

From: Yaquian, Juan C. <JYaquian@winston.com>
Sent: Tuesday, September 5, 2023 5:44 PM
To: Lindsay, Jonathan <jlindsay@irell.com>; Trials <Trials@USPTO.GOV>
Cc: DL Samsung Netlist IPRs <dlsamsungnetlistiprs@BakerBotts.com>; Winston-IPR-NetList <Winston-IPR-NetList@winston.com>; #NetlistIPR [Int] <NetlistIPR@irell.com>
Subject: RE: IPR2022-00996, IPR2022-00999 - Request for Conference Call

CAUTION: This email has originated from a source outside of USPTO. PLEASE CONSIDER THE SOURCE before responding, clicking on links, or opening attachments.

Your Honors,

To clarify **joined** Petitioners' (Micron) position regarding Patent Owner Netlist's below email to the Board, counsel for Netlist sent an email (a different email than the below email sent to the Board) on Saturday, September 2, 2023 stating that it was going to unilaterally email the Board regarding issues that have yet to be discussed between Netlist and Micron. Micron responded with its availability for a meet and confer to understand the issues raised by Netlist's Saturday email, as well as expressing Micron's concerns with the substance of the email. Netlist did not respond, and instead emailed the Board. If the Board sets a conference time to discuss Netlist's improper email, during that telephone conference, Micron will ask for clarification regarding the issues raised by Netlist's emails.

A copy of the email correspondence between Netlist and Micron prior to Netlist's email to the Board is shown as follows:

From: Lindsay, Jonathan <jlindsay@irell.com>
Sent: Saturday, September 2, 2023 5:00 PM
To: DL Samsung Netlist IPRs <dlsamsungnetlistiprs@BakerBotts.com>; winston-ipr-netlist@winston.com; Williams, Elliot D. <Eliot.Williams@BakerBotts.com>; Chandler, Ted <ted.chandler@bakerbott.com>
Cc: #NetlistIPR [Int] <NetlistIPR@irell.com>
Subject: IPR2022-00615, IPR2022-00996, IPR2022-00999 - Request for Conference Call

[EXTERNAL EMAIL]

Dear Counsel,

We intend to send the below email to the Board regarding IPR2022-00615, IPR2022-00996, and IPR2022-00999. Please let us know your availability for a call with the Board so that we can provide that information.

Dear Board,

Patent Owner requests a conference call with the Board to disclose positions Micron has taken in the parallel district court proceeding which are inconsistent with positions it has taken in the above IPR proceedings which directly impact the merits of the IPR challenge. This information is contained in a deposition transcript of Micron's corporate representative, but Micron improperly designated the transcript as confidential under the district court's protective order, and therefore Patent Owner is unable to submit the information itself as supplemental information. Moreover, failure on Micron's part to disclose this information is a direct non-compliance with its obligation to disclose inconsistent information under 36 CFR 42.51(f).

Patent Owner respectfully requests a conference call with the Board to seek guidance on how to proceed including, if necessary, seeking leave to file a motion to compel discovery.

The parties are available at the following time:

From: Yaquian, Juan C. <JYaquian@winston.com>
Sent: Tuesday, September 5, 2023 3:06 PM
To: Williams, Elliot D. <Eliot.Williams@BakerBotts.com>; Lindsay, Jonathan <jlindsay@irell.com>; DL Samsung Netlist IPRs <dlsamsungnetlistiprs@BakerBotts.com>; Winston-IPR-NetList <Winston-IPR-NetList@winston.com>; Chandler, Ted <ted.chandler@bakerbotts.com>; Winston-Micron-Netlist <Winston-Micron-Netlist@winston.com>
Cc: #NetlistIPR [Int] <NetlistIPR@irell.com>
Subject: RE: IPR2022-00615, IPR2022-00996, IPR2022-00999 - Request for Conference Call

Jonathan,

Micron is available for a meet and confer on this issue as follows:

