PUBLIC VERSION

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TEXAS INSTRUMENTS INCORPORATED,
Petitioner,
v.

GREENTHREAD, LLC,
Patent Owner.

IPR2024-00674
U.S. Patent No. 11,121,222

PATENT OWNER'S MOTION FOR ADDITIONAL DISCOVERY PURSUANT TO 37 C.F.R. § 42.51(B)(2)(I)

PUBLIC VERSION

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EXHIBIT LIST

Exhibit No.	Description
Ex. 2001	*Greenthread, LLC v. Intel Corp.*, No. 6:22-cv-00105-ADA, Dkt. 1 (Complaint) (W.D. Tex. Jan. 27, 2022)
Ex. 2002	[RESERVED]
Ex. 2003	*Greenthread, LLC v. Intel Corp.*, 6:22-cv-00105-ADA, Dkt. 38 (First Amended Complaint for Patent Infringement) (W.D. Tex., filed Apr. 29, 2022)
Ex. 2004	*Greenthread, LLC v. Intel Corp.*, No. 6:22-cv-00105-ADA, Dkt. 113 (Redacted Memorandum Opinion and Order) (W.D. Tex. Dec. 27, 2022)
Ex. 2005	*Greenthread, LLC v. Intel Corp.*, 6:22-cv-00105-ADA, Dkt. 38-8 (Greenthread's Amended Preliminary Infringement Contentions) (W.D. Tex., filed Apr. 29, 2022)
Ex. 2006	*Greenthread, LLC v. Intel Corp.*, 6:22-cv-00105-ADA, Dkt. 38-12 (Exs. D-1, D-2, D-3, D-6 to Greenthread's Preliminary Infringement Contentions) (W.D. Tex., filed Apr. 29, 2022)
Ex. 2007	*Greenthread, LLC v. Intel Corp.*, 6:22-cv-00105-ADA, Dkt. 49 (Notice of Appearance of Additional Counsel) (W.D. Tex., filed June 9, 2022)
Ex. 2008	Petition (Paper 1) in *Sony Group Corp. v. Greenthread, LLC*, IPR2023-00376
Ex. 2009	*Greenthread, LLC v. Dell Inc.*, No. 6:22-cv-105-ADA, Dkt. 120 (Second Amended Complaint)
Ex. 2010	*Greenthread, LLC v. Intel Corp.*, 6:22-cv-00105-ADA, Dkt. 135 (Motion for Admission Pro Hac Vice of L. Popovski on Behalf of Sony) (W.D. Tex., filed January 30, 2023)
Ex. 2011	[SEALED] Confidential agreement
Ex. 2012	[SEALED] Confidential declaration

Exhibit No.	Description
Ex. 2013	Email communication between Patent Owner's counsel and Petitioner's counsel dated from March 25, 2024 to April 18, 2024 regarding IPR2024-00672, -00673, -00674
Ex. 2014	[Reserved]
Ex. 2015	Email from Patent Owner's counsel to the Board regarding IPR2024-00672, -00673, -00674, -00771, -00772, -00773, -00774
Ex. 2016	PlayStation 5 Teardown, available at https://www.ifixit.com/Teardown/PlayStation+5+Teardown/138280
Ex. 2017	Texas Instruments TPS65084x Design Guide, available at https://www.ti.com/lit/ug/slvuaj8/slvuaj8.pdf
Ex. 2018	TI USB Connector Manager Class Extension Driver, available at https://www.dell.com/support/home/en-us/drivers/driversdetails?driverid=gvh3c
Ex. 2019	Texas Instruments USB 3.0 xHCI Host Controller, available at https://www.dell.com/support/home/en-ee/drivers/driversdetails?driverid=0fp8v
Ex. 2020	Texas Instruments Non-Isolated Point-of-Load Solutions for Tiger Lake in PC Applications, available at https://www.ti.com/lit/an/sluaa54b/sluaa54b.pdf
Ex. 2021	*Greenthread, LLC v. Intel Corp.*, 6:22-cv-00105-ADA, Dkt. 120-8, Greenthread's Amended Preliminary Infringement Contentions (W.D. Tex., filed Jan. 23, 2023)

I. INTRODUCTION

Patent Owner Greenthread, LLC ("PO") submits this Motion for Additional Discovery pursuant to 37 C.F.R. § 42.51(b)(2)(i) and as authorized by the Board via email on June 11, 2024. Petitioner has an extensive relationship with time-barred parties Intel, [redacted] and [redacted].[1] Among other things, Petitioner manufactures and designs components of products accused in prior litigation against those parties.

