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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC., HTC CORPORATION, HTC AMERICA, INC., SAMSUNG  
ELECTRONICS CO. LTD, SAMSUNG ELECTRONICS AMERICA, INC.,  
SAMSUNG TELECOMMUNICATIONS AMERICA, LLC AND  
AMAZON.COM, INC.  
Petitioners

v.

MEMORY INTEGRITY, LLC  
Patent Owner

U.S. Patent No. 7,296,121

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*Inter Partes* Review Case No. 2015-00163

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**PATENT OWNER'S OPPOSITION TO  
PETITIONERS' MOTION TO CORRECT EXHIBIT 1007  
PURSUANT TO 37 C.F.R. § 42.104(c)**

## I. Introduction

Patent Owner Memory Integrity, LLC (“Memory Integrity” or “MI”) hereby opposes Petitioners’ motion to correct Exhibit 1007. As described below, the Petition as filed omitted an entire chapter from Ex. 1007, the Duato reference, which the Petition and Petitioners’ expert cited and relied on. Petitioners failed to raise the issue until contacting Patent Owner’s counsel on March 17, 2015, over a month after Patent Owner’s preliminary response was filed and over four months after filing their Petition. Petitioners’ motion should be denied due to the substantive effect of the motion—Petitioners seek to deny the Patent Owner and this Board an adequate amount of time to address the Duato reference.

## II. Statement of Facts

The Duato reference was heavily relied on by Petitioner in its various petitions against U.S. Patent No. 7,296,121 (“the ’121 Patent”). In particular, Chapter 4 of Duato was used by Petitioners as a secondary reference for obviousness grounds which provided the sole proposed grounds for rejection for claim 9 in IPR2015-00161, claims 9 and 10 in IPR2015-163, and claim 9 in IPR2015-172. Notably claim 9 of Duato recites, *inter alia*, “each of the processing nodes has at least one routing table . . . which governs which portions of the first point-to-point architecture the associated processing node employs for communicating . . . , the at least one routing table in each of the processing nodes

being configured to direct all of the probes to the probe filtering unit.” Ex. 1001 cl.

9. Claim 10 is dependent on claim 9 and adds the additional limitation “wherein the at least one routing table in each of the processing nodes is configured to direct all broadcasts to the probe filtering unit.” Ex. 1001 cl. 10. In each of the petitions, Petitioners and their expert cited the entirety of Chapter 4 of Duato, without pin cites or quotations, as allegedly disclosing “various routing algorithms that may be utilized by [] routers. *See generally id.* at Chapter 4.” IPR2015-161, Paper 6 at 49, Ex. 1014 ¶ B-20; IPR2015-163, Paper 1 at 40, Ex. 1014 ¶ D-24; IPR2015-172, Paper 6 at 54, Ex. 1014 ¶ C-48. In addition, Petitioners and their expert also cited and quoted from several pages of Chapter 4 of Duato as allegedly disclosing “lookup tables.” IPR2015-161, Paper 6 at 49-50, Ex. 1014 ¶¶ B-20 to B-21; IPR2015-163, Paper 1 at 40-41, Ex. 1014 ¶ D-24; IPR2015-172, Paper 6 at 54-55, Ex. 1014 ¶ C-48. Despite the reliance on Chapter 4 of Duato for these proposed grounds, Chapter 4 was entirely absent from Petitioners’ Ex. 1007 as filed. Ex. 1007 at 71-72. Nor was Chapter 4 of Duato served on Patent Owner, or otherwise included in any part of any of the pending petitions challenging the ’121 Patent. Baker Decl. ¶ 3.

Petitioners’ failure to include Chapter 4 of Duato was apparent from the publicly accessible PRPS online filing system since about October 28, 2014. Ex. 1007 (PRPS filing date Oct. 28, 2014). Moreover, as Petitioners admit, Patent

Owner's preliminary responses, filed February 13, 2015, expressly argued that Chapter 4 was improperly excluded from the Petition as filed. Mot. at 9; Mot. Ex. A ¶ 7 (citing IPR2015-161, Paper 13 at 39; IPR2015-163, Paper 13 at 39; IPR2015-172, Paper 11 at 36). Nevertheless, Petitioners did not raise the issue of proposing to correct Exhibit 1007 until emailing counsel for Patent Owner on March 17, 2015 (Baker Decl. ¶ 4), more than a month after Patent Owner's preliminary responses were filed, and about four and a half months after the Petitions were filed. Moreover, Petitioners did not provide a copy of Chapter 4 of Duato to Patent Owner until their service of the present motion to correct Exhibit 1007, filed on March 26, 2015. Baker Decl. ¶ 3.

### III. Argument

As this Board noted in *Silicon Laboratories, Inc. v. Cresta Technology Corporation*, Case No. IPR2014-00809, Paper No. 28 (P.T.A.B. Nov. 26, 2014):

An inter partes review proceeding begins with the filing of a petition. 37 C.F.R. § 42.104. This is a statutory requirement. *See* 35 U.S.C. § 312(a). The purpose is to give adequate notice to the patent owner of the basis for relief by laying out the petitioner's grounds and supporting evidence. The Board's rules, however, allow for correction of certain clerical mistakes. ... 37 C.F.R. § 42.104(c) ... allows errors to be corrected in certain situations, without sacrificing the notice function of the petition in informing the patent owner of the "grounds and supporting evidence" for the petition.

*Id.* at 2-3 (some citations omitted). “[W]hen determining whether to grant a motion to correct a petition, the Board will consider any substantial substantive effect, including any effect on the patent owner’s ability to file a preliminary response.” Final Rule, 77 Fed. Reg. 48,680, 48,699 (Aug. 14, 2012).

Petitioners’ attempt to supplement their Petitions with Chapter 4 of Duato four-and-a-half months after their Petitions were filed, and over a month after Patent Owner’s preliminary responses were filed, would clearly sacrifice the “notice function of the petition” which should have informed Patent Owner of the “grounds *and supporting evidence*” for the Petitions. Moreover, granting Petitioners’ motion would plainly have a substantive, prejudicial effect on Patent Owner and its ability to file its preliminary response. Indeed, Patent Owner already filed its preliminary response to each of the Petitions without the benefit of Chapter 4 of Duato. If Petitioners’ motion were granted, it would deprive Patent Owner of its statutory right to address the content of Chapter 4 of the Duato reference in its preliminary response. 35 U.S.C. §§ 312(a)(3)(A), 313.

Additionally, Petitioners’ proposal to mitigate this prejudice by “permitting Patent Owner a reasonable amount of additional briefing ... on the missing portions of Exhibit 1007” is plainly inadequate to address the prejudice to the Patent Owner and the Board. Mot. at 9-10. Under the Board’s procedural rules, Patent Owner is entitled to three months to file a preliminary response. 37 C.F.R.

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