fully investigated as required by the Board. Ms. Summers confidently asserted that there is nothing to see between the parties because Petitioner does not ***directly*** sell or produce any of the ***complete*** Intel Accused Products (IAPs) back ***to*** Intel nor did it receive an indemnity request from Intel for ***directly*** supplying these ***final products*** to Intel. Ms. Summers focused on a narrow and hyper-literal reading of the Board's Order that neglects how Petitioner's

business actually operates: ***indirectly*** selling ***component parts***, through contract manufacturers, to downstream, branded companies. Ms. Summers did minimal "investigation" to substantiate her declaration, and Petitioner should not be rewarded for sticking its head in the sand at this point.

1. Ms. Summers Limited Her Investigation to a Subset of the Issues Highlighted in the Board's Order

Ms. Summers confirmed that, as part of preparing her declaration, she "review[ed] the PTAB [B]oard's order that ordered additional discovery." EX2087 at 11:22-12:3. From that, she focused her investigation on "two areas of inquiry that the PTAB requested." *Id.* at 12:9-17. This took her "[m]aybe 20 minutes, 30 minutes" to review the list of IAPs, "about an hour and a half" to look for direct sales agreements between Petitioner and Intel for those IAPS, and "[a]round the same" to "investigat[e] [MPS'] knowledge of the Intel litigation." *Id.* at 12:18-13:16. It *appears* that Ms. Summers conducted a thorough investigation, since her declaration includes at least a modicum of detail about the investigation she undertook on these two points. Ms. Summers described the files and employees that she searched (EX2087 at ¶9) and testified that she "reviewed the list [of IAPs] closely[, and] referred to the order to ensure that [she] was doing what [she] had been asked to do to review the list" (EX2087 at 15:14-19).

Ms. Summers further explained that all she did to "confirm [her] statement that [P]etitioner did not sell … or supply Intel with any of the [IAPs]" was make

sure she "did not have record of any sales agreements with Intel." EX2087 at 15:20-16:4; *see also id.* at 16:15-20. Of course, that literal reading of the Board's Order is preposterous, so, unsurprisingly, this yielded little to no results. But PO has never accused Petitioner of selling the complete IAPs, and for Ms. Summers to focus her entire investigation on this hyper-literal point certainly does not "yield useful information" or provide a "full record" for the Board to consider in its privity determination. Basically, Ms. Summers briefly looked at the list of IAPs, concluded "we are not Intel and do not sell final Intel parts," and stopped there. This review was incomplete, and Ms. Summers's position is undermined by two critical admissions: Petitioner is a ***component*** supplier and has an ***indirect*** sales model. As a result, she failed to present to the Board a comprehensive account of Petitioner's relationship with Intel under the guise of conducting a complete and thorough "investigation."

2. Ms. Summers Did Not Investigate Indirect Sales of Parts or Components to Intel

Ms. Summers's declaration strikes two different and competing tones. She definitively writes that "[t]here are no sales agreements between Petitioner and Intel" for the IAPs. EX2087 at ¶¶6, 8 ("Petitioner did not sell to Intel, or supply Intel with, any of the [IAPs]."). This makes sense, because as explained above, Petitioner does not manufacture or sell Intel products. ***Intel does***. However, when discussing

component sales, she equivocates by saying "Petitioner was not the supplier ***to Intel*** of any product, or component of a product." *Id.* at ¶8.

Ms. Summers testified that Petitioner, "[f]or the most part," has an "indirect sales model." EX2087 at 16:5-11. Any direct sales to "entities like Intel" would be the "exception to [Petitioner's] business model." *Id.*; *see also* EX2087 at ¶8 (explaining that "Petitioner's principal customers are contract manufacturers…, rather than branded companies"). This is the only reason why Ms. Summers could use such definitive language in her declaration: she operates as if MPS has a "direct sales relationship" with Intel, and when there were no documents to confirm or deny that, she concluded her "investigation." All she did was "check[]" Petitioner's "records to confirm whether [it] had sales agreements in place with Intel," to which she "found none." EX2087 at 16:15-20. But Ms. Summers never needed to "confirm whether they were a direct customer," and this inquiry was done only to appease her narrow reading of the Board's Order. Ms. Summers admitted that she did no "further investigation beyond examining whether there were [direct] sales agreements" for the IAPs. EX2087 at 18:15-18.

