Filed on behalf of: Orca Security Ltd.

Entered: March 5, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WIZ, INC.,
Petitioner,

v.

ORCA SECURITY LTD.,
Patent Owner.

IPR2024-01191
U.S. Patent 11,775,326 B2

PATENT OWNER'S AUTHORIZED MOTION FOR ADDITIONAL DISCOVERY

Exhibit List

Exhibit	Description
2001	Declaration of David R. Kaeli, Ph.D. ("Kaeli Decl.")
2002	*Curriculum Vitae* of David R. Kaeli, Ph.D.
2003	Trend Micro™ | **vm**ware®, *Trend Micro Enterprise Security: Changing the Game for Anti-Virus in the Virtual Datacenter* (White Paper) (Sept. 2010), https://www.kennisportal.com/wp-content/uploads/2022/06/ChangingtheGameintheVirtualDatacenter.pdf (last visited Sept. 7, 2024) ("vmware, *Trend Micro Enterprise Security*")
2004	Red Hat, *Red Hat Virtualization 4.0: Technical Reference: The Technical Architecture of Red Hat Virtualization Environments* (updated Mar. 29, 2018), https://docs.redhat.com/en-us/documentation/red_hat_virtualization/4.0/pdf/technical_reference/Red_Hat_Virtualization-4.0-Technical_Reference-en-US.pdf ("Red Hat Virtualization 4.0")
2005	RESERVED
2006	*Virtual Machine Snapshots*, *Red Hat Virtualization 4.3: Technical Reference: The Technical Architecture of Red Hat Virtualization Environments* (updated Apr. 20, 2020), https://docs.redhat.com/en-us/documentation/red_hat_virtualization/4.3/pdf/technical_reference/Red_Hat_Virtualization-4.3-Technical_Reference-en-US.pdf (excerpt) ("Red Hat Virtualization 4.3 – *Virtual Machine Snapshots*")
2007	Dominik Birk, *Technical Challenges of Forensic Investigations in Cloud Computing Environments* (Jan. 12, 2011), https://cachin.com/cc/csc2011/submissions/birk.pdf (last visited Sept. 7, 2024) ("Birk, *Technical Challenges*")
2008-2009	RESERVED
2010	U.S. Pat. No. 9,467,465 B2 ("Hibbert")

Exhibit	Description
2011	U.S. Pat. No. 10,298,599 B1 ("Zhang")
2012	U.S. Pat. No. 9,594,912 B1 ("Thioux")
2013	RESERVED
2014	Complaint for Patent Infringement, *Orca Sec. Ltd. v. Wiz, Inc.*, No. 1:23-cv-00758 (D. Del. July 12, 2023), ECF No. 1 ("Orca Compl.")
2015	Oral Order (Joint Motion for Discovery Dispute Teleconference), *Orca Sec. Ltd. v. Wiz, Inc.*, No. 1:23-cv-00758 (D. Del. May 17, 2024), ECF No. 62 ("Oral Order")
2016	Defendant Wiz, Inc.'s Initial Invalidity Contentions, *Orca Sec. Ltd. v. Wiz, Inc.*, No. 1:23-cv-00758 (D. Del. June 7, 2024) (excerpt) ("Pet'r's Invalidity Contentions")
2017	RESERVED
2018	Abraham Silberschatz et al., *Operating System Concepts* (9th ed. 2013) (excerpt)
2019	Derek Uluski, Real Time Anti-Virus for a Virtualized Environment (2008) (M.S.E.E., Thesis, Northeastern University) (excerpt) ("Uluski Thesis")
2020	RESERVED
2021	Amazon Web Service (AWS), *What Is a Hypervisor?* (2024), https://aws.amazon.com/what-is/hypervisor/ (last visited Sept. 11, 2024)
2022	Diego Perez-Botero et al., *Characterizing Hypervisor Vulnerabilities in Cloud Computing Servers*, Conference: Proceedings of the Workshop on Security in Cloud Computing (SCC), Hangzhou, China 1–8 (May 8, 2013) ("Perez-Botero, *Characterizing Hypervisor Vulnerabilities*")
2023-2025	RESERVED

