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Paper 9
Entered: March 19, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

POWER INTEGRATIONS, INC.,
Petitioner,

v.

SEMICONDUCTOR COMPONENTS INDUSTRIES, LLC,
Patent Owner.

Case IPR2017-01903
Patent RE45,862

Before BRYAN F. MOORE, JAMES B. ARPIN, and KAMRAN JIVANI, *Administrative Patent Judges.*

JIVANI, *Administrative Patent Judge.*

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314(a) and 37 C.F.R. § 42.108(b)

I. INTRODUCTION

Power Integrations, Inc. ("Petitioner") requested an *inter partes* review of claims 21–26 and 28–39 (the "Challenged Claims") of U.S. Patent No. RE45,862 ("the '862 patent"). Paper 2 ("Petition" or "Pet."). Patent Owner Semiconductor Components Industries, LLC ("Patent Owner") filed a Preliminary Response ("Prelim. Resp."). Paper 6.

Under 35 U.S.C. § 314(a), an *inter partes* review may not be instituted unless it is determined that there is a reasonable likelihood that the petitioner would prevail with respect to at least one of the claims challenged in the petition. Based on the information presented in the Petition and Preliminary Response, we are not persuaded that there is a reasonable likelihood Petitioner would prevail with respect to the Challenged Claims because Petitioner does not show sufficiently that the applied references are printed publications constituting prior art. Accordingly, we deny the Petition and do not institute an *inter partes* review of the Challenged Claims for the reasons set forth below.

II. BACKGROUND

A. The '862 patent (Ex. 1001)

The '862 patent, entitled "Power Conversion Integrated Circuit and Method for Programming," relates generally to integrated circuits and more particularly to power conversion integrated circuits. Ex. 1001, [54], 1:32–34. "A switched-mode power supply is an electronic power converter that incorporates a switching regulator to efficiently convert electrical power. [In particular, a s]witched mode power supplies convert an unregulated input power source (AC or DC) into a regulated DC output to power electronic devices such as computer equipment, TVs, and the like." Pet. 5 (citing

Ex. 1003 ¶¶ 32–41). Therefore, the Specification of the '862 patent teaches power conversion integrated circuits that operate with different power supplies and minimize the number of external components required for controlling the power supply on/off switch circuitry. Ex. 1001, 1:55–60.

Figure 1 of the '862 patent, as annotated by Petitioner, is reproduced below:

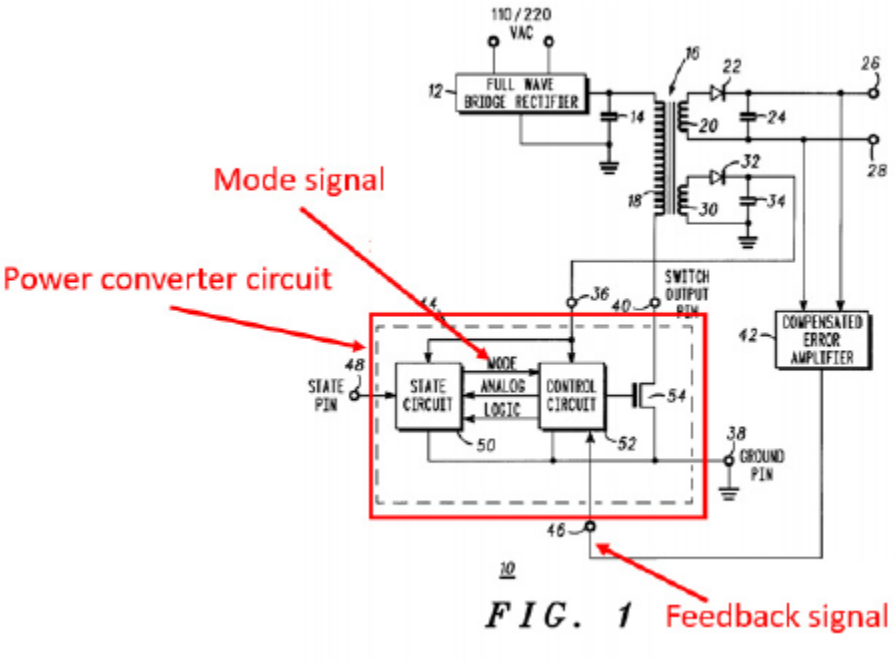

FIG. 1

Figure 1 depicts power supply 10 using integrated power converter circuit 44. Power supply 10 is controlled by power converter circuit 44, which includes five pins: bias pin 36, ground pin 38, feedback pin 46, state pin 48, and switch output pin 40. Ex. 1001, 2:58–62. A feedback signal, generated by compensated error amplifier 42, alters the pulse width of the control signal driving transistor 54 and, thus, regulates the output voltage of power supply 10. *Id*. at 3:29–36. "The value at the state pin 48 is used by the state circuit to generate a 'mode' signal, which is output to, and used by,

the control circuit 52 to control the on/off states of the power supply." Pet. 8.

Figure 2 of the '862 patent, as annotated by Petitioner, is reproduced below:

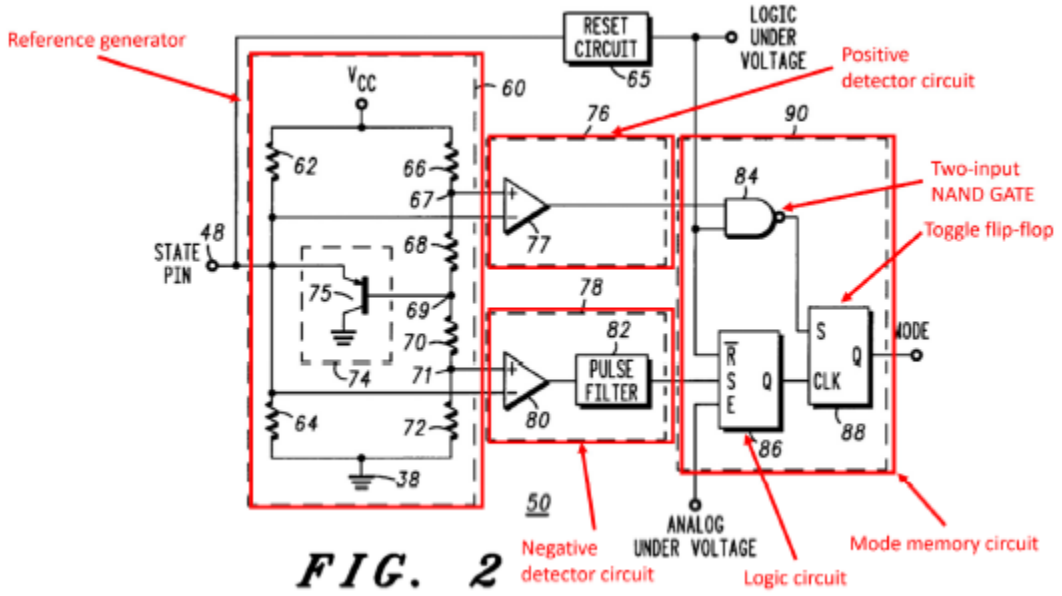

FIG. 2

Figure 2 depicts an embodiment of the state circuit portion of power converter circuit 44. "The state circuit includes reference generator 60, which is a resistance network that creates threshold voltages for the comparators of the positive detector circuit 76 and negative detector circuit 78. *Id.* at 9 (citing Ex. 1001, 4:11–14). The Specification describes that the resistance network may generate reference voltages of 2.9 volts (at node 67) for positive detector circuit 76 and 1.1 volts (at node 71) for negative detector circuit 78. Ex. 1001, 4:11–29.

Mode memory circuit 90 includes two-input NAND gate 84, logic circuit 86, and positive edge triggered toggle flip-flop 88. *Id.* at 4:47–49. NAND gate 84 has one input connected to the output of positive detector circuit 76 and the other input coupled to receive the signal entitled "LOGIC

UNDER-VOLTAGE." *Id.* at 4:49–52. As voltage Vcc increases from a starting voltage of zero, the signal LOGIC UNDER-VOLTAGE has an initial logic zero value that increases to logic level one at a predetermined Vcc voltage. *Id.* at 4:52–55. By increasing this signal to logic level one, the Vcc voltage is sufficient to operate the logic circuitry. *Id.* at 4:55–58. Similarly, the "ANALOG UNDER-VOLTAGE" ensures that the transistors in the circuit have a sufficient supply voltage to operate. *Id.* at 4:63–5:5. "The output of the mode memory circuit 90, 'MODE,' is input to control circuit 52, which uses this signal to control whether the power supply is turned on or off." Pet. 9 (citing Ex. 1001, 5:21–24, 5:61–62).