Tellingly, once asked whether "MPS sells products ***indirectly*** to Intel," Ms. Summers could no longer testify with the same confidence. EX2087 at 16:21-17:2. This marked a clear inflection point, and from this point forward, Ms. Summers answered nearly every question with some variation of "***I don't know***." *Id.*

"Q. Does Intel use … MPS products in its systems? A. ***Maybe***." *Id.* at 17:4-5. Ms. Summers testified that "no, [she] did not" perform any "investigation to determine which MPS products are used in Intel systems." *Id.* at 17:9-13. The following exchange clearly demonstrates the dearth of investigation Ms. Summers performed to review indirect or component sales to Intel:

> [Q.] What did you do to determine that no MPS product or MPS component is used in the Intel processors listed in Exhibit 2005?
>
> A. The statement says petitioner was not the supplier to Intel of any product. ***I wouldn't have knowledge or the ability to confirm whether our product was used***, but we were not the supplier to Intel of any of the accused product, certainly.
>
> Q. Did you do any investigation to determine whether any MPS products or components are used in the [IAPs]?
>
> A. Yes. As I mentioned, I confirmed that there were no sales agreements between MPS and Intel. And there were none.
>
> Q. Did you do any ***further investigation*** beyond examining whether there were any sales agreements between MPS and Intel?
>
> A. ***No***.

EX2087 at 18:1-18. Ms. Summers again tries to hide behind the narrow issue that she *did* investigate (*i.e.*, direct sales agreements between Petitioner and Intel for the IAPs). Her lack of knowledge concerning the IAPs does not stand alone.

Ms. Summers testified that she did not know whether *any* MPS components are included in *any* Intel devices and, as discussed in more detail below, she did not avail herself of any opportunity to learn the answer to that question:

> Q. So outside of researching whether there were sales agreements between MPS and Intel, ***did you do any investigation at all*** as to how MPS products are integrated with Intel processors?
>
> A. ***No***.

EX2087 at 23:21-24:3; *see also id.* at 19:18-20.

Ms. Summers clearly admitted that she does not "know whether the Intel Core i5-12400 processor"—or any of the other processors included in the list of IAPs—"includes any element designed or manufactured" by MPS. EX2087 at 25:5-26:2. She has never "seen a parts list for any of these processors," and did not know whether "anyone [else] in-house" had either. *Id.* at 26:8-13. Petitioner undertook no efforts to learn whether any of its parts are incorporated into Intel processors. Petitioner reviewed no parts lists, data sheets, and never asked Intel. *Id.* at 26:3-7.

Finally, Ms. Summers admitted she did not know whether "any MPS subsidiaries or affiliates sell products ***indirectly*** to Intel." EX2087 at 29:8-10. Like the parent company, she could only testify her search for *direct* sales between the parent company and Intel also "encompassed any direct sales agreements between MPS subsidiaries and affiliates with Intel." *Id.* at 28:19-29:7.

Petitioner and its declarant did the bare minimum "investigation" necessary to satisfy its overly narrow understanding of the Board's Order. Ms. Summers must have known that her "search" would not show any direct sales agreements with Intel for the IAPs because (a) Petitioner does not sell the IAPs, and (b) Petitioner does not rely on a direct sales model. Her investigation into Petitioner's relationship with Intel was far from complete, did not comply with the intent of the Board's Order, and violates the instruction from the Director.

3. Ms. Summers Did Not Consult With the Parties or People Who Would Possess Relevant Information

Petitioner's declarant testified that she "wouldn't have knowledge or the ability to confirm" whether any MPS component was used in any Intel product—accused or otherwise. EX2087 at 18:1-8. This is simply not true. Ms. Summers "learned that [she was] going to be a witness … sometime in late June 2025." *Id.* at 10:8-13. However, she has known of these IPR proceedings since at least "when they were filed," which began in February 2024. *Id.* at 11:3-6. Ms. Summers has been "indirectly" involved in the proceedings and admitted to reviewing at least one of Petitioner's previously-submitted briefs. *Id.* at 11:7-21. Presumably, she has been familiar with Petitioner's privity arguments, especially since Petitioner has only a "small internal legal team." *Id.* at 14:15. Ms. Summers has had *more than* enough time and "ability" to confirm the extent of Petitioner's relationship with Intel and

has had plenty of opportunities to consult with contacts that would have greater knowledge than her on the issues. *See id.* at 18:1-8.

