UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HP INC., DELL TECHNOLOGIES INC., DELL INC., ASUSTEK COMPUTER INC., and ASUS GLOBAL PTE. LTD.,
Petitioner

v.

LITL LLC,
Patent Owner

IPR2024-00404
U.S. Pat. No. 8,624,844

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

I. INTRODUCTION

Petitioner respectfully moves to submit EX1036 as supplemental information pursuant to 37 C.F.R. § 42.123(a). EX1036 contains evidence relating to the public availability of EX1007 ("Pogue") and EX1010 ("MIT"). Pogue and MIT are relied on in multiple grounds in this proceeding, including Grounds 1 and 4, and are therefore clearly relevant to the claims at issue in this IPR as required by § 42.123(a)(2). Accordingly, Petitioner respectfully requests that its motion be granted.

II. BACKGROUND

A. Legal Standard

A party may submit supplemental information under 37 C.F.R. § 42.123(a) if: (1) a "request for the authorization to file a motion to submit supplemental information is made within one month of the date the trial is instituted," and (2) the "supplemental information [is] relevant to a claim for which the trial has been instituted."

Unlike supplemental information submitted later in trial (§ 42.123(b)) or information not relevant to a claim for which trial was instituted (§ 42.123(c)), a motion under § 42.123(a) need not "show why the supplemental information reasonably could not have been obtained earlier…" *Compare* 37 C.F.R. § 42.123(c) (where a motion to supplement not filed under subpart (a) "must show why the supplemental information reasonably could not have been obtained earlier,

and that consideration of the supplemental information would be in the interests-of-justice").

Instead, the focus of a motion under subpart (a) of the Rule merely requires the Board to ensure that the proffered supplemental information does not seek to: (i) alter "the grounds of unpatentability authorized in this proceeding"; or (ii) change "the evidence initially presented in the Petition to support those grounds of unpatentability." *Palo Alto Networks*, IPR2013- 00369, Paper 37 at 3; *see also Biomarin Pharma. Inc., v. Genzyme Therapeutic Prods Limited Partnership*, IPR2013-00534, Paper 80 at 5 (Jan. 7, 2015) (considering the same factors under § 42.123(b)). Conducting such an evaluation, the Board also considers whether granting the motion would prevent the just, speedy, and inexpensive resolution of the proceeding, *Palo Alto*, IPR2013-00369, Paper 37 at 4, or would unfairly prejudice the other party, *Unified Patents Inc., v. Dragon Intellectual Property, LLC*, IPR 2014-01252, Paper 43 at 3 (Apr. 14, 2015).*Palo Alto Networks, Inc. v. Juniper Networks, Inc.*, IPR2013-00369, slip op. at 2-5 (PTAB Jan. 17, 2014) (Paper 37), *Hayward Industries, Inc. v. Pentair Water Pool and Spa, Inc.*, IPR2013-00287, slip op. at 2-5 (PTAB Jan. 27, 2014) (Paper 24).

B. This Proceeding

On June 10, 2024, the Board instituted trial in this proceeding. Patent Owner has not yet filed its Response to the Petition.

III. ARGUMENT

A. Petitioner's Motion Is Timely and the Supplemental Information Is Relevant as Required by 37 C.F.R. § 42.123(a)

Petitioner timely requested authorization from the Board by e-mail on July 8, 2024, which was within one month of the trial institution date of June 10, 2024. Thus, this motion satisfies the timeliness requirement under § 42.123(a)(1). In addition, the information Petitioner requests to submit into the record is unquestionably "relevant to a claim [at issue in] the trial" as required by § 42.123(a)(2). As explained below, the supplemental exhibits are relevant because they support Petitioner's assertions, do not seek to alter "the grounds of unpatentability authorized in this proceeding," and do not attempt to change "the evidence initially presented in the Petition to support those grounds of unpatentability." Moreover, acceptance of the proffered material will promote the search for truth in this matter and will thus serve to foster a fair and just final adjudication of the issues involved in these proceedings. For the foregoing reasons, Petitioner submits that the supplemental information should properly be permitted under § 42.123(a)(1) and entered into the record.

B. The Public Availability of Pogue and MIT Are Relevant to the Challenges In This IPR

In its Institution Decision, this Board concluded that "Petitioner has established a reasonable likelihood of prevailing on has demonstrated a reasonable likelihood of success in proving that claims 1, 3, 4, 7–10, 13, 14, 16, 18, and 22

would have been obvious over Lane and ***Pogue***." Institution Decision at 14 (emphasis added). The Board further noted that the Petition included additional challenges including a challenge that relies on ***MIT*** and determined that "Petitioner sufficiently demonstrates a reasonable likelihood of succeeding in these additional obviousness challenges." Institution Decision at 19-20. Pogue and MIT are therefore clearly relevant to this proceeding.

EX1036 is an Internet Archive declaration establishing that Exhibit A thereto includes true and accurate copies of printouts of archived web pages showing that (1) Pogue was listed as being on sale on the O'Reilly Safari website as of July 28, 2006; (2) Pogue had been reviewed multiple times on the Amazon.com website as of January 4, 2007, and (3) the content of MIT was publicly available on a C|Net "news.com" website as of October 13, 2005. All of these dates are more than one year prior to the earliest claimed priority date of April 1, 2008 for the '844 patent at issue in this IPR. Thus, EX1036 confirms the prior art status of Pogue and MIT and thus also is relevant to this proceeding.

Entry of EX1036 would not impede "the just, speedy, and inexpensive resolution" to this proceeding because it does not change the instituted grounds of unpatentability or alter the initially-presented evidence in the Petition; *to the contrary,* consideration of such exhibits will indisputably promote the fair, "just, speedy and inexpensive resolution" of these proceedings. 37 C.F.R. §42.1(b).

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