

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner

v.

NETLIST, INC.,
Patent Owner

Case IPR2025-00002
U.S. Patent No. 11,880,319

**PATENT OWNER PRELIMINARY RESPONSE
UNDER 37 C.F.R. § 42.107(a)**

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Patent Trial and Appeal Board
U.S. Patent and Trademark Office
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PATENT OWNER'S EXHIBIT LIST

Exhibit No.	Description
2001	JESD82-30, “LRDIMM DDR3 Memory Buffer (MB) Version 1.0,” JEDEC, October 2014,
2002	“Minutes of Meeting No. 160 JC-40 Digital Logic Committee,” December 10, 2009 [CONFIDENTIAL]
2003	<i>Samsung Elecs. Co. v. Netlist, Inc.</i> , IPR2020-00062, Exhibit 2026 (P.T.A.B. Aug. 15, 2022)
2004	<i>Samsung Elecs. Co. v. Netlist, Inc.</i> , IPR2020-00062, Paper 53 (P.T.A.B. Mar. 8, 2023)
2005	“Simplified File Naming: JEDEC Meeting Presentations,” JEDEC, December 2010 [CONFIDENTIAL]
2006	Email to JEDEC Request LRDIMM DDR3 Memory Initialization Chapter Proposal, January 2025

I. INTRODUCTION

The Board should deny institution of *inter partes* review of claims 1-20 of U.S. Patent No. 11,880,319 (“the ’319 patent”) because: (i) the Petition is procedurally deficient, (ii) discretionary considerations under § 325(d) strongly favor denial, and (iii) the Petition’s six Grounds all fail on the merits.

First, as part of its kitchen-sink approach to this case, Petitioner excessively incorporates by reference arguments from other documents in the record as well as the records in *other* IPRs to give the false impression that the Board has already resolved these issues in Petitioner’s favor. This not only violates the Board’s rule against incorporation by reference, it results in a Petition that fails to meet the statutory mandate of § 312(a)(3) to identify, *with particularity*, the grounds on which the claims are being challenged. Petitioner presents many of its arguments, including those related to key issues, as little more than conclusory statements followed by lengthy, unexplained string citations to the record. But such arguments are insufficient to carry Petitioner’s burden and to provide Patent Owner and the Board with the requisite notice of the unpatentability challenges. Because this defect runs throughout the entire Petition, the Board should deny institution on this basis alone.

Second, the Board should exercise its discretion to deny institution under § 325(d). The combinations and unpatentability theories presented here have

already been tested and overcome, and Petitioner presents only a token explanation as to how the Office allegedly erred in its prior analysis of the challenged claims. The Board should defer to the Office's prior determination instead of expending its limited resources reviewing arguments that have already been considered.

Third, the Board should deny institution on the merits. All six Grounds fail because Petitioner does not show that any of the references or combinations of references teach a "second signaling interface" that is "distinct from" a "first signaling interface," as recited in the independent claims. Grounds 1 and 4 are further deficient because, despite previous attempts, Petitioner cannot demonstrate that the proposed JEDEC draft was publicly accessible before the critical date. And, in Grounds 2 and 5, Petitioner relies primarily on a flawed and conclusory theory of collateral estoppel instead of explaining, in the Petition, how the evidence demonstrates that the claims are unpatentable.

Independently, each of these reasons supports denying institution. In combination, they overwhelmingly show that the Board should not institute trial.

II. THE '319 PATENT

A. Overview

The '319 patent relates to "systems and methods for handshaking with a memory module during or upon completion of initialization." EX1001, 1:25-27.

Figure 3, reproduced below, illustrates an example embodiment in which memory

modules (10, 26) are coupled to a system memory controller 14. EX1001, 4:24-34, 11:15-19. Each memory module (10, 26) includes a notification circuit (20, 30), which, in turn, includes a transistor (36, 38) in an open-drain configuration. EX1001, 6:57-7:7 (discussing notification circuit); 9:51-53 (open-drain transistor).

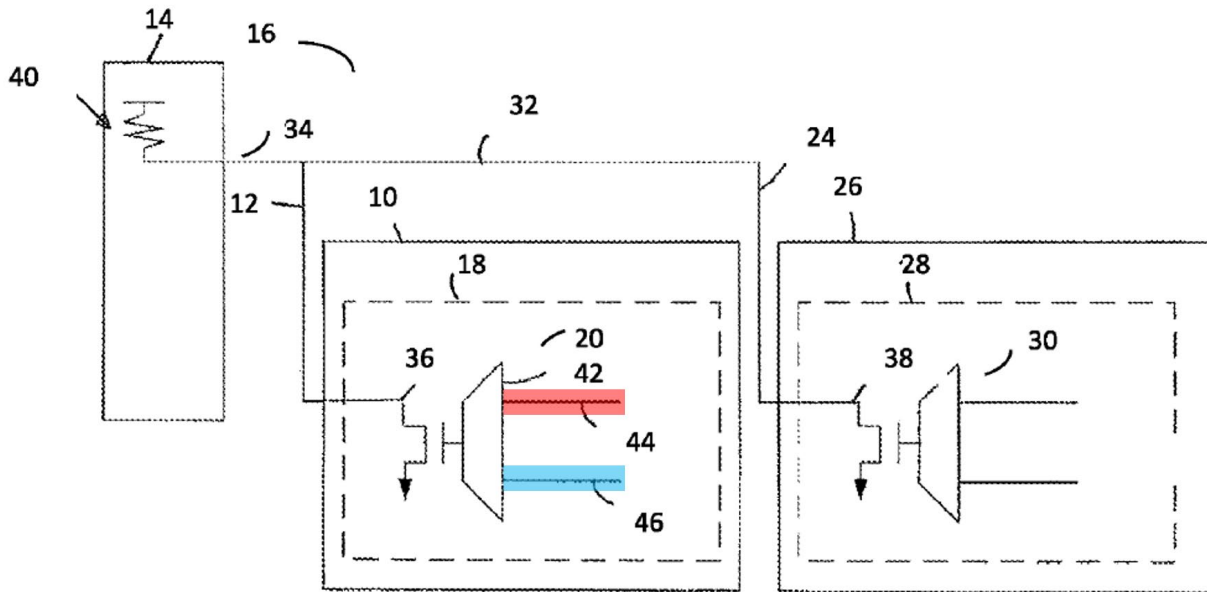


Figure 3

EX1001, FIG. 3 (annotated).

Focusing on notification circuit 20 above, the embodiment of Figure 3 includes a multiplexor 42 whose output is connected to the gate of the transistor 36. EX1001, 11:19-34. The multiplexor 42 includes two inputs: an input (red) to accept task_in_progress signal 44 used during an initialization mode and an input (blue) to accept error signal 46 during normal memory operations. *Id.*

B. Level of Ordinary Skill in the Art

At this stage of the proceeding, Patent Owner applies Petitioner's proposed

level of ordinary skill in the art. *See* Pet., 11. Patent Owner reserves the right to present a different definition, if necessary.

III. THE PETITION VIOLATES THE BOARD’S PROCEDURAL RULES.

The Petition’s excessive use of incorporation by reference violates the Board’s Rules and fails to provide Patent Owner and the Board with adequate notice of Petitioner’s patentability challenges. “[T]he expedited nature of IPRs bring with it an obligation for petitioners to make their case *in their petition* to institute.” *Intelligent Bio-Systems, Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016) (emphasis added). To do so, the petition must identify, “in writing and *with particularity*, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim.” 35 U.S.C. § 312(a)(3) (emphasis added).

A corollary to the requirement that petitioners make their case in their petition is that they are prohibited from incorporating by reference arguments from other documents into the petition. 37 C.F.R. § 42.6(a)(3); *Cisco Sys., Inc. v. C-Cation Techs., LLC*, IPR2014-00454, Paper 12 at 7-10 (P.T.A.B. Aug. 29, 2014) (informative). This “prohibition against incorporation of arguments from other documents serves various policy goals, including to minimize the chance that an argument may be overlooked and to eliminate abuses that arise from incorporation and combination.” *Parus Holdings, Inc. v. Google LLC*, 70 F.4th 1365, 1372 (Fed.

Cir. 2023) (cleaned up); *see also DeSilva v. DiLeonardi*, 181 F.3d 865, 866-67 (7th Cir. 1999) (Incorporation “by reference amounts to a self-help increase in the length of the [] brief” and “is a pointless imposition on the court’s time. A brief must make all arguments accessible to the judges, rather than ask them to play archeologist with the record.”). The Board should not consider any arguments that are not presented in the petition. *Cisco*, IPR2014-00454, Paper 12 at 10 (“[W]e will not consider arguments that are not made in the Petition, but are instead incorporated by reference. ...”).

The Petition widely and impermissibly incorporates by reference from other documents—such as Dr. Alpert’s declaration, prior Board decisions, and other evidence in the record—often presenting conclusory statements followed by lengthy and unexplained string citations. In arguing that the draft JEDEC proposal (EX1015) qualifies as prior art, for example, Petitioner presents a string citation that includes footnotes to additional string citations. Pet., 34 nn.3-5; *see also id.*, 38-39. Many of the cited documents, moreover, come from the records of other IPR proceedings. Likewise, Petitioner’s discussion of the proposed combinations heavily incorporates various documents. *See, e.g.*, Pet., 40, 41-42, 45. As another example, in Grounds 2 and 5, Petitioner argues that prior Board decisions demonstrate that the challenged claims are unpatentable, proffering lengthy and unexplained string citations to large amounts of the record as support. *See, e.g.*,

Pet., 40-41 (addressing motivation to combine), 63 (addressing element [1.d.1]), 67 (addressing element [1.d.2]). These are just a few examples of the Petition’s improper and extensive use of incorporation by reference—there are many others.

The Board should reject these arguments because, in addition to the improper incorporation by reference, they are insufficient to satisfy Petitioner’s burden of persuasion. *See Parus Holdings*, 70 F.4th at 1371 (noting that a party’s burden “cannot be met simply by throwing mountains of evidence at the Board without explanation or identification of the relevant portions of that evidence”); *Canadian Solar Inc., v. Maxeon Solar PTE., Ltd.*, IPR2024-01039, Paper 13 at 26-28 (P.T.A.B. Jan. 14, 2025) (“Petitioner does not direct us to any authority establishing that it may rely on findings of ... a Board decision involving different claims from a different patent application to satisfy its evidentiary burdens in this proceeding.”).