Petitioner wants to take inconsistent positions before the Board and in district court. On one hand, ***before the Board***, Petitioner claims it is not in privity with Intel, [redacted] and [redacted] (collectivily "Licensees") each of whom have a license ("Licenses") to the Challenged Patents. On the other hand, ***in district court***, Petitioner wants to have the benefit of the Licenses to reduce potential damages. Petitioner refuses to say whether it plans to raise a license defense in district court (at least until these IPRs are instituted). If Petitioner claims the benefit of the Licenses, then it is Licensees' sublicensee and exercising Licensee's rights. That puts Petitioner in privity. *See Taylor v. Sturgell*, 553 U.S. 880 (2008). It is unfair for Petitioner to cloak itself in Licensees' legal rights, while disclaiming privity.

[1] The Intel, [redacted] and [redacted] entities and Challenged Patents are identified in the Definitions section of the proposed discovery requests provided at Appendix A.

PO's proposed discovery is narrowly tailored to address Petitioner's relationships with Licensees and to cut through the unfairness of Petitioner's gamesmanship. First, PO requests Petitioner's agreements and communications with Licensees and [redacted] relating to the products they sell or manufacture for them. Second, PO seeks to pose one interrogatory striking at the heart of the privity inquiry—whether Petitioner intends to claim in district court the benefit of the Licenses. The requested additional discovery is therefore in the interests of justice.

II. BACKGROUND

A. Prior Litigation Involving the Challenged Patents

1. Intel-[redacted]-[redacted] Litigation

On February 1, 2022, Greenthread filed a complaint against Intel and [redacted] for infringement of the Challenged Patents, except the '014 patent. Ex. 2001, 1-4. After the '014 issued, Greenthread filed a First Amended Complaint against both parties, which it served on April 29, 2022. Ex. 2003. The original case against Intel and [redacted] was severed and the case against Intel was transferred from the Western District of Texas to the District of Oregon. Ex. 2004, 22. The [redacted] litigation remained in Texas and continued in parallel with the *Intel* litigation.

[redacted] was a real-party-in-interest to the [redacted] litigation. Greenthread's allegations in the First Amended Complaint against [redacted] were based on, among other things, [redacted] components in [redacted] products. Ex. 2003, ¶¶18, 60, 76-81; Ex. 2005, 8

("[redacted] Accused Products"), 18-20 (section entitled "[redacted] Accused Products"); Ex. 2006, 1-34. After PO accused [redacted] products, additional counsel stepped in to represent [redacted] with respect to [redacted] products. Ex. 2007. [redacted] then filed its own IPRs against the Challenged Patents, which had been asserted against [redacted] products. Ex. 2008. The [redacted] petition named [redacted] as a real-party-in-interest. Ex. 2008, 7. Afterwards, PO added [redacted] as a party to [redacted] litigation. Ex. 2009. After [redacted] was added to the case, [redacted] counsel for [redacted] products appeared in the case for [redacted] Ex. 2010. [redacted] other counsel did not represent [redacted] The parties ultimately settled their disputes.

2. Greenthread's Licenses to Intel and [redacted]

As part of the settlements, Greenthread granted Intel and [redacted] releases for past infringement and a license to Greenthread's patents, by way of sublicense through RPX. Ex. 2011, 2. Greenthread signed the agreement, licensing Intel and [redacted] on April 7, 2023. *Id*. In another proceeding, RPX submitted an affidavit stating: "By operation of their membership agreements with RPX, Intel and [redacted] acquired the full scope of sublicensable rights Greenthread granted to RPX at the time the RPX-Greenthread Agreement was executed." Ex. 2012.

The Licenses grant Licensees the right "to make, have made, use, have used, sell, … offer for sale, have offered for sale, have sold, … import, have imported, … and otherwise exploit or dispose of any Licensed Product and Service." Ex. 2011, 2

(definition of "Patent License"); Ex. 2012. The Licenses define "Licensed Product and Service" to include "any product … made, have made, used, purchased, provided, … or otherwise exploited or disposed of by or on behalf of" Licensees. Ex. 2011, 2. The License covers all Challenged Patents. *See id.*, 3 ("'Patents' shall mean …."). Accordingly, "any product" Licensees "have made" by any Petitioner or "purchase" from Petitioner is a "Licensed Product or Service" which Licensees have the right to "use, … sell, … obtain, … and otherwise exploit." *Id.*, 2-3.

