

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTEL CORPORATION,
ADVANCED MICRO DEVICES, INC.,

Petitioners,

v.

ADVANCED CLUSTER SYSTEMS, INC.,

Patent Owner.

IPR2025-00915

U.S. Patent No. 11,563,621

PATENT OWNER'S PRELIMINARY RESPONSE

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PATENT OWNER'S EXHIBIT LIST

<u>Exhibit</u>	<u>Description</u>
2001	DocketNavigator Statistics for Motion Success for Stay Pending IPR (Post-Institution) for Judge Albright
2002	J. Albright Standing Order Governing Proceedings (OGP) 4.4 – Patent Cases (Jan 23, 2024)
2003	DocketNavigator Statistics for Time-to-Milestones for Judge Albright
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2005	<i>Advanced Cluster Systems, Inc. v. Advanced Micro Devices, Inc.</i> , Scheduling Order (D.I. 36)
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2011	<i>TOT Power Control, S.L. v. AT&T, Inc. et al.</i> , No. 6:21-cv-00107-ADA (W.D. Tex. June 6, 2025)
2012	<i>AlmondNet, Inc. v. Amazon.com, Inc., et al.</i> , No. 6:21-cv-00898-ADA (W.D. Tex. June 19, 2025)
2013	Intel Corporation's Amended Invalidity Contention Cover Pleading (Apr. 25, 2025)

2014	[EXHIBIT NOT USED]
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2019	FAQ: The Sustainable Data Center – More Energy Efficient AI (available at https://www.intel.com/content/www/us/en/content-details/791405/faq-the-sustainable-data-center-ai-use-case.html?wapkw=sustainability&DocID=791405)
2020	NVIDIA Company Overview (May 2025) (available at https://investor.nvidia.com/events-and-presentations/presentations/presentation-details/2025/Company-Overview-5-25/default.aspx)
2021	Intel Corporation’s Answer and Counterclaims to First Amended Complaint, <i>Advanced Cluster Systems, Inc. v. Intel Corporation</i> , 7:24-cv-00245-ADA (W.D. Tex. Feb. 5, 2025) (D.I. 41)

I. INTRODUCTION

The Petition seeks *inter partes* review of claims 1-30 of U.S. Patent No. 11,563,621 (“the ’621 Patent”). It is one of eight petitions collectively filed by Petitioners that challenge patents asserted in parallel district court litigation.¹ See IPR2025-00913, Paper 5 at 2 (IPR2025-00794 and -00795 (the “Intel IPRs”); IPR2025-00862, and -00863 (the “AMD IPRs”); IPR2025-00914, -00915, and -00916 (collectively with the Intel IPRs and the AMD IPRs, the “related IPRs”)). Institution of the Intel IPRs was denied. IPR2025-00794, Paper 13; IPR2025-00795, Paper 13. A decision on Patent Owner’s request for discretionary denial for the AMD IPRs (IPR2025-00862 and -00863) is expected by September 17, 2025.² In this case, as in each of the related IPRs, the Petition fails to establish a reasonable likelihood that any challenged claim is unpatentable.

In particular, the Petition fails to demonstrate that Exhibits 1005 (Menon), 1006 (Trefethen), 1007 (RS/6000 Planning Guide), 1008 (POERef), and 1017

¹ The ’034 Patent and four other patents are the subject of patent infringement actions currently pending in the Western District of Texas, Case No. 7:24-cv-245-ADA (the “Parallel Intel Litigation”) and Case No. 7-24-cv-00244-ADA (W.D. Tex.) (the “Parallel AMD Litigation”) (collectively, the “Parallel Litigations”). IPR2025-00913, Paper 5 at 1.

² The AMD IPRs rely on the same prior art and assert the same grounds that were asserted in the Intel IPRs. See e.g., IPR2025-00862, Paper 4 at 1; IPR2025-00863, Paper 4 at 1.

(MPIRef) qualify as “printed publications” under 35 U.S.C. § 311(b). This failure is fatal to all of the asserted grounds, each of which rely on various combinations of those references. Petitioners have thus failed to establish a reasonable likelihood that any challenged claim is unpatentable.

