

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,

Petitioner,

v.

NETLIST, INC.,

Patent Owner

Case IPR2025-00001

Patent 11,386,024

**PETITIONER'S OPPOSITION TO
NETLIST'S MOTION TO SEAL EXHIBITS 2002 AND 2005**

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I. INTRODUCTION

Netlist's motion to seal Exhibits 2002 and 2005 should be denied. Those exhibits are JEDEC documents that are not marked confidential, and Netlist has failed to show that they should be treated as confidential under the *Argentum* standard for a motion to seal. Netlist's motion to seal is merely a stunt in support of Netlist's preliminary response that JEDEC documents supposedly are not "publicly accessible" and thus supposedly are not prior art.

II. BACKGROUND

Grounds 1 and 4 of the Petition relied on a JEDEC document marked as Exhibit 1015. The Petition included a detailed argument explaining why Exhibit 1015 was "publicly accessible" before June 13, 2010, and thus prior art. See Pet. 36–43. Nothing about JEDEC or its document was filed under seal (including Exhibits 1015, 1036–37, 1039, 1046, 1048–55, 1071–76, and 1091–93). Those same exhibits were previously filed in the public record in IPR2022-00062 and IPR2022-00064, and before that several of those documents (including Exhibit 1015) were previously filed in the public record in IPR2020-01042 and IPR2022-01044.

Netlist was involved in all of those previous IPRs but never filed a motion to seal any of those exhibits.

In response to the Petition in this IPR, however, Netlist filed a lengthy Patent

Owner Preliminary Response arguing that the JEDEC document marked as Exhibit 1015 was not “publicly accessible,” see Paper 7, at 18–42, and Netlist filed a motion to seal two other JEDEC documents marked as Exhibits 2002 and 2005, discussed below.

A. Exhibit 2002 (same as Exhibit 1116): JEDEC’s “Minutes of Meeting No. 160; JC-40 Digital Logic Committee” (Dec. 10, 2009)

Exhibit 2002 is not marked confidential, as shown by Exhibit 1116 which is the original non-confidential version of Exhibit 2002. Exhibit 2002/1116 is the meeting minutes for JEDEC’s meeting on December 10, 2009. Those meeting minutes are similar to Exhibit 1046, filed in the public record, which is the meeting minutes for JEDEC’s meeting on June 4, 2009. Those meeting minutes are relevant to the public accessibility of Exhibit 1015 because they use the “item number” 142.35 to refer to what became Exhibit 1015, making it easy for an interested member of the relevant public to find Exhibit 1015 using the number 142.35. As explained by the Petition:

JEDEC organized its committees (and their documents) by technical area, using a numbering convention—similar to the Dewey Decimal system—making them easy to find. EX1072, 59-62; EX1091, 39:21-43:7, 52:16-55:8. Here, the relevant committee was “JC-40,” which concerned the “CMOS Digital Logic” for memory modules, and JEDEC publicized information about JC-40 and its meetings on the Internet. *Id.*; EX1071, 2; EX1091, 37:19-38:25; EX1092, 31:24-33:3; EX1050, ¶5. Thus, a POSITA

interested in that technical area could easily find the relevant JEDEC committee and its documents and meeting dates. *Id.*

Furthermore, JEDEC indexed its documents by keywords, *see* EX1015; EX1072, 63-113, and assigned each presentation a unique “item number” (such as 142.35) that was included in meeting agendas and minutes to make it easier to find later, *see* EX1039; EX1046, 21-22; EX1015; EX1091, 53:17-54:18. JEDEC also provided a search feature on its website to find documents. EX1091, 53:3-:16; EX1071 (“Search our Documents”). Finally, you could simply call the JEDEC office to help you find what you were looking for. EX1091, 54:20-55:8.

Pet. 41.

B. Exhibit 2005 (same as Exhibit 1117): JEDEC presentation “Simplified File Naming: JEDEC Meeting Presentations” (Dec. 2010)

Exhibit 2005 is not marked confidential, as shown by Exhibit 1117, which is the original non-confidential version of Exhibit 2005. Exhibit 2005/1117 is a JEDEC presentation in December 2010 (after the relevant time period) titled “Simplified File Naming: JEDEC Meeting Presentations.” By way of background, since at least 2005 — as was publicized on the Internet — JEDEC was using filenames “based on an 8.3 file-name format,” with the first character indicating the JEDEC committee (e.g., “N = JC-40,”) and the remaining characters providing the following information:

Character Position								Extension Type			Document Type	
1	2	3	4	5	6	7	8	.	E1	E2	E3	
C	A	y	y	m	m	-	p	.	x	x	x	Agendas
C	B	y	y	n	n	n	r	.	x	x	x	Ballots
C	I	i	i	i	i	i	r	.	x	x	x	Items
C	L	y	y	m	m	o	p	.	x	x	x	Item log Reports
C	M	y	y	m	m	T	p	.	x	x	x	Minutes
C	T	y	y	m'	a	a	p	.	x	x	x	Minutes Attachments
C	N	y	y	m	m	r	p	.	x	x	x	Notices
C	P	y	y	n	n	n	r	.	x	x	x	Preballots (BoD)
C	P	i	i	i	i	i	r	.	x	x	x	Preballots (Committee)
C	S	y	y	n	n	n	r	.	x	x	x	Surveys

Document type identifier

Committee or BoD (Council) identifier

Point committee or revision identifier

EX1118, 1, 3 (yellow highlighting added), *available at*

<<https://web.archive.org/web/20081118133245/http://www.jedec.org/Home/manuals/default.cfm>>,

<<https://web.archive.org/web/20061210110839/http://www.jedec.org/Home/manuals/jm19-02.PDF>>. Thus, for example, “RI98304B.FM” would be the filename

used for a “JC-42 proposal, Item 983.04, Rev B; FrameMaker format.” EX1118,

4. Relevant to this IPR, a filename beginning with “NI14235” would be used for

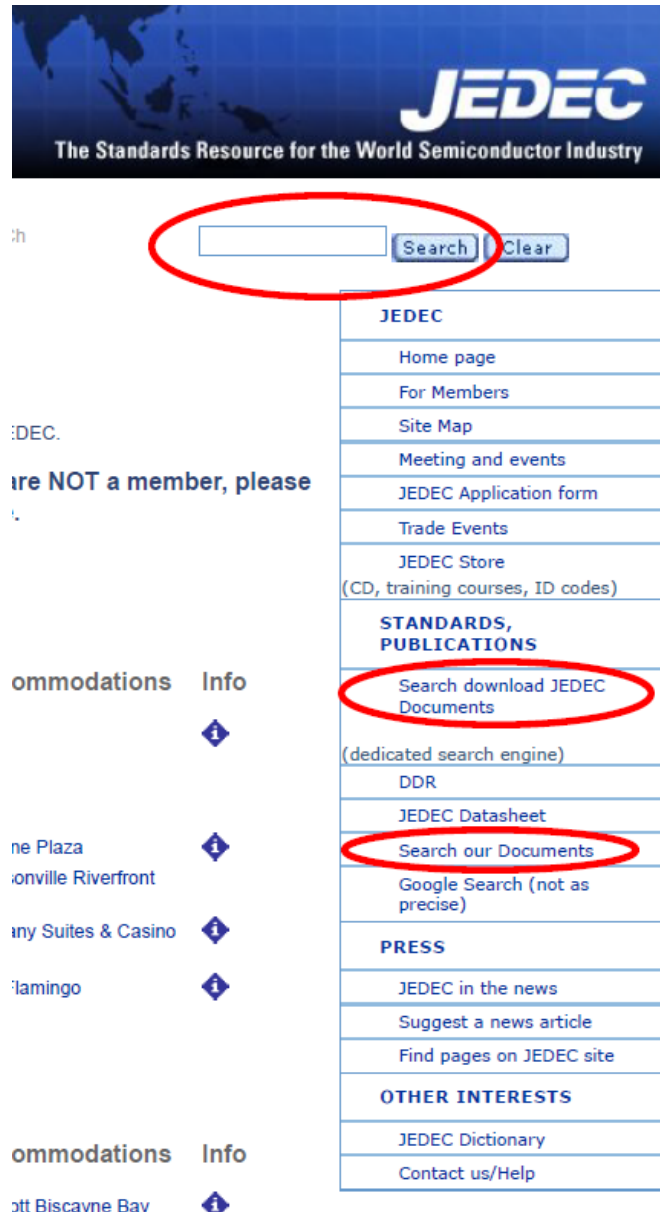
item number 142.35 in the JEDEC committee JC-40, making it easy to find the

document. As explained by the Petition, “JEDEC also provided a search feature on

its website to find documents. EX1091, 53:3-:16; EX1071 (‘Search our

Documents’). Finally, you could simply call the JEDEC office to help you find

what you were looking for. EX1091, 54:20-55:8.” Pet. 41. Reprinted below is the document and testimony cited by the Petition:



EX1071 (Apr. 6, 2009, see EX1076, ¶ 6) (red annotations added).

Q. If you are interested in JEDEC documents and presentations related to a particular technical area such as memory

modules, can you use the committee number to easily find relevant documents?

THE WITNESS: Yes.

Q. Could you briefly explain how?

A. So you can go to the JEDEC website, click on the committee, and then there's a -- a search box. You can search for particular words, by date, by item number, however you want to search for the document you're interested in.