B. Petitioner's IPR Proceedings

On March 12, 2024, Petitioner filed the first three petitions in these proceedings: IPR2024-00672 ('842 patent); IPR2024-00673 ('222 patent); and IPR2024-00674 ('222 patent). Each of these three petitions contains no evidence or explanation regarding its timeliness and § 315(b), just the bald statement that Petitioner is not barred or estopped from requesting IPR. IPR2024-00672, Paper 3, §IV; IPR2024-00673, Paper 3, §IV; IPR2024-00674, Paper 3, §IV. On April 10, 2024, Petitioner filed four more IPRs, IPR2024-00771 ('195 patent), IPR2024-00772 ('481 patent), IPR2024-00773 ('502 patent), IPR2024-00774 ('014 patent), each with the same bald statement. On March 25, 2024, Greenthread informed Petitioner that it "may be operating, in part, under" the Licenses and that "the petitions are [therefore] time barred." Ex. 2013, 3. Greenthread requested that Petitioners withdraw their petitions or at a minimum provide discovery into whether

the petitions are time barred. *Id*. On April 12, 2024, Petitioner responded refusing to withdraw the petitions or provide any discovery. Ex. 2013, 2-3. On May 31, 2024, Greenthread emailed the Board "to request authorization to file a motion for additional discovery," and providing both parties' positions on the request. Ex. 2015, 1-2. On June 11, the Board authorized this motion. *Id.* at 1.

C. Petitioner's Relationship with Patent Owner's Licensees and the Current and Co-Pending Proceedings

On April 6, 2023, Greenthread filed a complaint in the U.S. District Court for the Eastern District of Texas alleging that Petitioner infringes each of the Challenged Patents.

TI sells the several products to [redacted] who incorporates it into at least the [redacted]. Ex. 2016. The [redacted] was an accused product in the [redacted] litigation. Ex. 2021, 18. TI also designs and, on belief, sells multiple products to Intel, including the TPS65084x PMICwhich is a product "designed specifically" for an Intel SOC chip. Ex. 2017, 1; *see also* Ex. 2020. TI further sells multiple products, including USB products including the USB 3.0 xHCI Host Controller, to [redacted] Exs. 2018, 2019. Thus, Public information confirms that Petitioner's chips are incorporated into Intel, [redacted] and [redacted] products.

III. THE REQUESTED DISCOVERY

PO requests discovery that goes to the status of Licensees and [redacted] as RPIs and/or privies of Petitioner. If Intel, [redacted] or [redacted] is deemed an RPI or privy of

Petitioner, this petition is time-barred by 35 U.S.C. §315(b). Specifically, PO seeks discovery regarding (summarized; *see* Appendix A):

> 1. Agreements between i) Petitioner and/or its affiliates and ii) a Licensee or [redacted] (or their affiliates), relating to the products that Petitioner and/or its affiliates sells to, manufactures for, or designs with or for, Licenees or [redacted] Licensees.
>
> 2. All communications between i) any Petitioner and/or its affiliates and ii) any Licensee or [redacted] (or their affiliates), relating to Patent Owner or the products that Petitioner and/or its affiliates sells, makes, or designs to, for, or with any Licensee or [redacted]
>
> 3. Whether Petitioner's activities are licensed or exhaust PO's rights.
>
> 4. Communications and agreements related to the JDG or coordination between Petitioner (or its affiliates) and other current or former petitioners that have filed IPR petitions against Greenthread.

IV. THE INTERESTS OF JUSTICE SUPPORT GRANTING THE REQUESTED DISCOVERY

The Board applies the five-factor "necessary in the interest of justice" standard ("the *Garmin* factors") regarding motions for additional discovery. *See Garmin Int'l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 26 at 6–7 (PTAB Mar. 5, 2013).

