

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD**

SAMSUNG ELECTRONICS CO., LTD. AND
SAMSUNG ELECTRONICS AMERICA, INC.

Petitioners,

v.

MAXELL, LTD.,

Patent Owner

Case: IPR2024-00735

U.S. Patent No. 11,017,815

PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE

Mail Stop **Patent Board**
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
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FRE 602	1, 9
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FRE 801/802/805	1
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PATENT OWNER'S EXHIBIT LIST

Description	Exhibit #
1st Amended Docket Control Order from District Court Litigation	2001
Original Docket Control Order from District Court Litigation	2002
Maxell's Supplemental Preliminary Election of Asserted Claims	2003
Defendants' Preliminary Election of Prior Art	2004
IPR2024-00735 & IPR2024-00777 Petitions side-by-side compare	2005
U.S. Patent No. 10,679,647	2006
U.S. Patent No. 10,199,072	2007
U.S. Patent No. 9,818,449	2008
U.S. Patent No. 9,384,783	2009
U.S. Patent No. 8,644,684	2010
U.S. Patent No. 7,613,383	2011
U.S. Patent Application No. 2007/0022382	2012
U.S. Patent No. 7,512,622	2013
U.S. Patent No. 6,480,669	2014
U.S. Patent No. 7,974,511	2015
U.S. Patent No. 7,853,893	2016
Petitioner's invalidity contentions chart in District Court—Kaplan	2017
Petitioner's invalidity contentions chart in District Court—Bryant	2018
Translation of JP 4385943B2	2019
Certificate of Accuracy for Translation of JP 4385943B2	2020
Declaration of Jacob Sharony, Ph.D.	2021
Internet Archive Web Page from Hauppauge Computer Works (8/03)	2022
Internet Archive Web Page from Hauppauge Computer Works (9/03)	2023
www.bricklin.com/homenetwork.htm	2024
https://www.itprotoday.com/it-infrastructure/mixing-wired-andwireless-networking-in-your-home	2025
The Benefits of Wireless Technologies (https://librarytechnology.org/document/9643)	2026

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Internet Archive Web Page from Hauppauge Computer Works (10/03)	2027
Internet Archive Web Page from Hauppauge Computer Works (10/03)—Product Data Sheets	2028
Internet Archive Web Page from Hauppauge Computer Works (10/03)—Manuals	2029
TS 101 197 v1.2.1 (2002-02)	2030
Scrambling (Conditional Access System)	2031
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District Court Claim Construction Order	2033
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User's Guide for Windows NT	2039
Declaration of Ravin Balakrishnan, Ph.D.	2040

Pursuant to 37 C.F.R. §§ 42.62 and 42.64(c) and the Federal Rules of Evidence, Patent Owner hereby moves to exclude Exhibits 1003, 1008, 1010, 1011, 1051-1057, 1065-1068, 1070, 1073, as well as certain deposition testimony, submitted and relied upon by Petitioner in this proceeding.

I. IDENTIFICATION OF OBJECTIONS

Patent Owner timely objected to Exhibits 1003, 1008, 1010, and 1011 on November 22, 2024, including on the basis that they are not sufficiently relevant, unfairly prejudicial, the declarant lacks personal knowledge, contain hearsay, and lack authenticity and foundation and therefore inadmissible under the Federal Rules of Evidence ("FRE") 401/402, 403, 602, 801/802/805, and 901. Paper 14. Patent Owner objected to Exhibits 1051-1057 on January 3, 2025 when opposing Petitioner's motion to submit "supplemental information," including on the basis that they are not sufficiently relevant. Paper 16. The Board has not yet ruled on Petitioner's motion. Patent Owner objected to Exhibits 1065-1068 during the Dr. Balakrishnan's deposition, as well as the testimony, including on the basis they are irrelevant, hearsay, and incomplete. EX1072, at 52:9-68:10. Patent Owner objected to Exhibits 1070 and 1073 on April 30, 2025, including on the basis that they are hearsay, irrelevant, and unfairly prejudicial. Paper 24.