In addition to the LOGIC UNDER-VOLTAGE and ANALOG UNDER-VOLTAGE signals, the mode memory circuit 90 responds to the outputs of the positive detector circuit and the negative detector circuit. If the voltage on "state pin 48 is between the reference voltages at nodes 67 and 71, the signal at the output of comparator 77 has a logic one value, and the output of comparator 80 has a logic zero value. Thus, the signal MODE is a logic one and power supply 10 (FIG. 1) is on." Ex. 1001, 5:56–62. When the voltage at the state pin 48 is below the low threshold, the signal MODE is at a logic zero and the power supply is held in an off state. *See id*. at 6:56–58.

B. Challenged Claims

Claims 21, 23, 29, and 34 are independent. Claim 22 depends from claim 21. Claims 24–26 and 28 depend from claim 23. Claims 30–33 depend from claim 29. Claims 35–39 depend from claim 34. Claims 21 and 34 are illustrative of the claimed subject matter and reproduced below.

> 21. A power converter circuit, comprising:
>
> a pulse width modulated (PWM) control circuit configured to produce a control signal at an output of the PWM control circuit in response to a feedback signal received at a first input of the PWM control circuit; and
>
> a state circuit configured to prevent the control signal from switching only during a value of a state control signal received at an input of the state circuit, the state circuit including,
>
> (a) a first comparator configured to produce a first signal at an output of the first comparator based on a comparison between the state control signal and a first reference,
>
> (b) a second comparator configured to produce a second signal at an output of the second comparator based on a comparison between the state control signal and a second reference, and
>
> (c) a logic circuit including an output coupled to a second input of the PWM control circuit and configured to produce a mode signal at the output of the logic circuit in response to decoding the outputs of the first and second comparators and setting the PWM control circuit to a non-operational off-state to conserve energy for an extended period of time as determined by the state control signal, wherein the power converter circuit is provided in a monolithic integrated circuit package and the input of the state circuit is coupled to a pin of the monolithic integrated circuit package

Ex. 1001, 11:28–56.

> 34. A method of controlling an operational state of a power conversion control circuit in a semiconductor package, comprising:
>
> receiving a state control signal at a pin of the semiconductor package for controlling an operational state of a power conversion control circuit;

> comparing the state control signal to a first reference and to a second reference less than the first reference;
>
> generating a first value of a mode signal during a second value of the state control signal, the first value of the mode signal being dependent upon the comparing of the state control signal to the first reference and the second reference; and
>
> setting the operational state of the power conversion control circuit to one of a plurality of operational states in response to the mode signal depending on whether the state control signal is greater than the first reference value, or the state control signal is between the first and second reference values, or the state control signal is less than the second reference value.

Id. at 13:16–14:5.

C. Asserted Grounds of Unpatentability and Evidence Relied Upon

Petitioner presents the following grounds of unpatentability:

1. Claims 21–23, 26, 29, and 33–38 of the ’862 patent as anticipated under 35 U.S.C. § 102(b) by Robert A. Mammano, *Voltage-Mode Control Revisited – A New High-Frequency Controller Features Efficient Off-Line Performance*, 1993 HIGH FREQUENCY POWER CONVERSION CONFERENCE 40 (May 23–27, 1993) (“Mammano”) (Ex. 1004);
2. Claims 24, 25, 28, and 30–32 of the ’862 patent as rendered obvious under 35 U.S.C. § 103 by Mammano alone or in combination with PWR-SMP3 PWM Power Supply IC (“SMP3 Datasheet”) (Ex. 1005); and

3. Claim 34–39 of the ’862 patent as anticipated under 35 U.S.C. § 102(b) by the SMP3 Datasheet.

Petitioner supports its challenge with a declaration of Dr. Tamas Szepesi (“Szepesi Declaration”) (Ex. 1003). Petitioner also proffers a declaration of Mr. David Kung (“Kung Declaration”) (Ex. 1019).

