

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICRON TECHNOLOGY, INC.,
Petitioner

v.

YANGTZE MEMORY TECHNOLOGIES COMPANY, LTD.,
Patent Owner

Case No.: IPR2024-00794
U.S. Patent No. 10,950,623
Issue Date: March 16, 2021

Title: 3D NAND MEMORY DEVICE AND METHOD
OF FORMING THE SAME

**PETITIONER'S REQUEST FOR DIRECTOR REVIEW OF THE BOARD'S
FINAL WRITTEN DECISION**

	<u>Page</u>
<u>TABLE OF CONTENTS</u>	
I. BACKGROUND	2
II. ARGUMENT	4
A. Park Renders Claim 2 Obvious: Park Contains No Apparent Typographical Error	5
B. Shibata And Park Also Render The Claims Obvious: Any Prior Art Can Supply Motivation To Combine.....	7
C. Park And Shibata Render The Claims Obvious: A Proposed Combination Need Not Categorically Improve The Prior Art.	10
III. CONCLUSION.....	15

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Apple Inc. v. Andrea Elecs. Corp.</i> , 949 F.3d 697 (Fed. Cir. 2020)	14
<i>Axonics, Inc. v. Medtronic, Inc.</i> , 73 F.4th 950 (Fed. Cir. 2023)	11
<i>Bayer Pharma AG v. Watson Labs., Inc.</i> , 874 F.3d 1316 (Fed. Cir. 2017)	12
<i>Everstar Merchandise Co., Ltd. v. Willis Elec. Co., Ltd.</i> , No. 23-1686, 2025 WL 1501940 (Fed. Cir. 2025)	11, 13
<i>In re Fulton</i> , 391 F.3d 1195 (Fed. Cir. 2004)	11
<i>In re Garfinkel</i> , 437 F.2d 1005 (C.C.P.A. 1971)	7
<i>Intel Corp. v. PACT XPP Schweiz AG</i> , 61 F.4th 1373 (Fed. Cir. 2023)	11, 12
<i>Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.</i> , 821 F.3d 1359 (Fed. Cir. 2016)	4
<i>LG Elecs., Inc. v. ImmerVision, Inc.</i> , 39 F.4th 1364 (Fed. Cir. 2022)	6-7
<i>Luminex Int’l Co. v. Signify Holdings B.V.</i> , Nos. 25-2093, 26-1044 (Fed. Cir. Oct. 20, 2025)	4
<i>In re Mouttet</i> , 686 F.3d 1322 (Fed. Cir. 2012)	12
<i>Pfizer Inc. v. Sanofi Pasteur Inc.</i> , 94 F.4th 1341 (Fed. Cir. 2024)	15
<i>Pfizer, Inc. v. Apotex, Inc.</i> , 480 F.3d 1348 (Fed. Cir. 2007)	9

<i>Scanner Tech. Corp. v. ICOS Vision Sys., Corp. N.V.</i> , 528 F.3d 1365 (Fed. Cir. 2008)	13
<i>Xerox Corp. v. X Corp.</i> , No. 23-1913, 2025 WL 1692962 (Fed. Cir. June 17, 2025).....	15
<i>ZUP, LLC v. Nash Mfg., Inc.</i> , 896 F.3d 1365 (Fed. Cir. 2018)	9

LISTING OF EXHIBITS

Exhibit	Description
1001	U.S. Patent No. 10,950,623 B2 to Song et al.
1002	File History of U.S. Patent No. 10,950,623 to Song et al.
1003	Declaration of Dr. Jack C. Lee (“Lee”)
1004	U.S. Patent No. 10,559,583 B2 to Park et al. (“Park”)
1005	U.S. Patent Publ. No. 2019/0122734 A1 to Shibata et al. (“Shibata”)
1006	Aritome, “NAND Flash Memory Technologies” (2016)
1007	Silvagni, “3D NAND Flash Based on Planar Cells,” Computers 2017
1008	U.S. Patent Publ. No. 2015/0162084 A1 to Morooka et al.
1009	U.S. Patent Publ. No. 2015/0255478 A1 to Tanzawa
1010	U.S. Patent No. 9,589,978 to Yip
1011	U.S. Patent Publ. No. 2017/0062337 A1 to Park et al.
1012	Micheloni et al., “Inside Solid State Drives (SSDs)” (2nd Ed. 2018)
1013	Docket from <i>Yangtze Memory Technologies Company, Ltd. v. Micron Technology, Inc. and Micron Consumer Products Group, LLC</i> , Case No. 3:23-cv-05792-RFL
1014	Combined Civil and Criminal Federal Court Management Statistics (December 31, 2023), available at https://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distcomparison1231.2023.pdf
1015	File History of U.S. Patent No. 11,430,811 (Appl. No. 17/154,054) to Song et al.
1016	U.S. Patent No. 10,355,010 B2 to You et al.

