

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

VLSI TECHNOLOGY LLC,

150 South Wacker Drive, Suite 2400
Chicago, IL 60606

Plaintiff,

v.

PATENT QUALITY ASSURANCE, LLC,

Last known address of person to be served:
Northwest Registered Agent, LLC
25 First Avenue SW, Suite A
Watertown, SD 57021

AND

JOSEPH URADNIK,

Last known address of person to be served:
Joseph Uradnik
30177 Arrowhead Road
Grand Rapids, MN 55744

Defendants.

Civil Action No. CL 24001093

FILED
CLERK OF COURTS
CITY OF ALEXANDRIA
2024 JAN 31 PM 1:30
J. GREG PARKS, CLERK
BY JH
DEPUTY CLERK

COMPLAINT

Plaintiff VLSI Technology LLC (“VLSI”), by and through its undersigned counsel, pleads the following against defendants Patent Quality Assurance, LLC (“PQA”) and Joseph Uradnik (“Uradnik”) (collectively, the “Defendants”), and alleges as follows:

PRELIMINARY STATEMENT

1. This is an action for abuse of process, fraud, and civil conspiracy arising out of Defendants’ scheme to wrongly use an administrative trial proceeding called *inter partes* review (“IPR”), and its processes and procedures, to harass and attempt to extort tens of millions of dollars

from VLSI, rather than for the proper purpose of obtaining review of the patentability of one or more patent claims.

2. Months after VLSI was awarded one of the largest patent infringement verdicts in history against Intel Corporation (“Intel”) for infringement of two VLSI patents, PQA initiated IPR proceedings before the Patent Trial and Appeal Board (the “PTAB”). Uradnik and PQA then prosecuted the case, misusing PTAB processes and procedures in an attempt to pressure VLSI to pay them millions of dollars to drop the case. That was their true purpose: to extract money from VLSI, not to have the validity of VLSI’s patent claims determined.

3. PQA did not even exist before VLSI’s verdict. PQA has no legitimate interest in the validity of any VLSI patent. It does not make, use, or sell any products. It faces no risk of being sued for patent infringement. Defendants abused discovery and other procedures of the PTAB throughout the IPR proceeding by refusing to reveal the true nature of PQA, who or what was behind it, and their actual motivations in pursuing an IPR against VLSI.

4. Uradnik has no legitimate interest in the patentability of VLSI’s patents, either. Throughout the proceedings, he steadfastly refused to identify himself as anyone other than an “authorized representative” of PQA. Even after being asked repeatedly at his deposition to testify as to the true nature of his relationship with PQA, and to identify the people behind PQA and their interests, he refused to answer.

5. Defendants’ true purpose was extortion. Their repeated abuses of the processes and procedures of the IPR revealed that purpose, including: (a) falsely representing to the PTAB that PQA had an “exclusive” relationship with an expert in order to get a competing IPR petition dismissed; (b) threatening to file, and then actually filing, a second IPR petition when VLSI refused to pay the exorbitant sums of money that Defendants demanded to drop the case; (c) engaging in

brazen discovery misconduct to keep the identity of PQA's principals, and the true purposes for its creation, hidden from VLSI and the PTAB; and (d) willfully and repeatedly violating the discovery orders of the Director of the U.S. Patent and Trademark Office (the "USPTO") directing PQA to reveal its true nature and origins.

6. As a direct result of Defendants' abusive tactics, VLSI was forced to defend against an abusive IPR petition and engage in needless discovery, causing VLSI damages including attorneys' fees and costs. VLSI should be made whole for Defendants' abuses, which are tortious and a violation of Virginia law. In her decision to sanction PQA for its misconduct, the Director of the USPTO expressly found that she was not deciding whether VLSI suffered compensable injury from Defendants' abuse of process. That open question should now be decided.

THE PARTIES

7. Plaintiff VLSI is a Delaware limited liability company duly organized and existing under the laws of the State of Delaware. Its principal place of business is 150 South Wacker Drive, Suite 2400, Chicago, IL 60606.

8. PQA is a limited liability company organized under the laws of South Dakota. The address of the registered office of PQA is Northwest Registered Agent, 25 First Avenue SW, Suite A, Watertown, SD 57021. The Name of PQA's registered agent is Northwest Registered Agent.

9. Upon information and belief, Defendant Joseph Uradnik is an individual who is a citizen of Minnesota and is domiciled at 30177 Arrowhead Road, Grand Rapids, MN 55744. Uradnik testified that he was authorized by the undisclosed members of PQA to speak on PQA's behalf during IPR proceedings.

JURISDICTION AND VENUE

10. This Court has personal jurisdiction over Defendants because Defendants transacted business in the Commonwealth and caused tortious injury to VLSI by acts and omissions in the Commonwealth, where Defendants filed petitions to initiate the IPR proceedings and then abused the PTAB's processes and procedures in prosecuting the petitions.

11. Venue is proper in this Court because all or part of the cause of action arose in Alexandria, and evidence (including the IPR file) and witnesses to the action are in Alexandria.