At bottom, Petitioner’s excessive use of incorporation by reference and string citations to documents in this and other records skirts Petitioner’s obligation to perform reasoned analysis. The Board should reject Petitioner’s tactic. And because this deficiency runs throughout the entire Petition, including for key issues related to the merits, the Board should deny institution of review.

**IV. PATENT OWNER IS NOT COLLATERALLY ESTOPPED FROM
DEFENDING AGAINST GROUNDS 2 AND 5.**

Petitioner fails to demonstrate that Patent Owner is collaterally estopped from defending the challenged claims against the obviousness challenges raised in Grounds 2 and 5 in light of prior IPRs involving U.S. Patent Nos. 9,535,623; 9,858,218; and 10,474,595 (collectively, “the related patents”). *See* Pet., 5-7.

Petitioner, as the “party seeking to invoke collateral estoppel[,] must show: ‘(1) the issue is identical to one decided in the first action; (2) the issue was actually litigated in the first action; (3) resolution of the issue was essential to a final judgment in the first action; and (4) [the party against whom collateral estoppel is being asserted] had a full and fair opportunity to litigate the issue in the first action.’” *Google LLC v. Hammond Dev. Int’l*, 54 F.4th 1377, 1381 (Fed. Cir. 2022) (quoting *In re Freeman*, 30 F.3d 1459, 1465 (Fed. Cir. 1994)). Regarding the first factor, although “patent claims need not be identical for collateral estoppel to apply,” *id.*, Petitioner must show that the claims of the ’319 patent have “materially the same scope” as the claims that were at issue in the prior IPR proceedings, *ParkerVision, Inc. v. Qualcomm Inc.*, 116 F.4th 1345, 1357 (Fed. Cir. 2024); *see also id.* at 1357 n.4 (the party invoking collateral estoppel bears the burden of proving the identity of the issues).

Petitioner fails to show that any of the factors to invoke collateral estoppel are satisfied. Regarding the first factor (identity of the issues), Petitioner does not

show that the challenged claims have “materially the same scope”¹ as the claims of the related patents. *ParkerVision*, 116 F.4th at 1357. To start, Petitioner presents no analysis or comparison of the scope of any of the relevant claims in the Petition, opting instead to incorporate by references large swaths of Dr. Alpert’s declaration, prior Board decisions, and other record evidence. *See, e.g.*, Pet., 6 (citing EX1003, ¶¶155-158), 63 (lengthy, unexplained string citation when addressing the claimed “first signaling interface”), 67 (lengthy, unexplained string citation when addressing the claimed “second signaling interface”). Paragraphs 155-158 of Dr. Alpert’s declaration, alone, span more than 50 pages of claim charts that Petitioner attempts to incorporate without any explanation. EX1003, ¶¶155-158. Not only does presenting arguments in this manner violate the Board’s rules against incorporation by reference, *see supra* Section III, it is insufficient to show an identity of the issues for purposes of collateral estoppel.

Moreover, the claims of the ’319 patent are in fact materially different than those of the related patents. As one example, the claims of the ’319 patent recite “a first signaling interface” and a “second signaling interface” that “is distinct from

¹ Petitioner characterizes the relevant claims as “substantially similar,” Pet, 6, “substantially identical,” *id.*, 7, or “equivalent,” *see, e.g., id.*, 67 (addressing the “second signaling interface”); but not as having materially the same scope.

the first signaling interface.” EX1001, 14:50-57. The claims of the related patents do not even recite the term “interface,” let alone include two, distinct signaling interfaces. To the extent claim construction is necessary, the burden to request claim construction falls on the party seeking to invoke collateral estoppel.

ParkerVision, 116 F.4th at 1357 n.4. But Petitioner does not propose any claim constructions. Pet., 23 (arguing “[n]o claim construction is needed”). Nor does Petitioner explain how the claims of the related patents allegedly recite limitations of materially the same scope as the two, distinct signaling interfaces of the challenged claims. This example demonstrates that the claims of the ’319 patent are materially different than those of the related patents, and Petitioner fails to show otherwise.

The prosecution history of the ’319 patent further demonstrates that the challenged claims are materially different. There, the Examiner issued obvious-type double patenting (OTDP) rejections of claim 1 (the only claim pending at the time) over claims of the ’595 patent and of other patents. EX1002, 63. The Applicant then amended claim 1 to include (among other limitations) the two, distinct signaling interfaces, and argued that the amendment overcomes the OTDP rejections, EX1002, 97, 103. The Examiner subsequently allowed the claims. EX1002, 120, 210. Petitioner’s bare assertion that the first factor is satisfied is inconsistent with the claim language and the prosecution history, and thus fails.

Petitioner takes the same tack for the other collateral estoppel factors. It presents only conclusory allegations that factors two through four are satisfied and once again improperly incorporates by reference large swaths of Dr. Alpert's declaration, prior Board decisions, and other record evidence. Pet., 7 (citing EX1034, EX1102, and EX1103 in their entirety). The Board should reject these arguments because they suffer from the same shortcomings as Petitioner's arguments for factor one.

* * *

Petitioner fails to demonstrate that any of the four collateral estoppel factors are satisfied and thus Patent Owner is not estopped from defending the validity of the challenged claims against Grounds 2 and 5.

V. THE BOARD SHOULD DENY INSTITUTION UNDER § 325(d).

The Director has discretion to deny instituting review where “the same or substantially the same prior art or arguments previously were presented to the Office.” 35 U.S.C. § 325(d). The Board in *Advanced Bionics* restat[ed] the framework in [§ 325(d)'s] statutory language” as a “two-part framework,” and clarified how the six, non-exhaustive *Becton, Dickinson* factors fit within the two-part framework. *Advanced Bionics v. Med-El Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 7-11 (P.T.A.B. Feb. 13, 2020) (precedential); *see also Becton, Dickinson & Co. v. B. Braun Melsungen AG*, IPR2017-01586, Paper 8 at

17-18 (P.T.A.B. Dec. 15, 2017) (precedential as to § III.C.5, first paragraph). The policy undergirding the *Advanced Bionics* “framework reflects a commitment to defer to previous Office evaluations of the evidence of record unless material error is shown.” *Advanced Bionics*, IPR2019-01469, Paper 6 at 9.

The first part of the *Advanced Bionics* framework considers “whether the same or substantially the same art previously was presented to the Office or whether the same or substantially the same arguments previously were presented to the Office,” *id.* at 8, which encapsulates *Becton, Dickinson* factors (a), (b), and (d), *id.* at 9-10. Critically, *Advanced Bionics* instructs that “[p]reviously presented art includes art made of record by the Examiner, and art provided to the Office by an applicant, such as on an Information Disclosure Statement (IDS), in the prosecution history of the challenged patent.” *Id.* at 7-8. Following this guidance, Board panels have routinely held that art made of record by either the Examiner or applicant during prosecution but not applied in a rejection is sufficient to satisfy the first part of the *Advanced Bionics* framework. *See, e.g., Ivantis, Inc. v. Sight Sciences, Inc.*, IPR2022-01529, Paper 16 at 17 n.8 (P.T.A.B. Mar. 21, 2023) (explaining that “there is no requirement that [the] Examiner needs to rely on a reference in a rejection during prosecution in order for the reference to be ‘considered’ during prosecution” and citing *Advanced Bionics*); *Boragen, Inc. v. Syngenta Participations AG*, IPR2020-00124, Paper 16 at 21-22 (P.T.A.B. May 5,

2020) (denying petition under § 325(d) and explaining that “a rejection applying a reference that is later relied upon by a petitioner is not a prerequisite to a finding that such reference was already presented to the Office under § 325(d)”).

Under the second part of the *Advanced Bionics* framework, “if either condition of [the] first part of the framework is satisfied, [the Board determines] whether the petitioner has demonstrated that the Office erred in a manner material to the patentability of challenged claims.” *Advanced Bionics*, IPR2019-01469, Paper 6 at 8; *see id.*, 10-11 (explaining that the second part of the test involves *Becton, Dickinson* factors (c), (e), and (f)). Examples of material error include “misapprehending or overlooking specific teachings of the relevant prior art where those teachings impact patentability of the challenged claims” and “an error of law, such as misconstruing a claim term, where the construction impacts patentability of the challenged claims.” *Id.* at 8-9 n.9.

The petitioner carries the burden of demonstrating material error: “If a condition in the first part of the framework is satisfied and the petitioner fails to make a showing of material error, the Director generally will exercise discretion not to institute *inter partes* review.” *Id.* at 8-9; *see also Becton, Dickinson*, IPR2017-01586, Paper 8 at 17-18 (explaining that factor (e) asks “whether Petitioner has pointed out sufficiently how the Examiner erred in its evaluation of the asserted prior art”); *Microsoft Corp. v. AlmondNet, Inc.*, IPR2022-01319, Paper

9 at 11 (P.T.A.B. Jan. 30, 2023) (denying institution under § 325(d) where Petitioner did not sufficiently address whether the Office materially erred); *Microsoft*, IPR2022-01319, Paper 14 (P.T.A.B. Apr. 23, 2023) (denying Petitioner’s rehearing request of decision denying institution). Notably, “[i]f reasonable minds can disagree regarding the purported treatment of the art or arguments, it cannot be said that the Office erred in a manner material to patentability. At bottom, this framework reflects a commitment to defer to previous Office evaluations of the evidence of record unless material error is shown.” *Advanced Bionics*, IPR2019-01469, Paper 6 at 9.

As to *Advanced Bionics* Part One, each of Petitioner’s Grounds relies on the same theory of unpatentability that was already considered by the Examiner and overcome during prosecution. Compounding the issue, nearly all of the secondary references relied on in the Petition were cited to and considered by the Examiner. Further still, the Examiner had the benefit of earlier petitioners’ (including Samsung’s) and the Board’s analysis of these references as applied to claims of related patents, applying this same theory of unpatentability. Despite considering all of this information, the Examiner allowed the claims. This is exactly the type of situation to which § 325(d) was intended to apply.

