PROTECTIVE ORDER MATERIAL
REDACTED

Filed on behalf of: Wiz, Inc.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WIZ, INC.,
Petitioner,

v.

ORCA SECURITY LTD.,
Patent Owner.

IPR2024-01190
Patent No. 11,740,926

PETITIONER'S REPLY IN SUPPORT OF MOTION TO EXCLUDE EVIDENCE

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I. Exhibits 2134-2137 and 2148 Are Inadmissible Hearsay

PO relies on the exhibits' statements for their truth, not merely as evidence of "perceptions." Opp. 2. Dr. Kaeli relies on EX2134 as truthfully describing cloud adoption. EX2073, ¶203. He quotes EX2135's statement that agentless scanning "extend[ed] coverage" to argue that PO solved a need, not that PO was merely perceived that way. EX2073, ¶210. Others' views *are* the matter asserted in the first layer of EX2136. EX2136, 2-3 (characterizing respondents' statements). Dr. Kaeli relies on the second layer as true to argue that prior tools had particular problems. EX2073, ¶¶204, 208. PO argues that Dr. Kaeli can rely on EX2134-2136 regardless of their admissibility (Opp. 2-3)—the only exhibits PO defends on this basis—but ignores Wiz's showing that Dr. Kaeli merely acts as a mouthpiece for hearsay. Mot. 9-11. PO claims EX2136 is a "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). PO relies on EX2137 as truthfully describing flaws (not mere perceptions) of traditional tools to argue that they missed cyber threats. POR, 35. For EX2148, PO quotes Mr. Shua's assertion that people "remarked" that he helped redefine the market, 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 (not mere perceptions) to claim Mr. Shua actually redefined the industry. POR, 35.

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 long-felt need, and truth was not at issue because the statements *were* the industry 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 (industry 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 first-layer arguments fail. [redacted]

[redacted]

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

[redacted]

PO's arguments also fail for the second layer [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. 12-14. PO claims *Jazz* supports its actions, but PO used protected information to make requests, which *Jazz* forbid. PO even admits its alternative would have been a fishing expedition. *Id.*, 12. PO claims the discovery order negates unfairness, but obtaining discovery does not remove the taint from PO's actions or mitigate the dangers from PO's ongoing use of the ill-gotten documents. PO claims not requesting rehearing "waived" evidentiary arguments (*id.*, 10-11) but PO identifies no support for this novel legal theory.

PO ignores 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 conspiracy/infringement, issue confusion, or waste of time. This failure to respond leaves PO unable to meet its burden.

Respectfully submitted,

Dated: October 13, 2025

/ Matthew A. Argenti /
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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Petitioner's Reply in Support of Motion to Exclude was served on October 13, 2025, at the following electronic service addresses:

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