FACTUAL BACKGROUND

I. THE PTAB AND *INTER PARTES* REVIEW

12. This case involves abuse of process before a tribunal within the USPTO called the PTAB, which is headquartered in Alexandria, Virginia.

13. IPR proceedings are trial procedures that permit third parties to challenge the validity of patents issued by the USPTO. IPRs are intended to provide a quick and cost-effective alternative to patent infringement litigation, thus fostering a more efficient and streamlined patent system that ultimately will improve patent quality.

14. In an IPR proceeding, the PTAB can only determine whether a certain invention is patentable. It has no authority to award a party challenging a patent damages or to compensate a petitioner for successfully invalidating a patent claim.

15. The statute creating IPR provides that—with one critical exception—any person who is not the owner of a patent may file with the USPTO a petition to institute IPR proceedings with respect to the patent. According to that exception, an IPR may not be instituted if the petition requesting the IPR proceeding is filed more than one year after the petitioner, real party-in-interest, or privy of the petitioner is served with a complaint alleging patent infringement. Petitioners are

therefore required to identify all real parties in interest. If the petitioner identifies a real party-in-interest that is time-barred, the PTAB must deny the petition for IPR. An otherwise time-barred party may, however, join an already instituted IPR.

16. If the PTAB invalidates a patent in an IPR proceeding after a jury awards damages to a patent owner in an infringement action, the infringer may seek to have the damages award vacated on the basis of the PTAB's finding of invalidity, provided that the underlying infringement action has not reached final non-appealable judgment.

17. All documents filed with the PTAB must be signed under oath and with a representation that they are not being filed for an improper purpose.

18. Bad faith actors have an incentive to abuse the IPR process and game the system by trying to extort millions of dollars out of patent owners who have successfully enforced their patent rights in court. Such actors may improperly seek to file IPR petitions in bad faith with the end goal of ultimately dismissing the petition before the PTAB institutes an IPR proceeding in exchange for a windfall from the patent owner's damages award.

19. As described below, Defendants are such bad faith actors who engaged in a brazen abuse of the IPR process.

II. VLSI'S HISTORIC JURY VERDICT AGAINST INTEL FOR PATENT INFRINGEMENT

20. On April 11, 2019, VLSI filed a patent infringement suit against Intel in the U.S. District Court for the Western District of Texas ("WDTX"). The complaint alleged that Intel infringed multiple semiconductor technology patents owned by VLSI, including U.S. Patent Nos. 7,523,373 (the "'373 Patent") and 7,725,759 (the "'759 Patent").

21. After VLSI filed its complaint, in late 2019 and early 2020, Intel filed IPR petitions with the PTAB arguing that the '373 Patent and '759 Patent were invalid. The PTAB declined to

institute IPRs on the basis that the WDTX action (which included defenses similar to those posed by Intel in the proposed IPRs) was nearing trial and thus, any PTAB proceedings would be duplicative of the WDTX's assessment of validity.

22. After Intel's IPR petitions were dismissed by the PTAB, a jury trial commenced on February 22, 2021 in the WDTX. On March 2, 2021, after a five-day trial, a jury returned a verdict in favor of VLSI. The jury specifically found that (a) all asserted claims of the '373 Patent were literally infringed by Intel and all asserted claims of the '759 Patent were infringed by Intel under the doctrine of equivalents; (b) no asserted claim of the '759 Patent was invalid; and (c) VLSI was entitled to \$1.5 billion of lump sum damages for Intel's infringement of the '373 Patent and \$675 million in lump sum damages for Intel's infringement of the '759 Patent.

23. Following entry of the verdict, Intel moved for judgment as a matter of law and a new trial. The Court denied Intel's motion and, on April 21, 2022, entered final judgment, which included the following:

- a. Intel was found to have infringed all claims at issue in the '373 and '759 Patents;
 - b. Judgment was entered against Intel on its counterclaims of noninfringement of the asserted claims of both the '373 and '759 Patents;
 - c. Judgment was entered against Intel on its counterclaims of invalidity of the '373 and '759 Patents;
 - d. The claims VLSI asserted on the '759 Patent were found to be not invalid;
 - e. The Court awarded \$1.5 billion to VLSI for Intel's infringement of the '373 Patent claims and \$675 million to VLSI for Intel's infringement of the '759 Patent claims;
- and

f. The Court additionally awarded VLSI prejudgment interest in the amount of \$162,321,343.

24. After judgment was entered in the WDTX infringement action, Intel had no lawful ability to again petition the PTAB for an IPR with respect to the '373 and '759 Patents. As described above, no petition for an IPR may be filed more than one year after the date on which the petitioner, a real party-in-interest, or a privy of the petitioner is served with a complaint alleging infringement. Nor could a petition lawfully be filed by any petitioner if Intel was a real party-in-interest or in privity with the petitioner.

25. While Intel, its privies, and anyone representing Intel as the real party-in-interest were legally barred from initiating an IPR directed at either of the patents that it was found to have infringed, that bar did not categorically preclude an entity that was independent of Intel from challenging the validity of the patents in an IPR. Nor did it preclude Intel from joining an already-instituted IPR proceeding.