The Board should therefore deny institution as to all challenged claims.

II. THE PETITION DOES NOT ESTABLISH A REASONABLE LIKELIHOOD THAT ANY CHALLENGED CLAIM IS UNPATENTABLE BECAUSE IT FAILS TO CARRY ITS BURDEN TO SHOW THAT EXHIBITS 1005-1008 AND 1017 QUALIFY AS PRINTED PUBLICATIONS.

Under 35 U.S.C. § 311(b), a petitioner in an *inter partes* review may only challenge the claims of a patent based on “prior art consisting of patents or printed publications.” Petitioners have the initial burden of production to establish that there is prior art that renders the challenged claims unpatentable. *See Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1379 (Fed. Cir. 2015) (citing *Tech. Licensing Corp. v. Videotek, Inc.*, 545 F.3d 1316, 1327 (Fed. Cir. 2008)).

Whether a reference qualifies as a “printed publication” involves a case-by-case inquiry into the facts and circumstances surrounding the reference’s disclosure to members of the public. *In re Klopfenstein*, 380 F.3d 1345, 1350 (Fed. Cir. 2004). The key inquiry is whether the reference was made “sufficiently accessible to the public interested in the art” before the effective filing date. *In re Lister*, 583 F.3d 1307, 1311 (Fed. Cir. 2009) (quoting *In re Cronyn*, 890 F.2d 1158, 1160 (Fed. Cir.

1989)). A reference is considered “publicly accessible” upon a satisfactory showing that the document has been “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 Int’l, Inc. v. Internet Sec. Sys., Inc.*, 511 F.3d 1186, 1194 (Fed. Cir. 2008) (citation omitted). That standard is not satisfied merely by a date, copyright, or internet address appearing on the face of the document. *See, e.g., Content Square SAS v. Medallia Inc.*, IPR2022-00316, Paper 13 at 26–27 (PTAB Jul. 14, 2022) (“Numerous Board decisions have held that simply pointing to a date, even a copyright date, is not sufficient at the institution stage to demonstrate public accessibility.”)

Rather, for institution of an *inter partes* review “the burden is on the petitioner to identify with particularity evidence sufficient to establish a reasonable likelihood that the reference was publicly accessible before the critical date....” *Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-01039, Paper 29 at 16 (PTAB Dec. 20, 2019) (precedential). The Board emphasized that this standard is “far more than is required in typical notice pleading. . .,” and requires specific, substantiated evidence. *Id.*; *see also In re Wyer*, 655 F.2d, 221, 227 (CCPA 1981) (burden to show sufficient proof of public accessibility falls on the party asserting a reference as a prior art printed publication). Thus, Petitioners must show with particularity that each reference was practically available with reasonable effort at the relevant time—

simply showing that it existed somewhere on the internet or somewhere in a library is not enough.

Petitioners' evidence establishing references as prior art must also comply with the Federal Rules of Evidence to justify institution. The Board's Rules state that the "Federal Rules of Evidence shall apply to a proceeding," 37 C.F.R. § 42.62(a), and defines "proceeding" to include a "preliminary proceeding" that "begins with the filing of a petition for instituting a trial." 37 C.F.R. § 42.2.

Here, each of the asserted grounds relies on a combination of Exhibits 1005-1008—but the Petition fails to carry the burden of establishing that these exhibits qualify as "printed publications," and in many instances Petitioners' proffered evidence is not even admissible. The failure of any reference to qualify as a "printed publication" is fatal to all grounds of rejection relying on that reference. As none of Exhibits 1005-1008 qualify as a "printed publication," each of the asserted grounds should be rejected and institution of the instant Petition should be denied.

1. Exhibits 1007-1008: IBM Technical Manuals—RS/6000 and POEref

Exhibits 1007 (RS/6000) and 1008 (POEref) purport to be IBM technical manuals that Petitioners allege were "catalogued and indexed in IBM's online document library" at particular URL addresses. Pet. at 14-15. However, the Petition provides no evidence of library indexing or cataloging. *See e.g., Koninklijke Philips N.V. v. Zoll Med. Corp.*, 656 F. App'x 504, 529 (Fed. Cir. 2016) ("evidence of

indexing or cataloguing, [] while not prerequisites, serve as hallmarks of public accessibility”).

