

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTEL CORPORATION,
Petitioner,

v.

FG SRC LLC,
Patent Owner.

IPR2020-01449
Patent No. 7,149,867

**PATENT OWNER'S SUR-REPLY TO
PETITIONER'S REPLY TO PRELIMINARY RESPONSE**

LIST OF EXHIBITS

Exhibit No.	Descriptions
2001	Declaration of Dr. Vojin Oklobdzija
2002	Cray, Britannica Online Encyclopedia
2003	Declaration of Brandon Freeman dated 10/25/18 <i>SRC Labs LLC and Saint Regis Mohawk Tribe v. Microsoft Corporation</i> , No. 2:18-cv-00321-JLR, Dkt. 125 (W.D. Wash. Oct. 25, 2018)
2004	Plaintiff's Original Complaint For Patent Infringement in <i>FG SRC LLC v. Intel Corp.</i> , No. 6:20-cv-00315-ADA (W.D. Texas), filed April 24, 2020
2005	Plaintiff's First Amended Complaint For Patent Infringement in <i>FG SRC LLC v. Intel Corp.</i> , No. 6:20-cv-00315-ADA (W.D. Texas), filed April 24, 2020
2006	Declaration of Mark Wollgast dated 09/10/18 <i>Xilinx, Inc. v. Saint Regis Mohawk Tribe</i> , IPR2018-0195
2007	COTS Journal, UAVs Lead Push for Embedded Supercomputing
2008	Press Release: SRC Computers Chosen by Lockheed Martin for U.S. Army Program
2009	Declaration of Henning Schmidt
2009-1	Declaration of Henning Schmidt, Exhibit A, IEEE Xplore: Advanced Search
2009-2	Declaration of Henning Schmidt, Exhibit B, IEEE Xplore: Advanced Search Results
2010	Declaration Of Ryan Kastner, Ph.D. In Support Of FG SRC LLC's Opening Claim Construction Brief in <i>FG SRC LLC v. Intel Corp.</i> , No. 6:20-cv-00315-ADA (W.D. Texas), filed April 24, 2020
2011	Peter McMahon, High Performance Reconfigurable Computing for Science and Engineering Applications (Thesis Oct. 2006).
2012	Caliga, Delivering Acceleration: The Potential for Increased HPC Application Performance Using Reconfigurable Logic
2013	D. A. Buell, D. Caliga, J. P. Davis, G. Quan, "The DARPA boolean equation benchmark on a reconfigurable computer," Proceedings of the Military and Aerospace Programmable Logic Devices (MAPLD) Conference, Washington, DC, 8-10 September

Exhibit No.	Descriptions
	2004
2014	El-Araby, The Promise of High-Performance Reconfigurable Computing
2015	FG SRC LLC's Opening Claim Construction Brief in <i>FG SRC LLC v. Intel Corp.</i> , No. 6:20-cv-00315-ADA (W.D. Texas), filed April 24, 2020
2016	<i>Kerr Machine Co. d/b/a Kerr Pumps v. Vulcan Industrial Holdings, LLC</i> , No. 6:20-cv-00200, Text Order dated Aug. 2, 2020 (W.D. Tex.)
2017	<i>MultiMedia Content Mgmt LLC v. Dish Network L.L.C.</i> , No. 6:18-cv-00207, Dkt. 73 (W.D. Tex.)
2018	<i>Solas OLED v. Dell Techs. Inc.</i> , No. 6:19-cv-00514, Text Order dated June 23, 2020
2019	<i>Kerr Machine Co. v. Vulcan Indus. Holdings, LLC</i> , No. 6:20-cv-200, Dkt. 28 (W.D. Tex. July 31, 2020)
2020	<i>Kerr Machine Co. v. Vulcan Indus. Holdings, LLC</i> , No. 6:20-cv-200, Dkt. 24 (W.D. Tex. June 14, 2020)
2021	<i>Kerr Machine Co. v. Vulcan Indus. Holdings, LLC</i> , No. 6:20-cv-200, Dkt. 12 (W.D. Tex., June 14, 2020)
2022	Email from J. Yi to Counsel (Aug. 3, 2020)
2023	FG SRC LLC v. Intel Corp., No. 1:20-cv-00834, Dkt. 48 (W.D. Tex. Nov. 23, 2020) (Amended Schedule)
2024	<i>Continental Intermodal Group - Trucking LLC v. Sand Revolution LLC</i> , No. 7:18-cv-00147, Text Order dated July 22, 2020 (W.D. Tex.)
2025	<i>Solas OLED v. Dell Techs. Inc.</i> , No. 6:19-cv-00515, Text Order dated Jun. 23, 2020
2026	2019-07-11 - DirectStream MSFT - Huppenthal Declaration