III. PATENT QUALITY ASSURANCE IS SUDDENLY CREATED ON THE HEELS OF THE VERDICT

26. On or about June 14, 2021, approximately three months after the jury's almost \$2.2 billion verdict against Intel, a mysterious entity called Patent Quality Assurance, LLC was formed in South Dakota. South Dakota law does not require an LLC formed there to identify its members.

27. PQA was formed upon the application of a company called Northwest Registered Agent, LLC, which offers registered agent services to those seeking to form businesses.

28. Northwest Registered Agent promotes itself as offering services that help mask the identities of those behind newly formed companies.

29. In PQA's Articles of Organization filed with the South Dakota Secretary of State on or about June 14, 2021, Northwest Registered Agent identified "Morgan Noble" as the name of PQA's organizer.

30. On information and belief, Morgan Noble is not a real person, but a fictitious identity used by Northwest Registered Agent around the country when forming entities for its clients. For example, Northwest Registered Agent used "Morgan Noble" when creating: a West Virginia entity called Center for Hope and Change LLC, a Delaware entity called Shao Partners LLC, a Massachusetts entity called Summit Statistics Solutions LLC, a Nevada entity called FLU LLC, and a Virginia entity called The PartyLady LLC.

31. Many of the companies for which Northwest Registered Agent has used "Morgan Noble" as an organizer have been found to engage in wrongdoing, and/or do not operate as a legitimate company would. For example:

- a. In March 2021, the Better Business Bureau issued a warning against TLS LLC after several individuals performed work for TLS but were never paid for their services.
- b. Phoenix Solutions was allegedly used by former Speaker of the Tennessee House of Representatives, Glen Casada, to illegally launder campaign funds.
- c. Tarantula Outlet LLC allegedly engaged in a scam involving exotic animals.
- d. In December 2021, Hope and Change LLC had its business license revoked for failing to file an annual report with the West Virginia Secretary of State.

32. PQA does not make, use, sell, or import any products, let alone any products that could subject it to claims of infringement of VLSI's patents. Rather, it was apparently created solely for the purpose of extorting VLSI by filing IPR petitions challenging the validity of its

patents before the PTAB and then offering to dismiss those petitions in exchange for exorbitant sums of money.

IV. DEFENDANTS' IPR PETITION

33. On or around July 7, 2021, less than a month after its formation, PQA filed an IPR petition with the PTAB in Alexandria, Virginia challenging the validity of the '373 Patent claims that formed the basis of \$1.5 billion of the \$2.175 billion award against Intel.

34. In support of its IPR petition, PQA filed a sworn declaration of defendant Uradnik. Uradnik stated in his declaration that “[n]o business entity is a member of, owns any interest in, or exerts control over [PQA].” He further stated that “[e]ach member of [PQA] is a United States citizen who is not employed by, does not work for, and is not affiliated with” Intel or VLSI. While he stated in his declaration that PQA was “owned and managed exclusively by its members,” he did not disclose who those members were.

35. PQA’s petition was almost a verbatim copy of the IPR petition that Intel filed in 2019 challenging the '373 Patent, which the PTAB had declined to institute. Since PQA had no business aside from challenging VLSI’s patents, and thus was not at risk of being sued for patent infringement, it disingenuously claimed that its sole purpose in seeking to invalidate the patent was “to instill confidence in the integrity of the patent system and to ensure that innovative U.S. companies (and their consumers) are not unfairly taxed by entities asserting invalid patents.”

36. Defendants’ subsequent bad faith actions in prosecuting the IPR proceeding demonstrated that their true motive had nothing to do with the integrity of the patent system.

V. DEFENDANTS' FALSE AND EVASIVE FILINGS WITH THE PTAB AND ATTEMPTS TO EXTORT VLSI

37. PQA’s IPR petition was not the first to challenge the validity of the '373 Patent following the WDTX verdict. An earlier petition was filed by an entity called OpenSky Industries,

LLC (“OpenSky”), which similarly copied the invalidity arguments raised in Intel’s failed 2019 petition. The USPTO Director ultimately sanctioned OpenSky for filing abusive IPR petitions.

38. Defendants recognized that OpenSky’s nearly identical challenge to VLSI’s patent was a major obstacle to the success of their extortionate scheme. If IPR proceedings were instituted based on OpenSky’s petition, it would make little sense for VLSI to pay a large settlement to PQA, because VLSI would be required to defend the validity of its patent regardless of whether PQA voluntarily dismissed its petition. Additionally, it is likely that the PTAB would have dismissed PQA’s petition as duplicative if it instituted review based on OpenSky’s petition. Thus, before trying to extract a large settlement from VLSI, Defendants knew that they needed to eliminate OpenSky’s competing petition.

