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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WESTERN DIGITAL TECHNOLOGIES, INC.,

Petitioner,

v.

GODO KAISHA IP BRIDGE 1,

Patent Owner.

IPR2024-01447 (Patent 8,405,134 B2)

IPR2024-01493 (Patent 10,680,167 B2)

TELEPHONIC HEARING

October 29, 2025

1:01 p.m.

Reporter: Laurie J. Berg, CCR, RPR, CRR

A P P E A R A N C E S

Heard before:

The Honorable Sheila F. McShane
The Honorable Justin T. Arbes
The Honorable Monica Ullagaddi
The Honorable John D. Hamann

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P R O C E E D I N G S

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3 JUDGE MCSHANE: Good afternoon. We are
4 here concerning Patent Owner's request for leave to
5 file an expert declaration with their sur-replies in
6 IPRs 2024-01447 and 01493. I'm Judge McShane and
7 Judges Arbes, Hamann and Ullagaddi are also on the
8 line.

9 Who do we have from Petitioner?

10 MS. ARNOLD: This is Monica Arnold of
11 Armond Wilson representing Petitioner, Western
12 Digital, and I'm joined by my colleague and counsel of
13 record Michelle Armond.

14 JUDGE MCSHANE: Thank you.

15 And who do we have from Patent Owner's side?

16 MR. HRYCYSZYN: Good afternoon, Your
17 Honors. This is Gerry Hrycyszyn with Wolf Greenfield
18 for Patent Owner, and with me are Rich Giunta and
19 Adam Wichman.

20 JUDGE MCSHANE: Okay. Thank you.

21 We got an e-mail yesterday that indicated
22 that someone had arranged for a court reporter to be
23 on the line; is that correct?

24 MR. HRYCYSZYN: Yes, Your Honor.

1 Court Reporter, are you on the line?

2 MADAM COURT REPORTER: I am, sir. This
3 is Laurie Berg, the court reporter.

4 JUDGE MCSHANE: Thank you.

5 And Counsel, if you would -- when you get the
6 transcript, if you would get it docketed, we would
7 appreciate that.

8 MR. HRYCYSZYN: Yes, Your Honor, we'll do
9 that right away.

10 JUDGE MCSHANE: Okay. So we did look at
11 the e-mail -- brief e-mail that was sent yesterday as
12 to what the request concerns in a general way. And
13 Patent Owner's counsel here, it's your request, but
14 right up front, I'd just like to ask you the question,
15 what your e-mail stated was that you contend that some
16 of Petitioner's reply, some of the exhibits that were
17 submitted with the reply and portions of the expert
18 declaration are prohibited under our rules.

19 So it just kind of begs the question, why
20 haven't you requested a motion to strike here or --
21 and/or say in your sur-reply that the arguments in
22 evidence is improper?

23 MR. HRYCYSZYN: Sure, Your Honor, we can
24 start with that.

1 We are cognizant that motions to strike are
2 rarely granted and we did not want the board to get
3 the impression we were overreaching by asking for this
4 rare relief across all three IPRs. We did request
5 filing a motion to strike and the board granted it in
6 the related IPR that's -- I think that was the one we
7 just -- 1494 was that matter.

8 So, you know, we will argue in our sur-reply
9 that there's new evidence that shouldn't be
10 considered, but we would be happy to brief a motion to
11 strike on these two IPRs if the Board thought it was
12 appropriate here as well. We do think a motion to
13 strike would indeed simplify the issues for trial.

14 JUDGE MCSHANE: Okay. Thank you.

15 All right. So let's just turn to the request
16 for filing the expert declaration with the sur-reply.
17 And so we'll let you speak on that, Patent Owner
18 counsel.

19 But that said, we recognize that some of the
20 issues in these kinds of cases are inherently weedy.
21 That said, if you could try to avoid the weeds as much
22 as possible and give us, at a higher level, the
23 reasons that you think this sur-reply is justified,
24 we'd appreciate it.

