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

Inter Partes Review No.: IPR2024-00906

U.S. Patent No. 11,445,241

OPPOSITION TO PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. ARGUMENT 1

A. N93, BT-Spec, 3GPP-Spec Were Publicly Accessible Prior to the ’241 Patent’s Earliest Priority Date and Therefore Should Not Be Excluded 1

1. Each of the N93, BT-Spec, and 3GPP-Spec is Relevant and Authentic 2

2. N93 Was Publicly Accessible on Nokia’s Website 4

3. BT-Spec Was Publicly Accessible At The Bluetooth Technology Website 5

4. 3GPP-Spec Was Publicly Accessible At the 3GPP Website 6

B. 3GPP-Spec Is Relevant 7

C. PO Has Not Established That Exhibits 1002, 1007, Or 1031-1032 Should Be Excluded 9

III. CONCLUSION 10

TABLE OF AUTHORITIES

Page(s)

Cases

Acceleration Bay, LLC v. Activision Blizzard Inc.,
908 F.3d 765 (Fed. Cir. 2018) 3

Blue Calypso, LLC v. Groupon, Inc.,
815 F.3d 1331 (Fed. Cir. 2016) 4

In re Cronyn,
890 F.2d 1158 (Fed. Cir. 1989) 3

Jazz Pharms., Inc. v. Amneal Pharms., LLC,
895 F.3d 1347 (Fed. Cir. 2018) 4

Nobel Biocare Servs. AG v. Instradent USA, Inc.,
903 F.3d 1365 (Fed. Cir. 2018) 3

Samsung Elecs. Co. v. Infobridge Pte. Ltd.,
929 F.3d 1363 (Fed. Cir. 2019) 4

Valve Corp. v. Ironburg Inventions Ltd.,
8 F.4th 1364 (Fed. Cir. 2021) 2

Other Authorities

Fed. R. Evid. 901(a) 3

http://www.bluetooth.com/bluetooth/ 6

https://www.3gpp.org.....7

I. INTRODUCTION

Patent Owner ("PO") seeks to exclude three references relied on in Grounds 1, 2, 4, and 5 of the Petition, N93 (EX1010), BT-Spec (EX1014), and 3GPP-Spec (EX1015) and related evidence. PO lists various rules of evidence on page 1 of its motion, but never actually applies them in its motion, because PO's motion merely disputes whether there is sufficient evidence on the merits to establish that the references were publicly accessible. This is not an evidentiary objection. There is no legitimate dispute that the evidence is admissible and that the Board should determine, on the merits, whether the evidence is sufficient to show the references were publicly accessible. PO's Motion should be denied.

II. ARGUMENT

A. N93, BT-Spec, 3GPP-Spec Were Publicly Accessible Prior to the '241 Patent's Earliest Priority Date and Therefore Should Not Be Excluded

PO's motion alleges that N93, BT-Spec, and 3GPP-Spec were not publicly accessible in 2007 on the merits and, therefore, should be excluded as lacking foundation, authenticity, and relevance. Motion, 1-5. PO's argument is wrong on the facts, because there is sufficient evidence on the merits, and wrong on the law because whether the evidence is sufficient goes to the merits, not admissibility.

1. Each of the N93, BT-Spec, and 3GPP-Spec is Relevant and Authentic

There is no reasonable dispute that each of N93, BT-Spec, and 3GPP-Spec is authentic and relevant and that the proper foundation has been laid. EX1007 is an Internet Archive declaration that establishes that: (1) N93 was available on the Nokia website (EX1007, 1-2, 9-139); (2) BT-Spec was available on the Bluetooth website (*Id.*, 1-2, 194-1423); and (3) 3GPP-Spec was available on the 3GPP standards website (*Id.*, 1-2, 141-164). The PTAB has long recognized Internet Archive webpages—combined with an official declaration—are trustworthy unless the opposing party provides persuasive evidence that the declaration is untrustworthy. *E.g.*, *Johns Manville Corp. v. Knauf Insulation, Inc.*, IPR2015-01453, Paper 49, at 13-14. The Federal Circuit has further indicated that judicial notice may be taken of Internet Archive records. *Valve Corp. v. Ironburg Inventions Ltd.*, 8 F.4th 1364, 1374 (Fed. Cir. 2021). PO complains Dr. Creusere's navigation to N93, BT-Spec, and 3GPP-Spec was conducted in 2025 using the Internet Archive version of the website not in real-time using actual website as it existed in 2007. Mot., 4-5. PO does not provide a scintilla of evidence of the differences between the actual websites as they existed in 2007 and the archived versions reference. PO also fails to provide any evidence of why the Internet Archive declarations are untrustworthy. Therefore, there can be no doubt as to each

of N93, BT-Spec, and 3GPP-Spec's authenticity on this record. There is no doubt that the reference "is what the proponent claims it is." Fed. R. Evid. 901(a); Motion, 2.

