

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

**DECLARATION OF PAUL NIKOLICH IN
SUPPORT OF PATENT OWNER'S RESPONSE**

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I. INTRODUCTION

1. My name is Paul Nikolich, I am the owner of Nikolich Advisors, LLC, a technology, standards and business consulting firm. I have been retained as an expert by Plaintiff Wilus Institute of Standards and Technology, Inc. (“Wilus” or “Patent Owner”) in the above-referenced matter and have been asked to respond to certain expert opinions offered by an expert retained by Petitioner, Christopher Hansen. More specifically, I have been asked to respond to opinions contained in the “second” Declaration of Christopher Hansen, Ph.D. Regarding Public Accessibility of Prior Art References dated June 29, 2025 (“Hansen Declaration” or “Hansen Decl.”), and the Supplemental Public Accessibility Declaration of Christopher Hansen, Ph.D. dated February 16, 2026. (“Supplemental Declaration” or “Suppl. Decl.”).

2. I have been informed that in this proceeding, the Petitioner Samsung Electronics Co., Ltd. (“Samsung” or “Petitioner”) challenges and seeks to invalidate certain claims of U.S. Patent No. 12,004,262 (the “’262 Patent”), which is owned by the Wilus.

3. I have served as a testifying expert in patent litigation between Wilus and Samsung, including in *Wilus Institute of Standards and Technology Inc. v. Samsung Electronics Co., Ltd.*, 2:24-cv-0746-JRG-RSP (E.D. Tex.) and *Wilus Institute of Standards and Technology Inc. v. Samsung Electronics Co., Ltd.*,

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2:24-cv-0765-JRG-RSP (E.D. Tex.). The subject matter of the patents at issue in these cases related to Institute of Electrical and Electronics Engineers (“IEEE”) 802.11ax-2021 Amendment 1: Enhancements for High-Efficiency WLAN, a wireless communication technical standard. The 802.11ax-2021 standard was developed, ratified and published in final form by IEEE in 2021. The standard specifies the requirements for the underlying technology of products labeled “Wi-Fi CERTIFIED 6®” by the Wi-Fi Alliance (commonly known in the industry as “Wi-Fi 6”). For brevity, throughout this document I will refer to the IEEE Std 802.11ax-2021 standard as the IEEE 802.11ax standard.

4. In the district court patent litigation cases between Wilus and Samsung in which I was involved, I responded to opinions of Samsung’s experts about (among other things) whether a certain draft document (“draft D1.0”) developed during the IEEE 802.11ax project, was publicly accessible by certain dates for purposes of being prior art. I wrote an expert report and testified in a deposition on the substance of my opinions in those cases. As I explain below, in this proceeding, Dr. Hansen offers very similar opinions about whether draft D1.0 was publicly accessible on December 1, 2016 to an expert report of Harry Bims—for example, the sections of the Hansen Declaration directed to whether D1.0 was publicly accessible for prior art

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purposes (e.g., pages 13-39 of the Hansen Declaration), to which I responded in the district court patent litigation concerning this same issue, sharing in many sections, for example, the same sentence structure, paragraph organization, headings, word choice, assertions, and so on. I have thus previously addressed and provided sworn testimony responding to the substance of many of Dr. Hansen's opinions already in prior patent litigation between Wilus and Samsung. At a minimum, I am familiar with the issues and arguments pertaining to whether draft D1.0 was publicly accessible for purposes of being prior art to Wilus's patents.

5. For my work in this matter, I am being compensated at my standard hourly rate of \$750/hour. My compensation in no way depends on the opinions offered or the outcome of this proceeding.

II. QUALIFICATIONS

6. My *curriculum vitae* is attached as Exhibit A for reference.

7. As reflected on my CV, I received a M.S. degree in Biomedical Engineering and have spent more than 40 years of my career developing inventions, products and businesses related to communications, networking, and broadband access network systems based on technical standards. I am a named inventor on a number of patents and have been previously employed in senior engineering and leadership roles at several major tech firms.

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8. I have spent decades working in the standardization space and have held both elected and appointed positions at the IEEE. For instance, I served as Chair of the IEEE 802 LAN/MAN Standards Committee from 2001–2024, where I guided global consensus on wired and wireless networking standards and oversaw the participants, contributors, projects, and budget related to the more than 300 published standards developed by Working Groups of the Standards Committee. Below is a summary of other positions I have held at the IEEE and various awards I have received as a result of my contributions to the development of certain IEEE standards.

IEEE Standards Association

2024 - present	Past Chairman IEEE LAN/MAN Standards Association
2023-2024	Treasurer, IEEE Standards Association
2001-2024	Chairman IEEE LAN/MAN Standards Committee
1996-2001	Vice Chairman, IEEE LAN/MAN Standards Committee
1993-1996	Vice Chairman, IEEE 802.3 Ethernet Working Group
1989-1993	Member, IEEE 802.3 Ethernet Working Group
2003/4/5/18/20/21/22/23/24	Member, Standards Association Standards Board
2009/10/16/17/24	Member, Standards Association Board of Governors

IEEE Technical Activities

2001-2025	Member Computer Society Standards Activity Board
2018-2022	Member, Technical Activities Board (TAB) Management Committee
2018-2022	Chairman, IEEE TAB Committee on Standards
2023-2024	Past Chairman, IEEE TAB Committee on Standards
2018-2024	Technical Activities Representative to Standards Association
2025-2026	Computer Society Awards Committee
2025	IEEE Computer Society

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Hans Karlsson Standards Award Subcommittee
Chair

IEEE BoD Activities and Awards

2025-2026	IEEE Fellows Evaluation Committee
	IEEE Strategic Investment and Public Imperative Ad Hoc
2025	
2023-2024	IEEE Finance Committee
2025	IEEE Charles Proteus Steinmetz Award "For his leadership in the development and advancement of global IEEE 802 network standards."
2005	IEEE Fellow "For leadership in enabling ubiquitous broadband internet access and associated standards."