First, Ms. Summers explained that Petitioner "work[s] with contract manufacturers [CMs] to design [] parts that they are selling" to their own "downstream customers." EX2087 at 20:10-15, 21:14-22. Petitioner "provide[s its] technology to the CM. And they have their own customers, and they sell those products to them." *Id.* at 22:1-4. Ms. Summers then confirmed that Petitioner's CMs might "sell to downstream branded companies such as Intel," however, she did not investigate whether MPS tracks its CM's sales to these downstream branded companies. *Id.* at 22:5-13, 23:6-9 ("Q. Did you do anything to investigate sales from any of those [CMs] to other entities, including Intel? A. ***No***."). Petitioner's subsidiaries and affiliates use the same CMs as the parent company, *id.* at 29:11-18, and she still could not answer whether these subsidiaries or affiliates "sell products indirectly to Intel," *id.* at 29:8-10. Ms. Summers conducted no investigation into these contract managers, despite being Senior Corporate Counsel "responsible for negotiating sales contracts to companies that MPS supplies." *Id.* at 30:4-9. She is perhaps one of the *most* knowledgeable employees at MPS on this issue, and she has had more than enough "ability" to confirm whether Petitioner's designed parts end up as components in Intel processors. *See id.* at 18:1-8

Second, not only did Ms. Summers fail to reach out to Petitioner's CMs, but she did not contact Intel—or direct anybody else at MPS to do so—as part of her "investigation" into whether it incorporates any of Petitioner's components into its final products. EX2087 at 18:19-19:3. Ms. Summers did not check with Intel to see if it "includes any components or elements designed or manufactured by MPS" in any of the IAPs. *Id.*at 26:3-7. Without ever confirming with Intel, Ms. Summers has no basis to conclude that Intel does *not* incorporate any MPS components.

Third, Ms. Summers never consulted with the sales or engineering teams at MPS to determine the extent of Petitioner's relationship with Intel. Rather than "reach out to anyone in sales or engineering to find out whether or not MPS components are included in Intel devices," she relied entirely on her flawed review of Petitioner's direct sales agreements, which, for reasons discussed above, was inadequate for the task at hand. EX2087 at 19:10-20:2. She contacted nobody else in connection with her investigation. *Id.* at 36:4-8. She admitted that she did not know (a) whether "there [are] engineers at MPS that communicate with Intel," *id.* at 19:4-8, or (b) "if anyone in-house at MPS has a parts list" for any of the IAPs, *id.* at 26:11-13. But then again, she never asked around her organization to confirm her prior understanding. *See id.* at 27:2-10 (admitting that she did not know if there is "someone at MPS that would know the answer" to technical questions regarding

compatibility with Intel processors). She also did not check internally whether "MPS manufactures parts to be used in conjunction with Intel processors." *Id.* at 27:15-22.

The declarant Petitioner offered to respond to the Board's Order was not properly equipped to handle the discovery request. Aside from her cursory review of the list of IAPs and unenlightening review of Petitioner's *direct* sales agreements, Ms. Summers lacked the requisite knowledge to make the claims included in her declaration. There are other people employed at MPS, its contract manufacturers, or Intel with more relevant information, and the fact that Ms. Summers spoke to none of them indicates the hollowness of her investigation.

B. Petitioner Presented No Evidence Supporting Ms. Summers's Statements

The Board ordered Petitioner to produce "[d]ocuments sufficient to show the asserted privity relationship between Petitioner and Intel." Order at 7. Not only does Ms. Summer's conclusory declaration fail to satisfy the Order, but Petitioner offered no accompanying documents to substantiate the claims made by its declarant. While the Board only ordered Petitioner to produce sales and indemnification agreements "for the [IAPs]," any agreements or communications between Petitioner and Intel for *other* products would necessarily speak to the "asserted privity relationship." *Id.* at 6-7 The Board mentioned "documents" separate from, and in addition to, "declarations[] and deposition transcripts." *Id.* at 8. Further, any documents reviewed or created as part of any investigation into Petitioner's

relationship with Intel should have been produced to substantiate any assertion made in the declaration.

Ms. Summers testified about numerous issues where, presumably, she would have come across pre-existing documents or would have generated documents as part of the investigation. For example, she described how she "searched" for all sales and indemnification agreements concerning the IAPs (EX2087 at ¶¶6-7), but did not attach any computer printouts or other documents confirming that no such agreements existed. Relatedly, she mentioned searching her own files, emails, and those of "every employee in Petitioner's legal department," and instructed the "IT department [to] search the archived files and e-mails of … former employees." *Id.* at ¶9. Ms. Summers provided no proof whatsoever to corroborate her declaration.

IV. CONCLUSION

PO has sufficiently put the privity issue into dispute, and Petitioner has now had more than enough opportunities to prove that its products are not included in the IAPs, or that its relationship with Intel does not give rise to a privity finding. Petitioner has 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, Petitioner has *still* failed to meet its burden by failing to comply with the Discovery Order and the Director's remand instructions, and the Board should terminate this proceeding as time-barred.

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 SUPPLEMENTAL BRIEF CONCERNING BOARD-ORDERED DISCOVERY** has been served on Petitioner via email on the following counsel of record for Petitioner:

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