

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner,

v.

WILUS INSTITUTE OF STANDARDS AND TECHNOLOGY
INC.,
Patent Owner.

Case No. IPR2025-01164
U.S. Patent No. 12,004,262

**PATENT OWNER'S SUR-REPLY TO
PATENT OWNER'S PRELIMINARY RESPONSE**

Samsung's reply does not save the petition because it still fails to address the deficiency in the prior art, which does not teach elements [1.5] and [1.8]. These two elements, in combination, recite, among other things, setting BSS color in a trigger-based PPDU using an active BSS color and how to set the active BSS color when there is a BSS color change. '262 Patent, Claims 1, 4; POPR at pp. 7-8. The novelty of these elements is also corroborated by IEEE 802.11ax's amendment history, where this solution was proposed and adopted many months after the asserted prior art references which are the earlier iterations of the standards. POPR at pp. 16-19.

Issue 1 (BSS Color Conflict Resolution). Samsung's argument on whether the claims themselves require BSS color conflict rests on mischaracterizations of the POPR. Reply, p. 1. The POPR mentions that the patent solves the *problem* of "when the access point changes the BSS color, color conflict may result between the color sent by an Operation element and the color changed by the access point." POPR, p. 3. Samsung appears to equate claim language with the problem and requires the problem itself to be stated in the claim. Not so. Instead, what the plain language describes is the solution that addresses the problem, i.e., setting BSS color in the triggered-based PPDU as the active BSS color and how to set the active BSS color. POPR, pp. 3, 7-8.

Next, the plain language of the claims does recite how to set the active

BSS color when the wireless communication terminal “receives information on a BSS color change from the base wireless communication terminal.” ’262 Patent, [1.8], [4.6]. But Samsung invites the Board to ignore this element, which, curiously, is the element not taught in the prior art. Reply, p. 2. Samsung’s reply argues that the claim is met by setting the active BSS color value to a value from an Operation element.¹ Id. This argument, however, refers to a separate element (i.e., [1.7] / [4.5]) that is not at issue in the POPR. It does not address the situation described in element [1.8] / [4.8], which concerns how to set the active BSS color when there is a BSS color change.

Issue 2 (IEEE 802.11ax/D1.0 Public Accessibility). Whether the draft 1.0 (“D1.0”) version of the standard is publicly accessible does not change the fact that the standard’s amendment history shows that the invention of the ’262 Patent was not obvious at the time of the patent. POPR at pp. 16-19.

Regardless, the asserted D1.0 draft is not publicly accessible. The number of people in the IEEE voting group does not establish public

¹ Samsung’s claim interpretation has constantly been changing. In the petition, Samsung proposed plain and ordinary meaning. But after Patent Owner filed the preliminary response, Samsung took a contradictory position in the district court and argued that elements [1.5] and [1.8] are indefinite. Then in the reply, Samsung appeared to argue that element [1.8] is not required for the claim, which is broader than the plain and ordinary meaning. Now, one day before patent owner’s reply, Samsung withdrew the indefiniteness contention and reverted to the plain and ordinary meaning in the district court.

accessibility. Samsung does not dispute that obtaining membership in the voting group imposes significant requirements that a POSITA would not likely be able to meet. POPR, pp. 21-23. “[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. Ltd.*, 929 F.3d 1363, 1372 (Fed. Cir. 2019) (This is “why *Bayer* discounted the knowledge of various professors on a faculty committee reviewing student theses.”). That a classified document is distributed to hundreds of Department of Defense personnel (with appropriate clearance) does not make it publicly accessible.

Samsung's next argument, based solely on its expert's assertion, that there was “no expectation of confidentiality” in the (internal) distribution (Reply, p. 3) is plainly incorrect in light of undisputed facts. D1.0 was password-protected at all relevant times. There is no evidence suggesting D1.0 would have been distributed to anyone outside of the authoring organization.

Lastly, ***Petition*** provided no evidence that a ***POSITA*** actually obtained a copy of D1.0, including the relevant portion that is used as prior art, from a voting group member. Reply, p. 3; POPR, p. 24. The example names in Dr. Hensen's declaration are either on the voting group membership lists or are people who submitted proposals not relevant to this patented invention.

Patent Owner's Sur-Reply to POPR
IPR2025-01164 (U.S. Patent No. 12,004,262)

Dated: October 14, 2025

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CERTIFICATE OF SERVICE

I hereby certify that "Patent Owner's Sur-Reply to Patent Owner's Preliminary Response" was served on November 15, 2025 by email sent to:

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