1 MR. HRYCYSZYN: I'll do that, Your Honor.

2 So Patent Owner explained in its POR that the
3 petition did not even allege that a POSA would have
4 known how to form crystalline magnesium oxide with a
5 (001) preferential orientation on amorphous Cobalt
6 Iron Boron, which I'll refer to as CoFeB, let alone
7 cite evidence to support that.

8 Now, submitting evidence to establish this
9 was necessary for the petition to establish a
10 reasonable expectation of success, and thus, was
11 necessary to make out a prima facie case of
12 obviousness.

13 Now, the only proper reply to the POR's
14 argument that there was a failure of proof in the
15 petition would have been for the reply to point to
16 argument and evidence cited in the petition that made
17 that required showing.

18 TPG at 73 is clear that Petitioner may not
19 submit new evidence or argument in a reply that it
20 could have presented earlier, e.g., to make out a
21 prima facie case of unpatentability.

22 Here Petitioner did what the TPG prohibits;
23 it cited three new exhibits and new expert testimony
24 in an attempt to belatedly establish that a POSA would

1 have reasonably expected that the claimed crystal MgO
2 could have been formed on amorphous CoFeB. Now, that
3 evidence could have been presented in the petition.
4 We had our expert, Dr. Ross, review these new
5 exhibits. She disagrees with the Petitioner's
6 expert's characterization and does not believe that
7 they establish an expectation of success.

8 Patent Owner would be highly prejudiced if
9 Petitioner is allowed to make its case based on
10 evidence that was not in the petition and that
11 Patent Owner's expert did not have a chance to refute
12 in her declaration.

13 Now, we asked for authorization to submit a
14 short declaration from Dr. Ross limited to addressing
15 these three new exhibits and the associated new expert
16 testimony. Now, Patent Owner's, of course, amenable
17 to making Dr. Ross available for depo and Petitioner
18 having an opportunity to submit observations on cross,
19 kind of like the parties agreed to and the Board
20 ordered in the 1494 IPR.

21 Now, in the e-mail to the Board, Petitioner
22 argued that its petition established an expectation of
23 success for forming crystal MgO on amorphous CoFeB,
24 quote, As indisputably taught by Parkin, end quote.

1 What Parkin teaches is very much in dispute. But more
2 importantly for this call, Petitioner reference to
3 Parkin seeks to distract from the issue. Patent
4 Owner's request is not about Parkin. Because Parkin
5 was cited in the petition, Patent Owner can address it
6 in its sur-reply based on evidence already in the
7 record, right.

8 If Your Honors agree with us that Parkin does
9 not establish an expectation of success, then
10 Petitioner's expectation of success showing will rest
11 entirely on new evidence they cited in the reply. The
12 reply in Dr. Bokor's reply declaration rely on this
13 new evidence extensively, right. So there's, like,
14 seven pages in the 1447 IPR on its own discussing
15 these new exhibits.

16 Additionally, none of the reply's new
17 evidence describes forming crystal MgO on amorphous
18 CoFeB. The reply says these references teach growing
19 crystal MgO on different amorphous surfaces and argue
20 this would give a POSA an expectation of success of
21 forming crystal MgO on amorphous CoFeB. It's a new
22 theory that was never in the petition, and our expert
23 disagrees with it. And we're just asking Your Honors
24 for a shot at providing expert testimony to address

1 it.

2 I'd also just like to spend a moment
3 addressing arguments that they have in their e-mail.
4 So they said we had --

5 JUDGE MCSHANE: Well, wait a minute.
6 Wait a minute. Wait a minute.

7 On that one -- on that one, if you would,
8 Patent Owner -- or Counsel, I appreciate it, but let's
9 hear -- if you wouldn't mind, let's hear from
10 Petitioner on their arguments now and we'll -- I mean,
11 the e-mail was brief, and so we'll give them a chance
12 to present their arguments and then we'll allow you a
13 short rebuttal, okay?

14 MR. HRYCYSZYN: Thank you, Your Honor.

15 JUDGE MCSHANE: Okay. Petitioner's
16 counsel, please?

17 MS. ARNOLD: Thank you, Your Honor. This
18 is Monica Arnold for Petitioner.

19 First, we did establish a prima fascia case
20 of obviousness in our petition. It is undisputed that
21 Parkin, which is Exhibit 1062, disclosed growing
22 MgO (001) on an amorphous CoFeB, Dr. Ross admitted as
23 much in her deposition and the cites are in our
24 e-mail.

