



prejudice, their Invalidity Contentions, whether in response to any amendment by Parthenon Unified Memory Architecture LLC (“Plaintiff” or “Parthenon”) of its Infringement Contentions, or otherwise becoming aware of additional prior art. Additionally, Defendants reserve the right to modify their contentions should any of the claim limitations be construed, whether previously construed or not, by the Court.

Defendants will amend these Invalidity Contentions as appropriate. The information and documents that Defendants produce are provisional and subject to further revision as follows. Defendants will amend the disclosures and document production herein should Parthenon provide any information that it failed to provide in its P.R. 3-1 and 3-2 disclosures or should Parthenon amend its P.R. 3-1 or 3-2 disclosures in any way, whether explicitly or implicitly. Further, because limited discovery has only recently begun and because Defendants have not yet completed their search for and analysis of relevant prior art, Defendants will revise, amend, and/or supplement the information provided herein, including identifying and relying on additional references, should Defendants’ further search and analysis yield additional information or references, consistent with the Patent Rules and the Federal Rules of Civil Procedure, including information obtained through third-party discovery. Moreover, Defendants will revise their contentions concerning the invalidity of the claims of the Asserted Patents as appropriate depending upon the Court’s construction of the claims of the Asserted Patents, any findings as to the priority dates of the Asserted Patents, and/or positions that Parthenon or its expert witness(es) may take concerning claim interpretation, infringement, and/or invalidity issues.

Prior art not included in this disclosure, whether known or not known to Defendants, may become relevant. In particular, Defendants are currently unaware of the extent, if any, to which

Parthenon will contend that limitations of the asserted claims are not disclosed in the prior art identified by Defendants, particularly given that Parthenon has asserted numerous claims against the Defendants. To the extent that such an issue arises, Defendants will identify other references that would have made the addition of the allegedly missing limitation to the disclosed device or method obvious.

Defendants' Exhibits attached hereto cite to particular teachings and disclosures of the prior art as applied to features of the asserted claims. However, persons having ordinary skill in the art generally may view an item of prior art in the context of other publications, literature, products, and understanding. As such, the cited portions of prior art identified herein are exemplary only. Defendants will rely on the entirety of the prior art references listed herein, including uncited portions of those prior art references, and on other publications and expert testimony for any purpose, including as aids in understanding and interpreting the cited portions, as providing context thereto, and as additional evidence that the prior art discloses a claim limitation. Defendants will also rely on the entirety of prior art references listed herein, including uncited portions of the prior art references, as well as other publications not used as prior art, and testimony and documents, to establish bases for and motivations to make combinations of certain cited references that render the asserted claims obvious. Specifically, Defendants will rely upon the identified prior art in its entirety; other prior art identified in future supplements pursuant to the Local Rules and Federal Rules; corroborating references, documentation, source code, products, and testimony, including materials obtained through further investigation and third-party discovery of the prior art identified herein, that demonstrates the invalidating functionality identified in these contentions; references that show the state of the art in the relevant time period (irrespective of whether such references themselves qualify as

prior art to the Asserted Patents); and/or expert testimony to provide context to or aid in understanding the cited portions of the identified prior art.

The references discussed in the Exhibits herein may disclose the elements of the asserted claims explicitly and/or inherently, and/or they may be relied upon to show the state of the art in the relevant time frame. The suggested obviousness combinations are provided in the alternative to Defendants' anticipation contentions and are not to be construed to suggest that any reference included in the combinations is not by itself anticipatory.

For purposes of these Invalidity Contentions, Defendants identify prior art references and provide element-by-element claim charts based, in part, on the apparent claim constructions advanced by Parthenon in its Infringement Contentions. Nothing stated herein shall be treated as an admission or suggestion that Defendants agree with Parthenon regarding either the scope of any of the asserted claims or the claim constructions advanced in the Infringement Contentions. Moreover, nothing in these Invalidity Contentions shall be treated as an admission that any Defendant's accused technology meets any limitations of the claims.

Pursuant to P.R. 3-3 and 3-4, Defendants have provided disclosures and related documents pertaining only to the asserted claims as identified by Parthenon in its Infringement Contentions. Defendants will modify, amend, or supplement these Invalidity Contentions to show the invalidity of any additional claims that the Court may allow Parthenon to later assert. Defendants will further supplement their P.R. 3-4 document production should they later find additional, responsive documents.

Much of the art identified in the attached exhibits reflect common knowledge and the state of the art prior to the filing dates of the Asserted Patents. In many instances where a particular contention calls for combining references, any one of a number of references can be

combined. The inclusion of certain exemplary combinations herein does not exclude other combinations based upon the claim charts attached hereto.

In addition to and including the prior art disclosed in the Invalidity Contentions incorporated by reference herein, each of the asserted claims<sup>1</sup> of the Asserted Patents is anticipated by and/or obvious in view of one or more of items of prior art identified herein alone or in combination. Specific examples of this anticipation and obviousness, along with the motivation to combine the selected prior art, are set forth below. These combinations are not intended to be exhaustive, as there are many possible combinations of the references listed herein and it is not practical, particularly at this early stage prior to further factual investigation and claim construction proceedings, to identify and list all potentially relevant combinations.

#### **I. Identification Of Prior Art – Local Patent Rule 3-3(a)**

The identity of each item of prior art that allegedly anticipates each asserted claim or renders it obvious. Each prior art patent shall be identified by its number, country of origin, and date of issue. Each prior art publication must be identified by its title, date of publication, and where feasible, author and publisher.

Prior art under 35 U.S.C. § 102(b) shall be identified by specifying the item offered for sale or publicly used or known, the date the offer or use took place or the information became known, and the identity of the person or entity which made the use or which made and received the offer, or the person or entity which made the information known or to whom it was made known.

P.R. 3-3(a)

In addition to the prior art identified in the prosecution history of the Asserted Patents, Defendants intend to rely upon the prior art identified pursuant to P.R. 3-3(a) in the attached Exhibits in support of these Invalidity Contentions. In these contentions, including in the attached Exhibits, Defendants provide the full identity of each item of prior art, including: (1)

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<sup>1</sup> For reasons analogous to those identified herein, Defendants contend all *non-asserted* claims of the Asserted Patents are invalid as anticipated and/or obvious in view of the prior art or indefinite.

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