Exhibit	Description
1017	U.S. Patent No. 9,299,718 B2 to Park et al.
1018	U.S. Patent Publ. No. 2019/0035798 A1 to Hwang et al.
1019	U.S. Patent Publ. No. 2015/0137216 A1 to Lee et al.
1020	<i>Yangtze Memory Technologies Company, Ltd. v. Micron Technology, Inc. and Micron Consumer Products Group, LLC</i> , Case No. 3:23-cv-05792-RFL, Zoom Civil Minute Order, dated February 22, 2024 (Dkt. No. 42)
1021	U.S. Patent Pub. 2019/0214404 A1 to Ahn et al.
1022	<i>Curriculum Vitae</i> of Dr. Jack C. Lee
1023	U.S. Patent No. 8,945,996 to Tang et al.
1024	Declaration of Jared Bobrow in Support of Petitioner’s Motion for Admission <i>Pro Hac Vice</i>
1025	Reply Declaration of Dr. Jack C. Lee (“Lee Reply”)
1026	Transcript of the April 2, 2025 Deposition of Kelin Kuhn, Ph.D.
1027	Petitioner’s Hearing Demonstratives

Petitioner Micron Technology, Inc. requests Director Review of the Board’s Final Written Decision (“FWD,” Paper 30) regarding the ’623 patent. Respectfully, the Board abused its discretion and misapplied the law when it confirmed the patentability of dependent claims 2-5 and 7-11. The Petition established that Park, or combinations of Park and Shibata, render obvious the ’623 patent’s claims—which relate to a 3D memory device with “dielectric trenches” dividing its select gate layers. The Board erred in concluding otherwise.

First, the Board improperly rejected the Petition’s argument that Park alone renders claim 2 obvious, based on its finding that one of Park’s figures *may* have been drawn in error. On that basis, the Board ignored the figure’s disclosure and ruled against Petitioner. This was legal error: the Board may only ignore an express prior art disclosure if it includes an obvious or apparent error.

Second, the Board improperly rejected the Petition’s ground that relies on Shibata as modified to include features from Park. The Board mistakenly rejected this combination because other references—not Park and Shibata themselves—supplied the motivation to combine. But a motivation may come from many sources—not just the four corners of the combined references.

Third, the Board wrongly rejected the Petition’s argument that Park—when modified in view of Shibata—renders the claims obvious. The Board determined that Petitioner had failed to establish that the benefits of its proposed combination

categorically outweigh all potential disadvantages. But Petitioner had no obligation to show that its proposed combination categorically improves on the prior art. And even if such an inappropriate standard applied, Petitioner satisfied it in versions of the proposed combination that minimized potential disadvantages.

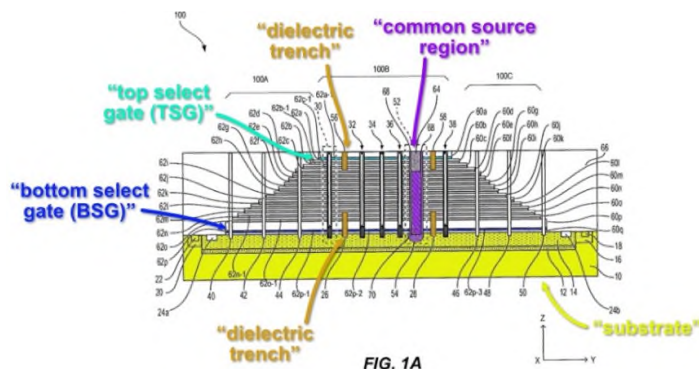
The first error discussed above requires reversal. The second and third errors require remand for further consideration applying the correct legal standard.

