

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SKULLCANDY, INC.,

Petitioner

v.

EARIN AB,

Patent Owner

***Inter Partes* Review No. IPR2025-00690
U.S. Patent No. 9,402,120**

PETITIONER'S SUPPLEMENTAL BRIEF

In Patent Owner Earin AB's (Earin) Preliminary Response (Paper No. 8), Earin argues that Petitioner Skullcandy, Inc.'s (Skullcandy) Petition (Paper No. 1) does not "establish that the Bluetooth® Spec. 4.1 was publicly accessible as of the priority date to qualify as a printed publication." POPR., 25–28. Skullcandy requested leave to respond to Earin's allegations, which request was granted. Should Earin persist in its allegations that the Bluetooth® Spec. 4.1 does not qualify as prior art, or has not been shown to be in the prior art, Skullcandy reserves its right to request leave to submit additional evidence on this issue at a later date. *See Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-01039, Paper 29 at 7 (P.T.A.B. December 20, 2019) ("[T]he petitioner may seek leave to file a reply *with further evidence*." (emphasis added)).

At this stage, Skullcandy need only "establish a reasonable likelihood that the reference ... qualifies as a printed publication." *Hulu*, IPR2018-01039, Paper 29 at 13, 16. Skullcandy meets this standard in its Petition and in its submission of the Bluetooth® Spec. 4.1 (Ex. 1006). Earin alleges that "the Petition presents *no evidence* attempting to show that the Bluetooth® Spec. 4.1 was publicly accessible as of the priority date of the challenged patent—the Petition is

entirely silent on this issue.” POPR., 27–28 (emphasis in original).¹ Earin’s allegations are demonstrably false.

Skullcandy states in the Petition, “The Bluetooth® Spec. 4.1 is prior art to the ’120 Patent under at least § 102(a)(1) because the Bluetooth® Spec. 4.1 was published on December 3, 2013, which is before the September 5, 2014, effective filing date of the ’120 Patent.” Pet., 9. By alleging that the Bluetooth® Spec. 4.1 “is prior art” and “was published,” Skullcandy pleads that the Bluetooth® Spec. 4.1 meets all relevant standards for the prior art, including public accessibility.

However, the inquiry does not stop at the allegations made within the Petition. Rather, “the totality of the evidence,” including “the indicia on the face of a reference, such as printed dates and stamps,” must be assessed. *Hulu*, IPR2018-01039, Paper 29 at 17–20. In *Hulu*, the Board found a reference reasonably likely to qualify as prior art even when considered separately from any supporting affidavit because it bore a copyright date, a printing date, an ISBN date, and was from “an established publisher.” *Id.* at 19.

The Bluetooth® Spec. 4.1 bears similar indicia of its public accessibility prior to the September 5, 2014, effective filing date of the ’120 Patent. In the lower

¹ To whatever extent the allegations contained in Earin’s Preliminary Response may suggest that a heightened standard should be applied, or that the evidence to Skullcandy’s Petition cannot be considered, when assessing the prior-art status of a reference, they should be rejected.

left-hand corner of its first page, the Bluetooth® Spec. 4.1 lists a publication date of “03 December 2013.” (Ex. 1006, 1.) The same publication date is found throughout the document in the footer. (Ex. 1006.)

Most tellingly, the Bluetooth® Spec. 4.1 explicitly states on page 3, “This specification can also be found on the official Bluetooth web site: <http://www.bluetooth.com>.” (Ex. 1006, 3.) Thus, not only does the Bluetooth® Spec. 4.1 include a prominent publication date, but it points to its public accessibility, without indication of any restrictions, “on the ... Bluetooth web site.”

The Bluetooth® Spec. 4.1 further states that copyright in the document is owned by the Promoter Members of Bluetooth SIG, Inc., a well-known and recognized industry body². (Ex. 1006, pp. 3–4.) The Bluetooth SIG is an established publisher which promulgates the Specification publicly so that members can design products in compliance with its requirements and non-members can avoid adopting the technology, which is prohibited. *See id.*; *Valve Corp. v. Ironburg Inventions Ltd.*, 8 F.4th 1364, 1374 (Fed. Cir. 2021) (reversing a Board decision that a document was not prior art based in part on its purpose).

These “distinctive characteristics” regarding the circumstances of the Bluetooth® Spec. 4.1’s existence and dissemination, the nature of its owner and

² Both Skullcandy and Earin are members of the Bluetooth SIG.

publisher, as well as the document's similarity to a periodical, show that the document was in the prior art. *See* Fed. R. Evid. 901(b)(4), 902(5), (6).

Accordingly, the indicia contained within the Bluetooth® Spec. 4.1 show that the document was publicly accessible before the critical date.

The foregoing indicia distinguish the Bluetooth® Spec. 4.1 from the reference considered in *Monolithic Power Sys. Inc. v. Volterra Semiconductor LLC*, IPR2020-01351, Paper 20 at 9–11 (P.T.A.B. Mar. 4, 2012), which Earin relies on. In *Monolithic*, the petitioner offered evidence of public accessibility of a separate document, a handbook, that cited to the reference, without evidence about which release of the handbook the evidence referred to. *Id.* To cure such a deficiency, the petitioner in *Monolithic* would have had to change its theory on public accessibility from the handbook to the reference, which it could not do. *Id.*

None of the foregoing is true here. The evidence of public accessibility is found in the Bluetooth® Spec. 4.1 itself, which requires no change to the theory for why the Bluetooth® Spec. 4.1 qualifies as prior art set forth in the Petition. Thus, the Board should decline to follow *Monolith*, and hold that Skullcandy has shown the Bluetooth® Spec. 4.1 reasonably likely qualifies as prior art.

Earin's Preliminary Response further states that the Cooperstock Declaration (Ex. 1007) is "devoid" of allegations relevant to the prior-art status of the Bluetooth® Spec. 4.1. POPR., 28. This too is demonstrably false. Dr. Cooperstock

states in his Declaration that a POSITA would have been aware of Bluetooth and its promulgation and would have known to reference the specification when designing compliant devices. (Ex. 1007, ¶ 68.) The fact that a POSITA was aware of the specification, and would have known to seek it out, including where the Bluetooth® Spec. 4.1 itself states that it is “found,” further shows that the Bluetooth® Spec. 4.1 would have been publicly accessible to a POSITA.

Finally, only one ground (Ground 3) of the three grounds presented in Skullcandy's Petition relies on the Bluetooth® Spec. 4.1. Pet., 9. Therefore, the Petition can and should be granted based on alternative meritorious grounds presented therein, even if the Board finds that the Bluetooth® Spec. 4.1 has not been shown to be in the prior art (which it should not for the reasons above).

For at least the foregoing reasons, and those presented in the Petition itself, the Board should institute *inter partes* review on all grounds, including Ground 3, finding that the Bluetooth® Spec. 4.1 is reasonably likely to qualify as prior art.

Dated: August 13, 2025

Respectfully submitted,

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CERTIFICATION OF PAGE COUNT

The undersigned certifies that the foregoing Petitioner's Supplemental Brief contains 5 page, excluding sections which can be excluded, such as certificate of service and certification of page count (but including the signature block).

Date: August 13, 2025

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CERTIFICATE OF SERVICE

As authorized by Patent Owner's Mandatory Notice, I hereby certify that on August 13, 2025, a copy of this document has been served in its entirety by electronic mail on Patent Owner's lead and backup counsel.

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