II. THE BOARD SHOULD EXCLUDE THE OBJECTED-TO EVIDENCE

A. The Board Should Exclude Exhibit 1010 (“WinTV”) Because Petitioner Has Not Shown It Was Publicly Accessible During the Relevant Time

The Petition, without any support, contends that a “POSITA would have been familiar with Hauppauge WinTV products as they were among the early TV tuner products at that time and were one of only two TV tuner products supported by the Windows Media PC. A POSITA would therefore have known to look on the Hauppauge website for relevant information.” Pet. at 5-6. These assertions are conclusory and insufficiently factually supported, and the Petition fails to allege that WinTV was publicly accessible to a POSITA at the relevant time (2004). Patent Owner timely objected under FRE 901, among others including FRE 401/402, which states: “To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” Fed. R. Evid. 901(a). In response, Petitioner filed a motion for supplemental information (Paper 15), opposed by Patent Owner (Paper 16), seeking to submit Exhibits 1051-1057 to establish the public accessibility of WinTV. As set forth in Patent Owner's Opposition, Exhibits 1051-1057 are legally irrelevant to whether Exhibit 1010 was publicly accessible to a POSITA in 2004. Therefore, the Board should exclude Exhibit 1010 as at least lacking foundation, authenticity, and relevance.

“Whether a reference qualifies as a printed publication under § 102 is a legal conclusion based on underlying fact findings.” *Acceleration Bay, LLC v. Activision Blizzard Inc.*, 908 F.3d 765, 772 (Fed. Cir. 2018). In an *inter partes* review, “the petitioner bears the burden of establishing by a preponderance of the evidence that a particular document is a printed publication.” *Nobel Biocare Servs. AG v. Intradent USA, Inc.*, 903 F.3d 1365, 1375 (Fed. Cir. 2018). To qualify as a printed publication, a reference “must have been sufficiently accessible to the public interested in the art.” *In re Cronyn*, 890 F.2d 1158, 1160 (Fed. Cir. 1989). The Federal Circuit has described public accessibility as “the touchstone in determining whether a reference constitutes” a printed publication under § 102. *Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1348 (Fed. Cir. 2016). A petitioner establishes public accessibility by demonstrating that a reference was “disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art, exercising reasonable diligence, can locate it.” *Jazz Pharms., Inc. v. Amneal Pharms., LLC*, 895 F.3d 1347, 1355–56 (Fed. Cir. 2018).

Uploading a document to a website may make the document “technically accessible” since “someone could theoretically find it on the Internet,” but uploading a document to a website does not necessarily make the document “publicly accessible.” *Samsung Elecs. Co. v. Infobridge Pte. Ltd.*, 929 F.3d 1363, 1369 (Fed. Cir. 2019); see *Acceleration Bay*, 908 F.3d at 772–74. For a document uploaded to

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a website, a petitioner must present “some evidence that a person of ordinary skill could have reasonably found the website” and then found the document “on that website.” *See Samsung*, 929 F.3d at 1369.

The Petition contains no credible evidence that Exhibit 1010 was publicly accessible in 2004 to a POSITA. Nor do Exhibits 1051-1057 provide evidence that Exhibit 1010 was publicly accessible. There is no testimony from Petitioner's expert that he was able to publicly access WinTV in 2004, or was otherwise familiar with Exhibit 1010 or WinTV more broadly at that time. Indeed, as demonstrated in the POR, Dr. Balakrishnan attempted to access WinTV via the evidence *provided in the Petition*. Paper 20 at 25-30; EX2040, ¶¶96-104. He was unable to do so:

99. For example, I navigated within the Internet Archive to the Hauppauge web site around the time Petitioner contends the WinTV manual was available (in August or September 2003) (*see, e.g.*, Exs. 2022 and 2023). I explored some links present at the time within those web pages, for example:

Exhibit	Link
2027	https://web.archive.org/web/20031001191953/http://www.hauppauge.com:80/html/tech.htm
2028	https://web.archive.org/web/20031001185005/http://www.hauppauge.com:80/html/specs.htm
2029	https://web.archive.org/web/20031011045622/http://www.hauppauge.com:80/manuals/

100. With respect to the link at Exhibit 2029, it is the next higher level directory where one would expect the manuals to be accessible. However, as can be seen from Exhibit 2029, that access was denied.

The Wayback Machine - <https://web.archive.org/web/20031011045622/http://www.hauppauge.com:80/manuals/>

Directory Listing Denied

This Virtual Directory does not allow contents to be listed.