9. In summary, I have spent 37 years contributing to the development and ratification of IEEE standards and thus I am intimately familiar with the IEEE's policies, procedures, and practices.

III. PUBLIC ACCESSIBILITY OF IEEE 802.11ax D1.0

10. Dr. Hansen expresses certain opinions in his Hansen Declaration and Supplemental Declaration to support his conclusion that IEEE 802.11ax Draft D1.0 was publicly accessible and prior art to the '262 Patent by December 1, 2016. Dr. Hansen's primary conclusion is that draft D1.0 was published and made publicly accessible when it was circulated via a link in an email to the IEEE 802.11ax Working Group on December 1, 2016. *See* Hansen Decl. ¶ 70 ("Based on the foregoing, it is my opinion that P802.11ax/D1.0, otherwise known as draft D1.0, was publicly accessible to members of the interested public as of December 1, 2016."). His Supplemental Declaration provides

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further opinions as to certain discrete issues—i.e., whether “Aspirant” members (as opposed to full-fledged members) could have had access to draft D1.0 by December 1, 2016, and whether another organization outside of IEEE 802.11ax Working Group (such as another standards-setting organization like the IETF) had access to D1.0. Remarkably, Dr. Hansen also provides sworn testimony that he distributed a later draft of 802.11ax, draft D6.0, in a manner that appears to have violated the IEEE 802 policies and procedures governing the distribution of draft standards documents.

11. I am qualified to analyze and assess Dr. Hansen’s specific factual assertions and opinions about the public accessibility of 802.11ax D1.0. At the time 802.11ax D1.0 was circulated internally within the voting bloc of the IEEE 802.11 Working Group on December 1, 2016, I had served as Chairman of 802 LAN/MAN Standards Committee organization for 15 years and would continue to serve as Chairman until 2024. The Standards Committee oversees the work performed by the IEEE 802.11 Working Group.

12. I am informed and understand that an important requirement for a given printed publication like 802.11ax D1.0 to be “prior art” against a U.S. patent is that it must have been sufficiently accessible to the public interested in the art. I understand that this is a fact-specific inquiry which looks at various factors, like whether, the degree and scope, and to whom specifically the

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printed publication was disseminated. I also understand that another important consideration relevant to a determination whether a printed publication like 802.11ax D1.0 is publicly accessible is existence (or lack thereof) of reasonable expectations that the material would not be copied or further disseminated by those individuals determined to be eligible to receive it. The specific formulation of the law, as I understand it and have been informed by counsel, is as follows: “the ultimate question is whether the reference was available to the extent that persons interested and ordinarily skilled in the subject matter or art, exercising reasonable diligence, can locate it.”

13. My understanding of the legal principles here is further supplemented by the following examples provided by counsel for Wilus:

- (1) a student’s written thesis that is stored in a college’s main library amongst other student theses, which were collectively indexed using individual cards and searchable by student name, and which was orally presented only to faculty members, is not sufficiently publicly accessible to be prior art;
- (2) a resident doctor’s various papers describing his work on stents, which he distributed to various supervisors and medical professional colleagues and also to two companies attempting to commercialize his stent technology, even without any formal confidentiality agreement,

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nonetheless did not establish public accessibility because academic, professional, and industry norms indicated that the distribution of the papers was done with an expectation of confidentiality.

- (3) a given article on file at the United States Copyright Office is not publicly accessible if its title cannot be searched for nor located by a subject matter search;
- (4) evidence that it was “general practice” at an industry conference to distribute article abstracts is insufficient evidence of actual evidence of distribution of a specific abstract for purposes of public accessibility.

14. To assess whether Dr. Hansen’s assertions regarding 802.11ax D1.0 was “publicly accessible,” I must also know the definition of “Person of ordinary skill in the art” (POSITA) as it stands in this case. I am informed that Dr. Hansen has opined as follow in this case: a POSITA “would have had a Bachelor’s degree in electrical engineering, computer engineering, computer science, or a related field, and at least three years of experience in the research, design or development of wireless communication devices, systems, and/or networks, or the equivalent.” This definition is identical to that which Samsung’s experts in the district court litigation proposed and which I adopted for purposes of my opinions there. For the purposes of this declaration, I do

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not disagree with Dr. Hansen's definition and adopt it for my analysis in this proceeding.

15. Dr. Hansen's primary conclusion is that draft D1.0 was publicly accessible for purposes of being prior art to the '262 Patent on December 1, 2016, when a link to the document was included in an email to voting members of the IEEE 802.11ax Working Group on that same day notifying recipients that balloting for draft D1.0 was open. *See* Hansen Decl. ¶ 70 ("Based on the foregoing, it is my opinion that P802.11ax/D1.0, otherwise known as draft D1.0, was publicly accessible to members of the interested public as of December 1, 2016."). He supports his conclusion by saying that one could obtain D1.0 by December 1, 2016 through two separate "options":

1. <u>Option 1: Become a Working Group Voting Member</u>

Hansen Decl. ¶¶ 57-63 ("Option 1" opinions)

2. <u>Option 2: Obtain the D1.0 Draft as a Non-Voting Member</u>

Hansen Decl. ¶¶ 64-70 ("Option 2" opinions)

16. I disagree with Dr. Hansen on both of these "options," in that I do not agree that the existence of either option establishes the public accessibility of draft D1.0 by December 1, 2016 as Dr. Hansen opines.