39. Defendants misled the PTAB to get it to dismiss OpenSky’s IPR petition. OpenSky attached to its petition a declaration from a technical expert, Dr. Adit Singh. This declaration had been prepared for Intel and filed with its failed 2019 IPR. OpenSky filed Dr. Singh’s declaration without his knowledge and without retaining him.

40. Four days after OpenSky filed its IPR petition, an unnamed “Petitioner” (who was in fact the people who would go on to form PQA) retained Dr. Singh. By the time PQA was created and filed its IPR petition, it argued that it had “exclusively” engaged Dr. Singh, and that its petition should therefore be granted in favor of OpenSky’s earlier-filed petition because OpenSky could not present Dr. Singh for cross-examination. Based on PQA’s representation about its exclusive retention of Dr. Singh, the PTAB found that OpenSky “brought forth the testimony of an expert that [OpenSky] likely cannot produce for cross-examination and will likely be excluded” as hearsay. Accordingly, on December 23, 2021, the PTAB concluded that OpenSky’s ’373 petition

did not warrant institution based on PQA's representation that OpenSky would have been unable to engage Dr. Singh. With that, the obstacle to Defendants' extortionate plan was removed.

41. As USPTO Director Kathi Vidal later found, PQA's representation about its "exclusive" arrangement with Dr. Singh was false. In a December 2022 decision, Director Vidal "determin[ed] that PQA, through its counsel, abused the IPR process by advancing a misleading argument and a misrepresentation of fact by representing, in its Petition, that it had exclusively engaged Dr. Singh, a witness relied on by another party . . . OpenSky . . . in a parallel proceeding, and which representation it later qualified as *not* being an exclusive engagement."

42. In addition to finding that PQA's representation about the nature of its relationship with Dr. Singh was false, USPTO Director Vidal found that PQA's behavior was inconsistent with its representations that it was challenging the '373 Patent to protect the integrity of the patent system. The Director found that PQA's behavior instead "show[ed] an intent to ensure that PQA, not OpenSky, would benefit monetarily from any [settlement] arrangement with VLSI." After all, if PQA's real motive for filing its petition was to protect the quality of the patent system, it would not care whether its petition or OpenSky's petition was the vehicle for invalidating the '373 Patent, and it would have made Dr. Singh available to OpenSky to challenge the patent. On the other hand, Defendants could extract a large settlement from VLSI only if OpenSky's petition was dismissed.

43. On or around July 7, 2021, at the time Defendants filed their IPR petition with the PTAB, PQA served the same petition containing its representations about its exclusive relationship with Dr. Singh on counsel of record for VLSI.

44. Had VLSI been aware of the true nature of PQA's relationship with Dr. Singh at the time PQA had filed its petition, it would have made that fact known to the PTAB.

45. After OpenSky's IPR petition was dismissed, Defendants saw that the time was right to demand an extortive settlement from VLSI. Understanding that PQA had no actual interest in challenging the '373 Patent, VLSI had earlier tried to engage in settlement discussions with PQA—efforts that PQA initially rebuffed. But after OpenSky's competing petition was dismissed, PQA communicated to VLSI that it was willing to dismiss its own IPR petition, and give up its purported mission to protect the integrity of the patent system, in exchange for exorbitant amounts of money.

46. PQA further threatened that, if VLSI didn't pay off PQA, it would file a motion to join the OpenSky IPR seeking to invalidate the other patent underlying the verdict against Intel—the '759 Patent. Defendants followed through on their threat. Once Defendants realized that VLSI would not cave to their demand, PQA petitioned to join OpenSky's IPR seeking to invalidate the '759 Patent. Defendants' conduct caused VLSI to expend attorneys' fees on briefing to oppose PQA's joinder petition. PQA then voluntarily withdrew its retaliatory petition just two days before the PTAB's deadline for a decision on whether to grant the joinder request.

47. When it filed the IPR petition to join OpenSky's IPR challenging the '759 Patent, PQA once again represented to the PTAB that its purpose in doing so was to protect the integrity of the patent system—a motive that is belied by the fact that it threatened to file the petition only if VLSI did not agree to pay it to go away. Defendants thus used the legal process of the PTAB and the risk of an impending IPR institution decision as a threat to further their scheme to extort large sums of money from VLSI.

48. PQA's behavior during settlement discussions also demonstrated an intent to extort VLSI in the future. For example, PQA refused to bind its principals to any settlement or even identify to VLSI who its principals were. Without knowing who was behind PQA's creation, VLSI

would not have any assurances that the same principals would forego attempts to create a different entity and petition the PTAB for an IPR seeking to invalidate VLSI's patents in the future (perhaps even the next day).

49. On January 26, 2022, over VLSI's objections, the PTAB instituted PQA's IPR seeking to invalidate the '373 patent. That same day, Intel sought to join the IPR proceeding that was instituted based on PQA's petition. The PTAB granted Intel's joinder request.