D. Related Proceedings

The parties identify a number of district court litigations involving the ’862 patent. Pet. 2; Paper 3, 2–3.

III. ANALYSIS

A. Principles of Law

Petitioner bears the burden of proving unpatentability of the Challenged Claims, and the burden of persuasion never shifts to Patent Owner. *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015). At this stage of the proceeding, Petitioner must establish that there is a reasonable likelihood that it will prevail with respect to at least one of the Challenged Claims. 35 U.S.C. § 314(a).

“A petitioner in an *inter partes* review may request to cancel as unpatentable 1 or more claims of a patent only on a ground that could be raised under section 102 or 103 and *only on the basis of prior art consisting of patents or printed publications*.” 35 U.S.C. § 311(b) (emphasis added); *see* 37 C.F.R. § 42.104(b)(2).

> [W]hether information is printed, handwritten, or on microfilm or a magnetic disc or tape, etc., *the one who wishes to characterize the information, in whatever form it may be, as a “printed publication”* . . . should produce sufficient proof of its dissemination or that it has otherwise been available and accessible to persons concerned with the art to which the document relates and thus most likely to avail themselves of its contents.

In re Wyer, 655 F.2d 221, 227 (CCPA 1981) (emphasis added).

"Public accessibility" is the touchstone in determining whether a reference is a "printed publication." *In re Hall*, 781 F.2d 897, 898–99 (Fed. Cir. 1986); *see, e.g., L-3 Commc'n. Holdings, Inc. v. Power Survey, LLC*, Case IPR2014-00832, slip op. at 11–12 (PTAB Nov. 14, 2014) (Paper 9) (applied reference not shown to be publicly accessible); *C&D Zodiac, Inc. v. B/E Aerospace, Inc*., Case IPR2014-00727, slip op. at 20–22 (PTAB Oct. 29, 2014) (Paper 15) (applied reference shown to be publicly accessible). "A reference will be considered publicly accessible if it was 'disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence, can locate it."' *Blue Calypso, LLC v. Groupon, Inc*., 815 F.3d 1331, 1348 (Fed. Cir. 2016) (quoting *Kyocera Wireless Corp. v. Int'l Trade Comm'n*, 545 F.3d 1340, 1350 (Fed. Cir. 2008) (quoting *SRI Int'l, Inc. v. Internet Sec. Sys., Inc.*, 511 F.3d 1186, 1194 (Fed. Cir. 2008)). The status of a reference as a printed publication is a legal conclusion "based on underlying factual determinations." *Blue Calypso*, 815 F.3d at 1348 (citing *In re Lister*, 583 F.3d 1307, 1311 (Fed. Cir. 2009)).

B. Claim Construction

We interpret claims of an unexpired patent using the broadest reasonable interpretation in light of the specification. *See* 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016). Under the broadest reasonable interpretation standard, claim terms generally are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir.

2007). The claims, however, "'should always be read in light of the specification and teachings in the underlying patent,'" and "[e]ven under the broadest reasonable interpretation, the Board's construction 'cannot be divorced from the specification and the record evidence.'" *Microsoft Corp. v. Proxyconn, Inc.*, 789 F.3d 1292, 1298 (Fed. Cir. 2015) (citations omitted). Further, any special definition for a claim term must be set forth in the specification with reasonable clarity, deliberateness, and precision. *See In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994). In the absence of such a definition, limitations are not to be read from the specification into the claims. *See In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

Neither party seeks construction of any claim terms. Pet. 13; s*ee generally* Prelim. Resp. We construe claim terms to the extent necessary to resolve the dispute before us. *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (explaining that only claim terms in controversy need to be construed, and only to the extent necessary to resolve the controversy). Because neither party seeks construction of any terms and because we determine that no construction of terms is necessary for our analysis on whether to institute the requested *inter partes* review, we do not construe any claim terms herein.