Each of N93, BT-Spec, and 3GPP-Spec is relevant to the obviousness of the Challenged Claims as shown in Grounds 1, 2, 4 and 5 of the Petition. *See also* Paper 11 (D.I), 68-70 (discussing the Grounds of institution based on N93, BT-Spec, and 3GPP-Spec). The only basis for PO's assertion that N93, BT-Spec, and 3GPP-Spec are not "relevant" is PO's argument on the merits that they were not publicly accessible. Motion, 1-5. This argument is wrong on the merits and is not an evidentiary objection.

PO fails to cite a single case in its Motion that supports PO's request to exclude this evidence on evidentiary grounds. Not one. In fact, every single case cited in PO's motion shows that PO's Motion should be denied, because every single case considered the evidence on the merits and ruled whether it was sufficient to show public accessibility. *See Acceleration Bay, LLC v. Activision Blizzard Inc.*, 908 F.3d 765, 772-773 (Fed. Cir. 2018) (article uploaded to a university computer science and engineering website and not publicly disseminated was not a printed publication); *Nobel Biocare Servs. AG v. Instradent USA, Inc.*, 903 F.3d 1365, 1375-76 (Fed. Cir. 2018) (a catalogue freely distributed at a conference where the distribution is corroborated is a printed publication); *In re*

Cronyn, 890 F.2d 1158, 1160-61 (Fed. Cir. 1989) (three undergraduate theses filed at the main library and a chemistry department library of a university are not printed publications); *Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1347-50 (Fed. Cir. 2016) (a article hyperlinked at a personal webpage of a graduate student not a printed publication); *Jazz Pharms., Inc. v. Amneal Pharms., LLC*, 895 F.3d 1347, 1357–59 (Fed. Cir. 2018) (material published on FDA website with no reasonable expectation of confidentiality is a printed publication); *Samsung Elecs. Co. v. Infobridge Pte. Ltd.*, 929 F.3d 1363, 1368-74 (Fed. Cir. 2019) (weighing on the merits evidence of publication at a conference, website and listserv e-mail). Because every case cited by PO considered the evidence on the merits, every case supports denying PO's Motion so that the Board can consider the merits here.

2. N93 Was Publicly Accessible on Nokia's Website

Petitioners provided substantial evidence on the merits that the N93 was publicly accessible on the Nokia website prior to the '241 patent's earliest priority date. EX1007, 1-2, 9-139 (Internet Archives Declaration showing public availability of N93), EX1031, 4-6, 733-864 (Internet Archives Declaration showing navigation to N93 through Wikipedia archived on October 15, 2007), 38-45 (Internet Archives Declaration showing navigation to N93 from www.nokia.com). *See also* EX1071 (historical version of N93 Wikipedia page

with link to the N93). There is no dispute that interested persons would have looked for the N93 user manual.

The merits and evidence of public accessibility of N93 are addressed at length in the Petition and Reply. Pet., 6; Reply, 2-3. For example, PO's expert Mr. McNair confirmed that the link embedded on the he N93 Wikipedia page as archived on October 15, 2007 was to the N93 URL (http://nds1.nokia.com/phones/files/guides/Nokia_N93-1_UG_en.pdf). EX1057, 64:20-65:9 (URL popping up). When he clicked on the link, he navigated to N93 URL as archived on April 23, 2007. *Id*, 65:15-68:13. Mr. McNair also advanced to the next archived version of the N93 URL, which was archived in July 2011, and which still pointed to the same version of N93. EX1057, 68:14-69:17. Because N93 was archived at the N93 URL on April 23, 2007 and in July 2011 and because the N93 URL was added to the N93 Wikipedia page during that time period, the preponderance of the evidence shows Nokia made the N93 publicly available at the N93 URL and interested members of the interested public could and did find it.