The Petition also fails to demonstrate that Exhibits 1007 and 1008 were publicly accessible by practical searchability, because it fails to offer any evidence that a query of any search engine before the critical date would have led to the particular URL addresses where the references were allegedly available. *See Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1350 (Fed. Cir. 2016) (“[T]he Board found that Groupon had failed to carry its burden of establishing that an interested party exercising reasonable diligence would have located Ratsimor. We agree. [...] The record is devoid of any evidence that a query of a search engine before the critical date, using any combination of search words, would have led to Ratsimor appearing in the search results.”).

Instead, Petitioners rely on expert testimony that the IBM manuals were technically accessible by navigating specific sequences of hyperlinks (so-called “link chains”) across several purported IBM webpages—each with numerous potential hyperlinks and no table of contents or other navigational guide—to arrive at landing pages that link to the manuals. Ex. 1003, ¶¶ 130, 134. Petitioners’ expert has cobbled together this collection of web pages to attempt to show these “link chains” (Ex. 1038 (allegedly associated with Ex. 1007) and Ex. 1039 (allegedly associated with Ex. 1008)), but these web pages fail to corroborate his testimony

because neither of these exhibits shows a link chain that was navigable (or that even existed) in its entirety at any point in time. Indeed, the purported IBM webpages constituting each of these exhibits list different archival dates. Ex. 1038; Ex. 1039 at 1-8. For example, the headers of the first three pages of Exhibit 1038 indicate the pages were captured by the web archive on August 14, 2001³; August 1, 2001; and August 22, 2001, respectively. Ex. 1038 at 1-3. The seventh page of the exhibit is from July 7, 2001, and the ninth page is from June 5, 2001. *Id.* at 7, 9. Petitioners provide no proof that these pages and links existed at the same time or were even navigable to Exhibit 1007 as suggested by their expert.

Petitioners' reliance on a declaration from the Internet Archive fails for the same reason. Ex. 1029 at 63-72, 75-76. Here again the collection of web pages does not evidence that the alleged link chains were navigable at any point in time prior to the critical date to the URL address where the IBM manuals could allegedly be found.

Moreover, Petitioners' proposed navigation of "link chains" from IBM's homepage to the specific URL addresses where the IBM manuals were allegedly

³ The archive.org explains that the archived URL includes an embedded date code identifying the date that the site was crawled. The date code translates as `yyyymmddhhmmss`, so for example in the URL `http://web.archive.org/web/19970126045828/http://www.archive.org/`, the date the site was crawled was January 26, 1997 at 4:58 am and 28 seconds. Ex. 1029 at ¶ 5.

available fails to demonstrate public accessibility because it requires the searcher to already know that the desired content exists and is associated with IBM's company name and its product names (e.g., "RS6000," "AIX"), prior to searching.

In re Cronyn, 890 F.2d 1158, 1161 (Fed. Cir. 1989) is instructive. In that case, a thesis document was alphabetically indexed in a library by the author's name, but the Federal Circuit found insufficient public accessibility because "the only research aid in finding the thesis was the student's name, which of course, bears no relationship to the subject of the student's thesis." Thus, the thesis "had not been cataloged or indexed in a meaningful way." *Id.* Likewise, here, the "accessibility" purported by the Petition is insufficient to demonstrate public availability because the company name ("IBM") and the IBM product names ("RS6000" and "AIX") were not shown by the Petition to bear sufficient relationship to the cluster computing concepts that a researcher would have presumably searched and that Petitioners now challenge as allegedly obvious.

Thus, the Petition provides insufficient evidence that Exhibits 1007 (RS/6000) and 1008 (POEref) were "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.

In addition, with respect to Exhibit 1008, Petitioners' expert also alleges that the exhibit was distributed with the IBM SP2 parallel computing platform ("PE

program”). Ex. 1003, ¶ 135. However, the expert does not purport to be a percipient witness of the alleged distribution. Instead, the expert simply parrots language from Exhibit 1008 and invites the Board to accept the parroted statement as true that Exhibit 1008 was distributed with the PE product. This is the poster child for hearsay under Fed. R. Evid. § 801-802, and no exception under § 803 has been identified or applies. Thus, the Board cannot rely on the parroted language as admissible evidence of the alleged distribution.