C. Level of Skill in the Art

Petitioner contends that a person of ordinary skill in the art of the '862 patent would have had "the equivalent of a Bachelor's degree or higher in electrical engineering with at least 3 years working experience in the design of electronic circuits, would be familiar with switching voltage regulator circuits and with the operation, design and fabrication of integrated circuits related to switching voltage regulators." Pet. 12–13 (citing Ex. 1003 ¶ 31).

Patent Owner does not address Petitioner's assessment of the level of ordinary skill. *See generally* Prelim. Resp. Having reviewed the '862 patent and the record before us, we adopt Petitioner's assessment as our own.

D. Mammano as Prior Art

Petitioner bears the burden of setting forth in its Petition a reasonable likelihood of success, including, among other things, making a threshold showing that Mammano is a "printed publication" within the meaning of 35 U.S.C. §§ 102(b) and 311(b). 35 U.S.C. § 314(a); *see* 37 C.F.R. § 42.108(c); *Apple, Inc. v. DSS Tech. Mgmt., Inc.*, Case IPR2015-00369, slip op. at 4–5, 9–11 (PTAB Aug. 12, 2015) (Paper 14); *see also supra* Section III.A. In order to meet this burden, Petitioner argues that Mammano constitutes prior art to the '862 patent as a printed publication because Mammano was published in May 1993, more than one year before the earliest filing date (June 4, 1997) of the '862 patent. *See* Pet. 4; Ex. 1001 at [64]. Patent Owner disagrees, and contends that Petitioner fails to demonstrate that Mammano is a printed publication. Prelim. Resp. 1–9. For the reasons set forth below, we determine that Petitioner's arguments and evidence with respect to the status of Mammano as a printed publication are unpersuasive and, therefore, that Petitioner is not reasonably likely to succeed in establishing in its challenges based on Mammano.

Petitioner asserts that "Mammano was published in May 1993, more than one year prior to the '933 patent's earliest priority date, and thus is prior art under 35 U.S.C. § 102(b)." Pet. 4 (citing Ex. 1003 ¶ 58).[1] This single

[1] Although Petitioner incorrectly refers to "the '933 patent," we understand this error to be harmless and instead proceed as if Petitioner had referenced the '862 patent here.

sentence is the totality of Petitioner's argument for the public accessibility of Mammano. *See generally* Pet. Petitioner's naked assertion that Mammano was published, and, therefore, publicly accessible, is not supported by the record, which fails to identify the circumstances and manner in which the reference was disseminated or in which persons interested and ordinarily skilled in the subject matter could locate the reference. *Cisco Systems, Inc. v. Constellation Techs., LLC*, Case IPR2014-01085, slip op. at 7–9 (PTAB Jan. 9, 2015) (Paper 11) (noting "naked assertion," unsupported by record, that reference was published).

On its face, Mammano purports to be an article prepared by a presenter at the High Frequency Power Conversion Conference, held in Vienna, VA, on May 23–27, 1993. Ex. 1004, 1, 2. This article was bound together with articles prepared by other presenters as a hard cover book and was apparently intended to be distributed to attendees at the conference. Ex. 1004, 1 ("This Book is the Property of:"), 2 ("Technical Papers and Authors"); *see* Ex. 1003 ¶ 58 (stating the Technical Papers of the Conference were "provided to the conference attendees as a hard cover book.").

Although Petitioner does not cite to any portion of Mammano in support of its argument, Petitioner does cite to testimony of its declarant, Dr. Szepesi, that he received the copy of Mammano relied upon in the Petition. Specifically, Dr. Szepesi testifies that:

> Mammano was presented at the Eighth International High Frequency Power Conversion Conference, which took place from May 23–27, 1993, in Vienna, Virginia. I personally attended the conference and received a copy of Mammano as part of the Technical Papers of the Conference (which was provided to the conference

> attendees as a hard cover book). The Technical Papers of the Conference, including Mammano, was freely distributed to all attendees. The copy of Mammano attached to the petition as Exhibit 1004 in this case is a photocopy of the original document from the Technical Papers of the Conference that I received at the conference and that has been in my possession since the conference.

