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Paper 27
Date: June 3, 2021

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 7,149,867

Before KALYAN K. DESHPANDE, GREGG I. ANDERSON, and KARA L. SZPONDOWSKI, *Administrative Patent Judges.*

SZPONDOWSKI, *Administrative Patent Judge*.

ORDER
Granting Petitioner's Motion to Submit Supplemental Information
37 C.F.R. § 42.123(a)

I. INTRODUCTION

We authorized Petitioner Intel Corporation ("Petitioner") to file a Motion to Submit Supplemental Information (Paper 21, "Motion") and Patent Owner FG SRC LLC ("Patent Owner") to file an Opposition (Paper 22, "Opp."). Paper 18. Petitioner seeks authorization to submit Exhibits 1027–1031. Motion 1. Upon consideration of the documents and the Parties' arguments, and for the reasons stated below, the Motion is granted.

II. ANALYSIS

Under 37 C.F.R. § 42.123(a), a party may file a motion to submit supplemental information if the following requirements are met: (1) a request for authorization to file such motion is made within one month of the date the trial was instituted; and (2) the supplemental information must be relevant to a claim for which trial has been instituted.

With respect to the first requirement of § 42.123(a), trial was instituted in this proceeding on March 3, 2021. Paper 13. Petitioner requested authorization to file a motion to submit supplemental information on April 2, 2021. Ex. 3003. Thus, Petitioner's request was made within one month of the date the trial was instituted. *See* Motion 2. Patent Owner does not dispute the timeliness of the request for authorization. *See generally* Opp.

With respect to the second requirement of § 42.123(a), the supplemental information Petitioner seeks to admit generally relates to the

public accessibility of Zhang,[1] Gupta,[2] and Chien,[3] which are the three prior art references that Petitioner relies on in this proceeding. Motion 1. Specifically, Petitioner seeks to submit:

(1) Exhibit 1027 – Declaration of Gordon MacPherson, Director Board Governance & IP Operations of The Institute of Electrical and Electronics Engineers, Incorporated ("IEEE"), and supporting documentation;

(2) Exhibit 1028 – Declaration of Eileen D. McCarrier, Manager of Research Services at Pillsbury Winthrop Shaw Pittman LLP, and supporting documentation;

(3) Exhibit 1029 – Declaration of Austin M. Schnell, an associate at Pillsbury Winthrop Shaw Pittman LLP, and supporting documentation;

(4) Exhibit 1030 – Supplemental Declaration of Rajesh K. Gupta, Ph.D, co-author of the Gupta reference, and supporting documentation; and

(5) Exhibit 1031 – Supplemental Declaration of Jacob Robert Munford, a library professional, and supporting documentation.

Id.

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[1] Xingbin Zhang et al., *Architectural Adaptation for Application-Specific Locality Optimizations*, published in the Proceedings of the International Conference on Computer Design - VLSI in Computers and Processors (IEEE, October 12–15, 1997), 150–156.

[2] Rajesh Gupta, *Architectural Adaptation in AMRM Machines*, Proceedings of the IEEE Computer Society Workshop on VLSI 2000 (IEEE, April 27–28, 2000), 75–79.

[3] Andrew A. Chien et al., *MORPH: A System Architecture for Robust High Performance Using Customization (An NSF 100 TeraOps Point Design Study)*, Proceedings of Frontiers '96 – The Sixth Symposium on the Frontiers of Massively Parallel Computing (IEEE, October 27–31, 1996), 336–345.

Petitioner asserts that 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." *Id.* Petitioner further asserts that "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." *Id.* at 2.

Patent Owner opposes for a number of reasons. First, Patent Owner disputes the relevance of the supplemental information. *See* Opp. 1, 2, 4, 8, 10–14. Specifically, Patent Owner contends that "the information [] does nothing more than demonstrate circumstances after the applicable date," and, therefore, is not relevant. *Id.* at 1–2. For example, Patent Owner argues that Mr. MacPherson's testimony "does not testify from personal knowledge that the references were actually distributed as alleged by Petitioner" and "offers no indication of the extent the references were available in 2003, such as how they were indexed for searching." *Id.* at 3, 11. Similarly, with respect to Ms. McCarrier's testimony, Patent Owner argues that "there is no indication of when either library first received the reference or made it available, which is the key inquiry." *Id.* at 4; *see also id.* at 14. Patent Owner also argues, with respect to Mr. Schnell's testimony, that the copy of the Gupta reference submitted by Mr. Schnell has an "earliest date stamp" of June 3, 2004, "a year after the June 18, 2003 priority date." *Id.* at 5; *see also*

Id. at 14. With respect to Dr. Gupta's testimony, Patent Owner argues that there is "[no] indication of personal knowledge about [the references'] availability in 2003." *Id.* at 12. With respect to Mr. Munford's testimony, Patent Owner argues that he "still cannot confirm when the references were shelved, indexed, and available for distribution at the various libraries he cites." *Id.* at 8; *see also id.* at 13 ("all that he has demonstrated is the availability of the *Zhang*, *Gupta*, and *Chien* references in 2021").

We do not find these arguments persuasive. Zhang, Gupta, and Chien are the references relied upon in the instituted challenges to the '867 patent. Paper 13, 11. In the Institution Decision, we determined preliminarily that Petitioner had made a threshold showing that the references constituted prior art printed publications. *Id.* at 34–44. Under Rule 401 of the Federal Rules of Evidence, which govern this proceeding, evidence is relevant if "(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." The public accessibility of these references is a potentially dispositive issue in the proceeding, and the supplemental information that Petitioner moves to submit is probative of that issue. Patent Owner's arguments address the sufficiency or weight of the testimony and evidence, not the relevancy. We, therefore, are not persuaded by Patent Owner's arguments that the proposed supplemental information is not relevant to the proceeding.

Second, Patent Owner contends that "Petitioner does not even try to prove the evidence was unavailable, and even a cursory review demonstrates it is comprised of opinions and evidence that was indisputably available to a diligent Petitioner." Opp. 1. For example, Petitioner argues that Mr. MacPherson's testimony could have been "timely submitted" but

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