Even so, the Petition provides no evidence regarding the time or extent of the alleged distribution of the PE program. Moreover, Exhibit 1036 fails to corroborate the alleged distribution, because the exhibit—which appears to be a third-party guide—says nothing about Exhibit 1008 or the PE program having been distributed, much less does the exhibit explain to who, when or how any such distribution occurred. Ex. 1036 at 13-14. It merely identifies “IBM AIX Parallel Environment – Operations and Use” as a typewritten manual under an ‘additional information’ heading. *Id.*

Thus, the Petition not only fails to demonstrate *public accessibility* of Exhibit 1008, it also insufficiently evidences the purported *dissemination* of Exhibit 1008 (POEref). *See e.g., Norian Corp. v. Stryker Corp.*, 363 F.3d 1321, 1330 (Fed. Cir. 2004) (generalized testimony alleging distribution is insufficient evidence of actual dissemination). Therefore, Exhibits 1007 and 1008 do not qualify as “printed

publications” and all grounds for challenging the ’621 Patent, each of which relies on Exhibits 1007 and one of which relies on Exhibit 1008, are fatally flawed. This alone justifies denying institution of the instant Petition as to all grounds.

2. Exhibit 1017: Working Group Report—MPIref

Exhibit 1017 (MPIref) appears to be a draft of the final report of the Message Passing Interface Forum (MPIF), a group that was collaborating to propose technical features for the MPI Interface.

Petitioners allege that Exhibit 1017 was published on the MPIF website (<http://www.mpi-forum.org/docs/mpi-10.ps>). Pet. at 15. However, as with Exhibits 1007-1008 discussed above, here too the Petition provides no evidence of library indexing or cataloging. *See e.g., Koninklijke Philips N.V.*, 656 F. App’x at 529. The Petition also fails to demonstrate that Exhibit 1017 was publicly accessible by practical searchability because the Petition does not offer any evidence that a query of any search engine before the critical date would have led to the particular URL address where the reference was allegedly available. *See Blue Calypso*, 815 F.3d at 1350.

Petitioners instead allege that Exhibit 1017 was publicly accessible because it was “distributed ... using FTP mail servers.” Pet. at 15; Ex. 1003, ¶ 140. There is no evidence of this, and the allegation would be insufficient even if true. *See SRI*, 511 F.3d at 1196 (holding that a paper placed on an FTP server was not publicly

accessible because the FTP server “did not contain an index or catalogue or other tools for customary and meaningful research”).

Petitioners’ theory relies on a statement on page iv of the exhibit immediately after listing contributing participants of MPIF, where the exhibit states: “The University of Tennessee and Oak Ridge National Laboratory made the draft available by anonymous FTP mail servers and were instrumental in distributing the document.” Ex. 1017 at 7. However, this statement is inadmissible as hearsay because it is being offered for the truth of the matter stated. Fed. R. Evid. § 801-802. Petitioners identify no exception under Fed. R. Evid. § 803 and none applies.

Even so, the document never states that it was made “publicly” available; it simply refers to making the draft “available.” Ex. 1017 at 7. Indeed, the statement alone cannot establish that Exhibit 1017 was made “publicly” accessible or available for several reasons. First, the “made the draft available” statement is presented in the past tense and therefore contradicts itself—i.e., Exhibit 1017 cannot have been made available before it was generated with that statement.⁴ Second, to the extent the “made the draft available” statement refers to some other draft, the availability

⁴ The May 4, 1994 date reflects the date Exhibit 1017 was printed—not necessarily published. Ex. 1017 at 2 (“This copy of the draft was processed by Latex on May 5, 1994.”). *See also, e.g., Content Square*, IPR2022-00316, Paper 13 at 26–27 (PTAB July 14, 2022) (“simply pointing to a date, even a copyright date, is not sufficient at the institution stage to demonstrate public accessibility”).

of that other draft is irrelevant to the public accessibility of Exhibit 1017. Third, to the extent the “made the draft available” statement refers to some plan to make Exhibit 1017 available, it is not evidence that Exhibit 1017 was actually made available to anyone as planned—or when it was actually made available. For example, Dr. Bajaj does not testify that he or his team received a copy of Exhibit 1017 at any time prior to the critical date. Ex. 1003 at ¶140. Moreover, when read in context, the sentence upon which Petitioners rely appears to refer to limited distribution to the MPIF participants who were collaborating to develop Exhibit 1017—not the general public.