17. In my opinion, 802.11ax D1.0 was not publicly accessible when it was made accessible to the active participants the 802.11 Working Group on

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December 1, 2016. As Dr. Hansen acknowledges, the 802.11 Working Group is a specific subset of individual participants, all of whom are also members of the broader 802.11 organization. *See, e.g.*, Hansen Decl. ¶¶ 57-58. In order to become a voter of the Working Group member (which is sometimes described as a person with “Voter” status within the organization) in the 2016-2017 time frame, one must have satisfied a series of requirements which can be summarized as follows: the individual must attend three sessions of the IEEE 802.11 Working Group—two of which must be “plenary” sessions (which are typically more eventful and heavily attended than non-plenary sessions). *See* Hansen Decl. ¶ 58.

18. Thus, in order to be an individual who actually received a copy (or, more accurately, an email notifying the individual that the password-protected section of the Working Group website had been updated to permit access to 802.11ax D1.0 and a link to that draft) by December 1, 2016, that individual must have been a participant of the Working Group no later than December 1, 2016. Dr. Hansen generally recites these facts in his declaration at Hansen Decl. ¶¶ 52-53.

19. Importantly, Dr. Hansen has overlooked one material issue. In order to be a member with voting privileges and the *motivation* to review D1.0 on December 1, 2016 to vote on it, that individual must have been a participant

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in the Working Group by August 15, 2016, which is the date on which ballot 223 was opened; ballot 224 was opened on September 10, 2016; and ballot 225, which concerns 802.11ax D1.0, was opened on December 1, 2016.¹

20. In any event, at a high level, Dr. Hansen's "option 1" opinion is that a POSITA (that is, a new CS/EE graduate with 3 years of work experience by late 2016 or early 2017), would have been either a participant or a voting member of 802.11 Working Group by December 1, 2016. This is a dubious conclusion for the following reasons.

21. First, the membership of the 802.11 Working Group skews overwhelming towards individuals with many years (or decades, in some cases) of relevant industry experience. To illustrate my point, consider the oldest version of the 802.11 Working Group members list crawled and captured by the Internet Archive, which dates to early 2018.² By that time, there were 243 members with voting status within the Working Group (and that number may have been even lower in December 2016). Upon a skim of

¹ See, e.g., https://ieee802.org/PNP/approved/IEEE_802_WG_PandP_v19.pdf (IEEE policies and procedures in effect in 2016) (section 4.2.3: membership may be lost if two of the last three Working Group letter ballots are not returned"). As the rules also state, membership is lost also if one does not participate in at least two of the last four plenary sessions.

² Available here: <https://web.archive.org/web/20180131044637/https://www.ieee802.org/11/members.htm>

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that list of voting members, I note that virtually all of the names of these members belong to distinguished engineers with many years of experience and who hold (or held) senior roles at their respective technology companies. Take, for example, the alphabetically first four names on the list and the information readily available about them on the Internet (and I note that these individuals' specific and self-reported qualifications are accessible to Working Group members, including myself):

- Aboulmagd, Osama: Huawei-affiliated; began participating in 802.11 Working Group in 2003.³ Served as chair of 802.11ax and 802.11ac.
- Adachi, Tomoko: Toshiba-affiliated; fellow at Toshiba since April 2000.⁴
- Ahn, Jinsoo: professor at Yonsei University since around 2014.
- Ahn, Woojin: Wilus-affiliated; a Wilus Senior Researcher by 2016, B.S. in EE from Yonsei University in 2006; M.S. in EE from Yonsei University in 2008.

22. It is reasonable to assume that most of the voting members of 802.11ax as of 2016 had similar or more credentialed and experienced backgrounds. This is consistent with my decades of experience in the 802.11 organization:

³ See, e.g., <https://lyon.ecampus.com/wireless-local-area-networks-quality/bk/9780738156736>.

⁴ See, e.g., <https://www.linkedin.com/in/tomoko-adachi-61582293/>.

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companies typically choose senior engineers with deep technical and standards setting expertise as delegates to 802.11 organization, particularly where standards-setting activities are concerned, because it is these senior engineers and researchers who can be most expected to meaningfully contribute to the 802.11 organization's activities. It typically does not make sense for a company like Huawei or Intel to send a junior engineer (with, say 2 or 3 years of experience) to Working Groups in the IEEE 802 LAN/MAN Standards Committee. Note that individuals participating in IEEE 802 LAN/MAN activities are expected to do so as individual technical experts. As for Dr. Hansen's implicit opinion that a junior engineer (with 2-3 years of experience) would be a Working Group voting member by December 1, 2016—that is generally inconsistent with my understanding of the specific facts and characteristics about the 802.11 Working Group's membership and, more importantly, not supported by evidence I've seen, such as by any evidence described in Dr. Hansen's declarations or in any evidence provided by Samsung's other experts in other proceedings relating to this issue.

