

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTEL CORPORATION,

Petitioner

v.

FG SRC LLC,

Patent Owner

CASE NO.: IPR2020-01449

PATENT NO. 7,149,867

**PETITIONER'S MOTION TO SUBMIT SUPPLEMENTAL
INFORMATION PURSUANT TO 37 C.F.R. § 42.123(a)**

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Patent Trial and Appeal Board
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TABLE OF SUPPLEMENTAL INFORMATION EXHIBITS

Exhibit No.	Description
Exhibit 1027	Declaration of Gordon MacPherson
Exhibit 1028	Declaration of Eileen D. McCarrier
Exhibit 1029	Declaration of Austin M. Schnell
Exhibit 1030	Supplemental Declaration of Rajesh K. Gupta, Ph.D.
Exhibit 1031	Supplemental Declaration of Jacob Robert Munford

I. INTRODUCTION

Petitioner Intel Corporation moves under 37 C.F.R. § 42.123(a) and the Board’s authorization, *see* Paper 18, to submit Exhibits 1027–31 as supplemental information to confirm the public accessibility of the Zhang (Ex. 1003), Gupta (Ex. 1004), and Chien (Ex. 1005) references.

The Board instituted IPR on all presented grounds, which rely on the Zhang, Gupta, and Chien references. *Id.* 10–11. The Board found a reasonable likelihood that each reference was publicly accessible before the alleged priority date and, thus, prior art. *Id.* at 43–44. However, it noted that “[t]o the extent Patent Owner continues to challenge the printed publication status of these references after institution, the parties are requested to further develop the record on this issue.” *Id.* at 44. Patent Owner continues to challenge printed publication status. Thus, Intel moves to submit supplemental information to further develop the record as instructed by the Board.

The proposed exhibits supplement, corroborate, and confirm the evidence that Petitioner submitted with its petition demonstrating that each reference was a conference paper published by The Institute of Electrical and Electronics Engineers, Incorporated (“IEEE”) and distributed to conference attendees, cataloged and made available in public libraries, and made publicly accessible on IEEE’s Xplore website, all before the alleged priority date. Thus, as detailed below, the Board should grant Petitioner permission to file Exhibits 1027–31 as supplemental information.

II. ARGUMENT

A. The requirements of § 42.123(a) are met and the motion is consistent with the just, speedy, and inexpensive resolution of this proceeding.

A party may file a motion to submit supplemental information if (1) authorization is requested within one month of the date trial is instituted; and (2) the supplemental information is relevant to a claim for which trial has been instituted. 37 C.F.R. § 42.123(a). The requirements of § 42.123(a) are “construed within the overarching context of the PTAB’s regulations governing IPR and general trial proceedings,” *Redline Detection, LLC v. Star Envirotech, Inc.*, 811 F.3d 435, 446–47 (Fed. Cir. 2015), including to “secure the just, speedy, and inexpensive resolution of every proceeding,” 37 C.F.R. § 42.1(b); *see also Redline*, 811 F. 3d at 448.

The two requirements of § 42.123(a) are met. First, Intel requested authorization to file this motion on April 2, which is less than one month from institution of trial. Paper 18 at 2. Second, the supplemental information is relevant to a claim for which trial has been instituted because it relates to the prior art status of Zhang, Gupta, and Chien, and each of those references is part of an instituted ground challenging multiple claims of the ’867 patent. Paper 13 at 11.

Intel’s Petition and accompanying evidence establish that Zhang, Gupta, and Chien are prior art because they were published by IEEE and publicly accessible prior to the critical date. *See* Paper 1 at 16–21; *see also* Paper 13 at 34–44. For example, Dr. Gupta, who authored or co-authored each reference, described the

MORPH/AMRM project that resulted in the Zhang, Gupta, and Chien references. Ex. 1010 ¶¶ 4–6; 15–26. He testified that each was made available to conference attendees, published in print by IEEE, and available on IEEE’s Xplore website, all before the critical date. *Id.* ¶¶ 18–26. Similarly, Mr. Munford reviewed the references and multiple libraries’ MARC records for each reference. Ex. 1012 ¶¶ 15–33. Mr. Munford noted that pandemic-related library closures and travel advisories prevented him from retrieving physical copies of the references, *id.* ¶ 14, but testified that, in his expert opinion after reviewing these materials, Zhang, Gupta, and Chien were publicly available in libraries shortly after each indicated publication date (November 18, 1997, May 15, 2000, and November 18, 1996, respectively). *Id.* ¶¶ 20, 26, 32. The references themselves bear indicia that support these publication dates. *See* Exs. 1003, 1004, 1005. As the Board found, this evidence at least established a reasonable likelihood that each was prior art to the ’867 patent. Paper 13 ¶¶ 40, 43.

Intel moves to provide information that supplements the previously established prior art status for each of Zhang, Gupta, and Chien in response to Patent Owner’s continued challenge to that status. For example, the supplemental information includes testimony by Gordon MacPherson, Director, Board Governance & IP Operations of IEEE. *See* Exs. 1027. Mr. MacPherson’s declaration includes true and correct copies of the Zhang, Gupta, and Chien references available

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