As to *Advanced Bionics* Part Two, Petitioner provides only a bare statement that the Examiner’s lack of explicit analysis of the Board’s prior decisions

cancelling allegedly similar claims demonstrates error. Pet., 116. But, as discussed herein, the claims include material differences as compared to the related claims upon which Petitioner relies. Petitioner has not shown error in the Examiner's prior consideration of the claims in view of the art and theories of patentability presented herein. Rather, Petitioner simply attempts to rehash this same information.

Applying the *Advanced Bionics* framework, the Board should deny institution under § 325(d).

A. Part One: Petitioner advances the same or substantially the same art and/or arguments that were previously presented to the Office.

1. All but one of the asserted references were cited during prosecution.

Petitioner's asserted Grounds rely on various combinations of Hazelzet, a draft JEDEC proposal, Buchmann, Wang, and Kim. With the exception of Wang, each of these was cited to and considered by the Examiner during prosecution.

Hazelzet was applied by the Examiner in a rejection in an October 5, 2022 non-final Office Action. EX1002, 60-67; *see also id.*, 224 (IDS considering Hazelzet). Hazelzet was also applied in rejections in two separate Office Actions in parent application 16/680,060 ("the '060 application"), which was examined by the same Examiner. EX1112, 190-198, 298-310; *Fitesa Simpsonville, Inc. v. The Proctor & Gamble Co.*, IPR2023-01451, Paper 11 at 14 (P.T.A.B. Mar. 20, 2024) (denying institution; relying on a reference being applied in grandparent

application to show prior Examiner consideration).

The draft JEDEC proposal was cited in an IDS and considered by the Examiner.² EX1002, 230 (IDS considering “JEDEC COMMITTEE LETTER BALLOT, LRDIMM DDR3 Memory Initialization Chapter Proposal (Dec. 2009) (‘JEDEC’)”); *see also* EX1112, 209 (draft JEDEC proposal considered in parent application). Buchmann and Kim also were cited in an IDS and considered by the

² Listing a reference in an IDS is not an admission that the reference is prior art against the claims. *Riverwood Int’l Corp. v. R.A. Jones & Co.*, 324 F.3d 1346, 1354-55 (Fed Cir. 2003) (noting that listing of the inventor’s own prior patent in an IDS does not make it available as prior art absent a statutory basis); *see also* 37 CFR § 1.97(h) (“The filing of an information disclosure statement shall not be construed to be an admission that the information cited in the statement is, or is considered to be, material to patentability as defined in § 1.56(b).”). Further, submission of the draft JEDEC proposal in an IDS in the parent application in September of 2020, EX1112, 131, in no way evinces that the document was publicly available as of the critical date (either June 2009 or June 2010). *Infra* Section VI.B. In fact, the draft JEDEC proposal was cited in an IDS only after it was submitted in IPR2020-01042 for the related ’595 patent. EX1112, 131 (document submitted was the IPR exhibit).

Examiner. EX1002, 223; *see also* EX1112, 212 (Buchmann and Kim considered in parent application).

Further, the Examiner considered Petitioner's (Samsung's) prior petitions from IPR2022-00062 ("the -062IPR") and IPR2022-00064 ("the -064IPR"), which asserted Hazelzet in combination with Buchmann, the draft JEDEC proposal, and/or Kim against the claims of related U.S. patents 9,858,218 and 10,474,595, respectively. EX1002, 230; *see also* EX1098; EX1100. The Examiner also considered the Board's Final Written Decisions from these proceedings. EX1002, 222. The Examiner, therefore, not only previously considered the asserted references, but also had the benefit of Samsung's prior theories of unpatentability and of the Board's prior analyses of these references when the Examiner considered the claims of the '319 patent.

This alone is sufficient to satisfy Part One of the *Advanced Bionics* framework as to these references and grounds 1, 2, 4, and 5. *See Keysight Techs., Inc. v. Centripetal Networks, Inc.*, IPR2022-01421, Paper 14 at 5 (P.T.A.B. Aug. 24, 2023) (on Director review, confirming "the first part of the *Advanced Bionics* framework does not require that an Examiner provide a discussion, analysis, or other findings on the applicability of the relevant material contained in an IDS" (internal quotations omitted)); *Agrinomix, LLC v. Mitchell Ellis Prods., Inc.*, IPR2017-00525, Paper 8 at 10-11 (P.T.A.B. June 14, 2017) (denying institution

under § 325(d) where prior art reference was “discussed in the Specification” of challenged patent).

In a transparent attempt to avoid § 325(d), Petitioner adds the Wang reference in Grounds 3 and 6. But while the reference may be new, the *arguments* Petitioner makes based on Wang are entirely cumulative of those the Examiner already considered, as explained in the following section.³

2. Petitioner’s asserted Grounds rely on the same primary reference, and the same theory of unpatentability that was overcome during prosecution.

Petitioner presents three sets of Grounds against the claims (1/4, 2/5, and 3/6), each of which relies on the same theory of unpatentability that was already

³ Even if the Board disagrees that the Hazelzet-Wang ground is cumulative, the Board can apply § 325(d) to only certain grounds in the Petition, and deny other grounds for different reasons, including by exercising discretion under § 314. *See, e.g., Pharmacosmos v. A/S American Regent, Inc.*, PGR2020-00009, Paper 17 (P.T.A.B. Aug. 14, 2020) (denying institution; exercising § 325(d) discretion for all but one ground, and applying discretionary considerations under *Chevron/Deeper* informative decisions to deny the petition in its entirety where the final ground included “overlapping issues to those already considered by the Office”).

considered by the Examiner and overcome during prosecution. In particular, Petitioner's three main Grounds (1-3) are all based primarily on Hazelzet, and, as characterized by Petitioner, "[i]n each, the functionality of buffering the data signals would be added to Hazelzet's memory module, ... and corresponding training would be added, including training sequences and reporting their completion over an open-drain output (e.g., UE 121) of Hazelzet." Pet., 40; *id.*, 40-41 (emphasis omitted). Despite being presented as three separate Grounds—based on combining either the draft JEDEC proposal, Buchmann, or Wang with Hazelzet—Petitioner's Grounds do not include substantively different theories, and are essentially cumulative to each other. In fact, Petitioner even presents them together, in a single discussion in which Petitioner bounces back-and-forth between the secondary references. *See, e.g.*, Pet., 40-50 (discussing the motivation to make all three combinations together), 53-57 (discussing the combination for element [1.b.2] for all three combination together), 67-74 (same for element [1.d.2]), 80-81 (same for element [1.e.3]).

But the Examiner already considered this theory of adding buffering and training sequences to Hazelzet, and found that it did not render obvious the claims of the '319 patent. During prosecution, the Examiner rejected the claims based on Hazelzet in view of a different JEDEC document (referred to as "JESD206" herein (EX1025)), which the Examiner relied on for its teachings of "training [sequences

that are] carried out by [the] memory buffer (module controller) itself,” and further determined that “Hazelzet’s memory module can be placed into a training mode to implement [JESD206]’s training sequences.” EX1002, 65-66. In the same way, Petitioner relies on the combinations of Hazelzet with Buchmann, the draft JEDEC proposal (EX1015⁴), and Wang to add “the functionality of buffering the data signals ... to Hazelzet’s memory module,” and to also add “corresponding training ... including training sequences.” Pet., 40. In other words, Petitioner’s asserted Grounds simply rehash the same or substantially similar combinations of teachings that the Examiner already considered during prosecution without identifying any material error in the Examiner’s analysis.⁵

In addition, Applicant submitted in an IDS prior Board Final Written Decisions for related patents, which discuss many of the same references as

⁴ Despite having it in front of him, the Examiner did not apply the draft JEDEC proposal relied on in the Petition. This is unsurprising, since this document was a non-public draft proposal and not prior art, as explained in Section VI.B.

⁵ In the Kim Grounds (4-6), Kim is relied upon to address elements in claim 2 related to the “open drain output.” Kim’s additional disclosure does not affect the cumulative nature of the asserted grounds because the Examiner determined that Hazelzet taught the open drain output of claim 1. EX1002, 64-65.

asserted in the Petition. *See* EX1034; EX1102; EX1103. The Examiner considered these Decisions before allowing the claims. *See* EX1002, 222 (IDS, considering -062IPR, -064IPR FWDs), 227 (IDS, considering IPR2018-00303 FWD).

Petitioner admits as much. Pet., 116; EX1003, ¶153.

Thus, the Examiner also already considered substantially the same art and arguments presented in the Petition, again satisfying *Advanced Bionics* Part one.

B. Part Two: Petitioner’s allegation of error under the second prong of *Advanced Bionics* is conclusory and unsupported.

Petitioner contends that the prior Board Decisions “cancelling the [allegedly] substantially similar claims of the ’623, ’218, and ’595 Patents,” “demonstrate that the Examiner materially erred in allowing the claims.” Pet., 116. Citing Rule 42.73(d)(3), Petitioner faults applicant and the Examiner for not offering any analysis of the claims in view of the Board’s prior decisions. Pet., 116. But such explicit analysis is not required by the rules. Rather, Rule 42.73(d)(3) merely precludes a patent owner “from taking action inconsistent with the adverse judgement,” such as, for example “obtaining in a patent ... a claim that is not patentably distinct from a finally refused or canceled claim.”

As explained above, the claims of the ’319 patent are patentably distinct from the ’623, ’218, and ’595 patents. *See* Section IV. That Petitioner had the opportunity to show otherwise but failed to do so in its Petition undermines its position that the Examiner erred in evaluating the claims of the ’319 patent.

Petitioner makes no allegation of error beyond the mere existence of the Board's prior Final Written Decisions, which (again) were considered by the Examiner. Petitioner carries the burden of demonstrating material error: "If a condition in the first part of the framework is satisfied and the petitioner fails to make a showing of material error, the Director generally will exercise discretion not to institute *inter partes* review." *Advanced Bionics*, IPR2019-01469, Paper 6 at 8-9; *see also Microsoft Corp. v. AlmondNet, Inc.*, IPR2022-01319, Paper 9 at 11 (P.T.A.B. Jan. 30, 2023) (denying institution under § 325(d) where Petitioner did not sufficiently address whether the Office materially erred); *Microsoft*, IPR2022-01319, Paper 14 (P.T.A.B. Apr. 23, 2023) (denying Petitioner's rehearing request of decision denying institution).