....

Q. If you ever needed help trying to find a JEDEC document, was there a person at JEDEC you could call who could help you find what you were looking for?

THE WITNESS: Yes.

Q. Can you tell us little bit about that?

THE WITNESS: Yeah. So Donna McEntire was one person you could call. There was another person you could call who was in charge of the item numbers or assigning item numbers to documents. You could also call her for help to find documents.

EX1091, 53:3-:16, 54:20-55:8 (objections omitted).

Netlist cited Exhibit 2005/1117 in support of the following argument in its Patent Owner Preliminary Response: "As an initial matter, evidence suggests that

the JEDEC website did *not* have search functionality until 2010, one year after the JEDEC proposal’s alleged 2009 publication date. EX2005, 3.” Paper 7, at 38.

However, Exhibit 2005/1117 does not concern adding “search functionality” to JEDEC’s website for the first time, and instead concerned a proposal to use longer filenames, rather than the 8.3 file-name format discussed above, such as the following:

Examples

Committee Presentation:

jc423^20100917^0304.01.2^TI^DDR4_Register_Updated.pdf

Where:

- Committee Code = jc423 (indicates JC-42.3)
- Date = 20100917
- Item Number = 0304.01.2
- Company = TI
- Description = DDR4_Register_Updated
- Ext = .pdf

EX2005/1117, 6 (yellow highlighting added).

III. LEGAL STANDARD

“In an *inter partes* review, the moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). A party moving to seal must show ‘good cause’ for the relief requested. 37 C.F.R. § 42.54(a).” *Great West Casualty Co. v. Intellectual Ventures II LLC*, IPR2015-01706, Paper 60, at 2 (PTAB Aug. 6, 2019) (denying Patent Owner’s motion to seal).

“Consequently, a movant to seal must demonstrate adequately that (1) the

information sought to be sealed is truly confidential, (2) a concrete harm would result upon public disclosure, (3) there exists a genuine need to rely in the trial on the specific information sought to be sealed, and (4), on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record.” *Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27, at 4 (PTAB Jan. 19, 2018) (informative) (denying Patent Owner’s motion to seal).

IV. ARGUMENT

Netlist has failed to show that Exhibits 2002 and 2005 (same as Exhibits 1116 and 1117) should be treated as confidential under the *Argentum* standard for a motion to seal. As explained above, JEDEC documents relevant to this IPR have been filed in the public record for years, without anyone (including a witness from JEDEC deposed in previous IPRs) ever suggesting that anything was confidential. Netlist’s entire argument is the following, with no supporting evidence: “Both exhibits contain information available only to individuals with valid JEDEC membership credentials. JEDEC treats these types of documents as restricted to its members and has requested they be filed under seal.” Mot. at 3 (not citing any evidence in support).

Netlist provides no support for its assertion that “[JEDEC] has requested they be filed under seal.” *Id.* That is because, as explained in the Petition,

“[a]ccording to the JEDEC Manual, the only thing that was ‘confidential’ was ‘[s]urvey ballots,’ see EX1048, 19; EX1049, 18; EX1050, ¶15; EX1092, 26:21-24, **not** proposed standards, which were copyrighted but not confidential . . . , see EX1048, 14-15; EX1049, 14-15.” Pet. 40 n.8.

Thus Netlist’s argument boils down to: “Both exhibits contain information available only to individuals with valid JEDEC membership credentials.” Mot. at 3. But Netlist’s argument confuses Copyright protection and confidentiality, as the Federal Circuit recently explained when reversing the Board on this very issue. *See Weber, Inc. v. Provisur Techs., Inc.*, 92 F.4th 1059, 1062, 1068–69 (Fed. Cir. 2024) (reversing “Board’s printed publication determinations” because the copyrighted “manuals were accessible to interested members of the relevant public by reasonable diligence”). For example, the front page of the New York Times is Copyrighted — meaning you cannot distribute it without permission — but obviously it is not confidential. See <<https://help.nytimes.com/hc/en-us/articles/115014792127-Copyright-notice>> (“All materials [on nytimes.com] are protected by...copyright law and may not be reproduced [or] ***distributed***...without...permission”); EX1091, 50:8-51:18.

