

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
U.S. Patent No. 11,386,024

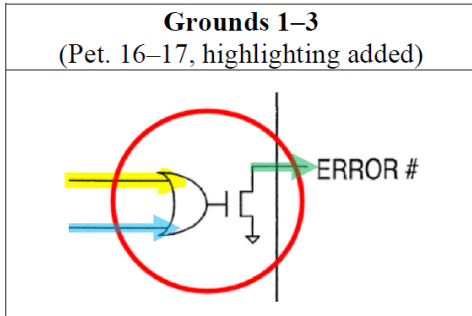
**PATENT OWNER'S SUR-REPLY
TO PETITIONER'S PRE-INSTITUTION REPLY**

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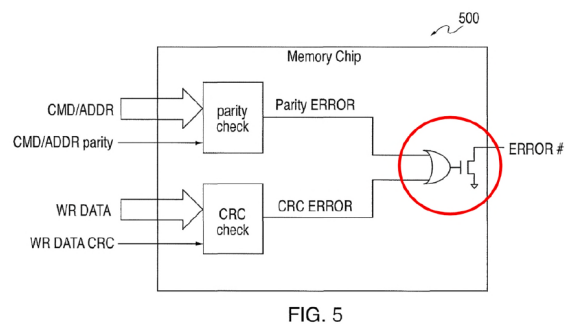
TABLE OF CONTENTS

I.	PETITIONER’S § 325(d) ARGUMENTS FAIL.....	1
II.	PETITIONER’S PUBLIC ACCESSIBILITY ARGUMENTS FAIL.	4

Petitioner's Reply exceeds the authorized scope and misrepresents the Petition. Purporting to address § 325(d), the Reply misrepresents Grounds 1-3 to try to cure Petitioner's fatally flawed Grounds. Specifically, it presents the figure below (left) as allegedly depicting Grounds 1-3, citing the Petition at 16-17. But, as shown below (right), the cited figure is a portion of Figure 5 of Kim (EX1017), which Petitioner discussed as "Background Technology." Pet., 16. Kim is *not* part of Grounds 1-3, Pet., 4, and thus the Reply attempts to mislead the Board.



Reply, 1.



Pet., 16 (annotating FIG. 5 of Kim).

Petitioner's public-accessibility arguments are similarly misleading. Regardless of whether the *existence* of the draft JEDEC proposal was known, or whether *other* documents were publicly accessible, Petitioner simply has not shown that the proposal *itself* was publicly accessible despite having tried numerous times in previous IPRs. Put simply, Petitioner had its chance to satisfy its burden of proof and failed. The Board should deny institution.

I. PETITIONER'S § 325(d) ARGUMENTS FAIL.

Petitioner's contention that § 325(d) "does not apply" because "there was no

discussion of the *combinations* here,” Reply, 1, is irrelevant under *Advanced Bionics* (Part 1) and inaccurate. *Advanced Bionics* at 8 (“the same or substantially the same prior art *or* arguments”). Here, every asserted reference (except Wang) was cited to and considered during prosecution (i.e., same prior art), POPR, 12-14, which satisfies *Advanced Bionics* (Part 1) for Grounds 1-2, 4-5. POPR, 12-14.

Regarding Grounds 3 and 6, Petitioner argues that Wang is not cumulative because it allegedly provides a “more complete” combination, confirming that Grounds 1-2, 4-5 are flawed and that the Examiner did not err when considering the same art. Reply, 2. Specifically, Petitioner now argues that Wang “provides the motivation for a ‘*second signal*’ to report training status (blue in the figures above...),” Reply, 3, referring to new annotations in misleading figures. But what the Petition actually says is that motivation to use Wang is to “add these *functionalities*,” meaning “data buffering” and “corresponding training,” not to add a “second signal.” Pet., 46-48 (emphasis added). The Board should reject Petitioner’s new arguments, which expose the deficiencies of the Petition. In sum, Petitioner’s reliance on Wang is cumulative to its reliance on the draft JEDEC proposal and Buchmann, POPR, 14-16, and Petitioner has not shown otherwise.