3. BT-Spec Was Publicly Accessible At The Bluetooth Technology Website

Petitioners also provided substantial evidence that BT-Spec was publicly accessible on the Bluetooth technology website prior to the '241 patent's earliest priority date. EX1007, 1-2, 194-1423 (Internet Archives Declaration showing

public availability of BT-Spec), EX1032, 19-26 (Internet Archives Declaration showing navigation to BT-Spec from the Bluetooth technology website homepage http://www.bluetooth.com/bluetooth/).

The merits and evidence of public accessibility of BT-Spec are addressed at length in the Petition and Reply. Pet., 6; Reply, 3-4. For example, PO misrepresents to the Board that Petitioners did not provide archived links to the BT-Spec itself. Motion, 3. Not so. Petitioner provided a declaration establishing the archived link to the BT-Spec itself. *See* EX1007, 2 (declaration to the link to the URL with the zip file containing the BT-Spec itself), 194-1423 (attaching the contents of that zip file, the BT-Spec itself, to the declaration). In response to PO's remarkable assertion that a POSITA may not be able to locate the Bluetooth specification on the Bluetooth website (Paper 7, 20-23), Petitioner additionally provided archived links to the Bluetooth website (EX1032, 19-26) leading to the BT-Spec. Paper 18, 3. And PO's expert navigated to BT-Spec from the Bluetooth technology website homepage. EX1057, 81:22-85:3.

4. 3GPP-Spec Was Publicly Accessible At the 3GPP Website

Petitioners also provided substantial evidence that 3GPP-Spec was publicly accessible on the 3GPP technology website prior to the '241 patent's earliest priority date. EX1007, 1-2, 141-164 (Internet Archives Declaration showing public availability of 3GPP-Spec), EX1032, 7-18 (Internet Archives Declaration showing

navigation to 3GPP-Spec from the 3GPP website homepage https://www.3gpp.org).

The merits and evidence of public accessibility of 3GPP-Spec are addressed at length in the Petition and Reply. Pet., 6; Reply, 4-5. For example, Mr. McNair navigated to 3GPP-Spec from the 3GPP technology homepage. EX1057, 69:18-73:8. 3GPP-Spec was also accessible in the 3GPP website following a slightly different path. EX1058, ¶14, EX1059-EX1062. Both experts were able to navigate to 3GPP-Spec on the 3GPP website following the prompts on those web pages and using two alternative paths, disproving PO's speculation that a POSITA might have had trouble finding 3GPP-Spec. EX1057, 68:18-73:8, 73:22-77:20 (Mr. McNair's navigation); EX1058, ¶¶13-14 (Dr. Creusere's navigation).

B. 3GPP-Spec Is Relevant

PO additionally argues (on the merits) that the 3GPP-Spec is not relevant to UMTS and, therefore, it would not have been obvious to combine its teachings with N93's teaching to implement 3G/UMTS (Ground 2) and Dua's teaching to be fully compliant with all 3GPP standards (Ground 5). Motion, 5-7. PO then argues that because PO believes it should win this issue on the merits, the 3GPP-Spec should be excluded as irrelevant. Motion, 7. Again, PO is wrong on the merits and, regardless of the merits, this is not a proper evidentiary objection.

The merits of the combinations are addressed in the Petition and Reply. Pet., 53-54; Reply, 22-24, 26, 28. For example, the base references (N93 and Dua) explicitly point a POSITA to 3GPP/UMTS, which is a trademark of ETSI, and ETSI publishes 3GPP/UMTS standards that change over time. EX2036, 2. The 3GPP-Spec on its face confirms that it is describing an advance to UMTS. EX1015 (3GPP-Spec), 2 ("UMTS, radio, layer 1"), 5 ("The present document describes the physical channels for evolved UTRA."). Dr. Cruesere testified that it was a "reasonable characterization" to use these terms to refer to all 3G capabilities, including its "many variations" over time. EX2030, 13:7-16, 24:8-18 (all worldwide 3GPP standards), 44:23-24 ("3GPP refers to the UMTS"); EX1002, ¶95 (by analogy, GSM includes the EDGE enhancement); EX1058, ¶37 (testifying UMTS includes Evolved UTRAN (3GPP-Spec)). Dr. Cruesere's testimony is corroborated both by the 3GPP-Spec, which refers to itself as UMTS as noted above, and by other contemporaneous evidence that 3GPP/UMTS included advancements like Evolved UTRA. EX1006, 429 (Tee at [0020]) ("3GPP EUTRAN"); EX1057, 42 (McNair Tr. at 41:14-18) (PO's expert admitting 3GPP EUTRAN is part of 3GPP). PO's incorrect arguments to the contrary go to the merits, not admissibility.