Indeed, Petitioners’ expert’s claims that Exhibit 1017 was available via “link chain” to a specific URL (<http://www.mcs.anl.gov/mpi/mpi-report.ps>) falls flat on closer inspection. First, entering the archived URL into a web-browser reveals that it is a direct-to-document-download page that does not appear to be linked to any usable webpage—much less to any webpage of the purported “link chain.” Second, neither of the exhibits relied on by Petitioners’ expert (i.e., Exhibit 1048 and Exhibit 1049) to show the alleged “link chain” actually show it. It is therefore unlikely that the URL could have been located through “reasonable diligence” by those who did not already know of it. *See SRI*, 511 F.3d at 1196 (holding that a paper placed on an FTP server was not publicly accessible because the FTP server “did not contain an index or catalogue or other tools for customary and meaningful research”).

Petitioners' expert also alleges that distribution of MPI documents was common practice and that his research team would have received a copy of Exhibit 1017. Ex. 1003, ¶ 129. This bald assertion is uncorroborated—and the expert does not claim to have ever actually received a copy of Exhibit 1017. There simply is no evidence that the document was distributed to the general public. *See e.g., Norian Corp.*, 363 F.3d at 1330 (generalized testimony alleging distribution is insufficient evidence of actual dissemination).

Therefore, to the extent Exhibit 1017 was distributed, it was at some unknown point in time and through working groups and FTP to a limited group of recipients who already knew about the document. The PTAB has repeatedly held this type of limited dissemination to be insufficient to establish public accessibility for qualifying an IPR exhibit as a printed publication under 35 U.S.C. § 311(b). *See Argentum Pharm. v. Research Corp. Tech. Inc.*, IPR2016-00204, Paper 19 (Decision on Institution) at 11-12 (PTAB May 23, 2016) (dissemination to a limited group already having personal knowledge of a document does not establish public accessibility for qualification as a “printed publication”).

A similar factual situation was considered by the Federal Circuit in *Samsung Elecs. Co. v. Infobridge Pte. Ltd.*, 929 F.3d 1363, 1372 (Fed. Cir. 2019). In *Samsung*, despite remanding on a different legal issue, the Federal Circuit affirmed the PTAB's holding that the alleged public accessibility of a working draft “WD4” of the High

Efficiency Video Coding standard was not shown by on-line accessibility to the same group who collaborated to create the working draft, i.e., members of the Joint Collaborative Team on Video Coding (JCT-VC). *Id.* The ability of that group to find the WD4 working draft during the relevant time period did not imply that the interested public could do so by exercising reasonable diligence. *Id.* “The Board therefore properly focused on whether those outside of the JCT-VC knew about the JCT-VC website in considering whether posting the WD4 reference on the website made it publicly accessible.” *Id.* The same rationale applies here to Petitioners’ insufficient showing that MPIF participants could access Exhibit 1017 via an FTP server.

Likewise, here, Exhibit 1017 appears to have had a limited distribution to only the same MPIF participants who were collaborating to develop Exhibit 1017 and already knew about it. Therefore, analogous to the *Argentum Pharm.* holding and the *Samsung* holding, the Petition here fails to establish that Exhibit 1017 was distributed or practically accessible to the public at large.

For the foregoing reasons, the Petition has not shown that Exhibit 1017 was sufficiently publicly accessible for qualification as a printed publication. Therefore, Exhibit 1017 does not qualify as a “printed publication” and the proposed grounds of rejection for claims 1-30 of the ’621 Patent, which each rely on Exhibit 1017, are

fatally flawed. This provides an additional independent reason for denying institution of the instant Petition as to all grounds.