Ex. 1003 ¶ 58. Petitioner maintains that Dr. Szepesi's testimony regarding the circumstances surrounding Dr. Szepesi's receipt and possession of Mammano serve to authenticate this exhibit. Ex. 1020, 11:13–16. Petitioner contends that its evidence of public accessibility consists of: (i) the nature of the reference, namely, that it is a conference paper; (ii) "the kind of agenda for the conference;" and (iii) Dr. Szepesi's testimony that he attended the conference and retained this copy of Mammano. *Id*. at 8:15–9:5.

We have considered Petitioner's arguments, Dr. Szepesi's testimony and Mammano itself, and we do not find that Petitioner presents persuasive evidence of Mammano's public accessibility. Referring to Exhibit 1004's cover page, the cover page indicates that it is the "Technical Papers of the Eighth International High Frequency Power Conversion 1993 Conference" and that the conference occurred on May 23–27, 1993 in Vienna, VA. Ex. 1004, 1. Given Dr. Szepesi's testimony (Ex. 1003 ¶ 58), we accept that Mammano is a paper presented at the conference and that the conference occurred on the dates set forth.

Nevertheless, initially, we note that neither Petitioner nor Dr. Szepesi provides any evidence concerning how the conference was publicized and promoted and to whom. Specifically, Petitioner argues:

> conference papers and conference agendas to conferences that were open to anybody who is in the art suffice and the indicia from the document itself — for example, all of the

> authors who were present at the conference who you can see in the table of contents, those authors necessarily would have been at the conference — and so the indicia from the document itself provides evidence that there was more — this wasn't just one guy at a conference, which is kind of the allegation that is being made here. *These are industry leaders and professors presenting at a conference, and at least the other presenters at the conference would have been present at the conference*.

Ex. 1020, 9:16–10:4 (emphasis added). Petitioner, however, leaves it to us to suppose the facts that would support these arguments. Petitioner does not provide evidence from which we may determine that this conference was publicized or promoted to persons skilled in the art.

In *Mass. Inst. of Tech. v. AB Fortia*, 774 F.2d 1104 (Fed. Cir. 1985) ("Mass Inst."), our reviewing court affirmed the tribunal's conclusion that a research paper was prior art based on evidence that the paper "was orally presented by Dr. Levine of the [Massachusetts Institute of Technology] group to the First International Cell Culture Congress in Birmingham, Alabama, September 21–25, 1975," which "was attended by 50 to 500 cell culturists," and that "copies were distributed on request, without any restrictions, to as many as six persons, more than one year before the filing date of the '534 and '654 patents." *Id.* at 1108–09. However, without sufficient evidence regarding the publication of and attendance at the conference, public accessibility cannot be shown. *See SRI Int'l, Inc. v. Internet Sec. Sys., Inc.*, 511 F.3d 1186, 1197 (Fed. Cir. 2008) (prior art not shown to be publicly accessible when it is "analogous to placing posters at an unpublicized conference with no attendees," prior art must be "publicized or placed in front of the interested public").

Second, apart from the list of authors provided in Exhibit 1004, Petitioner does not provide evidence regarding who presented at the conference and who attended the conference and whether those persons satisfied Petitioner's assessment of a person of ordinary skill in the art (*see supra* Section III.C). *See* Prelim. Resp. 2–3. As noted above, Petitioner asserts that the presenters were "industry leaders and professors" and that at least the listed presenters would have been present at the conference. Ex. 1020, 101–4; *see* Ex. 1004, 2. Petitioner does not argue that Dr. Szepesi was a person of ordinary skill in the art at the time of the conference, and Dr. Szepesi does not assert that he was a person of ordinary skill in the art as of that date. *See* Ex. 1003 ¶¶ 9–19; Ex. 1007. In particular, Dr. Szepesi does not testify that he had experience in the fabrication of integrated circuits related to switching voltage regulators at the time that he attended the High Frequency Power Conversion Conference, May 23–27, 1993. Ex. 1003 ¶¶ 13, 14; Ex. 1004, 1. Limited distribution, however, even to those skilled in the art, may not amount to "publication" under the statute unless the material is otherwise so situated that "anyone who chooses may avail himself of the information it contains." *In re Bayer*, 568 F.2d 1357, 1360, 1362 (CCPA 1978) (quoting 1 W. Robinson, The Law of Patents 327 at 448 (1890); holding that the distribution of alleged prior art to three members of a graduate committee, concededly members of the "interested public", for purposes of assessing appellant's entitlement to a degree did not, as a matter of law, "transmute[] . . . [the thesis] into a patent-defeating publication.")