Exhibit	Description
2026	Greg Zemlin, *Agentless vs. Agent-Based Security: Which is Better for the Cloud?*, Wiz (Nov. 26, 2023), https://www.wiz.io/academy/agentless-vs-agent-based-security ("Wiz Marketing")
2027-2039	RESERVED
2040	Stipulation and Order, *Orca Sec. Ltd. v. Wiz, Inc.*, No. 1:23-cv-00758 (D. Del. June 25, 2024) ("Amended Scheduling Order")
2041-2042	RESERVED
2043	Pallavi Vishwakarma, *Agent-Based Vs Network Based Internal Vulnerability Scanning*, SecOps Solution.com (July 2, 2023)
2044	*Agentless vs Agent-Based Scanning: A Comparative Analysis*, Runecast.com (July 20, 2023)
2045	Joint Claim Construction Chart, *Orca Sec. Ltd. v. Wiz, Inc.*, No. 1:23-cv-00758 (D. Del. Sept. 25, 2024) ("Jt. Claim Constr. Chart")
2046- 2047	RESERVED
2048	Wiz, Inc.'s Answering Claim Construction Brief, *Orca Sec. Ltd. v. Wiz, Inc.*, No. 1:23-cv-00758 (D. Del. Oct. 22, 2024) (excerpt) ("Answering Claim Constr. Chart")
2049	Appendix F, Invalidity of United States Patent 11,775,326 (the "'326 Patent"), attached to Defendant Wiz, Inc.'s Initial Invalidity Contentions, *Orca Sec. Ltd. v. Wiz, Inc.*, No. 1:23-cv-00758 (D. Del. June 7, 2024)
2050	Appendix F-1, Invalidity of United States Patent 11,775,326 (the "'326 Patent"), attached to Defendant Wiz, Inc.'s Initial Invalidity Contentions, *Orca Sec. Ltd. v. Wiz, Inc.*, No. 1:23-cv-00758 (D. Del. June 7, 2024)
2051	Declaration of Douglas E. Lumish Pursuant to 37 C.F.R. § 42.10(c)(2)

Exhibit	Description
2052	Declaration of Steven W. Peters In Response to Petitioner's First Objections to Evidence [*served, not filed*]
2053	Listing of Requested Documents
2054	RESERVED
2055	RESERVED
2056	Orca Security Ltd.'s Eleventh Supplemental Responses and Objections to Defendant Wiz's First Set of Interrogatories, *Orca Sec. Ltd. v. Wiz, Inc.*, No. 1:23-cv-00758 (D. Del. Dec. 13, 2024) (excerpts)
2057	Stipulated Protective Order, *Orca Sec. Ltd. v. Wiz, Inc.*, No. 1:23-cv-00758 (D. Del. Mar. 15, 2024), ECF No. 38
2058	Email exchange between counsel for Wiz, Inc. and counsel for Orca Security Ltd. (Dec. 17-26, 2024)
2059	Email exchange between counsel for Wiz, Inc. and counsel for Orca Security Ltd. (Dec. 23, 2024 – Feb. 25, 2025)
2060-2064	RESERVED
2065	*Orca Security Lands $6.5M Seed Round to Deliver IT Security Teams Unprecedented Full Stack Cloud Visibility, Securing High-Velocity Cloud Growth,* Orca Security Blog (June 12, 2019), https://orca.security/resources/blog/orca-security-lands-6-5m-seed-round-to-deliver-it-security-teams-unprecedented-full-stack-cloud-visibility-securing-high-velocity-cloud-growth/
2066	Orca Security, *The Ultimate Guide to: Gaining Full Stack Visibility Into Your Cloud Assets* (Nov. 2019)
2067	Orca Security Technical Brief, *SideScanning™ – Inside the Engine that Powers Orca Security* (2020)

Exhibit	Description
2068	Letter from counsel for Orca Security Ltd. to counsel for Wiz, Inc. (May 20, 2024), filed in *Orca Sec. Ltd. v. Wiz, Inc.*, No. 1:23-cv-00758 (D. Del. Sept. 10, 2024), ECF No. 140-2
2069	Letter to the Honorable Sherry R. Fallon from Rodger D. Smith Regarding Discovery Disputes, *Orca Sec. Ltd. v. Wiz, Inc.*, No. 1:23-cv-00758 (D. Del. Oct. 9, 2024), ECF No. 165
2070	Francis & James Berthoty, *Redefining CNAPP: A Complete Guide to the Future of Cloud Security,* Software Analyst Cyber Research, (Sept. 12, 2024), https://softwareanalyst.substack.com/p/redefining-cnapp-a-complete-guide
2071	Memorandum Order, *Orca Sec. Ltd. v. Wiz, Inc.*, No. 1:23-cv-00758 (D. Del. Oct. 22, 2024), ECF No. 182