VI. DEFENDANTS ABUSE THE DISCOVERY PROCESS DURING THE IPR

50. After the PTAB instituted the IPR based on PQA's petition, VLSI was entitled to take discovery of PQA's purported spokesperson Joseph Uradnik, who had filed the declaration in support of PQA's petition. During his deposition, VLSI's counsel sought to learn basic facts about PQA's formation, its membership, and its reasons for challenging VLSI's patent. Such discovery was relevant and important because, if PQA's purpose for filing its IPR petition was to extort a payment, VLSI could have sought to have the proceedings dismissed as a sanction for PQA's abuse of the IPR process. Additionally, if it turned out that Intel and PQA had coordinated their petitions to circumvent the time bar on Intel's petition, Intel also could have been dismissed from the proceedings or the IPR could have been de-instituted.

51. Defendant Uradnik was deposed on May 5, 2022. Instead of answering VLSI's legitimate deposition questions about the nature and purpose of PQA and its membership, Uradnik stonewalled, claiming that PQA had not authorized him to answer any deposition question or to provide VLSI with any information whatsoever aside from the very limited representations he had made in his declaration accompanying PQA's IPR petition. Thus, Defendants willfully violated the rules governing depositions and the PTAB's discovery process and procedures.

52. For example, during the deposition, counsel for VLSI asked Uradnik to identify the members of PQA. Uradnik refused to answer the question and instead responded that he was “not authorized to speak on that topic.” Mr. Uradnik similarly refused to identify how many members of PQA existed and whether he himself was a member of PQA.

53. VLSI’s counsel also asked Uradnik to identify the persons who had a financial interest in PQA and whether Uradnik himself had a financial interest in PQA. Uradnik once again refused to answer the question and responded that he was “not authorized to speak” on that topic.

54. Similarly, VLSI’s counsel asked Uradnik various questions to determine the motive underlying PQA’s formation. Such questions included whether PQA was formed to extort money from VLSI and whether PQA was legitimately concerned about the integrity of the U.S. patent system. Again, Uradnik refused to answer VLSI’s counsel’s questions and instead stated that he was not authorized to speak on those topics.

55. VLSI’s counsel also asked Uradnik whether PQA had coordinated with or communicated with Intel in any way prior to filing its IPR petition seeking to invalidate the ’373 Patent. Uradnik once again refused to answer the question and stated that he was not authorized to speak on that topic.

VII. DEFENDANTS INTENTIONALLY USE THE IPR PROCESS TO DRIVE UP VLSI’S ATTORNEYS’ FEES AND COSTS

56. After the PTAB instituted IPR and joined Intel as a party, PQA’s active participation in the proceedings was no longer necessary. Yet, even though PQA could not receive any benefit from the continued prosecution of its IPR petition—after all, the PTAB could not award it any compensation and it faced no risk of being sued by VLSI for patent infringement if the patent was found to be valid—after the PTAB instituted review, Defendants continued to use the PTAB’s discovery process to increase VLSI’s costs of litigating their abusive IPR.

57. For example, PQA deposed VLSI's expert. PQA also sought for the USPTO to exercise its power to conduct an *in camera* inspection of documents VLSI logged as privileged in response to discovery mandated by the USPTO Director and filed a frivolous motion to expunge certain documents from the record. Moreover, after the USPTO Director found that PQA abused the IPR process, PQA filed a frivolous mandamus petition with the Federal Circuit challenging that decision, which it later voluntarily withdrew.

58. PQA also asked the PTAB to exercise its power to provide joined petitioner Intel with access to sealed material in the record. As described above, if it was not for PQA's extortive petition, Intel would have been time-barred from filing a petition on its own and thus barred from accessing the sealed material.

59. In this and other ways, Defendants misused the processes and procedures of the IPR proceeding, which were enforceable by the PTAB and USPTO Director, for the improper purpose of increasing VLSI's costs of litigating the IPR after VLSI refused to yield to PQA's extortive settlement demands. Rather than promote the efficiency of the patent process, which was the intended purpose of the PTAB and IPR procedures, Defendants used those procedures as tools for harassment.

VIII. THE USPTO DIRECTOR REVIEWS PQA'S CONDUCT IN THE IPR PROCEEDINGS FOR ABUSE OF PROCESS

60. On or around April 27, 2022, U.S. Senators Mazie Hirono and Thom Tillis sent a letter to USPTO Director Vidal expressing concern that PQA and OpenSky were abusing the IPR process by filing petitions seeking to invalidate the '373 and '759 patents in an apparent attempt to extort money from VLSI. The Senators explained that the IPR petitions were suspect from the outset based on the facts that (a) the entities were formed shortly before filing their petitions; (b) the entities did not make, use, sell, or import *any* products, let alone any products that could subject

them to claims of infringement; (c) the companies filed their petitions only after VLSI had secured a nearly \$2.2 billion infringement verdict against Intel; and (d) the petitions filed by PQA and OpenSky were near carbon copies of petitions previously filed by Intel that had been rejected by the USPTO. The Senators concluded that PQA and OpenSky’s “activities represent a clear abuse of the IPR system.”

