PROTECTIVE ORDER MATERIAL
CONFIDENTIAL – ATTORNEY'S EYES ONLY
REDACTED

Filed on behalf of: Wiz, Inc.

By: Matthew A. Argenti (margenti@wsgr.com)
Michael T. Rosato (mrosato@wsgr.com)
Wesley E. Derryberry (wderryberry@wsgr.com)
Tasha M. Thomas (tthomas@wsgr.com)
Joseph M. Baillargeon (jbaillargeon@wsgr.com)
WILSON SONSINI GOODRICH & ROSATI

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WIZ, INC.,
Petitioner,

v.

ORCA SECURITY LTD.,
Patent Owner.

IPR2024-00863
Patent No. 11,663,031

PETITIONER'S REPLY IN SUPPORT OF MOTION TO EXCLUDE EVIDENCE

TABLE OF CONTENTS

Page

I. Exhibits 2134-2137 and 2148 Are Inadmissible Hearsay 1
II. Exhibits 2406, 2412, 2414, and 2416 Are Inadmissible Hearsay 2
III. The Wiz Confidential Documents Should be Excluded..... 5

I. Exhibits 2134-2137 and 2148 Are Inadmissible Hearsay

PO relies on the exhibits' statements as truthful, not merely as evidence of "perceptions." Opp., 2. PO facially relies on EX2134 as truthfully describing cloud adoption. POR, 37. To argue that prior tools "failed," PO treats EX2135 as truthfully stating that agentless scanning "extend[ed] coverage" to dormant machines. POR, 38-39. Perceptions *are* the matter asserted in EX2136. EX2136, 2 (stating professionals "remain concerned"). Regardless, PO relies on the second-layer hearsay as true to argue that prior tools "were vulnerable." POR, 37. PO likewise relies on EX2136-2137 as truthfully describing flaws, not mere perceptions, of traditional tools to argue that they missed vulnerabilities. POR, 39. PO claims EX2136 is "market report" per F.R.E. 803(17), but it is sponsored content interpreting opinion surveys. Opp., 3; EX2136, 1-3, 33-34; *City of Huntington v. AmerisourceBergen Drug Corp.*, No. CV 3:17-01362, 2021 WL 1382379, *4 (S.D.W. Va. Apr. 12, 2021) ("narrow" exception does not apply to narrative assessments or marketing-company analysis). For EX2148, PO quotes Mr. Shua's assertion that people "remarked" that he helped redefine the market (Opp., 4), but EX2148 contains no such remark and appears to relay PO's own input. EX2148, 24 (no asterisk indicates vendor participation), 15 (no asterisk). Regardless, PO treats EX2148 as truthfully describing PO's platform to argue that Mr. Shua actually redefined the industry (not mere perceptions). POR, 39.

PO's cases are inapposite. Opp., 1-2. In *HTC*, the "non-hearsay purpose" relied upon is "establish[ing] that IEEE Spectrum published the article," not the truth of its praise statements. *HTC Corp. v. Tech Props.*, No. 5:08-cv-882, 2013 WL 4782598, at *5 (N.D. Cal. Sept. 6, 2013). The other cases likewise involve praise, not solving a need, and truth was not at issue because the statements *were* the praise. *Hynix Semiconductor, Inc. v. Rambus Inc.*, No. C-00-20905, 2009 WL 112834, at *14-15 (IEEE award); *MOM Enters., LLC v. Vieth*, IPR2023-00726, Paper 112 at 88-89 (praise in journal article).

II. <u>Exhibits 2406, 2412, 2414, and 2416 Are Inadmissible Hearsay</u>

It was PO's burden to prove admissibility for both hearsay layers. *Bourjaily v. United States*, 483 U.S. 171, 176 (1987) (burden); *U.S. v. Cervantes*, 107 F.4th, 459, 472 (5th Cir. 2024). PO fails to prove either layer is not hearsay—relying on unfounded speculation belied by the record—and proves no applicable exception.

PO's arguments fail for the first layer [redacted]

[redacted]

Regardless, the exhibits refute PO's characterizations. [redacted]

PO's arguments also fail for the second layer [redacted]. [redacted]

[redacted]

PO fails to prove exceptions. [redacted]

[redacted]

III. <u>The Wiz Confidential Documents Should be Excluded</u>

PO's prejudice arguments fail, focusing on extraneous differences between the agreements in *Meyer*, *Burkette*, *Fayemi*, *Faison*, and *Errant Gene Therapeutics* and those it disregarded here. Opp., 11-12. PO claims *Jazz* supports its actions (*id.*, 13), but PO used protected information to make requests, which *Jazz* forbid. PO claims the discovery order negates unfairness. *Id.*, 10-11. But obtaining discovery does not remove the taint from PO's actions or mitigate the dangers from PO's ongoing use of the documents to smear Wiz and improperly litigate infringement. PO claims not requesting rehearing "waived" evidentiary arguments (*id.*, 10-12) but PO identifies no support for this novel legal theory.

PO sidesteps Wiz's showing that the dangers substantially outweigh the exhibits' probative value. PO does not dispute the lack of probative value, the unfairness from improperly litigating infringement, issue confusion, or waste of time. Instead, PO claims addressing probative value "is inappropriate for a motion to exclude." Opp., 13-14. But that is the express test of F.R.E. 403. By failing to respond to Wiz's analysis, PO fails to meet its burden of proving admissibility.

Respectfully submitted,

Dated: September 4, 2025

/ Matthew A. Argenti /
Matthew A. Argenti, Lead Counsel
Reg. No. 61,836

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Petitioner's Reply in Support of Motion to Exclude was served on September 4, 2025, at the following electronic service addresses:

Christopher Henry
Raghav Bajaj
Kristina McKenna
Douglas E. Lumish
Blake R. Davis
Steven W. Peters
Lucas Lonergan
Nicole E. Bruner
Latham & Watkins LLP
christopher.henry@lw.com
raghav.bajaj@lw.com
krissy.mckenna@lw.com
doug.lumish@lw.com
blake.davis@lw.com
steven.peters@lw.com
lucas.lonergan@lw.com
nicole.bruner@lw.com

Dated: September 4, 2025

/ Matthew A. Argenti /
Matthew A. Argenti, Lead Counsel
Reg. No. 61,836