Pursuant to 37 C.F.R. § 42.51(b) and the Board's authorization in Paper 18, Patent Owner Orca Security Ltd. ("Orca") respectfully requests that the Board order Petitioner Wiz, Inc. ("Wiz") to produce certain materials from a parallel district court litigation (*Orca Security Ltd. v. Wiz, Inc.*, No. 1-23-cv-00758 (D. Del.)) (the "Wiz Litigation") where Orca alleges that Wiz infringes the same patent, U.S. Patent No. 11,775,326, that Wiz challenges here. Specifically, Orca requests that Wiz produce 226 documents that it previously produced as "CONFIDENTIAL-ATTORNEYS EYES ONLY" in the Wiz Litigation (collectively, "Requested Documents" and more specifically listed in Ex.2053). As explained below, the Requested Documents are useful information in evaluating the patentability of the Challenged Patent because (1) every asserted ground is based on obviousness, and (2) the Requested Documents will be useful to show objective indicia of nonobviousness including Wiz's copying of Orca's patent-practicing SideScanning™ technology, which was motivated by Orca overcoming skepticism, receiving industry praise, and the claimed inventions resulting in great commercial success.

The Board should find that additional discovery of the Requested Documents is in the "interest of justice" (35 U.S.C. § 316(a)(5)) because Wiz controls the Requested Documents that are useful in defeating its obviousness arguments, and Orca would be prejudiced and unable to fully defend its patents' validity if Wiz can avoid additional discovery of those documents. Furthermore, all five factors set forth

in *Garmin Int'l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 26 (PTAB Mar. 5, 2013) ("*Garmin*") weigh in favor of granting Orca's motion.

I. FACTUAL BACKGROUND

In the Wiz Litigation, Orca asserts that Wiz infringes six of Orca's patents, including the challenged patent in this proceeding. All six patents name Avi Shua, Orca's co-founder and current Chief Innovation Officer, as the sole named inventor, and claim priority to the same provisional application filed January 16, 2019.

More than nine months after Orca initiated the Wiz Litigation, Wiz filed IPR petitions against each of Orca's patents. By the time Wiz's IPR petitions were instituted, discovery in the Wiz Litigation was in its advanced stages. Wiz had produced approximately 250,000 documents, corresponding to nearly one million pages, and the parties had exchanged hundreds of Requests for Production and dozens of interrogatories, including multiple rounds of responses.

Most relevant to the present motion, Wiz's Interrogatory No. 11 asked Orca to "Describe with specificity and precision the facts and circumstances concerning Your contention that Wiz copied anything from, or related to, Orca including but not limited to the Asserted Patents, including an identification of all Documents supporting those contentions and identify the Persons knowledgeable about the subject matter of this interrogatory." Ex.2056 at 2. Orca's original March 15, 2024 response to the interrogatory was based on public information, and detailed how

Wiz's only product, the "Wiz Cloud Security Platform," was a counterfeit copy of Orca's patented ideas, and Wiz's copying was reflected throughout Wiz's website, product offerings, advertisements, and blog posts, and had been observed by third parties. Ex.2056 at 3-11.

On October 28, 2024, Orca supplemented its response to Interrogatory No. 11 to identify internal Wiz documents designated "CONFIDENTIAL-ATTORNEYS EYES ONLY" under the District Court Protective Order, which Orca explained in a nine-page narrative response showed Wiz's product development included copying Orca's patents and patented technology, and that Wiz's copying was motivated by Orca overcoming skepticism, receiving praise for its patent-practicing technology, and significant commercial success due to the patented inventions. Orca's narrative supplemental response is redacted in Exhibit 2056 because it describes Wiz's internal documents under the District Court Protective Order (Ex.2057), and Wiz has not allowed it to be shared with the Board.

In December 2024, the Board granted institution of three of Wiz's six IPR petitions, and the parties agreed to a stay of the Wiz Litigation pending resolution of the IPRs. As part of negotiating the stay, Orca explained that it intended "to submit confidential and/or AEO information in the IPRs" produced in the district court litigation for purposes of the IPR, Ex.2058, and sent Wiz a proposed IPR protective order. Ex.2059 at 11-12. On January 7, 2025, Wiz agreed to the terms of the

proposed IPR protective order. Ex.2059 at 10. And, on January 28, 2025, Wiz agreed the parties will "use the proposed protective order for all instituted IPRs." Ex.2059 at 9.

In February 2025, Orca asked Wiz to agree to produce the internal Wiz documents Orca identified in its supplemental response to Wiz's Interrogatory 11, along with four additional documents (together, the Requested Documents), as additional discovery that would be useful in showing objective indicia of nonobviousness. Ex.2059 at 8. Orca proposed all such documents would be produced and treated with the same level of confidentiality under the IPR protective order as Wiz produced them in the Wiz litigation. *Id.* In response, Wiz's counsel stated, "to the extent any documents which have been given a confidentiality designation in the district court case will be filed in the IPRs we agree to a corresponding designation in the IPRs." Ex.2059 at 7. Wiz refused, however, to produce any Requested Document, stating it reviewed Orca's Requested Documents and unredacted interrogatory response and determined none of the documents "relate to secondary considerations" without further explanation. Ex. 2059 at 2.