23. In any event, Dr. Hansen asserts: "Although draft D1.0 was initially posted to a password-protected area of the IEEE website, this posting in fact would have served to make draft D1.0 accessible to a broad swath of the interested public. As I explained above, many hundreds of individuals among

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the interested public were voting members in the IEEE 802 Working Group and would have had direct access to draft D1.0 from the member area website immediately upon its posting on December 1, 2016.” Hansen Decl. ¶ 56. This assertion fails as a matter of logic: as I understand it, the “interested public” of the legal test is not “some people who are interested in the subject matter.” Rather, the “interested public” means: “persons interested and ordinarily skilled in the subject matter.” Certainly, the various senior researchers, university professors, and other experienced industry professionals in the voting bloc and participants of the 802.11 Working Group are “interested” in a basic sense in the subject matter—they are the ones collectively drafting and voting on the draft standard, after all. But a POSITA, here, according to Dr. Hansen, is simply a junior engineer or researcher with 2-3 years of work experience, with no special access to the password-protected materials distributed in the 802.11 Working Group balloting process. Such a POSITA would of course not have access to 802.11ax D1.0 draft, unless one were to presuppose (counterfactually and against both logic and evidence) that the POSITA is also a participant and/or a voting member as of December 1, 2016.

24. Dr. Hansen’s “option 1” opinions further assert that it would have been simple for a POSITA (having graduated from college 2-3 years earlier) to follow “straightforward” procedures for “becoming a voting member of the

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Working Group.” Importantly, those procedures required an interested person to attend three IEEE working group sessions *in person*, two of which must be week-long “plenary” sessions. Dr. Hansen’s opinions themselves show why the argument is weak. Under Dr. Hansen’s argument, a junior engineer (with 2-3 years of experience), fresh out of college in 2015 or 2016, would have needed to do the following:

- Attend at least two “plenary” IEEE sessions in the following locations and dates: (1) Macau, March 2016; (2) San Diego, California, July 2016, and (3) San Antonio, Texas, November 2016.
- If attending only two “plenary” sessions, also attend at least one of the following non-plenary IEEE sessions: (1) Waikoloa, Hawaii, May 2016, (2) Warsaw, Poland, September 2016.

25. In other words, Dr. Hansen requires this new EE/CS graduate (with 2-3 years of experience) to either self-fund travel and hotel costs to potentially distant locations for three full week long sessions (i.e., one of which would be in Macau, Poland, or Hawaii), or have been selected by their employer to attend. This strains credulity.

26. Dr. Hansen’s theory that a POSITA would have just “joined” the voting bloc of the Working Group fails for numerous reasons. First, a POSITA could not have been meaningfully motivated to do so beginning in December 2016

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if they had (hypothetically) been informed of the existence of 802.11ax draft D1.0 at that time, because they would not have had time to do so before the relevant priority date.

27. Even taking a junior software engineer in January 2016 with 2-3 years of experience (to go along with Dr. Hansen's theory that such a person could have begun attending IEEE 802.11 sessions in early 2016), it defies common sense and logic to conclude that this engineer, even acting with reasonable diligence, would have (whether self-funded or sponsored by an employer) strategically attended multiple IEEE sessions throughout 2016, some in potentially distant locations, just to become a voting member of the Working Group for the chance to learn about and access 802.11ax D1.0 by December 2016. And, as I've noted above, the reality is that virtually all voters and other Working Group members are not junior engineers with 2-3 years of experience. Put another way, if there were very junior engineers in the Working Group on December 1, 2016 (and I do not deny that is a possibility), they would have been extraordinary exceptions that did not fit the typical profile of Working Group participants and voters.

28. As for Dr. Hansen's "Option 2" opinions, he asserts that a person who was not a participant, member, or voter in the 802.11ax Working Group could have simply acquired a copy of D1.0 by asking a member. He asserts:

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“Voting members of the IEEE 802.11 Working Group commonly shared standard amendment drafts with non-voting members, as well as individuals who did not attend 802.11 Working Group or task group meetings at all. For example, in my experience, it was common for voting members to share draft standards with academic colleagues or industry engineers from their respective companies who were not voting members and, in some instances, were not even IEEE members. Based on the roughly 600 IEEE 802 Working Group members with direct access to the document (see ¶ 55), I estimate that draft D1.0 would have been disseminated to thousands of additional interested members of the public apart from just voting members by the earliest claimed priority date of the '262 Patent (e.g., April 14, 2017). In other words, there was not an expectation of confidentiality with respect to draft D1.0. (Hansen Decl. ¶ 66).

29. I disagree with the assertion there is not an expectation of confidentiality. There well defined restrictions on the distribution of IEEE draft standards, they are IEEE copyrighted work product. Furthermore, I specifically note the assertion is unsupported by Dr. Hansen with any examples, detailed explanation, or other evidence. It is also inconsistent with my understanding of the law, which provides that assertions concerning the “general practice” of the alleged distribution of a type of publication like a draft standard is insufficient to establish that a specific draft standard (that is, specifically draft D1.0) was publicly accessible for prior art purposes.