I. BACKGROUND

The '623 patent (Ex. 1001) relates to a 3D memory device. '623 patent, 1:33-36. Memory cells are located along vertically oriented memory strings. *Id.*, 1:28-40. The strings are accessed via “bottom select transistors” controlled by a “bottom select gate (BSG)” and “top select transistors” controlled by a “top select gate (TSG).” *Id.*, 1:40-57. The memory’s BSG is divided into parts using a “dielectric trench,” allowing memory strings to be controlled on a smaller, sub-block basis. *Id.*, 1:61-2:7. The TSG also can be divided by its own “dielectric trench.” *Id.*, 2:7-16.

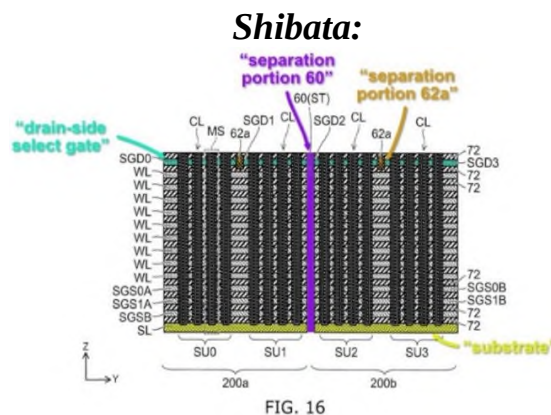
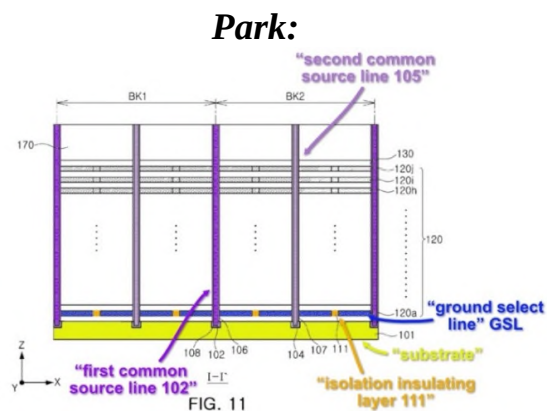
Independent claim 1 of the '623 patent requires “one or more first dielectric trenches formed in the BSG ... to separate the BSG into a plurality of sub-BSGs.” *Id.*, claim 1. Dependent claim 2—on which most of the patent’s other claims depend—requires “one or more second dielectric trenches formed in the TSG ... to separate the TSG into a plurality of sub-TSGs.” *Id.*, claim 2. Figure 1A of the '623 patent depicts an embodiment that employs separate sets of first and second

“dielectric trench[es]” (orange) to separate a memory’s “bottom select gate (BSG)” (dark blue) and “top select gate (TSG)” (light blue) into sub-units:



Id., Fig. 1A (annotated).

The Petition relied on Park (Ex. 1004) and Shibata (Ex. 1005). Park teaches a 3D memory device that employs shorter dielectric filled trenches—called “isolation insulating layer[s] 111”—that cooperate with Park’s common source lines to separate its BSG into sub-units. *See* Park, 1:37-46, 6:8-12. Shibata teaches a 3D memory device employing longer trenches—called “separation portions 62a”—to separate its TSG into sub-units. *See* Shibata, [0003], [0088]-[0090]. Examples of these references’ trenches and divided gates are below:



Park, Fig. 11 (annotated); Shibata, Fig. 16 (annotated). Petitioner argued

obviousness on three grounds: Park (Ground 1), Park when some of Park’s common source lines are replaced with longer dielectric trenches following Shibata (Ground 2), and Shibata when modified to employ trenches in its BSG as taught in Park (Ground 3). *See* Pet. (Paper 1), 25-63.