1 And so, to the point that these exhibit are
2 new, they're not new. Two of these exhibits are cited
3 by Dr. Yuasa's references, Exhibit 2006 and 2008, and
4 are all specifically addressing the concept of growing
5 MgO (001) on an amorphous surface.

6 Dr. Ross submitted these exhib -- the Yuasa
7 exhibits in her declaration, so she had -- that was
8 her first opportunity to review these and she didn't.
9 Then she had the opportunity to review and opine on
10 just these three exhibits in her -- during her
11 deposition and she didn't. So in her declaration, she
12 also took the time to look for other references that
13 supported her factually inaccurate statement that, at
14 the time of the priority date, it was not possible to
15 know the crystallization of MgO upon deposition on an
16 amorphous surface.

17 And so Petitioner is allowed to submit
18 evidence -- and this is the Trial Practice Guide at
19 Page 73, we are allowed to submit evidence to refute
20 something that the other side's expert has said, and
21 that's all that we did. These exhibits are not new.
22 She's had the opportunity to look at these. She
23 didn't. She didn't in her declaration. She didn't in
24 her deposition. She should not have the opportunity

1 now.

2 JUDGE MCSHANE: Is that it, Petitioner,
3 yeah?

4 MS. ARNOLD: I believe that's it,
5 Your Honor, unless you have any questions about what I
6 said.

7 JUDGE MCSHANE: Okay. And so, Patent
8 Owner, can we hear your rebuttal, please?

9 MR. HRYCYSZYN: Yeah. Thank you, Your
10 Honor.

11 So it's just not accurate to characterize
12 these exhibits as not new and Dr. Ross having had an
13 opportunity to address them.

14 Petitioner's basically arguing that Dr. Ross
15 had an opportunity to address these new exhibits
16 because they were cited in different exhibits in the
17 record. In essence, Petitioner is alleging that in
18 preparing her declaration responding to the petition,
19 Dr. Ross needed to review and address in her
20 declaration every reference cited in more than
21 150 exhibits in the case. Even for references the
22 petition never cited, that's just unreasonable, right.

23 And then the second point that counsel makes
24 is that Petitioner argues that Dr. Ross had an

1 opportunity to address these during her deposition,
2 right. So this is the first time that these
3 references were put into the record, were in front of
4 her in a deposition, right, and they expected her to
5 opine, on the spot, on references she had offered no
6 testimony on in the declaration she was being examined
7 on, she had never seen these references and she had no
8 opportunity to review and consider them. That's
9 unreasonable, too.

10 And to the extent counsel is arguing --
11 Petitioner is arguing that -- you know, that, you
12 know, there are all of these undisputed issues
13 regarding Parkin, it's just not true. But that's
14 Parkin. If they win on Parkin, then none of this is
15 relevant, right. Then they've won on Parkin and we're
16 done and none of this evidence that we would be
17 addressing in the sur-reply declaration should matter.
18 But the point is, they're wrong on Parkin and they
19 should not be able to rely on a new theory and new
20 evidence for the first time in reply.

21 We simply ask Your Honors to give us this
22 opportunity to express -- you know, to address this
23 new evidence, you know, and have our expert address
24 it. That's all I have, unless you have any other

1 questions.

2 JUDGE MCSHANE: Okay. Just hold for one
3 second.

4 (Pause.)

5 JUDGE MCSHANE: Petitioner, just a
6 question, in the other case -- when I say it's the
7 "other case," I frankly can't remember the number of
8 the case myself, but it's the one we discussed last
9 Friday, I believe, or -- it was discussed with the
10 other panel members last Friday, there -- in that
11 case, it's my understanding that you agreed to allow
12 the filing of a sur-reply.

13 Why is this -- why are these cases different?

14 MS. ARNOLD: Yes, Your Honor, thank you.

15 These cases are different, like I said,
16 because these exhibits are not new. And I can
17 elaborate on that slightly. Dr. Ross has had the
18 opportunity to opine on these exhibits and she didn't,
19 so she shouldn't get the opportunity now.