EX2040, ¶¶99-100. Dr. Balakrishnan concluded:

This leads me to conclude that the general public, or a POSITA at the time, did not have access to the various WinTV manuals, at least through the Hauppauge web site at the time. I could find no link to current or archived manuals. Even exploring some of the links on the home page failed to provide accessibility to product manuals.

Id., ¶101.

Petitioner presents attorney argument that navigation to WinTV from an archived version of the Hauppauge website could be accomplished “in just three clicks.” Paper 23 at 19. This self-serving statement—based on information not presented in the Petition—was conducted in 2025 using the Internet Archive, not in real-time from the actual live website as it existed in 2003/2004. Reconstruction of a path using modern archival tools does not equate to public accessibility at the relevant time. *See Samsung Elecs.* 929 F.3d at 1370–72. Not until Dr. Balakrishnan's deposition, utilizing Petitioner's pre-generated “bookmarks” provided on counsel's laptop, was Dr. Balakrishnan able to navigate through allegedly archived web pages never presented in the Petition. EX1072, 53:18-68:3. Yet, even then when asked to read the URL into the record, Dr. Balakrishnan found differences between the evidence in the Petition and the newly-navigated web page. *Id.*, 67:3-15. Nor is the recitation of numerals embedded into a URL a statement of a publication date or public accessibility of the information. *See ACTV, Inc. v. Walt Disney Co.*, 346 F.3d

1082, 1084-85, 1090-92 (Fed. Cir. 2003) (explaining that a URL merely identifies the location of information on the internet).

Dr. Balakrishnan's testimony regarding his inability to access WinTV based on the evidence *presented in the Petition* remains un rebutted. Petitioner has failed to show by a preponderance of the evidence that Exhibit 1010 was publicly accessible in 2004 and therefore the exhibit should be excluded because it lacks foundation, is inauthentic, and irrelevant.

B. Exhibits 1003, 1008, 1011, 1051-1057, 1065-1068, and 1073 Purportedly Relating to "WinTV," Should Also Be Excluded

Exhibits 1003, 1008, 1011, 1051-1057, 1065-1068, and 1073 should also be excluded because they do not show by a preponderance of the evidence that Exhibit 1010 was publicly accessible to a POSITA in 2004.

1. Exhibits 1008 and 1073

Exhibits 1008 and 1073 are Internet Archive declarations that include a WinTV manual. However, these declarations are irrelevant and hearsay because they do not purport to prove that Exhibit 1010 was publicly accessible to a POSITA in 2004. Therefore, Exhibits 1008 and 1073 should be excluded. Exhibit 1073 is additionally problematic because it attempts to change the evidence relied on in the Petition related to WinTV. The Petition represents Petitioner's case-in-chief, and, under the Board's rules, Petitioner's ability to supplement that case after institution

is necessarily limited. 37 C.F.R. § 42.123. For example, the Petition relies on Exhibit 1008 to provide the path by which WinTV was purportedly accessible:

Folder	URL
001	https://web.archive.org/web/20081010095021/http://ftp.casio.co.jp/pub/world_manual/qv/en/EXV7_EU_e.pdf
002	https://web.archive.org/web/20030914203323/http://www.hauppage.com:80/manuals/wintvpci.pdf

EX1008 at 2. Again, Dr. Balakrishnan provided un rebutted testimony that EX1010 would have only been accessible by the ones who created it, and was not indexed in a customary or meaningful way. EX2040, ¶¶96-104. Now, in Exhibit 1073, Petitioner provides *different* evidence to allegedly show a path by which WinTV was purportedly accessible:

<https://web.archive.org/web/20030914203323/http://www.hauppage.com/manuals/wintvpci.pdf>

EX1073 at 11. This evidence is also untimely, in addition to being irrelevant and hearsay, as it was never offered in response to Patent Owner's objections to Exhibit 1010 on November 22, 2024.