61. On June 7, 2022, USPTO Director Vidal initiated Director review of the PTAB’s decision to institute PQA’s IPR. Citing the same concerns articulated by Senators Hirono and Tillis in their letter to her, Director Vidal ordered that the parties to the IPR file briefing to, *inter alia*, answer the following interrogatory questions:

- a. When was PQA formed? For what purpose? What is the business of PQA? Who are members of PQA? Which other persons or entities have an interest in PQA or any of its activities including [the IPR] proceeding?
- b. What is the relationship between PQA and each of the other parties [*i.e.*, VLSI and Intel]? Other than communications already in the record, what communications have taken place between PQA and each of the other parties?
- c. Could PQA be subject to claims of infringement of the ’373 patent? Does PQA have development plans to create a product that could arguably infringe the ’373 patent? Does PQA have a policy reason for filing the Petition that benefits the public at large beside any reasons articulated in the already-filed papers?
- d. Does the evidence in this proceeding demonstrate an abuse of process or conduct that otherwise thwarts, as opposed to advances, the goals of the Office and/or the [statute creating IPR proceedings] and, if so, which evidence and how should that evidence be weighted and addressed?

- e. What is the basis for concluding that there are no other real parties in interest, beyond PQA? Are there additional people or entities that should be considered as potential real parties in interest?
 - f. Did PQA ever condition any action relating to this proceeding, including but not limited to delaying, losing, not participating in, withdrawing from, or taking action that will influence any experts' participation in this proceeding, on payment or other consideration by Patent Owner or anyone else?
62. Additionally, Director Vidal ordered PQA to provide the following documents to

VLSI:

- i. all documents filed with state, federal, and/or other governmental regulatory entities related to the formation of PQA and any communications related to the same or to the formation of PQA;
- ii. all documents relating to PQA's business plan including its funding, its potential revenue, and the future allocation of any of its profits;
- iii. all documents and communications relating to the filing, settlement, or potential termination of this proceeding, or experts in this proceeding, not already of record in the proceeding;
- iv. all documents and communications relating to the filing, settlement, or termination of any other *inter partes* review proceeding concerning the '373 patent, not already of record in this proceeding;
- v. all documents and communications with Dr. Adit Singh relating to his retention by PQA, including any agreements with him;

- vi. all documents and communications relating to any real party in interest and decisions made to list or not list any person or entity as a real party in interest; and
- vii. all communications with any named party related to the filing, settlement, or potential termination of this proceeding.

63. PQA refused to comply, agreeing to provide only “third party” communications among PQA and OpenSky, VLSI, Intel, governmental entities, and Dr. Singh, but not any internal PQA communications, contrary to Director Vidal’s mandated discovery order. PQA’s response to Director Vidal’s discovery order further suggested that it did not intend to log communications that it intended to withhold under a claim of privilege.

64. PQA’s representations that it would flout Director Vidal’s July 20, 2022 discovery order prompted her to issue another order reaffirming that PQA was required to comply with the full scope of the mandated discovery. She also reiterated that “[n]o responsive document may be withheld without being included in a . . . privilege log.”

65. Despite Director Vidal’s clear instructions, Defendants willfully violated her discovery orders. They failed to produce any responsive internal PQA documents and produced only a limited work product redaction log of communications between PQA’s counsel and Dr. Singh. PQA’s log did not identify any communications between PQA and its counsel that were withheld on the grounds of attorney-client privilege. As a result of Defendants’ failure to produce any internal documents or a meaningful privilege log, VLSI could not identify with specificity any documents for Director Vidal’s *in camera* review.

66. In addition to their brazen violation of Director Vidal’s mandated discovery order, Defendants also willfully evaded her interrogatories, which required PQA to respond with citations to supporting documentary evidence.

67. For example, Director Vidal ordered PQA to disclose the purpose for which it was formed, what its business was, and who its members were. To answer these questions, PQA was required to produce materials including communications related to its formation and internal documents related to its business plan. Instead, PQA responded only that the “initial authorization of PQA is to challenge patent(s) to ensure patent quality.” PQA refused to disclose its members, stating only that “PQA’s members are United States citizens, none of whom are employed by, work for, or are affiliated with Intel, OpenSky, or VLSI.” PQA also stated that “[n]o other persons or entities beyond PQA’s members have an interest in PQA, its future revenues, profits, or obligations, or any of its activities including this proceeding.”

68. Director Vidal found PQA’s answers to the above interrogatory questions to be unresponsive, as they “only make[] assertion[s] as to who [PQA’s] members are not; [they] do[] not identify the members of PQA.” Additionally, Director Vidal found that PQA did “not answer the interrogatory seeking the purpose for which PQA was formed, nor [did] PQA provide any required supporting evidence that would allow” her or VLSI “to verify that PQA’s business interest is limited to ensuring patent quality.” Director Vidal similarly found PQA’s other interrogatory responses to be insufficient.