The Board found claims 1 and 6 obvious in view of Park. However, it found claim 2 and all other dependent claims not unpatentable. FWD, 57.¹

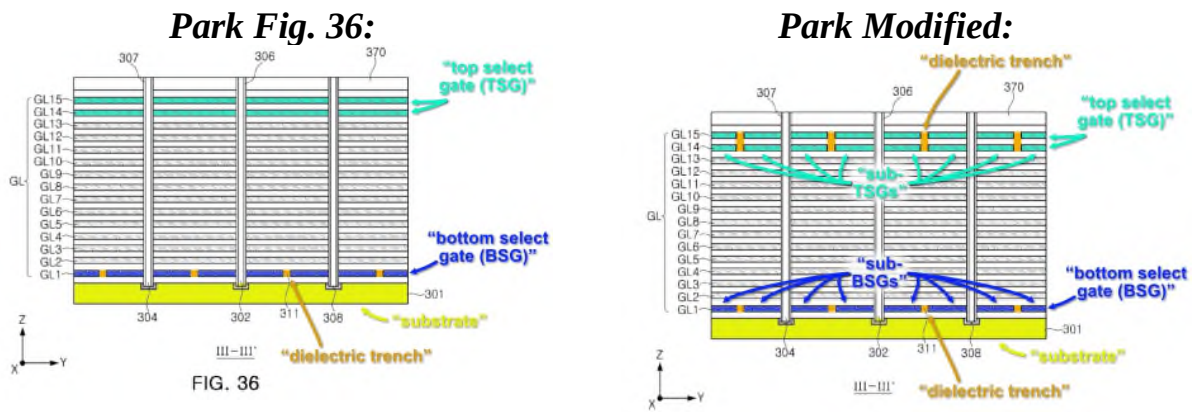
II. ARGUMENT

The Director reviews final Board decisions for, among other things, legal errors, abuses of discretion, or erroneous findings of material fact. *See* Director Review Process, § 2.B (Oct. 8, 2025). The Board abuses its discretion when a decision “is based on an erroneous conclusion of law; ... [or] clearly erroneous fact finding[s].” *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1367 (Fed. Cir. 2016). The FWD here checks **all** these boxes.

¹ Patent Owner appealed the Board’s claim 1 finding on October 23, 2025. *See* NOA (Paper 31). This request for Director review makes the Board’s decision non-final. Petitioner is simultaneously filing an unopposed motion to stay the appeal and remand to the Board, which guarantees agency jurisdiction. *See Luminex Int’l Co. v. Signify Holdings B.V.*, Nos. 25-2093, 26-1044 (Fed. Cir. Oct. 20, 2025) (staying appeal and remanding to allow consideration of a rehearing request).

A. Park Renders Claim 2 Obvious: Park Contains No Apparent Typographical Error

Claim 2 requires two sets of “dielectric trenches”: one in the BSG and another in the TSG. While some of Park’s figures show division of the TSG by common source lines that pass through all the memory’s layers, Figure 36 does not divide the TSG this way. See Pet., 41-42. Petitioner showed that a POSITA would have naturally addressed this problem by combining two of Park’s embodiments: the dielectric trenches Park has in its BSG would be used to similarly divide the upper TSG layer. See *id.*, 43-44. An example of this is shown below:



Park, Fig. 36 (annotated and modified).

Patent Owner did not dispute that it would have been obvious to include an additional, second set of upper trenches in the device of Figure 36 if this figure does indeed depict a memory with an undivided TSG. Patent Owner argued only that Figure 36 does not actually disclose an undivided TSG because it purportedly includes a typographical “error.” POR (Paper 12), 40-47. According to Patent Owner, correcting the figure to include an already divided TSG would foreclose a

reason to use a second set of trenches. *See id.*, 7. In reply, Petitioner pointed out that Figure 36 of Park unambiguously shows an undivided TSG. It also pointed to Park’s broad layer shape disclosure, and explained that accepting Patent Owner’s argument would mean that five separate figures in Park would need to have been drawn in error. *See Reply*, 12-13 (*citing* Park, Figs. 23, 29, 31, 34, 36).