3. Exhibit 1006: Trefethen

Exhibit 1006 purports to be an article that Petitioners argue was made publicly accessible at a particular university internet address (www.cs.cornell.edu/Info/People/Int/multimatlab.html)—allegedly via hyperlink from the webpage of one of its authors. Pet. at 14. However, the purported webpage of the author, i.e., Ex. 1023, from which Exhibit 1006 is allegedly accessible, does not include any active hyperlinks—much less a hyperlink to the specific internet address of Exhibit 1006. Thus, there is no evidence that Exhibit 1006 was reachable as alleged from the webpage of the author prior to the critical date.

Even so, public accessibility requires more than technical accessibility. *See Samsung*, 929 F.3d at 1369. Here, there is no evidence that interested members of the public could have found the particular internet address of Exhibit 1006 or the internet address of the author's webpage with reasonable diligence if they did not already know about them. While Petitioners' expert touts the prominence of the university, neither the expert nor the exhibit he relies on (i.e., Ex. 1033) claims that the website of the university department or the authors were known to interested persons. Nor does the Petition otherwise offer evidence or explanation for how an interested person would have located the particular URL addresses where Exhibit

1006 was allegedly accessible—only the bare and conclusory statement of Petitioners' expert. Ex. 1003, ¶ 128. *See e.g., Blue Calypso*, 815 F.3d at 1349 (article posted on author's webpage was not a "printed publication" where there was no specific evidence that interested persons would know of the author's webpage).

Moreover, there is no evidence that Exhibit 1006 was indexed or cataloged in a library or published in a journal prior to the critical date. While Petitioners' expert testifies that Exhibit 1006 is "currently" available on the ACM digital library (Ex. 1003, ¶ 127), such testimony is facially insufficient as evidence of pre-critical date availability or accessibility via the ACM digital library. Indeed, the sole exhibit relied on by the expert for his testimony, i.e., Ex. 1034, appears to be an unrelated excerpt explaining the digital library itself. The evidence thus fails to show that Exhibit 1006 was indexed or cataloged in a meaningful way prior to the critical date. *See e.g., Koninklijke Philips N.V.*, 656 F. App'x at 529.

Therefore, Petitioners failed to satisfy their burden of establishing that an interested member of the public in mid-2006 would have been aware of, or been able to find, Exhibit 1006 by exercising reasonable diligence. Accordingly, Exhibit 1006 does not qualify as a "printed publication" and all grounds for challenging the '621 Patent, each of which relies on Exhibit 1006, are fatally flawed. This provides an additional independent reason for denying institution of the instant Petition as to all grounds.

4. Exhibit 1005: Menon

Exhibit 1005 also purports to be an article that Petitioners allege was made publicly accessible at a particular university internet address (www.cs.cornell.edu/Info/People/vsmt/papers/sc97) and via hyperlink from the webpage of one of its authors. Pet. at 13; Ex. 1003, ¶ 121, citing Ex. 1026. But again, public accessibility requires more than technical accessibility. *See Samsung*, 929 F.3d at 1369. And here too, there is no evidence that interested members of the public could have found the particular internet address of Exhibit 1005 with reasonable diligence if they did not already know about it. Indeed, while Petitioners' expert states that the university in general was recognized, both the expert and the exhibit he relies on (i.e., Ex. 1033) are silent as to whether the department website or the authors were known to interested persons. Nor does the Petition otherwise offer evidence or explanation for how an interested person would have located the particular URL addresses where Exhibit 1005 was allegedly accessible—only the bare and conclusory statement of Petitioners' expert. Ex. 1003, ¶ 121. *See e.g., Blue Calypso*, 815 F.3d at 1349 (article posted on author's webpage was not a "printed publication" where there was no evidence that interested persons would know of the author's webpage).