Copyrighted just means you may need to pay money for a copy, as is true for virtually every publication, including the New York Times. The same is true for JEDEC documents, as explained by the Petition: “Membership was available as a

flat fee that gave everyone in a company access to all documents and meetings for a given JEDEC committee. EX1073; EX1074; EX1075; EX1091, 43:9-47:19, 48:18-50:6; EX1092, 26:25-27:10; EX1050, ¶5. . . . There is no evidence that JEDEC ever denied anyone membership. EX1091, 43:9-:20; EX1073.” Pet. 40. Importantly, the Federal Circuit has held that the “high cost” of obtaining the copyrighted documents (analogous to the cost of joining JEDEC) does not negate the document’s public accessibility: “Cost alone cannot be dispositive because the printed-publication inquiry is focused on the interested public, not the general public. Here, the interested public includes commercial entities that can afford high-cost [materials].” *Weber*, 92 F.4th at 1068 n.6; *see also Centripetal Networks, Inc. v. Cisco Sys., Inc.*, 847 F. App’x 869, 878 (Fed. Cir. 2021) (“[p]ublic accessibility is not limited to circumstances of free or academic distributions”). In any event, as explained by the Federal Circuit, “JEDEC meetings are open meetings, but nonmembers must receive an invitation to attend.” *Rambus Inc. v. Infineon Techs. AG*, 318 F.3d 1081, 1085 (Fed. Cir. 2003). For example, as explained by the Petition, “Netlist’s expert in related IPRs admitted to participating as a ‘guest’ at JEDEC, despite not being ‘a voting member.’ EX1107, 178:23-179:18.” Pet. 40; EX1048, 1 & n.2, 10; EX1049, 1 & n.2, 9–10.

Copyright is **not** a basis for sealing a document. For example, in *Argentum*, the Board denied a motion to seal “Exhibits 2040–2058,” which were research

papers available to “members of the public who pay a fee,” similar to the JEDEC documents here. *Argentum*, IPR2017-01053, Paper 27, at 5. The Board rejected Patent Owner’s arguments for sealing those exhibits: “Patent Owner asserts no ownership interest in the information sought to be sealed, and the Motion advances no other information sufficient to show that Patent Owner is competent to establish that the exhibits reflect truly confidential information. Nor does the Motion establish that Patent Owner is competent to address any harm that would inure to the owners of the information, in the event that the exhibits are disclosed to the public.” *Id.* “Although counsel purports to understand that the owners ‘would be harmed by the public disclosure of these data without a confidentiality agreement,’ the Motion sets forth no objective evidence sufficient to substantiate that bare attorney argument.” *Id.* at 6. The same is true here.

Furthermore, the Federal Circuit has already found that JEDEC meeting minutes like Exhibit 2002/1116 are **not** confidential: “Minutes of the JEDEC meetings . . . [a]re available to members and nonmembers alike.” *Rambus*, 318 F.3d at 1085. With respect to Exhibit 2005/1117, it is not marked confidential, and the Federal Circuit has already found that “there are no confidentiality agreements between individual [JEDEC] members.” *Id.* at 1102 n.9. Netlist’s own expert has admitted that JEDEC presentations like Exhibit 2005/1117 are not confidential:

Q. In your opinion would a person of ordinary skill in the art have known about the contents of presentations and proposals to JEDEC relevant to memory modules and memory devices, for example, by a word-of-mouth in the industry even if they did not have copies of those presentations and proposals to JEDEC?

THE WITNESS: Yes, I believe that that would have been the case, and that is so reflected in my declaration.

EX1077, 55:8–:20 (objection omitted). And even Netlist’s own patent application in this IPR admits that JEDEC proposals like Exhibits 1039, 1015, and 2005/1117 would be known by a POSITA. *See* EX1008, 22 (“recent proposal in JEDEC”).

To the extent Netlist is suggesting that Exhibits 2002 and 2005 should be filed under seal in this IPR because someone in the corresponding district court litigation may have stamped those documents as confidential, such an argument would be insufficient, as previously recognized by the Board. *See Great West Casualty*, IPR2015-01706, Paper 60, at 3–4 (denying Patent Owner’s motion to seal because “[i]t essentially asks us to seal this information because . . . it is sealed in district court. . . . [W]e are unpersuaded that the above conclusory analysis alone is sufficient to meet a good cause standard. Furthermore . . . the Motion fails to describe . . . any concrete harm that will result in the event of disclosure . . .”).

Neither JEDEC documents in general, nor Exhibits 2002 and 2005 in particular, are confidential. To the contrary, JEDEC was created over 50 years ago

“to serve the public interest.” EX1050, ¶¶4, 15 & p.146. A POSITA could easily join JEDEC to get copies of any documents they did not already have. Indeed, the entire point of JEDEC was (and still is) so *interested* members of the public could review documents like Exhibits 2002 and 2005 to decide whether to adopt a proposed standard *for the public*.

V. CONCLUSION

Netlist’s motion to seal Exhibits 2002 and 2005 should be denied.

Dated: Mar. 14, 2025

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 14th day of March, 2025, **Petitioner's Opposition to Netlist's Motion to Seal Exhibits 2002 and 2005** was served by email on the following counsel for Patent Owner:

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