20 So let me just take just a little bit of --
21 give you a little bit of explanation. For example,
22 Exhibit 1097, which is referred to as Wang 1997, is
23 cited by Yuasa in his APL 2005 paper, which is
24 Exhibit 2006. Yuasa cites to Wang 1997 for the

1 position that MgO (001) can be grown on an amorphous
2 substrate. So this was directly related to Dr. Ross's
3 opinion that this could not be done or it could not be
4 due.

5 So the second exhibit, Exhibit 1098, which is
6 referred to Inaba, Inaba is cited in Dr. Yuasa's 2004
7 Nature Materials article, which is Exhibit 2008,
8 Dr. Yuasa cites to Inaba to say that MgO (001) MTJs
9 can be prepared on any kinds of substrates, including
10 glass substrates and MgO seed layers. And so these
11 are also directly on point. So these two exhibits are
12 definitely not random, not new, they were directly
13 related to her opinions in her first declaration.

14 The third exhibit, 1099, which is referred
15 to as Tonouchi, is cited by Petitioner's exhibit,
16 Exhibit 1036, which is also referred to as Wulff, and
17 Wulff cites to Tonouchi for the position that MgO
18 growth with a strong preferential (001) orientation
19 regardless of substrate selection. So again, directly
20 on point to these issues. So this would have been
21 relevant when she was forming her position.

22 These are not random exhibits. They are
23 directly related to the issue here. They were
24 available to her either at the time that the petition

1 was filed or when she was rendering her opinions and
2 drafting her first declaration.

3 So there is no fishing expedition here,
4 anything like that, these are directly relevant, as
5 well as in the deposition.

6 JUDGE MCSHANE: Okay.

7 MS. ARNOLD: And --

8 JUDGE MCSHANE: All right. Sorry, go
9 ahead.

10 MS. ARNOLD: No. No. No. I'm done.

11 We have the cites that we're relying on in
12 our e-mail. But during her deposition, she said she
13 didn't see these exhibits before and she refused to
14 opine on them. But they were directly relevant and
15 they should have been evaluated when she was
16 formulating her first opinion.

17 And that's all. Thank you, Your Honor.

18 JUDGE MCSHANE: Okay.

19 MR. HRYCYSZYN: Your Honor, can I just
20 respond really quickly to that?

21 JUDGE MCSHANE: Yeah. Yes, I was going
22 to give you that opportunity. Go right ahead.

23 MR. HRYCYSZYN: Thank you, Your Honor.

24 So what that discussion misses is none of

1 those references or the citations are about crystal
2 MgO on an amorphous CoFeB.

3 It's entirely different to find some random
4 reference that says, hey, some material can be grown
5 on some other amorphous surface, it's just not
6 relevant to her opinion and it is entirely new theory
7 for the petition, which she was not responding to.
8 It's a complete tangent from the argument they were
9 trying to make in the petition and to which she was
10 responding, which is the whole point of our saying,
11 it's a new argument they should have had in the
12 petition, if that was what they were trying to make.

13 Thank you, Your Honor.

14 JUDGE MCSHANE: Thank you. And thank
15 both counsel for your arguments. They've been very
16 helpful. We are going to take this under advisement
17 and we will advise in due course.

18 So with that, we are adjourned. Thank you.

19 (Whereupon, at 1:19 p.m., the telephonic
20 hearing was adjourned.)

21

22

23

24

1 COMMONWEALTH OF MASSACHUSETTS

2 SUFFOLK, SS.

3

4 I, Laurie J. Berg, a Notary Public in and for
5 the Commonwealth of Massachusetts, do hereby certify:

6 That the hearing that is hereinbefore set
7 forth is a true record of the testimony given by all
8 persons present.

9 IN WITNESS WHEREOF, I have hereunto set my
10 hand this 29th day of October, 2025.

11

12

13

14

15

Laurie J. Berg

16

Laurie J. Berg

Certified Court Reporter

17

Registered Professional Reporter

Certified Realtime Reporter

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19

20 My commission expires:

21 August 30, 2030

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