As noted above, Petitioner asserts, without sufficient factual support, that the presenters were "industry leaders and professors" and that at least

the listed presenters would have been present at the conference. Ex. 1020, 101–4; *see* Ex. 1004, 3. While the Table of Contents is some evidence of who attended the conference, we note that many of the papers list multiple authors. Ex. 1004, 3. We cannot determine who attended the conference and who presented the papers based solely on the listing in the Table of Contents. *See* Prelim. Resp. 4–5

Here, Petitioner does not provide sufficient evidence that any person attending the conference satisfied Petitioner's assessment of a person of ordinary skill in the art. *See id.*; *cf. also LG Electronics, Inc. v. Core Wireless Licensing S.A.R.L.*, Case IPR2015-01986, slip op. at 29 (PTAB Mar. 16, 2017) (Paper 34) ("As explained above, in this proceeding, the papers in question were handed out without restriction to at least dozens of skilled artisans, with more being alerted, by email, to the posting of the documents on 3GPP's server." (emphasis added)); *Suffolk Techs., LLC v. AOL Inc.*, 752 F.3d 1358, 1364 (Fed. Cir. 2014) (relying on "at least six responses" to a reference posted to an online newsgroup including persons of ordinary skill in the art and noting that "[m]any more people may have viewed the post"); *In re Klopfenstein*, 380 F.3d 1345, 1350 (Fed. Cir. 2004) ("In this case, the Liu reference was displayed to the public approximately two years before the '950 application filing date. The reference was shown to a wide variety of viewers, a large subsection of whom possessed ordinary skill in the art of cereal chemistry and agriculture." (emphasis added)). As noted above, Petitioner does not argue that Dr. Szepesi, the one person whom we know to have attended the conference and received a copy of the technical papers book, was a person of ordinary skill in the art at the time of the conference, and, on this record, we cannot discern whether Dr. Szepesi

met Petitioner's assessment of a person of ordinary skill in the art at the time of the conference. *See supra* Section III.C.

Third, neither Petitioner nor Dr. Szepesi provides evidence of the conditions, if any, under which the technical papers were distributed to the conference attendees. Petitioner provides no evidence regarding whether the technical papers book was provided to conference attendees with or without restriction. The cover page of Exhibit 1004 includes the statement: "This Book is the Property of:" Ex. 1004, 2. On Dr. Szepesi's copy of the technical papers book, the line following this statement is blank. Although this statement may suggest that the book is the property of the attendee to whom it was given and that the attendee may do with it as he or she pleases, Petitioner does not make this argument, and we decline to draw that inference without more evidentiary basis.

During a conference call on January 9, 2018, Petitioner requested authorization to file a reply to Patent Owner's Preliminary Response and to respond to Patent Owner's contentions regarding the public accessibility of Mammano. Ex. 1020, 5:20–6:2. Nevertheless, Petitioner acknowledged that the panel was capable of assessing the requirements of the law and the evidence of record (*see id*. at 7:17–8:4) and that Petitioner did not intend to submit further evidence regarding public accessibility (*see id*. at 10:13–12:3). In particular, Petitioner stated that it did not wish to submit a further declaration from Dr. Szepesi, who was not only an attendee, but appears to have been a presenter (*see* Ex. 1004, 3 (Session 2.9)), concerning the public accessibility of the technical papers book. Ex. 1020, 11:11–13. Therefore, we denied authorization for a reply. *Id*. at 19:20–21:11.

Consequently, on this record, we are not persuaded that Petitioner makes the necessary threshold showing that Mammano was a printed publication more than one year before the earliest filing date (June 4, 1997) of the '862 patent.