2. Exhibits 1051-1057

Exhibits 1051-1057 should be stricken from the record for the reasons set forth in Patent Owner's Opposition to the Motion for Supplemental Information. Paper 16 at 4-7. Second, Exhibits 1051-1057 should be excluded because they are irrelevant to whether Exhibit 1010 was publicly accessible to POSITA in 2004. They are also hearsay for what Petitioner purports to rely on them. None of Exhibits 1051-1057

reference any “WinTV Manual” much less Exhibit 1010, an alleged version of the manual, relied on in the Petition. Indeed, the Board has rejected similar efforts to establish public accessibility of a reference based on publication of another document. *See, e.g., Monolithic Power Sys., Inc. v. Volterra Semiconductor LLC*, IPR2020-01351, Paper 20 at 6-11 (P.T.A.B. March 4, 2021) (finding Petitioner had not established public accessibility of a reference based on publication of another document because the record lacked evidence “that would tend to indicate that the release of the Handbook submitted as Exhibit 1017 is the particular release to which Philips refers.”).

3. Exhibits 1065-1068

Exhibits 1065-1068—screen shots and downloads based on bookmarked links created by Petitioner's counsel, are hearsay and irrelevant to whether the evidence presented in the Petition establishes Exhibit 1010 was publicly accessible. Exhibit 1068 is also irrelevant because it is incomplete and its authenticity questionable. As Dr. Balakrishnan testified:

I see a PDF file has been loaded. Actually, it may not be. Is it a PDF file? Well, the link says WinTV-PCI.pdf with a bunch of other stuff in the URL, but there is another header saying WinTV version 47.QXD. I don't recognize the name. But otherwise, it looks like a pdf filed with a bunch of pages of some kind of manual.

EX1072 at 65:1-7. Further adding to the confusion, incomplete Exhibit 1068 purports to be yet another version of a manual—"wintv ver 47.qxd"—further differentiating it from Exhibit 1010 and the version contained within Exhibit 1073. None of this purported evidence shows by a preponderance of evidence that WinTV was publicly accessible to a POSITA in 2004 and it should be excluded.

4. Exhibit 1003

Exhibit 1003, paragraphs relating to WinTV in Dr. Bederson's declaration, should also be excluded from evidence, namely, ¶¶ 101-104, 194, 196-199, 200-204, 209, 270, 335, 337, 339, 341-344, and 419. Dr. Bederson presents no evidence of the public accessibility of Exhibit 1010, nor did he offer any testimony of his personal knowledge of Exhibit 1010 in 2004. Thus, this testimony should be excluded pursuant to at least FRE 401/402, 403, 602, 801/802 and 901/902 as well as 37 C.F.R. §42.65.

5. Exhibit 1011

Exhibit 1011, which is an alleged archived Hauppauge.com web page, is irrelevant to whether Exhibit 1010 is publicly accessible. It therefore also should be excluded.

C. Petitioner Relies on Inadmissible Hearsay Testimony That Should Be Excluded

Patent Owner also moves to exclude various sections of expert deposition testimony (EX1072, at 52:9-68:12) based on relevance, hearsay, and lack of

foundation. Petitioner is attempting to use Dr. Balakrishnan's testimony in 2025 to prove the truth of the matter asserted by Petitioner, namely, that Exhibit 1010 was publicly accessible to a POSITA in 2004. Nor has Petitioner shown that Dr. Balakrishnan had personal knowledge of Exhibit 1010 in 2004, thus his testimony cannot authenticate or lay the foundation for admissibility of Exhibit 1010.

Dr. Balakrishnan's testimony relates to allegedly archived web sites navigated in 2025—evidence not presented in the Petition—and does not prove by a preponderance of the evidence that Exhibit 1010 was publicly accessible in 2004. Nor does any hearsay exception apply. Public accessibility is evaluated based on whether a POSITA could have located the document using tools available and customary at the time, not via hindsight navigation. *See Medtronic, Inc. v. Barry*, 891 F.3d 1368, 1380 (Fed. Cir. 2018).

III. CONCLUSION

For at least the foregoing reasons, the Board should exclude Exhibits 1003, 1008, 1010, 1011, 1051-1057, 1065-1068, 1070, 1073

Dated: July 18, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of July, 2025, a copy of the attached Patent Owner's Motion to Exclude Evidence, was served by electronic mail to the attorneys of record, at the following addresses:

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Respectfully submitted,

Date: July 18, 2025

By: /Robert G Pluta Reg No 50970/
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