30. In my experience, the IEEE 802.11 Working Group has always treated its confidential, password-protected materials with the expectation that their password-protected status conveys: that they be treated as confidential and

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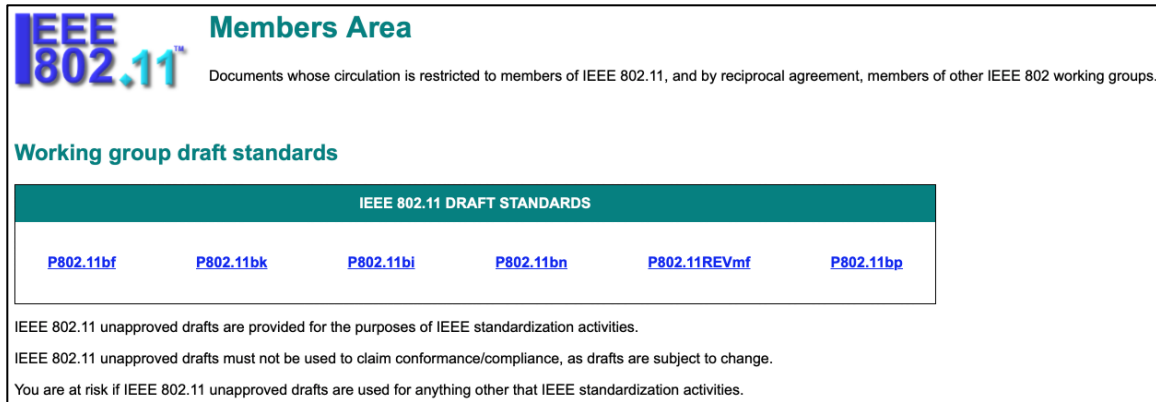
used only for the purposes permitted by the policies and procedures of the IEEE, the IEEE Standards Association and the IEEE 802 LMSC organizational units.

31. This expectation of confidentiality is clearly and repeatedly spelt out to 802.11 Working Group members and the broader 802 organization. *See, e.g.,* <https://1.ieee802.org/documents/> (“IEEE 802.1 working group documents are mostly public access, however, drafts under development are **private to working group participants**.”) (similar warning for 802.1 working group participants).

32. For example, the current landing page of the password-protected materials for the Working Group⁵ (which would have needed to be accessed in December 2016 by a voting member to obtain a copy of 802.11ax D1.0) shows as follows:

⁵ <https://www.ieee802.org/11/private/index.shtml>. The specific URL of the balloting webpage distributed on December 1, 2016, was https://www.ieee802.org/11/LetterBalls/LB225ax/LB225_instructions.html, which provided a link to the “members only” portion of the website for downloading draft 1.0 at this URL: http://www.ieee802.org/11/private/Draft_Standards/11ax/Draft%20P802.11ax_D1.0.pdf.

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33. As the screenshot shows, literally the first sentence shown in the “Members Area” behind the password protection prompt reads that it is for: **“Documents whose circulation is restricted to members of IEEE 802.11,** and by reciprocal agreement, members of other IEEE 802 working groups.” This written warning to Working Group members has been in place as long as I can recall.

34. As a broader matter, Dr. Hansen’s assertions are also inconsistent with the broader IEEE organization’s written policies and procedures regarding distribution of draft standards, which are currently available here <https://standards.ieee.org/about/policies/opman/sect6/> and which have not significantly changed (for our purposes here) since at least 2016. Those rules provide the scenarios in which drafts may be distributed: it can be distributed to other IEEE members or external standards-setting organizations only upon approval by the relevant Working Group Chair and stakeholders, and with other IEEE working groups or standards committees.

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35. Indeed, IEEE SA Standards Board Operations Manual 6 provides as follows:

6.1.3.2.1 Sharing drafts with Working Group participants

Participants in an active IEEE standards development project are entitled to receive a copy of draft standards produced by that project without charge. The Working Group Chair of the project determines whether an individual (for individual projects) or entity (for entity projects) meets the requirements for participation.

6.1.3.4 Draft distribution to recognized organizations external to IEEE

If a Working Group intends to distribute a draft to a recognized standards-developing organization or technical organization external to IEEE involved in the technology covered by that project for technical review and comment, the Standards Committee and Working Group Chair shall work with the IEEE Standards Department to establish the draft sharing relationship. A recognized organization is one that has been accepted and is listed on the [IEEE SA Working Group Draft Sharing for Coordination List](#).

Once the draft sharing relationship has been established, the Working Group Chair may share stable drafts. A stable draft is one that has

- a. been voted on by the Working Group as being ready to be shared, and
- b. undergone an IEEE SA editorial review and has been deemed without issue (e.g., the draft is absent any open or unresolved required editorial review items prior to draft distribution).

All drafts submitted to organizations external to IEEE shall have as the cover page the IEEE SA draft sharing cover letter. The cover letter outlines the IEEE copyright and permitted uses and is available from the IEEE Standards Department. When sharing the draft with the organization external to IEEE, the Working Group Chair shall inform the IEEE Standards Department.

The IEEE Standards Committee Chair or Working Group Chair shall immediately inform the IEEE Standards Department when the draft sharing relationship is no longer needed.

6.1.3.5 Other draft distribution

Requests for drafts other than described in subclauses 6.1.3.2 – 6.1.3.4 shall be directed to the [IEEE Standards Department](#).

36. In sum, drafts of standards cannot be freely distributed as Dr. Hansen suggests. Persons not authorized by default to receive copies of drafts may of course request access, like through the provisions of the policies and procedures shown above—but whether such requests are granted is committed to the discretion of the Chair of the relevant Working Group that developed

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and approved the draft, an IEEE copyrighted work product. And I am aware of no instance, and Dr. Hansen has provided no example, of where 802.11ax D1.0 (or earlier drafts such as D0.5) were circulated to anyone at on December 1, 2016 or soon thereafter who was not otherwise permitted to access them in the first place by default.