IX. DIRECTOR VIDAL FINDS THAT PQA ABUSED THE IPR PROCESS BUT PERMITS THE PROCEEDING TO CONTINUE

69. On December 12, 2022, Director Vidal issued a decision finding that PQA abused the IPR process. She “determin[ed] that PQA, through its counsel, abused the IPR process by advancing a misleading argument and a misrepresentation of fact by representing, in its Petition, that it had exclusively engaged Dr. Singh, a witness relied on by another party . . . OpenSky . . . in a parallel proceeding, and which representation it later qualified as *not* being an exclusive engagement.” In addition, Director Vidal determined that “PQA abused the IPR process by filing

this IPR, and threatening to file another IPR petition seeking to join a related, instituted IPR by OpenSky, in an attempt to extract payment from VLSI.” Moreover, Director Vidal concluded that PQA engaged in discovery misconduct by failing to comply with her mandated discovery order and inadequately responding to her interrogatories.

70. For abusing the IPR process and engaging in discovery misconduct, Director Vidal dismissed PQA from the IPR. However, over VLSI’s objection, Director Vidal refused to terminate the IPR proceeding and permitted it to move forward with Intel (who would have been time-barred from filing its own IPR) as the sole petitioner. Director Vidal reached this conclusion despite the fact that Intel indisputably would have been time-barred if it had initiated the IPR on its own. However, because it joined PQA’s IPR after the PTAB instituted proceedings, the time bar did not apply. Thus, because of Defendants’ abusive IPR petition and tactics during the proceedings, Intel was able to prosecute an IPR proceeding that it would otherwise have been foreclosed from pursuing.

71. On January 27, 2023, Director Vidal restored PQA as a petitioner in the IPR solely for the purpose of retaining jurisdiction over PQA so that it could respond to an order to show cause for why it should not be further sanctioned.

X. **THE USPTO DIRECTOR SANCTIONS PQA FOR ITS MISCONDUCT, BUT DOES NOT AWARD VLSI FEES, AND SPECIFICALLY NOTES THAT WHETHER VLSI SUFFERED COMPENSABLE INJURY IS AN OPEN QUESTION**

72. On June 13, 2023, the PTAB issued a final written decision on the challenged claims of the ’373 Patent and found all of the claims to be unpatentable. In other words, the PTAB effectively found the ’373 Patent, which was a basis for the jury’s verdict against Intel in WDTX, invalid.

73. On August 8, 2023, on PQA’s motion for reconsideration of her December 2022 decision that PQA had abused the IPR process, Director Vidal issued another decision finding that PQA had misrepresented the nature of its retention of Dr. Singh and determining that PQA had engaged in discovery misconduct. Once again, she concluded that PQA’s conduct was sanctionable and issued another order to show cause for why PQA should not be required to pay VLSI’s attorneys’ fees.

74. On December 13, 2023, Director Vidal issued a decision sanctioning PQA for its misconduct, despite the fact that she affirmed the PTAB’s decision to ultimately invalidate VLSI’s patent. Although Director Vidal issued a “strong admonishment to PQA for its conduct,” she declined to impose monetary sanctions on PQA. In her sanctions decision, Director Vidal explicitly stated that she was not deciding whether VLSI “suffered . . . compensable injury stemming from PQA’s alleged misconduct.”

75. To date, VLSI has not been compensated for the injuries it suffered as a result of PQA’s abuse of the IPR proceeding and its processes and procedures—including the attorneys’ fees and costs VLSI incurred.

COUNT ONE
ABUSE OF PROCESS
(AGAINST ALL DEFENDANTS)

76. Plaintiff incorporates by reference and realleges paragraphs 1 through 75 set forth above.

77. Defendants had an ulterior purpose in using the processes and procedures of the IPR proceeding. Rather than genuinely seeking a determination on the patentability of the ’373 Patent and ’759 Patent—which Defendants had no interest in—their purpose was to harass VLSI,

run up its costs, and extort money from VLSI by offering to stop the challenge to the patents underlying its jury award if VLSI would just pay it to stop.

78. Defendants' acts in the use of the processes and procedures were not proper in the regular course of the IPR proceedings, which included: repeatedly evading discovery and violating discovery rules; brazenly violating discovery orders; filing pleadings containing misrepresentations, including about who founded PQA and for what purpose, and PQA's relationship with its expert; serving unwarranted and harassing discovery on VLSI; and forcing VLSI to defend against frivolous motions.

79. As a direct and proximate result of Defendants' abuse of process, VLSI has suffered damages in the amount of not less than \$3.2 million, which includes the attorneys' fees and costs VLSI incurred in defending against the IPR proceeding and Defendants' abusive tactics.

80. Defendants' abuse of process was willful, malicious, wanton, oppressive, done with conscious indifference to the consequences, and with specific intent to harm. Therefore, VLSI is entitled to an award of punitive damages from Defendants, and each of them, in an amount to be proven at trial and sufficient to punish, penalize, and deter Defendants from engaging in such conduct in the future.