A. There is More Than a Possibility or Mere Allegation That the Requested Discovery Will Yield Useful Information

The discovery will yield useful information regarding whether Petitioner and time-barred parties are privies. Whether two parties are privies with respect to one

another is evaluated under the "common law" framework set forth in *Taylor. See WesternGeco LLC v. ION Geophysical Corp.*, 889 F.3d 1308, 1317 (Fed. Cir. 2018). "[A] variety of pre-existing 'substantive legal relationship[s]' between" two parties can create privity. *Taylor*, 553 U.S. at 894 (alterations in original). Among them are when two parties are "preceding and succeeding owners of property" and when one party acts as the "agent" for the other. *Id.* at 894-95. "[A]greements directly related to the product accused of infringing the patent at issue in this proceeding" satisfy *Taylor's* "pre-existing substantive legal relationship" test. *Ventex Co. v. Columbia Sportswear North America, Inc.*, IPR2017-00651, Paper 148 at 12 (PTAB Jan. 24, 2019) (precedential)).

As stated above, Petitioner has extensive "pre-existing substantive legal relationship" with time-barred Licensees including by selling, making, and desiging products with or for Licensees. Petitioner's agreements and communications with Licensees will show the precise nature of those relationships

Further, making custom products or designing products "specifically" indicates that Petitioner and Licensees may have an exclusive manufacturing agreement for some products and/or products are actually jointly designed. Ex. 2017. The panel found this type of relationship relevant in *Ventex*. IPR2017-00651, Paper 148 at 13. Additionally, when a party makes custom products it often includes

IP "clearance" provisions that the panel found relevant in *Bungie Inc. v. Worlds Inc.*, IPR2015-01264, Paper 64 at 40 (PTAB Jan. 14, 2020).

Further, contracts to "[a]ssembl[e] equipment based on information and instructions provided by" another party are "suggestive of an agency relationship." *In re Google LLC*, 949 F.3d 1338, 1346 (Fed. Cir. 2020). It is well established that "agents and principals are in privity for res judicata purposes 'if the prior action concerned a matter within the agency.'" *Herrion v. Children's Hosp. Nat. Med. Ctr.*, 448 F. App'x 71, 73 (D.C. Cir. 2011). Petitioner's manufacturing of accused products for Licensees may be similar to the assembling of equipment in *Google* and thus establish an agency relationship and privity. Whether Petitioner contends that it is acting as "have made" vendors under the Licenses would also be relevant to whether Petitioner is Licensees' agent.

Further, confirmation of Petitioner's sales of accused products to Licensees would show that it and Licensees are "preceeding and succeeding owners of property," specifically accused or licensed or infringing goods. *Taylor*, 553 U.S. at 894. The sales information and agreements would also show that sales of products to Licensees are "have made" under the Licenses (even if Petitioner disputes that for now to avoid privity). That would make Petitioner the beneficiary of an agreement "directly related" to the accused products, i.e., the Licenses. *Ventex*, IPR2017-00651, Paper 148 at 13.

B. The Second *Garmin* Factor Favors PO

The first two discovery requests (requests for agreements and communications, *supra* Section III) do not seek litigation positions. To the extent Petitioner may contend that the third discovery request (*id.*) seeks Petitioner's litigation positions, PO seeks this discovery to prevent the manifest unfairness of Petitioner taking directly contrary positions in two proceedings—i.e. arguing no privity here, but asserting a license defense in district court. It is essential that Petitioners provide this information ***now***, to prevent the unfairness of Petitioner's serial petition and changing its position ***later*** in district court. The Board should not allow Petitioner to gain an unfair advantage by saying one thing in district court and another thing at the PTAB.

C. The Requested Information Is Not Reasonably Available Through Other Means

The third *Garmin* factor favors granting the discovery requests. Most obviously, whether Petitioner contends it is a "have made" vendor under a License is information only in its possession. Likewise, the precise nature of Petitioner's relationship with Licensees and [redacted] and which products Petitioner sells to them can only be known by looking at the requested agreements and communications.

PO has investigated the RPI/privy issue to the extent possible via publicly available information and needs the information sought by the discovery requests to ascertain the exact nature of the relationship between Petitioner and the time-barred

parties. Without discovery, PO cannot know, for example, if or how Petitioner and its customers collaborate on product design, which customers buy which products, and which of Petitioner's products are incorporated into which Licensee or [redacted] products.

Furthermore, institution is a threshold issue. IPR "may not be instituted if the petition" is untimely. 35 U.S.C. § 315(b). PO needs the information ***now*** **to prevent Petitioner's gamesmanship** and in connection with ***this proceeding***.