Petitioner may disagree with the Examiner's conclusion that the claims are not obvious, but mere disagreement with the Office's prior determinations is an insufficient basis for institution. *Advanced Bionics*, IPR2019-01469, Paper 6 at 9 ("If reasonable minds can disagree regarding the purported treatment of the art or arguments, it cannot be said that the Office erred in a manner material to patentability.").

Petitioner has not shown error here. The Board should, thus, deny institution under § 325(d). *See Vital Connect Inc. v. Bardy Diagnostics, Inc.*, IPR2023-00381, Paper 7 at 19-20 (P.T.A.B. July 11, 2023) (denying institution where petition is

“silent on material error”); *Siemens Mobility, Inc. v. Metrom Rail, LLC*, IPR2024-00947, Paper 12 at 17-19 (P.T.A.B. Nov. 19, 2024) (denying institution under § 325(d) where Petition does not discuss the similarities between the asserted references and those considered during prosecution).

VI. THE PETITION FAILS TO DEMONSTRATE A REASONABLE LIKELIHOOD THAT ANY CLAIM IS UNPATENTABLE.

For the reasons above, the Board need not even address the merits of the Petition. In any event, the merits also fail, and the Board should deny institution on the merits for the following reasons: (A) for all six Grounds, Petitioner fails to demonstrate that the asserted combinations teach the claimed “second signaling interface” that must be “distinct from” the claimed “first signaling interface”; (B) for Grounds 1 and 4, Petitioner fails to demonstrate that the draft JEDEC proposal was publicly accessible before the critical date of the ’319 patent; and (C) for Grounds 2 and 5, Petitioner relies primarily on prior Board decisions, instead of explaining how the combinations allegedly render the claims obvious.

A. The Board should deny Grounds 1-6 because Petitioner fails to demonstrate that the asserted combinations teach a “second signaling interface” that is “distinct from” a “first signaling interface,” as recited in independent claims 1 and 11.

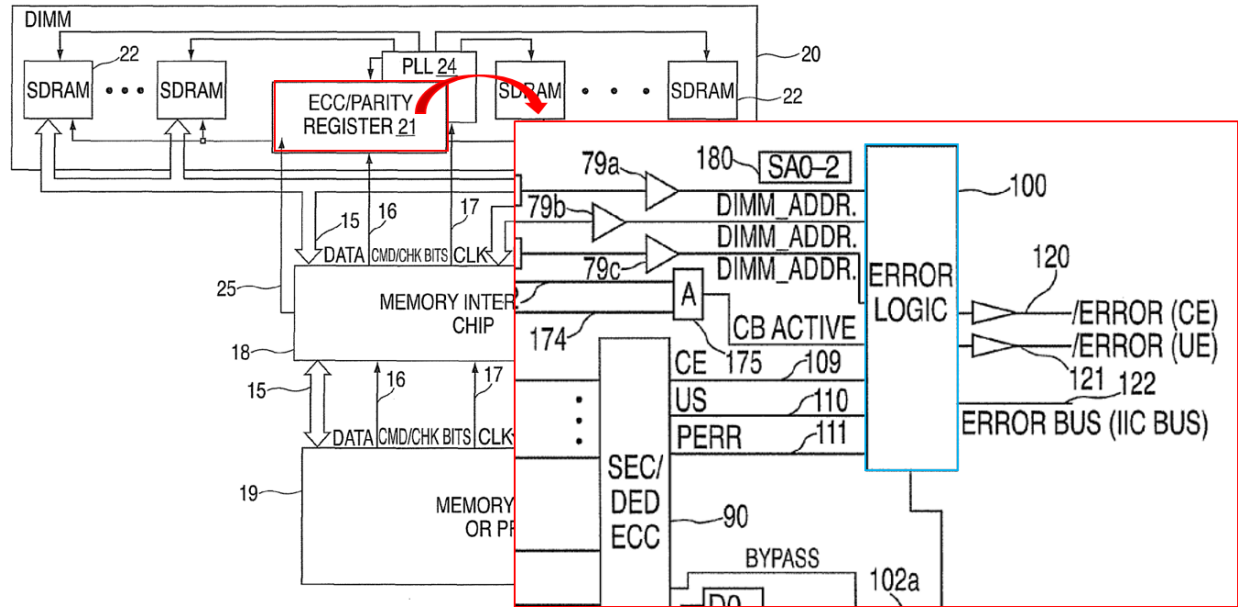
Independent claim 1 recites that “the memory subsystem is configured to provide a first signaling interface via the open drain output during normal operations” (element [1.d.1]) and “a second signaling interface via the open drain

output during an initialization operation ... wherein the second signaling interface is distinct from the first signaling interface” (included in element [1.d.2]).

Petitioner fails to demonstrate that the asserted combinations in Grounds 1-6 teach a “second signaling *interface*” that “is distinct from” a “first signaling *interface*.”⁶

Petitioner asserts that Hazelzet’s ECC/Parity register 21 is the claimed “memory subsystem controller.” Pet., 58 (element [1.c.1]). Hazelzet discloses that the ECC/Parity register 21 includes Error Logic 100, EX1014, ¶27, which Petitioner asserts includes the claimed “open drain output,” Pet., 61. Figures 2 and 4B of Hazelzet, reproduced-in-part below, show the ECC/Parity register 21 (in red) that includes the Error Logic 100 (in blue):

⁶ To the extent Petitioner relies on the “Board’s previous decisions” to teach or explain its position with respect to these (or any other) claim elements, the Board should disregard these arguments because Petitioner fails to make the necessary showings *in its Petition*, and extensively and impermissibly incorporates by reference from the record. *See* Pet., 63, 67.



EX1014, FIGS. 2, 4B (reproduced-in-part and annotated to show ECC/Parity Register 21 in red and Error Logic 100 in blue).

1. Petitioner’s alleged “first signaling interface”

Regarding the claimed “first signaling interface,” Petitioner argues that “Hazelzet’s ‘ECC/Parity register [21]’ ... includes **interface circuitry** capable of utilizing parity error signals PERR (111, yellow) to output signal UE 121 to the host indicating a parity error (*‘to provide a first signaling interface via the open drain output’*) in parity mode *‘during normal operations.’*” Pet., 63-64 (underline and italics in original; boldface added). Petitioner annotates part of Figure 4B of Hazelzet as shown below,⁷ but does not provide any further explanation as to what

⁷ Figure 4B of Hazelzet shows a portion of Hazelzet’s ECC/Parity register 21. EX1014, ¶¶27, 44.

2. Petitioner's alleged "second signaling interface"

For the claimed "second signaling interface," Petitioner points to the same, unspecified "interface circuitry" of Hazelzet that it mapped to the claimed "first signaling interface." Pet., 67-69. Specifically, Petitioner argues,

As discussed above (pp.47-50),^[8] the combinations analyzed here teach a memory module that includes **interface circuitry** to provide a status signal to the memory controller via Hazelzet's open drain output ("*a second signaling interface via the open drain output*") during an initialization operation about the status of training sequences ("*during an initialization operation including initialization operation sequences*").

Pet., 67 (underline and italics in original; boldface added).

Instead of identifying a second, distinct signaling interface in Hazelzet,

⁸ Pages 47-50 of the Petition refer to Petitioner's proposed "[m]otivation to use Hazelzet's open-drain signaling for training notification" in which Petitioner argues that a POSITA would have combined Hazelzet with the draft JEDEC proposal, Buchmann, or Wang to use Hazelzet's open-drain output to report the status of training sequences. Pet., 47-50. Here, Petitioner does not allege that it would have been obvious to modify Hazelzet to include two distinct signaling interfaces; nor does it even mention the distinct signaling interfaces recited in the claims. *See id.*

Petitioner alleges that a “POSITA would have understood that an interface for reporting a training status (*‘second signaling interface’*) as taught by the combinations is ‘distinct from’ the parity error reporting interface of Hazelzet (*‘first signaling interface’*), discussed immediately above (pp.63-67).” Pet., 67-68. According to Petitioner, the alleged first signaling interface in the proposed combinations would communicate parity errors during normal operations, and the alleged second signaling interface in the proposed combinations would communicate training status. *Id.*, 68⁹; *see also id.* at 68-69 (for each of the draft JEDEC proposal, Wang, and Buchmann, explaining what signals would be communicated by alleged second signaling interface (e.g., “completion of the MB-DRAM Training” for JEDEC), without identifying a second, distinct signaling interface).

3. Petitioner fails to show a “second signaling interface” that “is distinct from the first signaling interface.”

Petitioner thus posits what the two alleged signaling interfaces in its proposed combinations would *communicate* (parity errors for the first interface,

⁹ Notably, in this discussion, Petitioner cites the same paragraphs of Hazelzet that it did to address the claimed “first signaling interface,” Pet., 68 (citing EX1014, ¶¶59, 70, 72, and 76), which, as explained above, do not disclose distinct signaling interfaces.

training status for the second interface), but fails to demonstrate that Hazelzet’s “interface circuitry” or any other combination of the alleged prior art actually includes the two, distinct signaling interfaces that are recited in the claims.

To start, Petitioner does not explain what a POSITA would have understood the term “interface” or “signaling interface” to mean. Pet., 23; *see* EX1003, ¶¶159-162; 37 C.F.R. § 42.104(b)(3)-(4) (a petition “must identify ... [h]ow the challenged claim is to be construed” and “[h]ow the construed claim is unpatentable”). It is unclear how Petitioner construes the term “interface” and what, specifically, in the proposed combinations that Petitioner asserts satisfies the claimed second signaling interface, which is fatal to the Petition. *See Intelligent Bio-Systems*, 821 F.3d 1369 (petitioners must “make their case in their petition”); *Corephotonics, Ltd. v. Apple Inc.*, 84 F.4th 990, 1001 (Fed. Cir. 2023) (the petition must “provide an understandable explanation ... of the patentability challenges.”)