In addition to the purported website posting, Petitioners' expert also alleges that Exhibit 1005 was presented at a 1997 conference. Ex. 1003, ¶ 121. For this,

Petitioners' expert relies on what appears to be a schedule of the conference from Exhibit 1026. *Id.*; Ex. 1026 at 2-5. But on-its-face the schedule says nothing about whether Exhibit 1005 was actually presented at the conference, to who or when. For example, there is no percipient testimony that Exhibit 1005 was presented—as opposed to merely some high-level overview of a similar topic—or was distributed at the alleged presentation. The schedule alone is therefore insufficient to corroborate the expert's allegations of Exhibit 1005 having been presented. Thus, the Petition offers insufficient evidence to support its theory that Exhibit 1005 was presented at the conference.

In another attempt to qualify Exhibit 1005 as a “printed publication,” Petitioners' expert alleges that conference proceedings including Exhibit 1005 were made available by the last day of the conference. Ex. 1003, ¶ 121. For this, Petitioners' expert relies on the declaration of purported IEEE custodian, Gordan MacPherson. Ex. 1003, ¶ 121; Ex. 1027 at ¶ 11. However, while MacPherson states that “[c]opies of the conference proceedings were made available no later than the last day of the conference,” he does not explain how or to who they were allegedly made available. Ex. 1027 at ¶ 11. MacPherson also does not provide a foundational basis for making this claim. He does not purport to have witnessed Exhibit 1005 being made available, as alleged, nor does he include any business records that can

corroborate his testimony or otherwise explain how or to who Exhibit 1005 was allegedly made available. *Id.*

For example, MacPherson's testimony, and the expert's corresponding allegations, that Exhibit 1005 is "currently" available on the IEEE digital library (Ex. 1003, ¶ 121; Ex. 1027 at ¶ 11) are facially insufficient as evidence that Exhibit 1005 was made available by the last day of the conference, as alleged. Moreover, the Petition fails to include an IEEE abstract or other bibliographic data indicating the date on which Exhibit 1005 was allegedly uploaded to or was otherwise made available on the IEEE digital library. Indeed, MacPherson's claim that "the article and abstract from IEEE Xplore show the date of publication" is entirely uncorroborated. Exhibit A to the MacPherson declaration, which purports to be the March 4, 2025 downloaded "article ... from IEEE Xplore," (Ex. 1027 at ¶ 9-10) does not show a purported date of publication. Ex. 1027 at 3-21. And the Petition conspicuously fails to include the alleged "abstract from IEEE Xplore." Ex. 1027 at ¶10. Accordingly, MacPherson's bare assertions that the conference proceedings "were made available" are mere *ipse dixit*. Thus, neither MacPherson's testimony nor Exhibit 1027 corroborate Petitioners' contentions made via the threadbare and conclusory assertions of their expert.

Finally, Petitioners' expert alleges that Exhibit 1005 was also available on the conference website. Ex. 1003, ¶ 121. But again, public accessibility requires more

than technical accessibility. *See Samsung*, 929 F.3d at 1369. Here, the purported technical availability of Exhibit 1005 on the conference website is not evidence that interested members of the public could have found the particular URL address where Exhibit 1005 was purportedly available with reasonable diligence if they did not already know about it. Indeed, while Petitioners allege that the conference itself was well known, the Petition contains no evidence that the alleged URL address of the conference website, i.e., Ex. 1026, was known to interested members of the public. For example, Exhibits 1030-1031 relate to the conference, and do not identify any URL address of Exhibit 1026, including the URL address of the conference website where Exhibit 1005 was allegedly available.

Accordingly, Petitioners failed to satisfy their burden of establishing that an interested member of the public in mid-2006 would have been aware of, or been able to find, Exhibit 1005 by exercising reasonable diligence. Exhibit 1005 therefore does not qualify as a “printed publication” and all grounds for challenging the ’621 Patent, each of which relies on Exhibit 1005, are fatally flawed. This provides an additional independent reason for denying institution of the instant Petition as to all grounds.

5. Citations by others (Ex. 1028, 1035, 1037)

Petitioners also rely on purported citation listings in Exhibits 1028, 1035 and 1037 and invites the Board to infer public availability based on hearsay references

to certain documents and Petitioners' unsupported assertion that Exhibits 1005, 1006 and 1017 reflect those documents. Pet. at 13-15; Ex. 1003, ¶¶ 121, 123, 127-128, 140, 142. However, Exhibits 1028, 1035 and 1037 are unauthenticated, and therefore inadmissible under Fed. R. Evid. §§ 901-902. Petitioners offer no custodian's declaration authenticating the content or explaining the source of these documents, and does not identify any basis upon which they would be self-authenticating.

