

Filed on behalf of Western Digital Technologies, Inc.

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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.

Case No. IPR2024-01447

U.S. Patent No. 8,405,134

PETITIONER'S MOTION TO STRIKE

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5 U.S.C. § 556	5
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I. STATEMENT OF RELIEF REQUESTED

Instead of filing them with its Preliminary Response or Response briefs, IP Bridge flouted Board rules by its unilateral and unauthorized filing of Exhibits 2080-2081 with its Motion to Strike/Sur-reply. Because IPB's sandbagging would prejudice Petitioner and violate the Administrative Procedure Act ("APA"), Petitioner requests:

1. The Board strike and expunge from the record IPB's new Exhibits 2080-2081. *See* 37 C.F.R. § 42.7(a); *Unified Patents v. Voice Tech*, IPR2020-01018, Paper 43 at 6 (P.T.A.B. Sept. 28, 2021) (striking and expunging new exhibits); *see also* *Unified Patents v. Am. Patents*, IPR2019-00482, 2020 WL 1656238, at *3 (P.T.A.B. Apr. 3, 2020).
2. The Board strike the portions of IPB's Sur-reply relying on Exhibits 2080-2081. *E.g.*, Paper 32 ("Sur-reply"), 2, 4, 10-17, 29-30 (relying on EX2080-2081 or cross-referencing § V.B); *Am. Patents*, 2020 WL 1656238, at *3 (striking references to new exhibits from sur-reply).

This Motion was authorized via email on November 21, 2025. EX3103.

II. GOOD CAUSE SUPPORTS THE RELIEF REQUESTED

A. Exhibits 2080-2081 Were Improperly Filed Without Authorization

"Patent Owner knew or should have known that submitting Exhibits [2080-2081] with its Sur-reply was prohibited." *Satco Prods. v. Seoul Semiconductor*,

IPR2020-00836, 2021 WL 5197168, at *32 (P.T.A.B. Oct. 22, 2021).

IPB knew it was required to seek authorization before filing new exhibits with its Sur-reply, stating in a November 11, 2025 email to Petitioner that it would seek Board authorization to file Exhibits 2080-2081. *See* 37 C.F.R. § 42.23(b); Consolidated Trial Practice Guide (“CTPG”), 73-74. But IPB never did, and instead unilaterally and without authorization filed Exhibits 2080-2081 with its Motion to Strike. Nor did the Board authorize IPB to file any exhibits with either its Motion to Strike or its Sur-reply. *See* EX3102; *Cisco v. TQ Delta*, IPR2016-01466, 2017 WL 4317622, at *1 (P.T.A.B. Sept. 26, 2017) (motion to strike does not provide “an opportunity to submit new evidence”). IPB’s concession that it needed authorization to file Exhibits 2080-2081 reveals it flouted Board rules. IPB did not stop there, extensively citing these unauthorized exhibits in its Sur-reply. *See, e.g.*, Sur-reply, 2, 4, 10-17, 29-30.

B. IPB Forfeited Its Opportunity To Submit Exhibits 2080-2081

Despite failing to seek the permission it knew was required, IPB now belatedly asks for forgiveness and authorization to submit Exhibits 2080-2081 in response to Petitioner’s Reply. EX3103, 2. It is too late to ask now: “because [IPB] failed to partake in available procedural mechanisms such as requesting that its sur-reply be permitted to include arguments and evidence that would otherwise be impermissible in a sur-reply, it could not fault the Board for excluding new

arguments in the sur-reply.” *ZyXEL Commc’ns v. UNM Rainforest Innovations*, 107 F.4th 1368, 1382 (Fed. Cir. 2024) (citation modified) (quoting *Parkervision v. Vidal*, 88 F.4th 969, 981 (Fed. Cir. 2023)).

Because IPB chose not to seek such authorization initially, any efforts to belatedly argue these exhibits constitute proper rebuttal and should be authorized after the fact are “not well-taken.” *See, e.g., Satco*, 2021 WL 5197168, at *32 (“Patent Owner’s argument that the exhibits constitute ‘proper rebuttal evidence’ is not well-taken.... [T]he exhibits were improperly submitted, without authorization and in violation of our Rules and Guidance.”).

Even if considered, IPB’s arguments are unfounded that it needed EX2080-2081 to refute Parkin’s inverted Figure 11 disclosing forming MgO(001) on amorphous CoFeB. *See* EX3103, 2. IPB addressed Figure 11 in its Preliminary Response, Paper 8 (“POPR”), 44-47, and could have also relied upon EX2080-2081 at that time or in its Response brief. Instead, IPB deliberately ignored the Board’s invitation to address Parkin’s disclosures of inverted layers, including Figure 11. *See* Paper 10, 28-29; Paper 25, 3. Having waived its opportunities to submit Exhibits 2080-2081 in response to the Petition at any prior point in the trial, it cannot now complain of unfair prejudice. *Parus Holdings v. Google*, 70 F.4th 1365, 1373 (Fed. Cir. 2023) (“By raising an argument in its Preliminary Response, but not its Response, a patent owner waives said argument.”).

C. Petitioner Would Be Highly Prejudiced By The Untimely Admission of Exhibits 2080-2081

Admitting Exhibits 2080-2081 would prejudice Petitioner. IPB chose not to submit these exhibits with its Response brief, but instead flouted Board rules by filing Exhibits 2080-2081 after the Reply. *See, e.g., Cisco*, 2017 WL 4317622, at *1 (motion to strike does not provide “an opportunity to submit new evidence”); CTPG, 80-81; *Satco*, 2021 WL 5197168, at *33 (“The facts here merit striking Exhibits 2009-2016, as it is beyond dispute that those exhibits are new evidence that was inappropriately submitted.”).

IPB sandbagged Petitioner, who would be deprived of the opportunity to submit responsive argument or evidence if Exhibits 2080-2081 were belatedly allowed. Petitioner will have no opportunity to respond to these exhibits through briefing or submission of additional evidence and expert testimony. *See* 37 C.F.R. § 42.23(b). “[I]t would be procedurally unfair to allow Patent Owner to [present new arguments] for the first time in its Sur-Reply. At this point in the trial, Petitioner cannot meaningfully respond to Patent Owner’s belatedly introduced arguments....” *Am. Patents*, 2020 WL 1656238, at *3.

The late admission of exhibits to IPB’s sur-reply would also violate the APA by denying Petitioner a fair chance to rebut them. Under the APA, the Board “must give the parties notice and an opportunity to respond.” *Nike v. Adidas*, 955 F.3d 45,

54 (Fed. Cir. 2020); *e.g.*, 5 U.S.C. §§ 554(b)-(c), 556(d). However, substantive briefing is now closed and “[t]he oral argument present[s] no opportunity for [Petitioner] to supply evidence, whether expert or lay or documentary evidence” in rebuttal. *Dell v. Acceleron*, 818 F.3d 1293, 1301 (Fed. Cir. 2016); 5 U.S.C. § 556(d) (“A party is entitled to... submit rebuttal evidence” under the APA.).

III. CONCLUSION

WD respectfully requests the Board strike and expunge new Exhibits 2080-2081 and strike the portions of IPB’s Sur-reply citing and/or relying on them.

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Dated: December 2, 2025

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CERTIFICATE OF SERVICE

The undersigned certifies that pursuant to 37 C.F.R. § 42.6(e), a true copy of the foregoing **PETITIONER’S MOTION TO STRIKE** is being served electronically on December 2, 2025 to the following counsel for Patent Owner to the following email addresses:

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