To the extent Petitioner is relying on Hazelzet’s alleged “interface circuitry,” Petitioner fails to explain how the same, unspecified “interface circuitry” satisfies both the claimed “first signaling interface” and “the second signaling interface,” which must be “distinct” from each other. *See Amazon.com, Inc. v. Nokia Techs. Oy*, IPR2024-00920, Paper 10 at 16 (P.T.A.B. Feb. 5, 2025) (finding that two distinct claim features were not satisfied by same prior-art element). It does not, and Hazelzet fails to teach or suggest two distinct signaling interfaces.

To the extent Petitioner is alleging that something other than Hazelzet's alleged "interface circuitry" satisfies the claimed second signaling interface, Petitioner has not identified anything in any of the references that suggest using a distinct interface for training operations. Even if the draft JEDEC proposal, Buchmann, and Wang disclose training operations, Petitioner fails to explain why a POSITA would have understood these training operations, as applied to Hazelzet's "interface circuitry," demonstrate a second, distinct signaling interface. Petitioner presupposes the existence of the second signaling interface and focuses on how the alleged second signal interface would operate instead of demonstrating that the art/combinations teach the second, distinct signaling interface. *See* Pet., 67-68 (asserting, without explanation, that a POSITA would have understood there to be a second signaling interface).

Dr. Alpert's testimony on this point largely tracks the arguments in the Petition and thus does not help Petitioner. *See id.*, 68 (citing EX1003, ¶¶256-257). Like Petitioner, he does not explain what a POSITA would have understood the term "interface" or "signaling interface" to mean. *See id.*, ¶¶256-257. He does not identify distinct signaling interfaces in the references. *See id.* Nor does he explain why a POSITA would have allegedly understood that adding training operations to Hazelzet's "interface circuitry" teaches or renders obvious a second, distinct signaling interface. *See id.* The remainder of his testimony on this point focuses on

what, in each of the JEDEC proposal-, Buchmann-, and Wang-combinations, would be communicated from the alleged second signaling interface, not what teachings show a distinct, second signaling interface. *See id.*, ¶¶258-261.

4. The Kim Grounds (4-6) do not address the independent claims and thus do not demonstrate that the claimed “second signaling interface” would have been obvious.

The Petition lists claims 1-20 as the challenged claims in Grounds 4-6, which tack Kim onto the combinations in Grounds 1-3. Pet., 4. The Petition, however, includes only a short discussion of Grounds 4-6 in which Petitioner does not explain how the proposed combinations (that include Kim) teach any of the elements of the independent claims. *See* Pet., 110-115. Specifically, Petitioner presents a general discussion of Kim and how Kim might be combined with the other references, but does not mention the elements of the independent claims. *See id.* Critically, Grounds 4-6 do not purport to address the two distinct signaling interfaces that are recited in the independent claims and that are missing from Grounds 1-3. Rather, claim elements [2.a] and [2.b.2]¹⁰ are the only claim elements

¹⁰ [2.a]: “The memory subsystem of claim 1, wherein the memory subsystem controller includes a transistor having an open drain coupled to the open drain output, a source coupled to ground, and a gate”; [2.b.2]: “wherein the memory subsystem controller is further configurable to apply a second signal related to one

that Petitioner identifies and specifically discusses in Grounds 4-6. Pet., 115. Thus, there is no basis to institute review of the independent claims in Grounds 4-6.

The Petition's citations to Dr. Alpert's declaration confirm that Grounds 4-6 do not include the independent claims. The Petition cites paragraphs 214-223 and 292-303 of Dr. Alpert's declaration. Pet., 110-115. Paragraphs 214-223 relate generally to Dr. Alpert's/Petitioner's proposed reasons to combine the references, not to the specific claim mapping that begins in paragraph 224.¹¹ And paragraphs 292-303 relate to Dr. Alpert's analysis of claim 2. EX1003, ¶¶292-303.

Accordingly, the addition of Kim in Grounds 4-6 does not cure the deficiencies of Grounds 1-3 with respect to the independent claims.

or more parts of the initialization operation sequences to the gate of the transistor during the initialization operation.”

¹¹ Notably, Dr. Alpert's heading for Section V.C reads: “Claims 1-20 are obvious in light of Hazelzet in combination with either JEDEC, Buchmann, or Wang, *with or without Kim for certain claims*,” EX1003, page 193 (above paragraph 224) (emphasis added), and does not rely on Kim until addressing claim 2 in paragraph 290.

B. Grounds 1 and 4 also fail because Petitioner fails to demonstrate a reasonable likelihood that the draft JEDEC proposal was publicly accessible before the critical date (either June 2009 or June 2010).

Grounds 1 and 4 should be denied for the additional reason that Petitioner fails to establish that the draft JEDEC proposal (EX1015) was publicly accessible before the critical date of the '319 patent.

The “touchstone” of whether a reference constitutes a printed publication is “public accessibility.” *SRI Int’l, Inc. v. Internet Sec. Sys., Inc.*, 511 F.3d 1186, 1194 (Fed. Cir. 2008). Public accessibility, in turn, requires something “more than” mere “technical accessibility” or the possibility that “someone could theoretically find” a reference. *Samsung Elecs. Co. v. Infobridge Pte.*, 929 F.3d 1363, 1369 (Fed. Cir. 2019). Rather, it requires that the reference be “disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence can locate it.” *SRI*, 511 F.3d at 1194 (cleaned up).

The patent challenger bears the burden to show public accessibility. *See B/E Aerospace, Inc. v. C & D Zodiac, Inc.*, 709 F. App’x 687, 698 (Fed. Cir. 2017). “[T]he petition must identify, with particularity, evidence sufficient to establish a reasonable likelihood that the reference was publicly accessible before the critical date of the challenged patent and therefore that there is a reasonable likelihood that

it qualifies as a printed publication.” *Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-01039, Paper 29 at 13-14 (P.T.A.B. Dec. 20, 2019) (precedential).

Petitioner has not met its burden here. The draft JEDEC proposal was not publicly accessible before the June 2009 provisional application filing date or the June 2010 filing date of the earliest non-provisional application to which the ’319 patent claims priority. In fact, Petitioner’s own evidence establishes that the proposal was an internal, password-protected document only ever distributed and accessible to its authors. The proposal therefore does not qualify as a printed publication, and the Board should reject Petitioner’s unpatentability Grounds which rely on the proposal (Grounds 1 and 4).

1. The draft JEDEC proposal was never adopted nor published, and was accessible only to the authoring committee.

Although Petitioner glosses over the point, the draft JEDEC proposal is not an issued standard at all. Rather, as the face of the document makes clear, it is an internal “*proposed*” chapter authored by a twenty-three member JEDEC subcommittee (the JC-40.4 subcommittee on Registered & Fully Buffered Memory Support Logic within the JC-40 committee on Digital Logic) for inclusion in a

standard. EX1015, 1-3; EX1048, 7-8; EX1049, 7.

JEDEC Solid State Technology Association 2500 Wilson Boulevard Arlington, Virginia 22201-3834 TEL: (703) 907-7560 FAX: (703) 907-7583 http://www.jedec.org EIA Electronic Industries Alliance COMMITTEE LETTER BALLOT COMMITTEE: JC-40.4 Committee Item Number: 142.35 Subject: LRDIMM DDR3 Memory Initialization Chapter Proposal Background: At September '09 JEDEC meeting in San Jose, "motion by Intel and seconded by Montage to authorize the TG to issue one or more ballots on the items listed on pages 3 and 4 of the presentation that have item numbers, have been shown in the committee and for which the TG has reached a consensus". The motion passed by acclamation. This ballot proposal is to specify LRDIMM DDR3 Memory Initialization, and has been approved by DDR3 MB TG on 11/09/2009. Keywords: DDR3, MB, Memory Buffer, LRDIMM, Initialization Ballot Template Version draft rev. F © JEDEC 2005	Item 142.35 6 Initialization 6.1 Initialization Overview The sequence of steps below is an overview of the power-up initialization of the Memory Buffer. Figure 1 shows a graphical representation of the same steps. Detailed requirements for each step are provided in the following sections. Note that the sequence below does not distinguish between host HW and host SW (i.e. BIOS). 1. Power-Up (Same requirements as §82) a. Ramp of voltage rails b. Generation of stable clock c. De-assertion of RESET# 2. Determination of DIMM configuration via SPD read out 3. CA Clock to CMD Training¹ a. Sets the optimal phase of the clock to CA and Cnl signals. 4. Memory Buffer Initialization a. Host initializes buffer control words 5. DRAM Initialization a. Host initializes DRAM MRS registers 6. DRAM ZQ Calibration a. Host issues ZQCAL command to DRAM 7. Memory Buffer to DRAM Interface Training a. Done by the buffer, triggered by host ECW write b. Write Leveling c. Read Enable training d. Read/Write DQ/DQS training² Host can wait for a per-physical rank time-out of tCAL=10ms or periodically poll the buffer via SMBus CSR read or wait for ERRROUT#. 8. Host to Memory Buffer Interface Training³ a. Done by host 9. Normal Operation ¹This step is optional for the MB but may be done by some platforms. No special support by the MB is required. ²This step is optional for the MB but may be required for stable DIMM operation. ³This step is optional for the MB but may be done by some platforms. Page 3 of 9
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EX1015, 1, 3 (red boxes added).

This particular version of the proposal was never adopted by JEDEC—rather, a modified version was adopted as part of a standard that issued years later in 2014. *See* EX2001; EX2002, 15 (meeting minutes showing that editorial changes were requested). The proposal is thus akin to a draft section of a decision from this Board—i.e., “not the type of document that [is] meant for public release.” *Google Inc. v. Art+Com Innovationpool GmbH*, IPR2015-00788, Paper 7 at 9-11 (P.T.A.B. Sept. 2, 2015) (finding that a technical report was not publicly accessible in part because it included a prominent “DRAFT” marking).

As explained below, Petitioner's own evidence as to how the proposal was created and distributed confirms this commonsense understanding.

a. Petitioner's JEDEC consulting declarant Ms. Carlson testifies that the draft JEDEC proposal (also referred to as Item Number 142.35) was included in a November 2009 "Letter Ballot" that was distributed *only to the couple dozen members of the JC-40 committee* so that they could comment and vote on the proposal. EX1051, 1; EX1050, ¶¶7-8; EX1055, ¶¶6-7; EX1048, 16-17; EX1049, 16; EX1037, 21.