The Board rejected Petitioner’s argument, finding that “a person having ordinary skill in the art would have recognized an inconsistency between at least Figures 27 and 36 that would have called into question the accuracy of either or both of those Figures.” *FWD*, 27. The Board then determined that, because Petitioner stated in passing that it was “just as likely” that Figure 27—and not all of Figures 21, 29, 31, 34, and 36—could include a typographical error, Petitioner had not carried its burden to show obviousness under a “more likely than not” preponderance standard. *FWD*, 26 (quoting *Reply*, 13). The Board explained that this allowed it to “substantially discount[]” what Figure 36 of Park unambiguously shows, thereby effectively reading this figure out of the reference. *Id.*, 27.

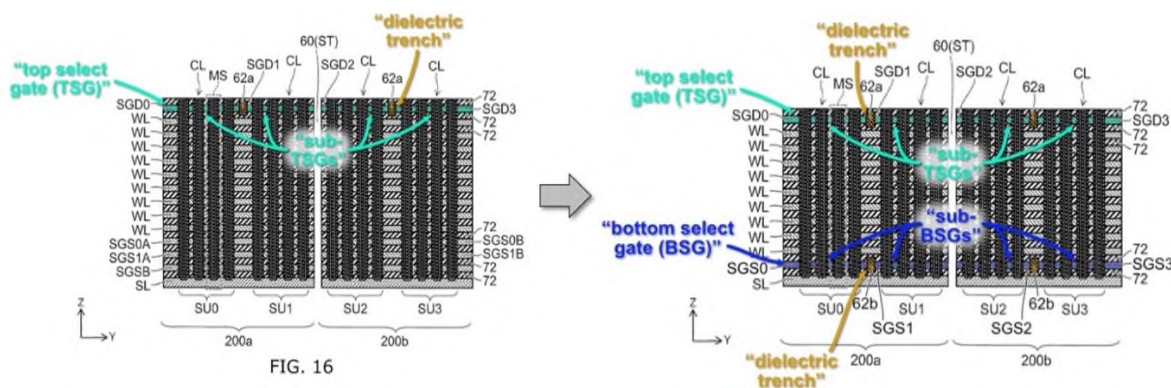
The Board’s decision erroneously conflates the legal standard for obviousness with the legal standard for what constitutes such an “obvious error” in a prior art reference that the reference’s disclosure may be disregarded. The Board could only read out Figure 36 by determining that it is “not ... an actual teaching, but rather ... an obvious error of a typographical or similar nature.” *LG Elecs., Inc. v.*

ImmerVision, Inc., 39 F.4th 1364, 1365 (Fed. Cir. 2022). Only an error so “apparent” to a POSITA that they “would have substituted it with the correct information” satisfies that standard. *Id.* But the Board found no such error here. Instead, it recognized that a POSITA would have found it “just as likely” that Figure 36 correctly shows an undivided TSG (as Petitioner contended, consistent with Park’s broad disclosure of differently sized and shaped memory layers) as the possibility that Figures 23, 29, 31, 34, and 36 are all drawn in error (as Patent Owner’s argument requires). A POSITA cannot “mentally substitute” “errant information” with the “correct information” without knowing what is correct and what is wrong. *Id.*, 1372. Given that Park lacks an apparent and obvious error here, the Board was obligated to treat Figure 36 as a disclosure and part of the evidence that must be considered in assessing whether Petitioner met its burden to prove obviousness. *In re Garfinkel*, 437 F.2d 1005, 1008 (C.C.P.A. 1971). And because Petitioner established that what Figure 36 discloses would have rendered claim 2 obvious—a contention that Patent Owner did not contest—the Director should reverse the Board’s finding of non-obviousness.

B. Shibata And Park Also Render The Claims Obvious: Any Prior Art Can Supply Motivation To Combine

Petitioner also established that modifying Shibata in light of Park would have rendered claim 2 (and the claims that depend on it) obvious. Shibata employs dielectric trenches to divide—and allow for independent control on a sub-block basis

of—its TSG. But rather than dividing its BSG, Shibata employs multiple BSG layers. The Petition explained that following Park’s teaching to use a single divided BSG layer to achieve the same sub-block control would have been obvious:



Pet., 75-76 (reproducing, annotating, and modifying Shibata, Fig. 16). Doing so would have beneficially (1) simplified manufacturing, and (2) freed up space for more memory cells, thereby increasing memory density. *Id.*, 76-77.

