

**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

**REPLY IN SUPPORT OF PATENT OWNER'S
MOTION TO EXCLUDE EVIDENCE**

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Patent Trial and Appeal Board
U.S. Patent and Trademark Office
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I. INTRODUCTION

EX1010 (“WinTV”) and Exhibits 1003, 1008, 1010, 1011, 1051-1057, 1065-1068, 1070, and 1073 should be excluded because Petitioner has not shown by a preponderance of the evidence that WinTV is prior art.

II. ARGUMENT

The Petition’s entire discussion regarding the prior art status of EX1010 is the following:

The WinTV card was **a product** offered for sale/sold in the U.S. by Hauppauge Computer Works, Inc. at least by 11/10/1999 (EX1011), and its Installation and Reference manual (EX1010, hereinafter “WinTV”) is dated 6/30/1999 (EX1010, 6 (native p. iii)). WinTV was published no later than September 14, 2003 on the hauppauge.com website. EX1008. ... A POSITA would therefore have known to look on the Hauppauge website for relevant information. **These products** were also mentioned in patents that would have come to the attention of a POSITA looking for information on such products....”

Pet., 6-7 (emphasis added). Petitioner provides no evidence that the manual was included with the products allegedly offered for sale by Hauppauge, and its alleged publication date alone is insufficient to establish public accessibility. *Medivis, Inc. v. Novarad Corp.*, IPR2023-00042, Paper 35, at 27-28 (P.T.A.B. March 6, 2024).

A. Technically Accessible Links ≠ Public Accessibility

Petitioner’s evidence of public accessibility consists entirely of Internet Archive links purportedly appearing on the Hauppauge website variously in August

and September of 2003. Other than Petitioner’s vague conjecture, there is no evidence that a POSITA knew of EX1010 or its location in 2003. Nor does Petitioner offer evidence or argument that WinTV’s webpage location was “indexed... (through search engines or otherwise)” and thus locatable by a search engine. Thus, although Petitioner has attempted to make a showing that EX1010 was technically accessible, “public accessibility requires more than technical accessibility.” *Samsung Elec. Co. v. Infobridge Pte. Ltd.*, 929 F.3d 1363, 1369 (Fed. Cir. 2019); *see also First Solar, Inc. v. Rovshan Sade*, IPR2023-00827, Paper 13, at 15-19 (P.T.A.B. November 16, 2023) (finding, in similar circumstances, Internet Archive links insufficient for a showing of public accessibility). Thus, EX1010 should be excluded because it lacks foundation, is authentic, and irrelevant.

B. Exhibits 1051-1057

Exhibits 1051-1057—patents that vaguely reference WinTV *products*, not EX1010—do not carry Petitioner’s burden of showing that EX1010 was publicly accessible. *Medivis*, IPR2023-00042, Paper 35, at 28 (fact that reference was cited by various publications insufficient to show public accessibility). Moreover, Dr. Bederson’s testimony that a POSITA would have been familiar with the Hauppauge WinTV *products* and that he was “personally familiar” the Windows Media PC on which such products allegedly functioned is irrelevant to the public accessibility inquiry. *Medivis*, IPR2023-00042, Paper 35, at 28.

C. Dr. Balakrishnan's Testimony and Exhibits 1065-1068

Most of Petitioner's opposition consists of recounting the testimony of Dr. Balakrishnan. But Petitioner fails to rebut Dr. Balakrishnan's testimony regarding (1) his inability to access EX1010 based on the evidence presented in the Petition (EX2040, ¶¶96-104), and (2) how EX1010 would have only been accessible by the ones who created it, and was not indexed in a customary or meaningful way (*id.*). Nor does Petitioner rebut that it is attempting to change the evidence relied on in the Petition related to WinTV via new Internet Archive links. *See* Mot., 6-7.

Exhibits 1065-1068 present a patchwork timeline of dubious evidence that undermine the reliability of any claim to EX1010's public accessibility:

Ex.	Link	Date
1065	https://web.archive.org/web/20030927003737/http://hauppauge.com:80/	9/27/03
1066	https://web.archive.org/web/20030801080926/http://www.hauppauge.com:80/html/free_sw.htm	8/1/03
1067	https://web.archive.org/web/20030801082755/http://www.hauppauge.com:80/html/sw_pci_selector.htm	8/1/03
1068	https://web.archive.org/web/20030914203323/http://www.hauppauge.com/manuals/wintvpci.pdf	9/14/03

The disparate links and archival dates used in Petitioner's attempt to recreate the pathway to EX1010 simply highlight the inaccessibility of EX1010 to a POSITA in 2003. "[A] work is not publicly accessible if the only people who know how to find it are the ones who created it." *Samsung Elecs.*, 929 F.3d at 1372.

Petitioner's claim is incorrect that the capture of webpages by Internet Archive "is itself evidence of public availability of those web pages, and the

accessibility of WinTV was demonstrated by Dr. Balakrishnan.” First, Internet Archive webpages are not evidence of public accessibility. *First Solar*, IPR2023-00827, Paper 13, at 15-19. Second, Dr. Balakrishnan’s testimony relates to different archived webpages 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 2003. 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).

Dr. Balakrishnan’s declaration testimony is also not contrary to his testimony provided on cross-examination. Petitioner provides *different* evidence to allegedly show a path by which EX1010 was purportedly accessible. Dr. Balakrishnan previously testified that by utilizing *the evidence presented in the Petition* he was unable to access the evidence. EX2040, ¶¶96-104. That testimony remains un rebutted.

Petitioner’s attempt to rehabilitate its inadmissible evidence misses the mark by claiming Maxell’s “use of the same technique to allege the opposite” justifies Petitioner’s approach. Opp., 7. Petitioner bears the burden of persuasion in demonstrating public accessibility, and “that burden never shifts to the patentee.” *Dynamic Drinkware v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015).

D. No Exceptions to the Hearsay Rule Apply

Petitioner is attempting to use Dr. Balakrishnan's testimony to prove the truth of the matter asserted, namely, that EX1010 was publicly accessible to a POSITA in 2003. Opp., 2-7. Petitioner does not deny that Dr. Balakrishnan's testimony is hearsay. Instead, Petitioner argues that an exception applies under FRE 803(1). But this exception does not apply. Dr. Balakrishnan's alleged "present sense impression," testifying about irrelevant links not included in the Petition, shepherded by Petitioner's counsel to archived Hauppauge websites, fails to link events in 2025 to those in 2003. *U.S. v. Baca*, 409 F. Supp.3d 1041, 1084 (D.N.M 2019).

Petitioner's additional proffered exceptions under FRE 804(b)(1) and 804(a)(5)(A) also fail because Dr. Balakrishnan is available on the day of the oral hearing, and thus he is not an "unavailable witness" under FRE 804.¹

III. CONCLUSION

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

¹ Maxell understands that no new evidence is to be submitted at this stage. However, if relevant to the Board's decision on this point, Dr. Balakrishnan is willing to confirm via declaration that he is available for the oral hearing.

Dated: August 1, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of August, 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: August 1, 2025

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