UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MONOLITHIC POWER SYSTEMS, INC.,
Petitioner,

v.

GREENTHREAD, LLC,
Patent Owner.

IPR2024-00552
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 57, "Opp.") to Patent Owner's Motion to Exclude (Paper 56, "Mot.") utterly miss the mark and neglect the fact that "Exhibit 1059" comprises two seemingly disjointed references. Pages 1-12 of the PDF appear to be a textbook excerpt, while pages 13-31 appear to be from a slideshow presentation. It is unclear to Patent Owner—and almost certainly the Board—whether these two seemingly separate documents come from the same original 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., 2. Petitioner has no answer for the horizontal slide presentation affixed at the back end of 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." *Id*., 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* Paper 38 (Pet. Reply), 15. 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 authentication and the public availability date 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 claims to be and that it was "accessible to a POSITA as of the earliest effective filing date" of the challenged patent. *Id*. (emphasis added); *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 406 (2007).

While authentication may be a "low bar," *see* Opp., 2, Petitioner has come forth with ***zero*** evidence of the textbook's public availability, ***zero*** evidence that the textbook and slideshow presentation come from the same original source, and ***zero*** evidence of the slideshow presentation's public availability. It does not 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." *Id*. What matters is whether Petitioner or the exhibit—"on its face"—can establish that it was this educational material as of the effective filing date of the Challenged Patent. In fact, Petitioner admits it "has not relied on any date of Exhibit 1059's public availability." *Id*. But when presenting a technical reference for Petitioner's purposes—that is, a POSITA's knowledge at the time of the invention—the date of public availability is critical.

Petitioner claims that the exhibit was not presented to "show a POSITA's knowledge of the art as of a certain date." Opp., 1. Petitioner says that Sproul "describe[s] the physics of the P-N junction." *Id.* But to somehow separate the "physics" from a POSITA's knowledge in this case is merely an attempt to get around PO's cited cases. To offer a "technical discussion of a P-N junction" in connection with an excerpt of expert deposition testimony necessarily speaks to a POSITA's knowledge. *See id.*, 3. Petitioner simply cannot argue otherwise.

Neither do the cases cited by Patent Owner "miss the point." Opp., 3. Patent Owner explained how, under PTAB precedent, Petitioner (a) must identify evidence sufficient to establish that the reference was publicly available, (b) that a copyright notice, on its own, is insufficient for that purpose, and (c) authentication is required when portions of the exhibit appear to come "from a different document than the remainder." Mot., 2-4. Petitioner contends that these cases are "inapt," but offers no cases itself to support its arguments, *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 *Spectrum* petitioner at least put forth a declaration explaining *where* the reference was retrieved from the internet, but without sworn testimony regarding the date of public availability, such "evidence" was insufficient to establish the reference's public

availability relative to the time the invention was made. *Spectrum* at 27. Here, Petitioner has done nothing of the sort.

Further, Petitioner takes problem with *SDI Techs.* But here, the mismatch between the two documents is arguably worse than that case, since over half of the "exhibit" appears to originate from a different source than what Petitioner claims the exhibit is. This calls into question the reliability and authenticity of the ***entire*** exhibit, irrespective of what pages are "relied upon by Petitioner." *See* Opp., 3.

Finally, Petitioner's policy argument that it would be "atypical" 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., 3-4.

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

Dated: July 3, 2025

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 REPLY IN SUPPORT OF ITS MOTION TO EXCLUDE** has been served on Petitioner via email on the following counsel of record for Petitioner:

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

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

PerkinsServiceMPS-GreenthreadIPR@perkinscoie.com

Dated: July 3, 2025

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