		Committee Letter Ballot JC-40.4-09-320 Item 142.35 Distributed: 11 Nov 2009 Expiring: 03 Dec 2009	
SPONSOR:	Super Micro Computer Inc., represented by John Smolka, johns@supermicro.com , (408) 390-8302 N/A		
DISTRIBUTION:	Formal Vote: JC-404 Non voting committees: JC-40 (Information and Comments)		
Eng. No.:	AS 90577		
Item No.:	142.35		
SUBJECT:	LRDIMM DDR3 Memory Initialization Chapter Proposal		
BACKGROUND:	At September 09 JEDEC meeting in San Jose, motion by Intel and seconded by Montage to authorize the TG to issue one or more ballots on the items listed on pages 3 and 4 of the presentation that have item numbers, have been shown in the committee and for which the TG has reached a consensus. The motion passed by acclamation. This ballot proposal is to specify LRDIMM DDR3 Memory Initialization, and has been approved by DDR3 MB TG on 11/09/2009.		
PATENTS:	No known patent issues on the sponsor's part		
ATTACHMENT:	Download NB09320-.pdf		
KEYWORDS:	DDR3, MB, Memory Buffer, LRDIMM, Initialization		
[Top] 			

EX1051, 1 (red boxes added).

The Letter Ballot contains a “Download NB09320-.pdf” link which, when clicked, takes committee members to an internal JEDEC system referred to as a “Voting Machine,” where they can access and vote on the proposal. EX1050, ¶¶7-8; EX1055, ¶7; EX1092, 19:3-9; EX2003, ¶¶11-18.

JEDEC’s Voting Machine stores draft proposals on *internal* JEDEC servers, and those proposals are accessible *only* to members of the JEDEC committee from which the proposals originate. EX1092, 16:18-17:7, 18:23-21:17. To access a particular ballot and proposal, committee members must sign in using their login and password credentials. EX1092, 16:24-17:7, 19:3-9, 20:14-21:23; EX2003, ¶¶11-18. As former JEDEC members—including Petitioner’s own declarant, Dr. Halbert—testified, ballots were treated as confidential within their respective committees, and it was “contrary to JEDEC policy” to “distribute a pending committee ballot to a non-JEDEC entity.” EX1091, 23:3-18; EX2003, ¶¶20-21 (another former JEDEC member testifying that “pending committee ballots could not be distributed *outside* of the relevant group of JEDEC members”). The JEDEC Manual of Organization and Procedure, which Petitioner also submits as an exhibit, confirms that such documents are “for internal use” only—external use is permitted only “at the discretion of the Board.” EX1049, 15; EX1048, 15-16.

Ultimately, while the non-abstaining members of JC-40.4 voted to approve the draft JEDEC proposal, EX1050, ¶¶8-9; EX1055, ¶8, EX1037, 21-22, the

proposal was modified before being included in the standard that JEDEC ultimately adopted. EX2001; EX2002, 15. For that reason, the proposal was never published (either on JEDEC’s website or through some other channel). As the JEDEC Manual makes clear, “publication” cannot occur until *after* a proposal “has successfully completed” all steps in the promulgation process, which in turn requires JEDEC’s Board and legal counsel to approve the proposal. EX1049, 14, 20; EX1048, 14-15, 20-21. Such approval was never granted for the draft JEDEC proposal at issue here.

b. Petitioner sweeps all of these details under the rug, but they show that the JEDEC proposal was an internal, password-protected working draft that only its authors ever saw or had access to—i.e., exactly the type of document that has been found in other cases *not* to be publicly accessible.

In *Infobridge*, for example, the Federal Circuit addressed a “working draft” of a video coding standard, which the petitioner (Samsung) argued was publicly accessible in part because it was shared among “more than 250 members” of the organization. 929 F.3d at 1365-66, 1370-71. The Federal Circuit rejected that argument, holding that “[a] work is not publicly accessible if the only people who know how to find it are the ones who created it.” *Id.* at 1372. The members who had received a copy of the proposal “were part of ongoing, collaborative efforts to draft” the document, and so their access was not probative of public accessibility.

Id. The inquiry, the court emphasized, must “focus on the knowledge of those *outside* the authoring organization”—“[t]o hold otherwise would ... depart from what it means to publish something.”¹² *Id.*

Another case involving Samsung is also on point. In *Samsung Electronics Co. v. Rembrandt Wireless Technologies, LP*, IPR2014-00890, Paper 8 (P.T.A.B. Dec. 10, 2014), the Board addressed an “unapproved draft” of a proposed IEEE standard. *Id.* at 5. Notice of the proposal was sent to the working group’s listserv, and members could access a password-protected version of the document on the group’s server. *Id.* at 3-4. The Board found that the proposal was not publicly accessible, in part because “[p]rovision of a document to co-authors ... does not constitute dissemination, or availability, of the document to the public.” *Id.* at 10.

That same conclusion is warranted here. As in *Infobridge* and *Rembrandt*, the JEDEC proposal is an internal draft document distributed and accessible only

¹² The Federal Circuit vacated the Board’s finding that the draft proposal was not publicly accessible because the Board did not adequately analyze the lead author’s email to the organization’s listserv. 929 F.3d at 1374-75. On remand, however, the Board reaffirmed that the working draft was not publicly accessible, and Samsung ultimately dismissed its appeal. *See Samsung Elecs. Co. v. Infobridge Pte*, IPR2017-00099, Paper 43 (P.T.A.B. Nov. 13, 2020).

among its authors. As in *Rembrandt*, moreover, the proposal is password protected in part to prevent individuals outside JEDEC from gaining access. It is not a printed publication.

c. Petitioner nevertheless points to two decisions, EX1108 and EX1109, in which the Board held, for purposes of institution, that the draft proposal here was publicly accessible and rejected the logic in *Rembrandt* as inconsistent with the Federal Circuit's decision in *GoPro, Inc. v. Contour IP Holding LLC*, 908 F.3d 690 (Fed. Cir. 2018). Those institution decisions, however, are non-binding and were rendered without the benefit of the extensive record that the parties subsequently developed, which demonstrates that the draft JEDEC proposal was *not* publicly accessible. And notably, the Board did not address the issue in its Final Written Decisions in those IPRs. *See* EX1102, 9 n.4, 15; EX1103, 9 n.4, 15.

Nor is *Rembrandt* inconsistent with *GoPro*. In *GoPro*, the Federal Circuit held that a catalog distributed to hundreds of trade-show attendees was publicly accessible even though the trade show was not open to the general public. 908 F.3d at 694-95. But importantly, none of the attendees who received the catalog was involved in its creation. Here and in *Rembrandt*, by contrast, the draft proposal was only ever received and accessible by its creators. A long line of Federal Circuit precedent—including *Infobridge*—establishes that such documents are *not* publicly accessible. *See, e.g., SRI*, 511 F.3d at 1196-97 (vacating summary judgment of

invalidity where a working draft of an SRI paper was only available on SRI's FTP server and was not "accessible to anyone other than the peer-review committee"); *ResQNet.com, Inc. v. Lansa, Inc.*, 594 F.3d 860, 865-66 (Fed. Cir. 2010) (affirming no public-accessibility finding where the manual at issue was marked as "an unpublished work"); *Northern Telecom, Inc. v. Datapoint Corp.*, 908 F.2d 931, 936 (Fed. Cir. 1990) (reports describing military system were not publicly accessible where they were "distributed to approximately fifty persons or organizations involved in" the project and were "not for public release").

Thus, the Board's non-binding institution decisions in prior cases should not control the outcome here. The draft JEDEC proposal is simply not a printed publication within the meaning of 35 U.S.C. § 102.

2. Petitioner's contrary arguments are legally flawed and unsupported by its own evidence.

Rather than presenting a single, cogent theory of public accessibility, Petitioner adopts a kitchen-sink approach, asserting a patchwork of unrelated arguments—based almost entirely on evidentiary records from different IPRs which Petitioner improperly incorporates by reference—in hopes that one of them sticks. Many of Petitioner's arguments are irrelevant to the public-accessibility inquiry or belied by Petitioner's own evidence. All of Petitioner's arguments fail.

- a. **Petitioner’s “dissemination” theory of accessibility fails.**
 - i. **At most, Petitioner has shown that the draft JEDEC proposal was accessible to authoring committee members, not to interested members of the relevant public.**

Petitioner’s primary argument is based on “dissemination”—i.e., that the draft JEDEC proposal was actually “disseminated to JEDEC’s JC-40 committee members” by November 2009. Pet., 38. According to Petitioner, the proposal was distributed via email in advance of the vote and thus was publicly accessible as a matter of law. *Id.* This argument is flawed on multiple levels.

To start, none of Petitioner’s evidence supports the notion that the draft JEDEC proposal was ever emailed to committee members. At best, the evidence establishes that JEDEC had an “E-mail distribution,” generally. EX1075, 1. But Petitioner’s witness testified in other IPRs that the draft JEDEC proposal at issue here was never distributed through that channel. EX1092, 19:11-21:2; EX2003, ¶¶11-18. Rather, as explained above, the proposal was distributed via an internal Voting Machine requiring login credentials. *See supra* Section VI.B.1; *see also* EX1049, 16 (JEDEC Manual stating that “committee ballots shall be distributed ONLY by the JEDEC office with Board-approved electronic distribution methods”); EX1048, 16-17.

In any event, regardless of *how* the proposal was distributed to JC-40 committee members, the fact remains that the proposal was *only* ever distributed—and only ever accessible to—those members. As explained above, the record evidence establishes that it was “contrary to JEDEC policy ... for a JEDEC committee member to distribute a pending committee ballot to a non-JEDEC entity.” EX1091, 23:3-18; *see also id.*, 18:3-25 (“[I]f a JEDEC committee member ... wanted to send a ballot [to a third party], ... you’d need prior permission from JEDEC.”). Indeed, Petitioner seems to concede that nobody other than the authoring committee received copies of the proposal. *See* Pet., 38 (arguing only that the proposal was “disseminated to JEDEC’s JC-40 committee members” and no one else).