Petitioner pointed to prior art explaining why “increas[ing] the number of stacked cells” in Shibata to improve 3D memory “is very important.” *E.g.*, Ex. 1006, 355; Ex. 1007, 2; Ex. 1012, 139. Petitioner also established that “increasing [the] number of stacked cells is the only reasonable way” to achieve this goal. *E.g.*, Ex. 1006, 357; *see also* Ex. 1012, 139 (“[t]o reduce the bit size, the number of stacked cells need to go up”). Petitioner even pointed to a reference that achieves this goal—increasing the number of stacked memory cells—in the very same way as the combination of Shibata and Park: by “reduc[ing] the amount of memory cell string selection circuitry.” Pet., 77 (citing Ex. 1008, ¶¶ [0002], [0066].) Patent Owner did not dispute that this was all known and disclosed in the prior art.

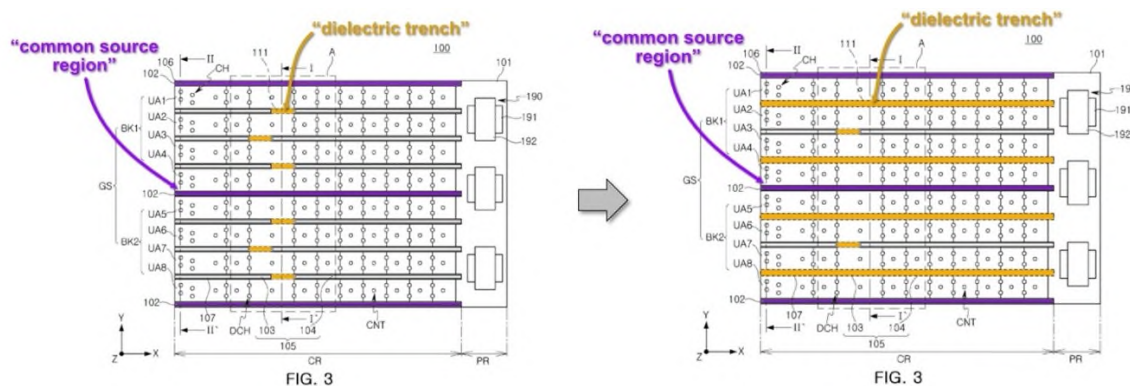
The Board nevertheless rejected this combination based on a supposed “disconnect in Petitioner’s reasoning.” FWD, 52. In the Board’s view, while the Petition argued that modification of Shibata to include a divided BSG would increase memory density without increasing its height, “Park does not teach reduction of memory cell string selection circuitry.” *Id.*, 53. The Board went on to note that “[t]he impetus for Petitioner’s improvement comes from Petitioner’s own creation of a new design of Shibata,” which is “impermissible hindsight.” *Id.*

That conclusion misapprehends the standard for motivation to combine. Petitioner had no obligation to show that Park itself supplies the motivation to apply its teachings to Shibata. As the Federal Circuit has repeatedly explained, motivation “may be found in any number of sources, including common knowledge, the prior art as a whole, or the nature of the problem itself.” *Pfizer, Inc. v. Apotex, Inc.*, 480 F.3d 1348, 1362 (Fed. Cir. 2007); *see also ZUP, LLC v. Nash Mfg., Inc.*, 896 F.3d 1365, 1372-73 (Fed. Cir. 2018) (admitted, well-known benefits attributable to prior art features provide motivation). And here, notwithstanding what Park does or does not disclose, Petitioner provided ample record evidence establishing the desirability of the proposed combination. In fact, Patent Owner had never even challenged that a POSITA would have considered it desirable to increase the density of memory cells in a 3D memory device. Nor did Patent Owner challenge that a POSITA would have recognized that the only realistic way to achieve this is to include more layers

of memory cells—as the modification of Park in light of Shibata accomplishes. This motivates a person of ordinary skill to apply Park to Shibata. Applying the correct legal standard to this uncontested evidence, the Board should have found claim 2 obvious

C. Park And Shibata Render The Claims Obvious: A Proposed Combination Need Not Categorically Improve The Prior Art

Another ground in the Petition explained why it would have been obvious to replace some of Park’s common source lines with longer dielectric trenches as taught by Shibata. See Pet., 57-63. This is shown below:



Id., 61-62 (annotating and modifying Park, Fig. 3). Making this modification would have beneficially improved Park’s memory density. See *id.*, 57-63.

