Paper No. __

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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BROADCOM CORPORATION

Petitioner

v.

WI-FI ONE, LLC

Patent Owner

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Case IPR2013-00636
U.S. Patent No. 6,424,625

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**PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE**

**UNDER 37 C.F.R. § 42.120**

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# TABLE OF AUTHORITIES

## Cases



## Statutes

## I. BROADCOM'S PETITION IS NOT BARRED BY 35 U.S.C. § 315(B)

Owner[1] asserts that Broadcom's Petition is barred because Broadcom is a "privy" of the D-Link Defendants, the alleged "real parties-in-interest to this Action." (Resp. at 8; Paper No. 34). Owner has raised this identical argument twice, and has failed each time. This Board previously denied Owner's Motion for Additional Discovery regarding privity and real party-in interest issues and the Federal Circuit subsequently denied Owner's Petition for a Writ of Mandamus seeking to overturn this Board's decision. This third attempt relies on *exactly the same arguments Owner made to this Board and the Federal Circuit* and should be rejected for the same reasons. Owner offers no new reason whatsoever for this Board to reverse its prior decision that Owner's proffered "evidence" and legal authorities fail to amount to anything more than "speculation" or "a mere possibility" that Broadcom is in privity with the D-Link Defendants or that the D-Link Defendants are real parties-in-interest.

### A. Broadcom is Not in Privity with the D-Link Defendants

Owner again relies on unsubstantiated allegations of Broadcom's "substantive legal relationship" of indemnity with the D-Link Defendants, "multiple legal actions on behalf of the community of interest," and Broadcom's

[1] After institution, Ericsson transferred the '625 patent to Wi-Fi One, LLC. This Reply refers to the current and prior owners as "Owner".

"attendance" at the Texas trial to support its claim of privity. (*Id.*; Paper No. 34). Owner's arguments, which rely on the same flawed and speculative "evidence" asserted previously, fail to establish Broadcom as a privy. As the Board correctly held, "indemnity payments and minor participation at trial are not sufficient to establish privity." (Discovery Decision at 7 (citing *Bros, Inc. v. W.E. Grace Mfg. Co*, 261 F.2d 428, 429 (5th Cir. 1958)); Paper No. 20). Instead, Owner must demonstrate that Broadcom actively controlled the Texas Litigation. (*Id*. at 7-8; Paper No. 20; *see also Goodman v. Super Mold Corp.*, 103 F.2d 474,482 (9th Cir. 1939) (no privity where there was no evidence manufacturer of accused infringing device "had the right to control the defense of the suit.")). Owner cannot, however satisfy this burden, because Broadcom did not control – actively or otherwise – the

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