C. PO Has Not Established That Exhibits 1002, 1007, Or 1031-1032 Should Be Excluded

PO argues these exhibits should be excluded because they do not show on the merits that N93, BT-Spec, and 3GPP-Spec were publicly accessible. Motion, 7. Again, PO's argument should be rejected because it is wrong on the merits and because it goes to the merits, not admissibility.

EX1007, 1031, and 1032 are Internet Archive declarations that establish the authenticity of the evidence discussed above. They should not be excluded merely because PO argues (incorrectly) in a single sentence (Motion at 7) that they do not also establish public accessibility.

EX1031 and EX1032 are additional evidence that the N93 was publicly accessible at Nokia's website nokia.com at the relevant time. EX1007 at 2. For example, EX1031 at 4-6 includes a true and accurate copy of the Wikipedia page for the Nokia N93 product archived on October 15, 2007. EX1031, 4 (Wikipedia URL), 5-6 (Wikipedia page). The link "Online copy of the N93 Manual (PDF)" under External links (EX1031, 5) is the link to <u>same</u> N93 pdf at the <u>same</u> URL on the nokia.com website. EX1031, 733. Because the Wikipedia page is public and maintained by the public, this is extremely persuasive evidence that the interested public could access—and in fact did access—N93 on the Nokia website as set forth in the Petition. PO also asserts that EX1031 and EX1032 should be stricken from

the record based on PO's arguments (Paper 17, 3-10) in PO's Opposition to the Motion for Supplemental Information. Motion, 8. Petitioners have already addressed those arguments in their corresponding Reply. Paper 18.

PO then simply states in a single sentence that the Board should exclude more than 80 paragraphs of Dr. Creusere's testimony on the basis that he "fails to provide evidence of public accessibility" and he did not have "personal knowledge" of certain exhibits in 2007. Motion, 8. PO then lists, without any discussion, eight rules of Federal Evidence and a C.F.R. provision. *Id.* This is not a legally cognizable evidentiary objection to expert testimony. These 80+ paragraphs of Dr. Creusere's opinions were made under oath, were subject to cross examination, set forth the bases for his opinions, and pertain to many relevant issues before the Board. Even if it were true (it is not) that his opinions in these paragraphs were not sufficient on the merits to show public accessibility, that would not be a sufficient reason to exclude them as inadmissible.

III. CONCLUSION

PO's Motion should be denied in its entirety for the reasons discussed above.

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Respectfully submitted,

/s/ Brian K. Erickson
Brian K. Erickson
Reg. No. 48,895
DLA Piper LLP (US)

303 Colorado Street, Suite 3000
Austin, TX 78701
Phone: 512-457-7059
Fax: 512-721-2263
Brian.Erickson@us.dlapiper.com

Gianni Minutoli
Reg. No. 41,198
DLA Piper LLP
One Fountain Square
11911 Freedom Drive, Suite 300
Reston, VA 20190-5602
Phone: + 1 703 773 4000
Fax: + 1 703 773 5000
Gianni.minutoli@us.dlapiper.com

Roshan K. Bhattarai
Reg. No. 70,092
DLA Piper LLP (US)
500 Eighth Street, NW
Washington DC 20004
Phone: 202-799-4418
Fax: +1 202 799 5000
Roshan.Bhattarai@us.dlapiper.com

Attorney for Petitioners

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e) and 42.105(b), the undersigned hereby certifies that a copy of the foregoing, Reply to Patent Owner's Opposition to Petitioners' Motion to Submit Supplemental Information Pursuant to 37 C.F.R. §42.123(a), was provided to the Patent Owner by emailing a copy of same (by agreement) to the following attorneys of record and email addresses for the Patent Owner:

Robert Pluta (rpluta@mayerbrown.com)

maxell-samsung-service@mayerbrown.com

A courtesy copy was sent electronically to counsel for Patent Owner in the District Court Litigation:

Saqib J. Siddiqui (ssiddiqui@mayerbrown.com)

Tiffany A. Miller (tmiller@mayerbrown.com)

Date: August 27, 2025

/s/ Brian K. Erickson

Brian K. Erickson
Reg. No. 48,895
DLA Piper LLP (US)
303 Colorado Street, Suite 3000
Austin, TX 78701
Phone: 512-457-7059
Fax: 512-721-2263
Brian.Erickson@us.dlapiper.com

Attorney for Petitioners