COUNT TWO
COMMON LAW FRAUD
(AGAINST ALL DEFENDANTS)

81. VLSI incorporates by reference and realleges paragraphs 1 through 80 set forth above. Beginning on or around June 7, 2021, at the time Defendants filed PQA's IPR challenging the validity of the '373 Patent, they intentionally and falsely represented to VLSI and the PTAB that, among other things, PQA exclusively retained Dr. Singh and PQA's purpose in petitioning for and pursuing IPR proceedings was "to instill confidence in the integrity of the patent system

and to ensure that innovative U.S. companies (and their consumers) are not unfairly taxed by entities asserting invalid patents.” As the USPTO Director later found, these representations were false or misleading.

82. These false representations were of material facts. As the USPTO Director acknowledged, the PTAB denied OpenSky’s competing IPR petition based on PQA’s representations about its exclusive relationship with Dr. Singh. If it were not for Defendants’ false representation, the PTAB would have dismissed PQA’s petition as duplicative of OpenSky’s. Additionally, the PTAB would not have instituted IPR based on PQA’s petition if PQA had been honest that its motive for filing the petition was to extort VLSI.

83. Defendants’ false representations were made intentionally and knowingly, with the intent to mislead both VLSI and the PTAB.

84. VLSI relied on Defendants’ false representations, resulting in damages to VLSI. Had VLSI known the true nature of PQA’s relationship with Dr. Singh or PQA’s true purpose in pursuing IPR, VLSI would have brought it to the PTAB’s attention, which would have resulted in the dismissal of PQA’s petition, and saved VLSI millions of dollars in attorneys’ fees and costs incurred to defend against the IPR.

85. Importantly, PQA did not make its settlement demands known until on or around December 31, 2021—which was after it had eliminated OpenSky’s competing petition and after the final briefing deadline to the PTAB related to institution of the IPR petition had passed. Had VLSI been aware that PQA intended to extort it sooner, it could have raised this issue with the PTAB before IPR proceedings had been instituted. PQA’s misrepresentations about its true motives for filing an IPR petition were thus material, and VLSI relied on these misrepresentations to its detriment.

86. As a direct and proximate consequence of PQA's fraud, VLSI suffered damages, including \$3.2 million that it incurred in attorneys' fees and costs to defend against PQA's instituted IPR that VLSI would have avoided absent Defendants' fraud.

87. Defendants' fraud was willful, malicious, wanton, oppressive, done with conscious indifference to the consequences, and with specific intent to harm. Therefore, VLSI is entitled to an award of punitive damages from Defendants, and each of them, in an amount to be proven at trial and sufficient to punish, penalize, and deter Defendants from engaging in such conduct in the future.

COUNT THREE
STATUTORY BUSINESS CONSPIRACY
(AGAINST ALL DEFENDANTS)

88. VLSI incorporates by reference and realleges paragraphs 1 through 87 set forth above.

89. In violation of Va. Code §§ 18.2-499-501, PQA, Uradnik, and others combined, associated, agreed, mutually undertook, or concerted together for the purpose of willfully and maliciously injuring VLSI in its reputation, trade, business or profession.

90. Among other things, Defendants agreed and combined to injure VLSI's business and reputation by abusing the processes and procedures of the IPR proceeding in violation of Virginia law and defrauding VLSI.

91. As a direct and proximate result of Defendants' unlawful conspiracy, VLSI has suffered substantial monetary damages in an amount not less than \$3.2 million, said damages to be proven at the time of trial.

92. VLSI is entitled to an award of treble damages for Defendants' violations.

93. VLSI is also entitled to an award of the costs of suit, including reasonable attorneys' fees and expenses, and any injunction the Court deems reasonable.

COUNT FOUR
COMMON LAW CONSPIRACY
(AGAINST ALL DEFENDANTS)

94. VLSI incorporates by reference and realleges the allegations in paragraphs 1 through 93 set forth above. PQA, Uradnik, and others combined to accomplish, by some concerted action, some criminal or unlawful purpose, or some lawful purpose by criminal or unlawful means. Among other things, they combined to injure VLSI and extort money from VLSI by abusing the processes and procedures of the IPR proceedings in violation of Virginia law and defrauding VLSI.

95. As a result of Defendants' unlawful conspiracy, VLSI has suffered substantial monetary damages in an amount not less than \$3.2 million, said damages to be proven at the time of trial.

96. Defendants' conspiratorial conduct was willful, malicious, wanton, oppressive, done with conscious indifference to the consequences, and with specific intent to harm. Therefore, VLSI is entitled to punitive damages sufficient to punish, penalize, and deter Defendants from engaging in such conduct in the future.

PRAYER FOR RELIEF

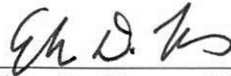
WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. Enter judgment in favor of VLSI on all counts;
2. Award VLSI compensatory damages against Defendants in the amount VLSI proves at trial, not less than \$3.2 million;
3. Award VSLI punitive damages against Defendants to the maximum amount allowed by law;

4. Award VLSI treble its compensatory damages against Defendants;
5. Award VLSI its costs, including reasonable attorneys' fees and expenses, incurred in connection with this action; and
6. Grant such other relief as the case may require or as may be deemed proper and equitable.

Dated: January 31, 2024

Respectfully submitted,



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