As *Infobridge* makes clear, “[a] work is not publicly accessible if the only people who know how to find it are the ones who created it.” 929 F.3d at 1371-72. That ends the inquiry.

ii. Petitioner’s speculation about interested members of the relevant public joining JC-40 to gain access to the draft JEDEC proposal is contradicted by the evidence and, in any event, legally irrelevant.

Resisting this conclusion, Petitioner asserts that anyone could “easily” sign up to become a JC-40 member and thereby gain access to the proposal. Pet., 36-37, 39. Even if that were true as a technical matter, that is not enough to prove public

accessibility, which “requires more than technical accessibility.” *Acceleration Bay, LLC v. Activision Blizzard Inc.*, 908 F.3d 765, 773 (Fed. Cir. 2018). Public accessibility requires a showing that an interested member of the relevant public could have practically accessed the document *exercising reasonable diligence. Id.*

Petitioner has not made such a showing here. As an initial matter, Petitioner’s assertion that anyone could join JEDEC is flatly wrong. As JEDEC’s own website stated in 2009, “[m]embership is *company based, not by individual.*” EX1073, 1 (emphasis added). And not just any company can join, but only companies “that manufacture semiconductor products, or provide related services or equipment” and that pay the required \$4,000-per-year fee. *Id.*; EX2003, ¶8; EX1073; *see also* EX1092, 27:23-28:17 (Ms. Carlson agreeing that, to join JEDEC, “you have to be in a company that meets the requirements”); EX1050, ¶5. Thus, as Petitioner itself conceded in other IPRs involving the same JEDEC proposal—and exactly contrary to what Petitioner argues here—“an interested individual can’t just join JEDEC.” EX2004, 23:23-24:2; EX2003, ¶8.

In fact, JEDEC’s membership restrictions would presumably exclude Petitioner’s *own expert*—an independent consultant who analyzes microprocessor technology and testifies in patent cases—from becoming a member. The fact that Petitioner’s expert could not access the draft JEDEC proposal proves that the proposal is not in fact accessible to interested members of the relevant public.

Even if individuals could join JEDEC, Petitioner does not explain how an individual would know to join the JC-40 committee to gain access to the draft proposal at issue here without “already kn[owing] what to look for and where to look for it.” *Infobridge*, 929 F.3d at 1372. But that improperly assumes the very proposition that Petitioner seeks to prove. *See Infobridge*, IPR2017-00099, Paper 43 at 25 (finding standard JCT-VC proposal not publicly accessible where Samsung failed to demonstrate that “interested artisans outside of the JCT-VC, exercising reasonable diligence, *would* have known about the JCT-VC listerv, the need to join the listserv to gain access to documents of interest to those in the field, and the procedure to join or subscribe to the listserv”).

Petitioner also has a timing problem. The Letter Ballot for the draft JEDEC proposal was distributed to JC-40 on November 11, 2009, and expired three weeks later, on December 3, 2009. EX1037, 21; EX1051, 1. Petitioner does not explain how a person could have known to become a member of the JC-40 committee *during the exact three-week period* when the proposal was subject to a vote. Nor does Petitioner proffer any evidence that subsequently joined committee members would have access to expired ballots, or that the JEDEC proposal was even indexed and cataloged in the Voting Machine so that it could be found after the vote. *See SRI*, 511 F.3d at 1197 (no public accessibility where “the record offer[ed] no evidence” that interested members of the relevant public would look “for an

unpublicized paper with a relatively obscure filename”); *Nokia Corp. v. Ipcor*, No. IPR2021-00533, Paper 10 at 30 (P.T.A.B. Aug. 12, 2021) (“[T]here is no supporting testimony or record evidence that a person of ordinary skill in the art was aware of the nomenclature or would have understood the contents of the document based upon it.”).

It bears repeating that the applicable standard here is one of *reasonable* diligence. Yet Petitioner’s theory would require an interested member of the relevant public to (i) know about the existence of this draft proposal; (ii) know which JEDEC committee had access to it; (iii) form a company that qualifies for membership in JEDEC; and (iv) join the committee to obtain a copy of the draft (all at the right time, no less). That would require extraordinary diligence, if it is even possible at all. More fundamentally, it presupposes that the searcher would know exactly what they were looking for and where to look, which fatally undermines any conclusion that the draft was publicly accessible.

iii. General knowledge of the subject matter described in the draft JEDEC proposal does not establish public accessibility of the proposal itself.

Trying a different tack, Petitioner argues that, regardless of whether the draft JEDEC proposal itself was publicly accessible, the “contents” of the proposal were discussed and “quickly disseminated by ‘word-of-mouth’ throughout the entire industry.” Pet., 39 (citing *M & K Holdings, Inc. v. Samsung Elecs. Co.*, 985 F.3d

1376, 1380-83 (Fed. Cir. 2021)). Along these same lines, Petitioner points to a *different* document, Exhibit 1039, which Petitioner contends is a PowerPoint “related to” the JEDEC proposal and which was “discussed” within JC-40 before the proposal itself was disseminated. *Id.*, 38-39. These arguments are also flawed.

Petitioner’s assertion that the contents of the draft proposal were freely discussed is belied by the record, which establishes that there was an expectation of confidentiality within JEDEC committees as to items subject to a vote. *Supra* Section VI.B.1. The document itself may not have been marked confidential, to be sure, but “[t]he mere fact that there was no legal obligation of confidentiality” is insufficient alone to establish public accessibility. *Cordis Corp. v. Boston Sci. Corp.*, 561 F.3d 1319, 1333 (Fed. Cir. 2009). Rather, “professional and behavioral norms” can give rise to an expectation of confidentiality. *Id.* at 1333-34. That is the case here.¹³

¹³ Petitioner contends that proposed standards “were copyrighted but not confidential[.]” Pet., 36 n.6 (citing *Weber, Inc. v. Provisur Techs., Inc.*, 92 F.4th 1059, 1062, 1068-69 & n.6 (Fed. Cir. 2024), and *The New York Times’* copyright notice). Not quite. As the discussion above makes clear, proposed standards subject to vote are themselves part of ballots, which were treated as confidential by JEDEC committee members. In any event, even if Petitioner were correct, it is still

In any event, mere knowledge that a document exists (or knowledge of some of the document’s contents) does not make the *document itself* publicly accessible, especially when that document is shielded behind password protection and accessible only to its creators. *See Infobridge*, 929 F.3d at 1370 (rejecting argument that draft standard proposal was publicly accessible simply because the subject matter was discussed at an earlier conference); *Nokia*, IPR2021-00533, Paper 10 at 28 (disseminating a “meeting report” that “attached [a] list of technical documents” including a standards proposal did not make the proposal publicly available).

M & K is not to the contrary. In that case, “full copies” of the articles at issue were “made available” at various task force meetings “attended by between 200 and 300 interested persons,” where the articles were discussed “without any expectation of confidentiality[.]” 985 F.3d at 1380. Quite the opposite here—the draft JEDEC proposal was made available *only* to JC-40 members under an expectation of confidentiality. And, contrary to Petitioner’s assertion otherwise, the

stuck with the problem that those having access to the proposal (JC-40 members) are *collaborators* on the document itself (as in *Infobridge*), not passive consumers of the document (such as the recipients of the product manuals in *Weber* or subscribers to *The New York Times*).

Federal Circuit in *M & K* did *not* find “‘word of mouth’ dissemination sufficient” to establish public accessibility. Pet., 39. Rather, the court noted that skilled artisans could have learned of the task force’s *website* “by word of mouth,” and that the website “hosted downloadable copies” of the articles. *Id.* By contrast, as explained below, *infra* Section VI.B.2.b, JEDEC’s website does *not* host downloadable copies of draft proposals.

As for the PowerPoint (Exhibit 1039), Petitioner’s attempt to treat it as an extension of the draft proposal for purposes of the public-accessibility inquiry is improper. *See Infobridge*, 929 F.3d at 1370; *Kyocera Wireless Corp. v. ITC*, 545 F.3d 1340, 1352 (Fed. Cir. 2008) (refusing to treat a collection of related specifications as a single “document that can be assigned a single prior art date of creation”). In any event, Petitioner’s argument suffers from the same flaw as Petitioner’s primary argument: the PowerPoint was accessible only to JC-40 members, and a document’s accessibility only among its authors does not make it publicly accessible.

Finally, citing *Qualcomm Inc. v. Apple Inc.*, 24 F.4th 1367 (Fed. Cir. 2022), Petitioner states in passing that the draft JEDEC proposal and PowerPoint are “admitted prior art” simply because the ’319 patent’s provisional application refers to a “recent proposal in JEDEC.” Pet., 34 (citing EX1008, 22). Even to the extent the provisional’s reference to a “recent proposal” could be interpreted as referring

to the draft JEDEC proposal here—which had not even been distributed to JC-40 members by the time the provisional was filed in September 2009—Petitioner’s argument and reliance on *Qualcomm* is profoundly misplaced.

Qualcomm holds only that statements in a patent application admitting that certain concepts were known in the art may be used in an IPR to “provide a factual foundation as to what a skilled artisan would have known at the time of the invention” (such as “furnishing a motivation to combine” or “supplying a missing claim limitation”). 24 F.4th at 1376. But *Qualcomm* says nothing about using such statements to establish *the public accessibility* of references that discuss those concepts. In fact, the Federal Circuit has suggested that such statements do *not* have any bearing on the public-accessibility inquiry. *See ResQNet.com*, 594 F.3d at 866 (holding that patentee did not convert unpublished manuals “into printed publication prior art by including them with the IDS submitted to the PTO”). Petitioner’s passing argument on this score should be rejected.

b. Petitioner’s “indexing/cataloging” theory of accessibility also fails.

Petitioner next asserts that “JEDEC publicized information about JC-40 and its meetings on the Internet,” and that “JEDEC indexed its documents by keywords” and “provided a search feature on its website to find documents.” Pet., 37-38. Although unclear, Petitioner seems to ask the Board to infer that the particular draft JEDEC proposal at issue here was indexed and searchable on

JEDEC's internal servers and website. That inference is unfounded.

When evaluating public accessibility of a reference on a website or online repository, there must be “some evidence that a person of ordinary skill could have reasonably found the website and then found the reference on that website.”