- Wednesday, September 6, between 10 AM and 2 PM (ET) and between 3 PM and 4 PM (ET)
- Thursday, September 7, between 10 AM and 12:30 PM (ET) and between 1:30 PM and 4 PM (ET)

We note that Micron is concerned that Netlist misrepresents that Micron has taken inconsistent positions. Moreover, it would be improper to introduce such testimony into these IPR proceedings. Micron is participating in the joined IPR proceedings only in an understudy role with Samsung taking the primary role. Micron is also concerned that Netlist appears to have improperly used a deposition transcript in an attempt to gather testimony that Netlist incorrectly alleges supports Netlist's IPR positions without properly seeking leave from the Board to conduct discovery on relevant IPRs. Micron is also concerned that Netlist is referencing a district court litigation deposition that occurred after the deadline for submitting new evidence in the IPR proceedings. Micron is also concerned that Netlist misrepresents that Micron improperly designated the referenced district court litigation deposition transcript as confidential when paragraph 16 of the district court's protective order specifies that deposition transcripts are confidential for 30 days—a period that has not yet expired. Furthermore, paragraph 18 of the protective order specifies a 10 day period for a producing party to consider a request to withdraw confidentiality designations—a period that has not yet expired. Micron is also concerned that Netlist misrepresents that the referenced testimony is from a Micron representative without acknowledging that the witness was not designated as a 30(b)(6) witness on any relevant prior art topics and indeed testified in a matter that did not even involve the IPR challenged in IPR2022-00615.

Respectfully,
 Juan C. Yaquian

Juan C. Yaquian
 Associate Attorney
 Winston & Strawn LLP
 D: +1 713-651-2645
 F: +1 713-651-2700
 VCard | winston.com

**WINSTON
& STRAWN**
 LLP

From: Lindsay, Jonathan <jlindsay@irell.com>
Sent: Tuesday, September 5, 2023 3:16 PM
To: Trials <Trials@USPTO.GOV>
Cc: DL Samsung Netlist IPRs <dlsamsungnetlistiprs@BakerBotts.com>; Winston-IPR-NetList <Winston-IPR-NetList@winston.com>; #NetlistIPR [Int] <NetlistIPR@irell.com>
Subject: IPR2022-00996, IPR2022-00999 - Request for Conference Call

Dear Board,

Patent Owner requests a conference call with the Board to disclose positions Micron has taken in the parallel district court proceeding which are inconsistent with positions it has taken in the above IPR proceedings which directly impact the merits of the IPR challenge. This information is contained in a deposition transcript of Micron's corporate representative on technical matters relating to the 918/054 patents, and who discussed the difference between AMB packets and signals. This deposition did not occur until August 30. The next day Netlist asked for the relevant testimony be de-designated so that it can be used. Micron has improperly designated the transcript as confidential under the district court's protective order, and therefore Patent Owner is unable to submit the information itself as supplemental information. Moreover, failure on Micron's part to disclose this information is a direct non-compliance with its obligation to disclose inconsistent information under 36 CFR 42.51(b)(1). Netlist has made Micron aware of its concerns regarding compliance with 36 CFR 42.51(b)(1).

Patent Owner respectfully requests a conference call with the Board to seek guidance on how to proceed including, if necessary, seeking leave to file a motion to compel discovery.

The parties are available at the following time:

- Wednesday, September 6, between 11:00am and 3:30pm Eastern
- Thursday, September 7, between 11:00am and 3:30pm Eastern

Jonathan M. Lindsay
IRELL & MANELLA LLP
840 Newport Center Drive, Suite 400
Newport Beach, CA 92660
Direct: 949.760.5220

PLEASE NOTE: This message, including any attachments, may include privileged, confidential and/or inside information. Any distribution or use of this communication by anyone other than the intended recipient(s) is strictly prohibited and may be unlawful. If you are not the intended recipient, please notify the sender by replying to this message and then delete it from your system. Thank you.

The contents of this message may be privileged and confidential. If this message has been received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author. Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under applicable tax laws and regulations.