Petitioner also alleges that Wang is not cumulative to the draft JEDEC proposal “given Netlist’s contention that JEDEC is ‘not ... prior art.’” Reply, 3. In other words, Petitioner presented Wang as a hedge because of the clear

shortcomings in its public-accessibility arguments. But the problem for Petitioner under § 325(d) is that Petitioner identified the same motivations for Wang that it identified for JEDEC's LR-DIMM in the Petition, i.e., "reduced load and increased performance and capacity." Pet., 46-47; Reply, 3. Thus, Petitioner relies on Wang for the same purported teachings that Petitioner alleges are included in the draft JEDEC proposal. Wang simply provides nothing new to the asserted combinations. Accordingly, despite Petitioner's contentions otherwise, the Petition relies on Wang in a manner that is cumulative to the other references in the Petition, which were all previously considered by the Examiner.

Since *Advanced Bionics* (Part 1) is satisfied, it is Petitioner's burden to show material error by the Examiner. *Advanced Bionics* at 8-9. But the only allegation of error was a conclusory reference to the Board's prior decisions for related patents. POPR, 16-17; Pet., 112-113. Petitioner attempts to recast this argument on reply, piecing together disparate quotes from the Petition, contending "[t]he Examiner 'materially erred' in allowing the '024 claims while being 'silent' about Grounds 1-6." Reply, 2. This conclusory statement is still insufficient to show material error, particularly in view of the Petition's complete lack of analysis comparing the scope of the '024 patent claims to the claims of the related patents. Because Petitioner has failed to show material error, the Board should exercise its discretion and deny institution.

II. PETITIONER’S PUBLIC ACCESSIBILITY ARGUMENTS FAIL.

Petitioner does not dispute the critical fact that dooms its public-accessibility theory: the draft JEDEC proposal was only ever accessible to the members of JC-40 who created it (in a password-restricted form, no less). POPR, 20-28. And “[a] work is not publicly accessible if the only people who know how to find it are the ones who created it.” *Samsung Elecs. Co. v. Infobridge Pte.*, 929 F.3d 1363, 1371-72 (Fed. Cir. 2019). That ends the inquiry.

Even so, Petitioner’s reply arguments fail. It asserts that the 2014 JEDEC standard is materially identical to the 2009 draft JEDEC proposal. Reply, 3-4. So what? The inquiry is whether the *proposal itself* was accessible to interested members of the public *as of the critical date*. That a similar document may have been publicly accessible long after that date is irrelevant. POPR, 34-36.

Next, analogizing to a presidential election and quoting the JEDEC Manual, Petitioner contends that “[o]pen discussion of balloted material is permitted and encouraged” even if the ballots themselves are confidential. Reply, 4-5 (quoting EX1048, 17; EX1049, 16). But the quoted provision clearly refers to discussions among “[m]ember companies” *voting on the ballots*. EX1048, 17; EX1049, 16. That those individuals are encouraged to discuss the materials on which they vote is irrelevant. The point is that *proposals themselves* are not accessible to individuals *outside* of JC-40. The JEDEC proposal is thus more akin to a draft

decision of this Board subject to vote by the panel members. The Board’s final decisions are publicly accessible, but its draft decisions certainly are not.

Petitioner insists that interested persons could simply join JEDEC to obtain a copy of the draft proposal. Reply, 5. But as Petitioner’s counsel itself conceded in another proceeding, “an interested individual *can’t* just join JEDEC.” POPR, 31 (emphasis added) (quoting EX2024, 23:23-24:2; citing EX2003, ¶8). Only companies meeting certain criteria can join. POPR, 31. Petitioner’s response is that an interested person can theoretically “create a company.” Reply, 5. Even if true, that proves PO’s point—it shows the extraordinary lengths a skilled artisan must go to in order to obtain the proposal. The applicable standard is one of *reasonable* diligence, not extraordinary diligence. *Infobridge*, 929 F.3d at 1369.

Lastly, pointing to a single link (“Search our Documents”) on an archived version of JEDEC’s website, Petitioner insists that the website was searchable. Reply, 5 (quoting EX1071). But Petitioner does not come remotely close to satisfying its burden to show that the *particular draft JEDEC proposal at issue here* was indexed and accessible on JEDEC’s website. POPR, 38-39. It was not: *only* documents which “contain material that has been prepared, reviewed, and approved through the JEDEC Board of Directors level and subsequently reviewed and approved by the JEDEC legal counsel” are published. POPR, 39 (quoting EX1049, 2, 20; citing EX1048, 2, 20-21; EX2003, ¶9).

Respectfully submitted,

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))

I certify that the above-captioned **PATENT OWNER'S SUR-REPLY TO PETITIONER'S REPLY** was served in its entirety on March 21, 2025, upon the following party via electronic mail:

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