Infobridge, 929 F.3d at 1369. And where indexing is concerned, the “ultimate question is whether the reference was available to the extent that persons interested and ordinarily skilled in the subject matter of art, exercising reasonable diligence, can locate it” as of the alleged priority date. *Acceleration Bay*, 908 F.3d at 774 (cleaned up). Petitioner has not made such a showing here.

To the extent Petitioner suggests that the proposal was indexed and cataloged on JEDEC's internal servers, that argument suffers from the same flaw described above—the proposal is accessible only by JC-40 committee members. *See* EX1092, 16:18-17:7 (Ms. Carlson acknowledging that “[o]nly JC-40 members would have access to” the draft proposal “on JEDEC's servers”).

To the extent Petitioner suggests that the proposal was indexed and searchable on JEDEC's website, it is wrong. 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. Thus, there could be no way for a skilled artisan to find documents using keywords as of 2009. That the website is searchable today (or even was searchable at some time in the past) is

“irrelevant to public accessibility in the relevant timeframe.” *Nokia*, IPR2021-00533, Paper 10 at 30-31.

Even if search functionality had been available in 2009, Petitioner proffers no information or evidence from which the Board could possibly assess the reliability of such functionality. Petitioner does not explain, for example, how the search worked or how keywords were generated, or even how many documents were available on the website as of 2009. Thus, there is “insufficient evidence of record to support a finding that a person of ordinary skill in the art” could have located the proposal using JEDEC’s website. *Acceleration Bay*, 908 F.3d at 773.

Still further, even if *some* documents were meaningfully cataloged, indexed, and searchable on JEDEC’s website as of 2009, Petitioner has not shown that the particular JEDEC proposal at issue here was. And, in fact, Petitioner’s evidence confirms it was *not*. The JEDEC Manual states that *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. EX1049, 2, 20; EX1048, 2, 20-21; EX2003, ¶9. As explained at length above, the draft JEDEC proposal here was *not* approved by the Board or legal counsel. It therefore was not accessible on JEDEC’s website. Indeed, Petitioner does not proffer any evidence that the proposal was ever viewed or downloaded from the website or from anywhere else. *See Blue Calypso*, 815

F.3d at 1349 (finding that the absence of such evidence supported the Board’s finding of no public accessibility).

As a last effort, Petitioner suggests that even if someone could not find the JEDEC proposal online, she “could simply call the JEDEC office to help [her] find” it. Pet., 38. Not so. Patent Owner had a third-party researcher contact JEDEC to obtain a copy of the draft proposal at issue here, and a JEDEC representative denied the request, confirming that “JEDEC committee and task group materials and proposals, including but not limited to presentations, ballots, *draft versions of standards, etc. are restricted to JEDEC members.*” EX2006 (emphases added). JEDEC’s response confirms that the draft JEDEC proposal is not publicly accessible and undermines Patent Owner’s speculation to the contrary.

c. Petitioner’s reliance on JEDEC’s “prominence” is misguided.

Finally, Petitioner insists that JEDEC is a “highly prominent” organization and emphasizes that anyone could attend its meetings. Pet., 35. In a similar vein, Petitioner mentions in passing that the JC-40.4 vote was held “at a publicly accessible resort in Maui,” as if to suggest that “anyone could walk in” from off the street. *Id.*, 35, 38. This line of argument is a red herring.

Under Petitioner’s logic, all internal and confidential documents created by Samsung itself would be publicly accessible merely because Samsung is a well-known company. That conclusion is untenable and legally incorrect. At most,

JEDEC’s prominence as an organization establishes general awareness of JEDEC (and perhaps its website). But it is not enough to show that an interested member of the relevant public would have known about JEDEC or “could have reasonably found [its] website”—rather, Petitioner must also show that such a person would have “found *the reference* on that website.” *Infobridge*, 929 F.3d at 1369, 1370 (emphasis added) (rejecting Samsung’s similar argument). For all the reasons explained above, Petitioner has not made such a showing.

Nor is it true that interested members of the relevant public had unfettered access to JEDEC meetings. As the very case to which Petitioner cites makes clear, “nonmembers must receive an invitation to attend” such meetings. *Rambus Inc. v. Infineon Techs. AG*, 318 F.3d 1081, 1085 (Fed. Cir. 2003); *see also* EX1071 (JEDEC meeting notice requiring nonmembers to “contact the chairman of the committee”); EX1048, 10 (“All JEDEC committee and subcommittee meetings are open to members, their designated alternates, and guests invited by the committee or subcommittee chairperson.”); EX1049, 9; EX2003, ¶9 (“In 2009, JEDEC meetings were closed to the public,” and “JEDEC committee and subcommittee meetings are only open to members of the specific committee or subcommittee ...”).

Lastly, even if the Maui resort at which the vote on the draft JEDEC proposal took place was open to the public, Petitioner has not shown that the *vote*

itself was open to interested members of the public. *See Rembrandt*, IPR2014-00890, Paper 8 at 8 (finding that draft standard proposal was not publicly accessible where Samsung failed to show that a meeting in which the proposal was discussed “was advertised or otherwise announced to the public,” or “how members of the potentially interested public would have been made aware of these meetings”). That a resort is publicly accessible does not mean that any meeting taking place there is.

* * *

In the end, Petitioner has not met its burden to establish that the draft JEDEC proposal was publicly accessible as of the '319 patent's priority date or actual filing date. Accordingly, the proposal should be disqualified as prior art, and the Board should reject Petitioner's Grounds 1 and 4.

C. Grounds 2 and 5 also fail because Petitioner relies primarily on prior Board decisions, instead of explaining how the combinations allegedly render the claims obvious.

Grounds 2 and 5 should be denied for the additional reason that Petitioner relies primarily on collateral estoppel instead of making the necessary evidentiary showings in its Petition. In these Grounds, Petitioner relies heavily on incorporating by reference from prior Board decisions directed to the related patents (and other evidence in the record) instead of providing fulsome explanations of how the combination of Hazelzet and Buchmann allegedly render

the challenged claims obvious. *See, e.g.*, Pet., 40-41 (addressing motivation to combine), 63 (addressing element [1.d.1]), 67 (addressing element [1.d.2]).

But Patent Owner is not collaterally estopped. *See supra* Section IV. And Petitioner’s reliance on prior decisions related to different claims and its failure to make necessary evidentiary showings in its Petition doom Grounds 2 and 5. *See Canadian Solar*, IPR2024-01039, Paper 13 at 26-28 (“Petitioner does not direct us to any authority establishing that it may rely on findings of ... a Board decision involving different claims from a different patent application to satisfy its evidentiary burdens in this proceeding.”). For this additional reason, the Board should deny Grounds 2 and 5.

VII. IF NECESSARY, THE BOARD SHOULD EXERCISE ITS DISCRETION UNDER *CHEVRON* AND *DEEPER*.

Section “314(a) invests the Director with discretion on the question whether to institute review” *SAS Inst. Inc. v. Iancu*, 138 S. Ct. 1348, 1356 (2018); *see also Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) (“[T]he PTO is permitted, but never compelled, to institute an IPR proceeding.”). The Board’s informative *Chevron* and *Deeper* decisions hold that this discretion may be exercised to deny instituting review when (i) an insufficient number of the proposed grounds of unpatentability that are presented in a petition or (ii) an insufficient number of claims that are challenged in a petition satisfy the threshold for institution (i.e., the reasonable likelihood standard). *Chevron Oronite Co. LLC*

v. Infineum USA L.P., Case IPR2018-00923, Paper 9 (P.T.A.B. Nov. 7, 2018);

Deeper, UAB v. Vexilar, Inc., IPR2018-01310, Paper 7 (P.T.A.B. Jan. 24, 2019).

Here, the Petition raises six Grounds, each of which suffers significant procedural and substantive flaws. None of the Grounds meet the reasonable likelihood standard. But to the extent the Board disagrees on any specific Ground or on any specific claim, it should exercise its discretion under *Chevron* and *Deeper* because it would be an inefficient use of the Board's and the parties' resources to conduct trial on all six Grounds that are raised in the Petition. *See* November 2019 PTAB Consolidated Trial Practice Guide ("CTPG"), 64 ("If a panel determines that a petition meets the standards for institution in relation to fewer than all the challenges presented, or where deficiencies in the petition ... affect only a portion of the challenges presented, the panel will evaluate all the challenges and determine whether, in the interests of efficient administration of the Office and integrity of the patent system, the entire petition should be denied.").

For example, despite previous attempts and a significant expenditure of resources, Petitioner is unable to demonstrate that the proposed JEDEC draft (asserted in Grounds 1 and 4) was publicly accessible before the '319 patent's critical date. *See* Section IV.B. Instituting review would require the parties and the Board to expend additional resources on this lost cause. As another example, because Petitioner fails to present a concise and focused mapping of the claim

elements to the references (i.e., fails to present its arguments “with particularity,” 35 U.S.C. § 312(a)(3)), Patent Owner and the Board would have to hunt through the dense record to attempt to locate and address Petitioner’s theories of unpatentability. Digging through the evidence and presenting coherent theories of unpatentability are Petitioner’s burden, not the Board’s or Patent Owner’s. Compounding the case for the denial, the Patent Office has already considered the same or substantially the same art and arguments presented in the Petition when it initially evaluated the claims of the ’319 patent. *See* Section V.

Given the Board’s limited resources, this case falls squarely into the type that warrants denial of grounds or claims under *Chevron* and *Deeper*, if necessary.

VIII. CONCLUSION

The Petition fails to show a reasonable likelihood that any of the challenged claims is unpatentable as obvious in view of the asserted art and, therefore, the Board should deny institution.

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CERTIFICATE OF WORD COUNT (37 C.F.R. § 42.24(d))

1. This Patent Owner Preliminary Response complies with the type-volume limitation of 14,000 words, comprising 12,225 words, excluding the parts exempted by 37 C.F.R. § 42.24(a)(1).

2. This Patent Owner Preliminary Response complies with the general format requirements of 37 C.F.R. § 42.6(a) and has been prepared using Microsoft® Word 2016 in 14-point Times New Roman font.

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

I certify that the above-captioned **PATENT OWNER PRELIMINARY
RESPONSE UNDER 37 C.F.R. § 42.107(a)** and associated Exhibits 2001-2006
were served in their entireties on February 21, 2025, upon the following parties via
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