II. EACH *GARMIN* FACTOR WEIGHS IN FAVOR OF DISCOVERY

a. *Garmin* Factor 1 – The Requested Documents Are Useful

The first *Garmin* factor favors Orca's motion. "The essence of Factor (1)" is that the "requester of information [Orca] should already be in possession of a

threshold amount of evidence or reasoning tending to show beyond speculation that something useful will be uncovered." *Garmin*, Paper 26 at 7. Useful means "favorable in substantive value to a contention of the party moving for discovery." *Id*. Here, there is no dispute the Requested Documents exist, and Orca has far more than speculation they will be useful to show objective indicia of nonobviousness and refute Wiz's arguments of unpatentability, all of which are based exclusively on obviousness but fail to address any objective indicia. *See generally* Paper 2; *Liqwd, Inc. v. L'Oreal USA, Inc.*, 941 F.3d 1133, 1136-37 (Fed. Cir. 2019) (objective indicia analysis is "a fundamental part of the overall § 103 obviousness inquiry"); *WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1328 (Fed. Cir. 2016) (objective indicia evidence "must be considered in *every* case.") (emphasis in original).

Due to the District Court's Protective Order, Orca is unable to reference the contents of the specific documents here, but that is not necessary for the Board to rely on Orca's representations from the Wiz Litigation. *See MOM Enters., LLC v. Veith*, IPR2023-00726, Paper 45 at 4 (PTAB Dec. 6, 2023). And, as Orca has explained to Wiz, including in its detailed narrative response to Wiz's Interrogatory No. 11, the Requested Documents show Wiz's copying of Orca's patented technology, and that Wiz was motivated to do so because Orca overcame skepticism and received significant praise and commercial success as a result of its patented inventions. *See supra* at § I, Exs.2055-2056, 2059.

While Orca is keenly aware from the Wiz Litigation that the Requested Documents will be useful, the Board can also conclude from public documents that there is much more than a "mere possibility" that the Requested Documents will be useful to the objective indicia analysis. *Cf. Garmin,* Paper 26 at 6.

It is well-established that "copying by a competitor is a relevant consideration in the objective indicia analysis." *Liqwd*, 941 F.3d at 1137-38; *see also Wyers v. Master Lock Co.*, 616 F.3d 1231, 1246 (Fed. Cir. 2010). Here, the Requested Documents relate to Wiz's access to and specific efforts to copy Orca's SideScanning™ technology, which Orca will show in its Patent Owner Response was implemented in 2019, before Wiz was founded, and embodies the challenged claims. *See, e.g.*, Ex.2065 (2019-06-12 Orca Seed Round Announcement) at 3-4 ("Orca Cloud Visibility Platform leverages Orca's patent-pending SideScanning technology"), 5 (use by customers); Ex.2066 (Orca E-Book dated November 2019) at 16 (Orca "utilizes the patent pending SideScanning™ technology"); Ex.2067 (Orca's 2020 "SideScanning™ Technical Brief") at 5 ("Orca Security uses a novel patent-pending technology called SideScanning™").

The already available evidence shows, at least circumstantially, that Wiz copied Orca's patent-practicing product design. Wiz was founded in January 2020 and began developing a competing product only *after* its founder received access to information about Orca's inventions in May 2019. Ex.2056 at 3. Redacted

documents filed in the Wiz Litigation confirm Wiz's internal documents show further access to Orca's patent-practicing technology. *See, e.g.,* Ex.2068[1] at 7 (Wiz admitted "it possesses screenshots of Orca's Platform."), *id.* (Orca noting "Wiz's customer facing documents … reflect that Wiz performs substantial analysis and comparison of Wiz's Platform to Orca's Platform, and that Wiz has specifically analyzed Orca's solutions"); Ex.2069 at 5 (Orca stating Wiz's interrogatory response "confirm[ed] [Wiz] illicitly accessed a wide array of Orca's confidential documents."). And third-party industry analysts have observed that comparing the substantial similarity of Wiz's "feature set" to Orca's "patented agentless SideScanning technique" is "inevitable." Ex.2070 (Cloud Security Guide) at 31; *see also* Ex.2056 at 4-7 (other industry analysts comparing features of Orca's product to Wiz); *Medtronic, Inc. v. Teleflex Innovations S.a.r.l.*, 70 F.4th 1331, 1340 (Fed. Cir. 2023) ("Evidence of access and substantial similarity ***is*** evidence of copying.") (emphasis in original).