37. Any other form of distribution other than that specified in the policies and procedures must be approved by the IEEE Standards Association. In view of the policies and procedures of the IEEE Standards Association and the IEEE 802 LMSC, it is incorrect to conclude that a given draft would have been freely distributed without any expectation of confidentiality. It appears Dr. Hansen believes that, despite the written policies and procedures that governed IEEE 802.11's work, individuals would have freely violated those policies and procedures. If so, I am not aware of any instance where an individual did so with respect to 802.11ax D1.0, and Dr. Hansen has identified none. In reality, the strong expectation is that participants in IEEE 802 LMSC standards activities shall rigorously follow the rules of the organization, and it is my general experience that participants do, in fact, follow the rules. I am aware of no instance where an IEEE 802 LMSC participant, in violation of those rules, distributed 802.11ax D1.0 to someone else outside of the organization without obtaining proper approval with the expectation they

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adhere to the copyright restrictions, and certainly not on December 1, 2016 or shortly thereafter.

38. Let me emphasize my point: Dr. Hansen says that he “estimates” draft D1.0 would have been disseminated to “thousands of additional interested members” by April 14, 2017, based on his predicate “estimate” of “roughly 600 IEEE 802 Working Group members with direct access to the document. I take this assertion to mean that Dr. Hansen thinks there were “thousands” of people outside of the IEEE 802 Working Group who allegedly received draft D1.0 by April 2017.

39. What is Dr. Hansen’s *evidence* of this unfettered dissemination? Well, at paragraph 67 of the Hansen Declaration, Dr. Hansen mentions Genady Tsodik and Leonid Epstein, who were listed as authors on a March 2017 submission to the Working Group that Dr. Hansen says are evidence that they received a “pre-D1.0” (Hansen Decl. ¶ 67) draft. This does not support Dr. Hansen’s opinion, because a “pre-D1.0” draft is not draft D1.0, and evidence that an earlier draft was available to a given person is not evidence that a later draft was also available to that person. Dr. Hansen’s example here also reveals a flaw in his logic: if draft D1.0 were “publicly accessible” as he says by December 1, 2016, why is a 802.11ax submission submitted in March 2017

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referencing an older draft and not draft D1.0? Dr. Hansen neither recognizes nor explains this logical inconsistency.

40. Further, Mr. Tsodik and Mr. Epstein’s statuses as “potential voters” or “aspirants” is not actually relevant to (or dispositive of) to the question here—because they, as participants in the Working Group, would have already had access to D1.0 via their Working Group website username/password credentials. They are permitted already under the organization’s rules and regulations to download draft D1.0.

41. Incidentally, consider Mr. Tsodik and Mr. Epstein’s actual work experience as of 2016. Mr. Tsodik, then a Huawei employee, graduated from college in 2002, and then obtained a master’s degree in 2008: <https://www.linkedin.com/in/tsodik-genadiy-7779b93/> (accessed April 16, 2026). *See:*

"Thesis titled "H∞ Control of Time Delay Systems via Discretized Lyapunov Functional	Education Tel Aviv University MSc, Electrical Engineer  2008 – 2004
Technion - Israel Institute of Technology BSc, Electrical and Electronics Engineering  2002 – 1998	

Mr. Epstein, also then affiliated with Huawei, graduated from Moscow State University of Transport with a master’s degree in electrical engineering in

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1981. See <https://www.linkedin.com/in/leonid-epstein-1521a22/> (accessed April 16, 2026):



42. Neither Mr. Epstein nor Mr. Tsodik were fresh out of college with 2-3 years of experience in 2016, of course—they had skill and education far surpassing that of a POSITA, which at minimum suggests the counterfactual nature of Dr. Hansen’s assertions where he insists that a much more junior engineer would have been a voting member or participant in the WG by December 1, 2016.

43. Next, at his paragraph 68 of the Hansen Declaration, he likewise refers to Frank Hsu, who Dr. Hansen says was an “aspirant” in the Working Group as of December 1, 2016. Hansen Decl. ¶ 68. This does not support Dr. Hansen’s conclusion; Mr. Hsu, as a participant in the Working Group, was already permitted under the organization’s rules and regulations to download draft D1.0.

44. Then, at paragraph 69, Dr. Hansen refers to a March 2017 submission that mentions an aspect of D1.0. It has four authors, two of whom, Iilan Sutskover and Michael Simon, Dr. Hansen says were not 802.11 Working

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Group members. This, according to Dr. Hansen, means D1.0 was shared with people outside of IEEE. This appears to be incorrect. Dr. Sutskover (e.g., <https://www.linkedin.com/in/ilan-sutskover-5088b92/>) has been involved with IEEE 802 Working Group standards-setting activities since at least 2004. See, e.g., https://www.ieee802.org/16/tge/contrib/C80216e-04_319r1.pdf (2004-dated contribution from Dr. Sutskover to 802.16), <https://mentor.ieee.org/802.11/dcn/07/11-07-2392-01-000n-lb97-motion-to-rewrite-ldpc-encoding-equation-20-41.doc> (2007-dated contribution from Dr. Sutskover to IEEE 802.11). Mr. Simon, then affiliated with Rohde and Schwarz, has been deeply involved in the IEEE Broadcast Technology Society since 2009. See, e.g., <https://bts.ieee.org/images/files/newsletters/spring09.pdf> (Spring 2009 IEEE newsletter discussing Mr. Simon, who had “25 years” of experience as of 2009), and his recent election to administrative committee for 2009-2011 term). Dr. Sutskover and Mr. Simon, as a *longtime* IEEE members by 2016 actively participating in standards setting activities (and, in Dr. Sutskover’s case, participation specifically in IEEE 802.11 work), were at minimum individuals permitted to access D1.0 through the IEEE and IEEE 802 LMSC rules and regulations.