Exhibits 1028, 1035 and 1037 are also inadmissible as hearsay under Fed. R. Evid. §§ 801-802 because they are out-of-court statements offered to prove that the underlying references were publicly available at a certain time. Petitioners have not identified any hearsay exception under Fed. R. Evid. § 803 upon which to admit the out-of-court statements for their alleged truth. Therefore, Exhibits 1028, 1035 and 1037 cannot be relied upon by the Board as admissible evidence that documents cited therein were publicly accessible.

Even if considered, the mere fact that Exhibits 1028, 1035 and 1037 cite to documents that Petitioners allege are the Menon document, the Trefethen document and the MPIRef are insufficient to show that those documents were publicly accessible. *See e.g., Medivis, Inc. v. Novard Corp.*, IPR2023-00042, Paper 35 (FWD) at 27-28 (PTAB Mar. 6, 2024) (holding that a Journal of Biomedical Informatics reference was not sufficiently shown to be publicly accessible by alleged

citation by seven publications). Likewise, the citation of Exhibit 1006 (Trefethen) by Exhibit 1005 (Menon), does not qualify Trefethen as a printed publication that was practically accessible to the public before the critical date. Merely being cited later by another reference does not establish searchability and discoverability by skilled artisans using reasonable diligence before June 13, 2006. *See e.g., Argentum*, IPR2016-00204, Paper 19 at 11-12 (articles that cited a thesis were held insufficient to establish public accessibility of the thesis, where the articles' authors had personal knowledge of the thesis).

In sum, Petitioners' Exhibits 1005, 1006, 1007, 1008, and 1017 should be given no weight because Petitioners have not met their burden to show these are prior art printed publications. This failure is fatal under 35 U.S.C. § 311(b). Petitioners' attempt to establish public accessibility through Exhibits 1028, 1035 and 1037 also fails—not only are these exhibits inadmissible hearsay, but they do nothing to demonstrate genuine public availability of the underlying references. Accordingly, the Board should refuse to institute trial on any ground relying on Exhibits 1005, 1006, 1007, 1008, or 1017, and the grounds depending on them should be denied.

III. CONCLUSION

The Petition fails to establish a reasonable likelihood of success on any challenged claim of the '621 Patent, because it does not present a reasonable

likelihood that all of the elements of at least one claim are present in the asserted combination of prior art. In particular, the Petition fails to carry its burden to show that Exhibits 1005-1008 and 1017 qualify as printed publications, thereby disqualifying them as the basis for each of the asserted grounds in the present IPR. Because all the asserted grounds in the Petition relies on some combination of these exhibits, each asserted ground is unsupported by the evidence. Institution should therefore be denied under 35 U.S.C. § 314(a).

Dated: August 27, 2025

Respectfully submitted,

/David P. Lindner/

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CERTIFICATION UNDER 37 C.F.R. § 42.24

Pursuant to 37 C.F.R. § 42.24(d), I certify that this brief complies with the type-volume limits of 37 C.F.R. § 42.24 because it contains 5,127 words, according to the word-processing system used to prepare this brief, excluding the parts that are exempted by 37 C.F.R. § 42.24 (including the table of contents, a table of authorities, a listing of facts which are admitted, a certificate of service or this certificate word count, and appendix of exhibits).

Dated: August 27, 2025

/David P. Lindner/

David P. Lindner, Reg. No. 53,222

Counsel for Patent Owner

Advanced Cluster Systems, Inc.

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned hereby certifies that I caused true and correct copies of the foregoing **PATENT OWNER'S PRELIMINARY RESPONSE** to be served in its entirety on August 27, 2025 by filing this document through the U.S. Patent Office's P-TACTS Filing System, as well as causing true and correct copies be delivered by electronic mail on Petitioners' lead and backup counsel at the following email addresses (as agreed by counsel for Petitioners):

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