

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

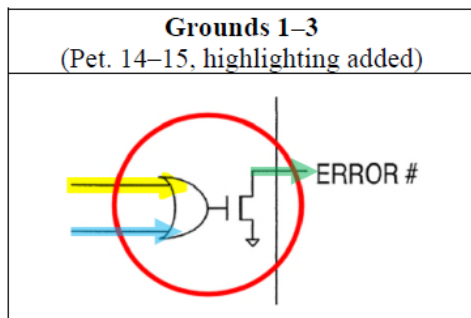
**PATENT OWNER'S SUR-REPLY
TO PETITIONER'S PRE-INSTITUTION REPLY**

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Petitioner's Reply exceeds the authorized scope and misrepresents the Petition. In the guise of a § 325(d) argument, Petitioner argues the '319 claims are not patentably distinct from canceled claims of related patents, attempting to bolster its collateral estoppel arguments. Reply, 1-2. Worse, purporting to address § 325(d), the Reply misrepresents Grounds 1-3 to try to cure Petitioner's fatally flawed arguments for the "second signaling interface." Specifically, it presents the figure below (left) as allegedly depicting Grounds 1-3, citing the Petition at 14-15. But, as shown below (right), the cited figure is a portion of Figure 5 of Kim (EX1017), which Petitioner discussed as "Background Technology." Pet., 14. Kim is *not* part of Grounds 1-3, Pet., 4, POPR, 30-31, and thus the Reply is misleading.



Reply, 2.

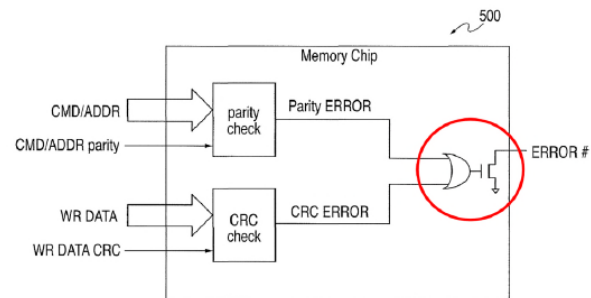


FIG. 5

Pet., 14 (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, 2, 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., the same prior art), POPR, 14-17, which satisfies *Advanced Bionics* (Part 1) for Grounds 1-2, 4-5. POPR, 14-17.

Further, the Examiner *did* consider the Hazelzet-JEDEC and Hazelzet-Buchmann *combinations*. See POPR, 16, 19-20. Petitioner implies that the Examiner allowed the ’319 patent claims without considering certain FWDs of related patents, arguing “[t]he Examiner then allowed the 319 claims ... a few days *before* the ’218 and ’595 [FWDs].” Reply, 3 (citing EX1002, 120). But Petitioner conveniently ignores that, *after* the Notice of Allowance, Netlist filed an RCE along with an IDS citing these FWDs, EX1002, 174-209, which the Examiner considered and which resulted in a *new Notice of Allowance*. EX1002, 210, 222.

The Examiner also considered the *same obviousness theory* (same or substantially same arguments) presented in all six Grounds: adding buffering and training sequences to Hazelzet was obvious. POPR, 13, 17-20. Petitioner advanced this alleged motivation for adding Wang—to “add these *functionalities*” (i.e., “data

buffering and corresponding training”). Pet., 42-44 (emphasis added). Petitioner now stresses that Wang “*expressly* discloses a *motivation* for adding ‘buffering [of] data’ and ‘corresponding training’ to Hazelzet.” Reply, 3 (emphasis and alterations Petitioner’s). But Petitioner identified the same, allegedly non-cumulative motivations for Wang as for JEDEC, i.e., “increase[d] performance and capacity.” Pet., 43; Reply, 3. The Reply also advances a new argument that Wang is not cumulative because it “provides the motivation for a ‘*second signaling interface*’ (e.g., via interface circuit 250) to report training status (blue arrows above).” Reply, 3. This new argument is improper and should be rejected.

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 is a conclusory reference to the Board’s prior decisions for related patents. POPR, 20-21; Pet., 116. Petitioner attempts to recast this argument on reply, piecing together disparate quotes from the Petition: “[t]he Examiner ‘materially erred’ by issuing the 319 claims without ‘any analysis ... of the Board’s decisions’ and while being ‘silent’ about Grounds 1–6.” Reply, 3. 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 ’319 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, 33-40. 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, 47-48.

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, 43 (emphasis added) (quoting EX2024, 23:23-24:2; citing EX2003, ¶8). Only companies meeting certain criteria can join. POPR, 43. 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, 50-51. 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, 51 (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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