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45. Finally, as for Dr. Hansen’s Supplemental Declaration, his first main point is that one could become an “aspirant” (as opposed to a voting member) of the 802 Working Group and obtain access to draft D1.0. I do not disagree with that assertion, but it misses the point: evidence that any such aspirant existed was not supplied (1) as of the date Dr. Hansen asserts D1.0 became publicly accessible for prior art purposes, December 1, 2016? And, if so, (2) does that aspirant matches the definition of a POSITA in this case? If not, then there is no *evidence* supporting a conclusion of Dr. Hansen’s public accessibility opinion—there is only his speculation (which, as I’ve already noted above, is completely counterfactual to the actual makeup of the membership of the Working Group).

46. The Supplemental Declaration’s second point is that participants in another standards-setting organization, such as the Internet Engineering Task Force (“IETF”), could have requested and obtained a copy of D1.0—this, according to Dr. Hansen, means that it was publicly accessible as of December 1, 2016. Suppl. Decl. ¶¶ 25-27. Dr. Hansen’s opinion here is flawed in multiple respects: *first*, it is unsupported by any evidence that any IETF participant actually did request (and obtain) draft D1.0 on December 1, 2016 or shortly thereafter; *second*, it is unsupported by any analysis or evidence that Dr. Hansen’s hypothetical IETF participant matched the definition of a POSITA

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(i.e., it is possible that, as a factual matter, the ordinary or average IETF participant was someone with skill and experience far exceeding that of a POSITA in this proceeding—meaning that whether this hypothetical IETF participant could have requested and possibly obtained draft D1.0 from the 802.11ax Working Group chair bears less, little, or no weight on the operative question: whether draft D1.0 was publicly accessible *to the POSITA*. **Third**, it fails to establish the 802.11ax Working Group chair *would have* granted access to D1.0 to this hypothetical IETF participant – that is, permission is left to the discretion of the Working Group chair (as Dr. Hansen clearly acknowledges)—so, the natural questions are, *how likely was it for permission to be granted? Would this hypothetical IETF participant expect permission to be granted or even be motivated to make such a request in the first place?* Dr. Hansen fails to answer these questions (or even acknowledge their importance and relevance), much less provide any evidence in support of his position on them. For instance, if the WG chair had a history of *not* granting permission when fielding requests for draft D1.0 (or any other draft), that makes it less reasonable to conclude that a POSITA would have had access to draft D1.0 through that method—this is partly why I insist on the importance of *evidence* on this issue one way or another, because it one cannot simply speculate (as Dr. Hansen has) and assert in conclusory fashion that

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“anyone could have gotten a copy.” If there is no *evidence* that (1) a POSITA got a copy of draft D1.0, or (2) POSITA expected to have been able to get a copy of D1.0, then this means that there is no *evidence* that draft D1.0 was publicly accessible on the date that Dr. Hansen asserts.

47. This lack of evidence is fatal, in my view, to Dr. Hansen’s argument, because the specific date and manner of the alleged distribution logically determines the date on which a given publication is publicly accessible—and Dr. Hansen has provided no specifics at all other than speculative assertions.

48. Finally, Dr. Hansen relays an anecdote where he emailed a copy of 802.11 D6.0 to his students at UCLA. Suppl. Decl. ¶ 28. He acknowledges it is not “specific” to draft D1.0—meaning that it is not evidence of public accessibility of draft D1.0 as of December 1, 2016. This anecdote, unfortunately, appears to me to show Dr. Hansen’s violation of the IEEE Standards Association and IEEE 802 LMSC rules and regulations and the 802.11 Working Group’s written prohibitions on unauthorized distribution. Perhaps Dr. Hansen regularly breaks the organization’s rules and believes others break the rules as well—but this is not evidence that a POSITA would have emailed someone like Dr. Hansen in December 2016 and obtained a copy of draft D1.0.

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IV. CONCLUSION

49. For the reasons explained above, it is my opinion that Dr. Hansen has not demonstrated that draft D1.0 of IEEE 802.11ax was “publicly accessible” on December 1, 2016 or at any other date.

50. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that all statements made herein of my knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001.