The Board’s reason for rejecting this ground rests on an improperly heightened standard for motivation to combine. The Board acknowledged—as Patent Owner had never disputed—that replacing Park’s common source lines with longer insulating regions like those in Shibata would have presented a clear benefit: a smaller device with greater memory density. FWD, 39. The Board also recognized

that Park itself “encourage[s]” this modification. *Id.*, 36. The Board nevertheless determined that a POSITA would not have modified Park as proposed because Petitioner supposedly failed to establish that the benefit of doing so would “outweigh[]” any potential drawbacks. *Id.*, 41; *see also id.*, 47.

But it is not necessary to establish that a modification represents an “‘improvement’ in a categorical sense.” *Intel Corp. v. PACT XPP Schweiz AG*, 61 F.4th 1373, 1381 (Fed. Cir. 2023). So long as the prior art suggests the “desirability of a particular combination,” the motivation-to-combine requirement is satisfied; a showing that it is the “preferred, or *most* desirable, combination” is not required. *In re Fulton*, 391 F.3d 1195, 1200 (Fed. Cir. 2004); *see also Everstar Merchandise Co., Ltd. v. Willis Elec. Co., Ltd.*, No. 23-1686, 2025 WL 1501940, at *3 (Fed. Cir. 2025). As such, it does not matter that the Board credited Patent Owner’s contention that replacing Park’s common source lines with Shibata’s longer insulating regions would have disadvantages—principally, etching and performance issues. *See FWD*, 34, 39-40. A POSITA “may be motivated ... to secure some benefits at the expense of others.” *Axonics, Inc. v. Medtronic, Inc.*, 73 F.4th 950, 957 (Fed. Cir. 2023).

In rejecting the Petition’s arguments, the Board relied on pre-*KSR* authority suggesting that “the benefits, both lost and gained, should be weighed against one another” to assess whether a proposed combination is “desirable.” *FWD*, 41 (quoting *Winner Int’l Royalty Corp. v. Wang*, 202 F.3d 1340, 1349 (Fed. Cir. 2000)).

But that cannot mean Petitioner had an obligation to show that the benefits of its combination outweigh any possible disadvantages, as the Board held. A proposed combination need only constitute a “suitable” option, not an out-and-out “improvement” over the prior art. *Intel*, 61 F.4th at 1380-81; *see also In re Mouttet*, 686 F.3d 1322, 1334 (Fed. Cir. 2012) (a known system “does not become patentable simply because it has been described as somewhat inferior to some other product for the same use”). The Board made no finding that the combination Petitioner proposed would not be suitable for its intended purpose or otherwise undesirable. To the contrary, the Board rejected Patent Owner’s argument that Park teaches away from longer insulating regions because of any resulting inoperability—finding instead that Park “encourage[s]” such a substitution notwithstanding potential drawbacks. FWD 36; *see Bayer Pharma AG v. Watson Labs., Inc.*, 874 F.3d 1316, 1328 (Fed. Cir. 2017) (“[O]bviousness does not require that the motivation be the best option, only that it be a suitable option....”) (internal quotation marks and citation omitted).

Next, even if Petitioner were required to show that its proposed combination’s advantages outweighed any disadvantages, the Board recognized that this would be achieved in the version of Petitioner’s proposed combination that replaces a reduced number of Park’s common source lines (*see Pet.*, 62-63). Critically, the Board agreed that in such a combination, any downsides would be minimal because “the majority of the sacrificial layers are removed and replaced with conductive

material.” FWD, 47. As such, the proposed combination satisfied the Board’s erroneously heightened legal standard for obviousness.