Moreover, as Orca's top competitor, Wiz's "internal documents" about Orca's technology can "represent important admissions" establishing industry praise. *Apple Inc. v. Samsung Elecs. Co.*, 839 F.3d 1034, 1054 (Fed. Cir. 2016) (en banc). Here, Orca is requesting production of 226 such documents, but it bears emphasizing that

[1] All cited district court documents are to publicly-available versions.

this is a narrow subset of the total number of Wiz's internal documents discussing Orca and its novel patent-practicing SideScanning™ technology. For example, the District Court found that between three of Wiz's co-founders and Wiz's chief marketing officer, there were "about ***35,000 unique documents***" hitting on the "search terms combining 'orca* AND' with keywords deemed to be relevant to the issues in the case." Ex.2071 ¶10 . Wiz withheld most of these documents until the District Court agreed they were "facially relevant" and granted Orca's motion to compel their production. *Id.* The Board should follow suit here and order Wiz to produce the Requested Documents, which are facially useful for nonobviousness.

Wiz has argued Orca's motion should be denied because Orca has not shown the relevance of the Requested Documents on a document-by-document basis. That is not possible due to Wiz's protective order arguments, nor required. *See MOM Enters.*, Paper 45 at 6-7, 9 (no requirement to justify each document). Rather, Orca has made a threshold showing of usefulness and, once the documents are produced, Orca will show how they refute Wiz's obviousness arguments. Wiz will be free to challenge the substance of the evidence in its Reply.

b. ***Garmin* Factor 2 – Orca Does Not Seek Wiz's Litigation Positions**

There is no dispute *Garmin* Factor 2 weighs in Orca's favor because none of the Requested Documents relate to Wiz's litigation positions.

c. ***Garmin* Factor 3 – Orca Cannot Generate Equivalent Information**

Garmin Factor 3 weighs in Orca's favor because the Requested Documents are Wiz's internal documents and not publicly available. Although Wiz produced the documents to Orca's counsel in the Wiz Litigation, the District Court Protective Order does not permit Orca to produce them here. Ex.2057 ¶7. In contrast, the District Court Protective Order expressly provides that Wiz *can* produce the documents in other proceedings (Ex.2057 ¶27), but Wiz has refused to do so absent the Board ordering Orca's requested discovery. As the Board found in similar circumstances, an attempt to use a district court protective order as a shield to additional discovery is "unavailing," where "the District Court's Protective Order does not preclude Petitioner from separately authorizing Patent Owner to use Petitioner's own information in this proceeding." *MOM Enters.*, Paper 45 at 9.

d. ***Garmin* Factor 4 – Orca's Instructions are Easily Understandable**

Instructions "seeking only … documents previously produced in [a] District Court action" are "easily understandable." *MOM Enters.*, Paper 45 at 8.

e. ***Garmin* Factor 5– Orca's Requests are Not Burdensome**

Garmin Factor 5 is in Orca's favor because the Requested Documents are limited in scope and tailored to Orca's genuine need, and their production will not burden Wiz. As discussed above, Orca seeks the production of 226 expressly specified internal Wiz documents, which were identified as useful to objective

indicia from more than 35,000 internal Wiz documents hitting on "'orca* AND' with keywords deemed to be relevant." Ex.2071 ¶10. There is no "financial burden, burden on human resources [or] burden on meeting the time schedule" (*cf. Garmin,* Paper 26 at 14) to Orca's request because Orca's counsel is already in possession of the Requested Documents, the parties have agreed to a Protective Order for the IPRs, and Wiz already agreed to use in this proceeding confidentiality designations corresponding to those used in District Court. *See supra* at § I; Exs.2059, 2058. Thus, all Wiz needs to do is acknowledge production of the specified documents in the IPR. *See MOM Enters.* Paper 45 at 2, 9-10 (rejecting burden arguments and ordering production of 294 documents produced in district court); *Samsung Bioepis Co. v. Regeneron Pharms., Inc.* IPR2023-00884, Paper 58 at 4-5, 9-10 (PTAB, May 23, 2024) (no burden where "the Requested Materials are expected to be immediately available to Patent Owner and in form for production").

III. CONCLUSION

For the reasons discussed above, Orca's motion should be granted.

Respectfully submitted,

Dated: March 5, 2025

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 5th day of March, 2025, a true and correct copy of the foregoing **Patent Owner's Authorized Motion for Additional Discovery and all Exhibits** were served by electronic mail on Petitioner's lead and backup counsel at the following email addresses:

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