Executed on April 17, 2026

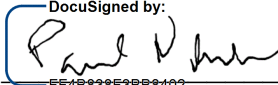
DocuSigned by:

FF4B638F3BB6402...
Paul Nikolich
Owner of Nikolich Advisors LLC

Exhibit A

Paul Nikolich
3 Barberry Way, Essex Fells NJ 07021
857.205.0050 p.nikolich@ieee.org

Relevant Experience & Accomplishments

IEEE (Institute of Electrical and Electronic Engineers) Leadership

- IEEE, a 501(c)3 non-profit professional home for the worldwide engineering and technology community with over 500,000 members whose mission to enable the development of technology and standards for the betterment of society.
- 2024 to present, Chairman Emeritus of the IEEE 802 LAN/MAN Standards Committee (LMSC)
- 2001 to 2024, Chairman of the IEEE 802 LMSC, oversaw and brought consensus to a diverse global mostly industry-based constituency responsible for producing approximately 15-20 standards per year, maintaining 75+ published standards and managing 50+ standard development projects in wired and wireless communications networking. IEE 802 LMSC has over 1000 active participants affiliated with large and small firms. IEEE 802 LMSC has worldwide recognition of companies, academic institutions, Standards Development Organizations (SDO) and National SDO Bodies with direct liaison relationships to ISO/IEC/JTC1, ITU-T and ITU-R, 3GPP, several National Regulatory bodies. Oversight over annual operating budget of approximately \$2.5 million/year and volunteer manpower valued in the range of \$250-\$275 million per year.
- Active leadership in multiple executive level IEEE activities: Fellows Committee, Technical Activities Committee on Standards Chair, Standards Association Board of Governors Treasurer, Standards Board, Strategic Planning Chair, Business Development Chair, the Computer Society Standards Activities Board, Industry Engagement, Entrepreneurs Steering Committee, and 5G Steering Committee.

Private Angel Investor, Technology Entrepreneur, Business Leader, Executive Consultant

- Owner of Nikolich Advisors LLC, an angel investor entity with several private early-stage high technology companies in its portfolio and member of several advisory boards.
- Provide executive consulting services to the communications industry, specializing in the broadband services operator sector for wireline/wireless data and video infrastructure systems.
- Provide expertise to companies and law firms engaged in Intellectual Property disputes.
- Co-founder of Broadband Access Systems, which invented and produced a carrier class cable modem termination system that was acquired in 2000 by ADC Telecommunications for over \$2 billion.
- Created and managed strategic business and technology programs for my employers.

Employment	Self Employed Angel investor and Executive Consultant Nikolich Advisors LLC	<i>2001-present</i>
	• Actively assist entrepreneurs launch and operate technology companies. • Provision of executive consulting and corporate advisory services in business development, technology strategy and intellectual property management.	
	Cofounder, VP Technology & Standards, BAS (200 people)/ADC (2,000 people), Westborough MA	<i>1998-2001</i>
	• Responsible for co-founding and technology development of a carrier class communications system for cable system application (DOCSIS), intellectual property creation, protection and management, customer interfaces, standards development and fund raising.	
	VP Engineering, Sarnoff Digital Communications, Waltham MA (20 people)	<i>1996-1998</i>
	• Co-founder responsible for technology development of a silicon demodulator for digital cable and broadcast television applications.	

VP of Technical Staff, Racal Datacom, Boxborough MA and Reading UK (1200 people) 1989-1996

- Led advanced development of LAN/WAN data communications systems. Key member of Intellectual Property management team and strategic business planning in the USA and UK.

Various engineering roles in large and small companies, *Motorola, Analogic, Elscint, Alpha Industries, Applitek, LANcity, Mayflower Communications*, 1978-1989

- Designed, developed and manufactured equipment for medical imaging and wired/wireless communications applications.

Patents & IP WO-6,853,680 System and process for embedded cable modem in a cable modem termination system to enable diagnostics and monitoring;
US-6,826,195 System and process for high-availability, direct, flexible and scalable switching of data packets in broadband networks;
US-2004/208563 Ranging in the physical layer (patent application);
US 2002/0101630 Monitor, control and configuration of fiber node via cable modem;
HK-1058869 System and process for return channel spectrum manager;
CA-2431282 Supporting multiple upstream and downstream channels in a cable modem termination system line card;
WO-2011/038265 System and method for altering control criteria for mobile device operation
US-5,787,087 Method and apparatus for interconnecting a plurality of terminal equipments to the ISDN.

Responsible for several private inventions in the radio frequency, data communications and medical imaging fields.

Elected/ Appointed positions IEEE Computer Society 802 LAN/MAN Standards Committee Chair Emeritus 2024-present
IEEE Computer Society 802 LAN/MAN Standards Committee Chair 2001-2024
IEEE Standards Association Board of Governors 2023/2024 (Treasurer), 2016/2017, 2009/2010
IEEE Technical Activities Board and Committee on Standards Chair 2018-2022
IEEE Fellows Committee 2012, 2024-2026
IEEE Finance Committee 2023-2024
IEEE Life Fellow 2005

Investment & Advisory activities Investments: Origin Wireless (acquired 2026), Wyebot, octoScope (acquired 2021), Endeca (acquired 2011), Alantro (acquired 2000), Avilar, Narad/Phyflex, WiQuest
Advisory: PHAZR, Innophase, Kandou, OrbAnalytics, Azimuth Systems, Entropic (IPO 2007), Stargus (acquired 2004), LANcity (acquired 1996), Aerocopter, Flarion, Propagate, ICTV, Copanion, Fuzion, SeaChange, Lucid Wave
Board of Directors: OctoScope, Radcomm, Windspeed

Education **M.S. Biomedical Engineering**, Polytechnic Institute of New York, Brooklyn NY 1979
B.S. Biology and B.S. Electrical Engineering, Polytechnic Institute of New York, Brooklyn NY 1978
M.S. Electrical Engineering, Completed all degree requirements except thesis at Florida Atlantic University and Northeastern University 1980-1982

Skills My primary strength is working with young entrepreneurs to invent, develop and commercialize technology as the basis for starting new, emerging technology companies.