D. The Requests Are Easily Understandable

As set forth in Appendix A, the three discovery requests are straightforward.

E. The Requests Are Not Overly Burdensome

PO's requested discovery is limited to agreements and communications relating to products sold to time-barred parties, and whether Petitioner intends to claim the benefit of the Licenses. The narrowly-tailored nature of this discovery ensures that Petitioner will not suffer an undue burden in complying with the requests. The first two requests are requests for specific types of agreements and communications. If Petitioner claims that these documents are too numerous to produce, it would only underscore the extent of its relationship with Licensees and the need for the documents.

Regarding the third request, Petitioner should be able to easily state whether or not it intends to claim the benefit of prior licenses, and its apparent unwillingness

to confirm or deny this—or perhaps take inconsistent positions at the PTAB and in district court—cannot be attributed to burden.

V. TIMING OF DISCOVERY RESPONSES

If additional discovery is granted, PO requests that Petitioner be ordered to submit all the requested discovery immediately, because the POPRs will be due during the briefing of PO's motion.

VI. CONCLUSION

Therefore, the Board should grant the requested discovery.

Dated: June 17, 2024

Respectfully submitted,

/Alan Whitehurst/

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CERTIFICATION OF SERVICE

The undersigned hereby certifies that a copy of this **PATENT OWNER'S MOTION FOR ADDITIONAL DISCOVERY PURSUANT TO 37 C.F.R. § 42.51(B)(2)(I)** has been served on Petitioner via email on the following counsel of record for Petitioner:

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Dated: June 17, 2024

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APPENDIX A

PUBLIC VERSION

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TEXAS INSTRUMENTS INCORPORATED,
Petitioner,
v.

GREENTHREAD, LLC,
Patent Owner.

IPR2024-00674
U.S. Patent No. 11,121,222

PATENT OWNER'S PROPOSED DISCOVERY REQUESTS TO PETITIONER

PUBLIC VERSION

INSTRUCTIONS

1. If you withhold information based on privilege, work product protection, common interest privilege, or other exemption from discovery, provide a privilege log stating the date, the type of information withheld (e.g., document, email, phone call) with a brief description, the participants/recipients, and for written communications, the author.

2. This should not be covered by any request, but just to be clear, any Petitioner does not need to log or produce communications solely between it and its litigation and/or IPR counsel.

DEFINITIONS

1. "Petitioner" means Petitioner or real party in interest to these proceedings.

2. "Intel" means Intel Corporation and/or its affiliates.

3. "[redacted]" means [redacted]., their affiliates.

4. "[redacted]" means [redacted]

, their affiliates.

5. "Licensees" mean Intel and (individually "Licensee").

6. "Challenged Patents" means any patent challenged in these proceedings, including U.S. Patent Nos. 8,421,195; 9,190,502; 10,510,842; 10,734,481; 11,121,222; and 11,316,014.

REQUESTS FOR PRODUCTION

Request for Production No. 1

All agreements between i) any Petitioner and/or its affiliates and ii) any Licensee or (or their affiliates), relating to the products that Petitioner and/or its affiliates sells, makes, or designs to, for, or with any Licensee or including sales contracts, purchase orders, and design agreements.

Request for Production No. 2

All communications between i) any Petitioner and/or its affiliates and ii) any Licensee or (or their affiliates), relating to Patent Owner or the products that Petitioner and/or its affiliates sells, makes, or designs to, for, or with any Licensee or including specifications, plans, drawings, (including drafts of the forgoing), test results, documents identifying the finished product into which Petitioner's

product is incorporated and any documents showing the involvement and/or role of Petitioner and/or Licensee or [redacted] with respect to the product, such as communications between engineers working for a Petitioner and engineers working for a Licensee.

Request for Production No. 3

All communications and agreements between i) Petitioner and/or its affiliates and ii) other current or former Petitioners that have filed IPR petitions against Greenthread's Challenged Patents relating to joint defense group work or coordination against Greenthread or its Challenged Patents.

INTERROGATORIES

Interrogatory No. 1

State whether any Petitioner condends that any of its activities are licensed to or exhaust Patent Owner's rights in a Challenged Patent.

Dated: June 17, 2024

Respectfully submitted,

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