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I. INSTITUTION SHOULD BE DENIED UNDER *FINTIV*

Fintiv Factor 1 strongly favors denial because Petitioner’s unsupported speculation that the Court might grant a post-institution stay (Paper 11, 1) is contradicted by Patent Owner’s direct evidence that a stay is highly unlikely. Paper 9, 3-4. Regarding Factors 2-3, trial is set for November 8, 2021, and “the Court will not move the trial date except in extreme situations.” Order Governing Proceedings for Patent Cases (v3.2), available at <https://tinyurl.com/y4nxokvz>. Even assuming the “extreme situation” of a continuance of the trial date (commensurate with the one-month *Markman* extension), the related litigation will go to trial in December 2021, two months before a final written decision. This schedule strongly favors denying institution. *Philip Morris Prod., S.A. v. RAI Strategic Holdings, Inc.*, IPR2020-00921, Paper 9, at 14-15 (PTAB Nov. 16, 2020). Petitioner’s Reply does not address the remaining Factors, which also favor denial.

Given the specific factual circumstances here, an IPR would not be an “expeditious, efficient, and less expensive alternative to district court litigation,” as these proceedings would be needlessly duplicative of the district court action.

II. THE PRINTED PUBLICATION STANDARD HAS NOT BEEN MET

Petitioner’s Reply merely reinforces that Dr. Gupta only “believes” *Zhang, Gupta*, and *Chien* may have been disseminated based on an undefined “general practice in the scientific and engineering community.” This contrasts sharply with

cases in which the declarant unequivocally testified as to the specific practices of the specific organization, including that he actually received a copy of the asserted publication. *Laboratory Corp. of America Holdings v. Quest Diagnostics*, IPR2019-00738, Paper 14 at 13 (PTAB Sept. 4, 2019); IPR2019-00738, Ex. 1002, ¶34.

As to online publication, typical direct evidence of publication is not present here. See *Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-01039, Paper 39 at 18 (PTAB POP Dec. 20, 2019) (online publication supported by “office manager of the Internet Archive”). An online search for the asserted publication is probative evidence if it includes terms that appear in the challenged patent’s specification. *In re Lister*, 583 F.3d 1307, 1315 (Fed. Cir. 2009). Patent Owner demonstrated that such an online search here is fruitless. Paper 9, 30-31. Under *Lister* and its progeny, Petitioner’s online publication theory therefore fails. See *Acceleration Bay, LLC v. Activision Blizzard, Inc.*, 908 F.3d 765, 774 (Fed. Cir. 2018).

Mr. Munford’s testimony likewise falls short. In *Quest*, the petitioner submitted a declaration containing specific information about the particular library and unequivocal testimony that a copy of the reference was actually received. IPR2019-00738 at 12-15. No such evidence is presented here. Petitioner’s assertion that shelving of a reference is unimportant (Paper 11, 4) is wrong: “[P]articularly for manuscripts or dissertations stored in libraries, courts may inquire whether a reference was sufficiently indexed, catalogued, and shelved.” *Hulu*, IPR2018-01239

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