The Board nonetheless found that Petitioner had not proven that the claims would have been obvious, reasoning that “replacing fewer common lines would result commensurately in less ... advantages[,]” and Petitioner had failed to “quantify a degree of replacement such that ... the advantages of partial common source replacement outweigh the disadvantages.” *Id.* In other words, the Board faulted Petitioner for failing to meet yet another erroneous requirement: that Petitioner show the precise “degree of replacement” at which the quantum of benefits sufficiently outweighs disadvantages such that there exists a motivation to combine. Such a requirement cannot be reconciled with *KSR*’s “flexible” motivation-to-combine inquiry, as the Federal Circuit recently held in a decision rejecting the need to “quantify the precise benefit achieved by their proposed combination[s]” as “overly rigid and inconsistent with well-established precedent.” *Everstar*, 2025 WL 1501940, at *3. Determining the optimal “degree of replacement” required nothing more than a POSITA “pursu[ing] known options within his or her technical grasp.” *Scanner Tech. Corp. v. ICOS Vision Sys., Corp.* N.V., 528 F.3d 1365, 1381 (Fed. Cir. 2008).

Finally, Petitioner asserted a separate version of the proposed combination that also independently meets the Board’s erroneous motivation-to-combine

standard. Specifically, Petitioner demonstrated that a POSITA would have used well-known techniques to overcome etching and deposition problems in the proposed combination by using either the dummy channels and open regions taught by Park or drive circuits taught by Shibata. Pet., 62-63; Reply 18-20; see Ex. 1004, 11:52-55; Fig. 14; Ex. 1005, [0324]-[0325]. As the Board recognized, these techniques presented solutions to the etching and deposition problems to “minimize” disadvantages of the proposed combination and would therefore address any “significant drawbacks.” FWD, 41. Nevertheless, the Board rejected these grounds of obviousness. This reasoning also does not withstand scrutiny.

First, the Board faulted Petitioner for supposedly failing to mention these techniques in the Petition. FWD, 44-45. But the Petition referenced both (1) adjusting Park’s memory design, and (2) using Shibata’s tailored drive circuits to mitigate any potential etching problems. See Pet., 62-63. While Petitioner did not discuss Park’s particular disclosures of dummy channels and open regions until the reply, that is plainly permissible because that discussion provides either (1) “another example” of a known technique to address the potential etching problem, and/or (2) a “legitimate reply to evidence introduced by the patent owner” criticizing Petitioner’s proposed combination. *Apple Inc. v. Andrea Elecs. Corp.*, 949 F.3d 697, 706-707 (Fed. Cir. 2020). The Board abused its discretion in holding otherwise. *Id.*, 707.

The Board alternatively found that Petitioner had not established that a POSITA would have a “reasonable expectation of success” in applying Shibata’s drive circuit or Park’s dummy channels to the proposed combination in which Park uses longer dielectric trenches. FWD at 46. The Board seemed to take issue with the absence of an explicit prior art disclosure demonstrating that a POSITA would have successfully applied these methods. *Id.* But obviousness law does not require anything of the sort. *See Pfizer Inc. v. Sanofi Pasteur Inc.*, 94 F.4th 1341, 1349 (Fed. Cir. 2024) (rejecting that a reasonable expectation of success requires a prior art reference that “*exemplifies*” the proposed combination because “[th]e expectation of success need only be reasonable, not absolute”). The Board recognized that Petitioner demonstrated that “the references are capable of performing the relied-upon functions or could possess the relied-upon structures.” FWD, 46. The appropriate legal standard requires nothing more: Because “the prior art provides guidance” on how to address the problems that arise from the loss of common source lines, and “expressly contemplates” use of these techniques in similar memory devices, a skilled artisan would have had a reasonable expectation of success. *Xerox Corp. v. X Corp.*, No. 23-1913, 2025 WL 1692962, at *6 (Fed. Cir. June 17, 2025).

III. CONCLUSION

Petitioner respectfully requests that the Board’s final written decision regarding claims 2-5 and 7-11 be reversed or remanded.

Respectfully submitted,

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Dated: November 13, 2025

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CERTIFICATE OF SERVICE

The undersigned hereby confirms that the foregoing Petitioner's Request for Director Review of the Panel's Final Written Decision was caused to be served on November 13, 2025 via electronic mail, upon the following attorneys of record for the Patent Owner:

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