E. SMP3 Datasheet as Prior Art

Petitioner bears the burden of setting forth in its Petition a reasonable likelihood of success, including, among other things, making a threshold showing that the SMP3 Datasheet is a "printed publication" within the meaning of 35 U.S.C. §§ 102(b) and 311(b). 35 U.S.C. § 314(a); *see* 37 C.F.R. § 42.108(c); *Apple, Inc. v. DSS Tech. Mgmt., Inc.*, Case IPR2015-00369, slip op. at 4–5, 9–11 (PTAB Aug. 12, 2015) (Paper 14); *see also supra* Section III.A. In order to meet this burden, Petitioner argues that the SMP3 Datasheet constitutes prior art to the '862 patent as a printed publication because it was published more than one year before the earliest filing date of the '862 patent, namely June 4, 1997. *See* Pet. 4; Ex. 1001, [64]. Patent Owner does not respond to Petitioner's assertions regarding the SMP3 Datasheet. *See generally* Prelim. Resp. For the reasons set forth below, we determine that Petitioner's arguments and evidence with respect to the status of the SMP3 Datasheet as a printed publication do not satisfy the requisite threshold level of proof.

Relying on its declarant, Mr. Kung, Petitioner asserts that the SMP3 Datasheet "was published in July 1991, which thus makes it prior art under 35 U.S.C. § 102(b)." Pet. 4 (citing Ex. 1019 ¶¶ 1–2). Mr. Kung, in turn, states that he is the Director of Design Engineering at Power Integrations and began working at Power Integrations in 1989. Ex. 1019 ¶ 1. Mr. Kung continues, "I have personal, contemporaneous knowledge that copies of this

SMP3 data sheet were published, made available, and distributed to the public in July of 1991, as also indicated by the '7/91' date code at the bottom of each page of the data sheet." *Id.* at ¶ 2.

We have considered Petitioner's arguments, Mr. Kung's testimony, and the SMP3 Datasheet itself, and we do not find that Petitioner presents persuasive evidence of the SMP3 Datasheet's public accessibility. The SMP3 Datasheet bears no obvious indicia of public accessibility. *See generally* Ex. 1005. For instance, the SMP3 Datasheet does not state plainly the date it was made publically accessible, contain a mailing stamp or address, or include any statement of how a member of the public would obtain this document. *See id*. Rather, Mr. Kung states the "7/91" appearing near the page numbers in the footer of this document indicates that it was published in July 1991. Ex. 1019 ¶ 1. The number "7/91" is proceeded by the letter "B" in every instance, and Mr. Kung does not explain the meaning of this letter or its relevance to the purported code of "7/91." *See*, *e.g.*, Ex. 1005, 1; *see also id.* Nevertheless, crediting Mr. Kung's testimony, the date on a datasheet, standing alone, is insufficient to show public accessibility. *Toshiba Corp.v. Optical Devices LLC*, Case IPR2014-01447, slip. op. at 40–42 (PTAB Mar 9, 2016) (Paper 34). Moreover, Petitioner and Mr. Kung do not adduce evidence of actually providing the SMP3 Datasheet to the public, e.g., customers; how it was provided; the number of persons to whom it was given; and how those customers requested or otherwise came to receive this document. Petitioner also does not contend that it was Power Integrations' standard business practice to make datasheets, such as the SMP3 Datasheet, publically accessible, and Mr. Kung offers no evidence or testimony in that regard. Without such information, we are unable to

conclude that the SMP3 Datasheet was publically accessible prior to the critical date. *See, e.g., In re Enhanced Security Research, LLC*, 739 F.3d 1347, 1354–55 (Fed. Cir. 2014) (finding dated manual was "publically-available" based, in part, upon the declaration of the Chief Executive Officer describing how members of the public would request copies of the manual and testifying as to the number of customers who would have received the manual).

Accordingly, on this record, we are not persuaded that Petitioner has made the necessary threshold showing that the SMP3 Datasheet was a printed publication more than one year before the earliest filing date (June 4, 1997) of the '862 patent.

IV. SUMMARY

We determine that Petitioner has not demonstrated a reasonable likelihood of prevailing with respect to at least one of the Challenged Claims.

V. ORDER

It is, therefore,

ORDERED that the Petition is *denied* and no trial is instituted.

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