

Filed on behalf of Western Digital Technologies, Inc.

By: Michelle E. Armond

Douglas R. Wilson

Joseph Li

Monica Arnold

Yue Han

ARMOND WILSON LLP

4685 MacArthur Court, Suite 390

Newport Beach, CA 92660

Telephone: (949) 932-0778

Email: ipr@armondwilson.com

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 OPPOSITION TO MOTION TO EXCLUDE EVIDENCE

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IPB's Motion to Exclude is little more than a desperate, third re-run of IPB's disagreements with Dr. Bokor's reply declaration testimony about forming MgO(001) on CoFeB. This Motion does not overcome the high bar of excluding expert testimony, which is "rarely called for in a proceeding before the Board." *Unified Patents v. Ideahub*, IPR2020-01338, 2022 WL 443888, at *4 (P.T.A.B. Feb. 7, 2022) (citation omitted). Citing no Board decision and incorrectly assigning the burden to non-movant WD, IPB's Motion provides another recitation of its disagreements on the merits with the substance of Dr. Bokor's reply testimony in lieu of addressing any of his qualifications or even attempting to meet its burden to prove Dr. Bokor is unqualified to offer such opinions under Federal Rule of Evidence 702. IPB also misrepresents Dr. Bokor's deposition testimony and his relied-upon evidence in a transparent effort to impugn his overwhelming qualifications. IPB utterly fails to carry its burden to show that its arguments are anything other than merits disputes directed to weight of the testimony rather than admissibility. Given these fundamental errors, IPB's frivolous Motion should be entirely denied.

I. IPB'S MOTION IS BOTH FUNDAMENTALLY FLAWED AND IMPROPER

A. IPB's Legal Standard Is Incorrect

IPB's Motion (Paper 44, "Mot.") is fundamentally defective. It erroneously places the burden on WD to "show that Bokor's testimony meets the requirements

in each section of rule 702.” Mot., 1; *see also id.*, 2-3. But it is **IPB’s burden** as the “moving party... to establish that it is entitled to the requested relief” of having certain of Dr. Bokor’s written testimony excluded. 37 C.F.R. § 42.20(c); *Siemens Mobility v. Metrom Rail*, IPR2023-00470, 2024 WL 3045506, at *32 (P.T.A.B. June 18, 2024) (same). And in bench proceedings such as this, exclusion of expert testimony is an extraordinary remedy rarely granted. *Unified Patents*, 2022 WL 443888, at *4.

IPB’s Motion is also silent as to **why** the gatekeeping function is necessary here in view of the Board’s discretion to weigh an expert’s testimony under 37 C.F.R. § 42.65(a). *See* Mot., 2-3. Indeed, IPB’s Motion does not cite a single Board opinion at all, completely ignoring and misrepresenting the applicable standard before the Board. *See generally* Mot. IPB cites *EcoFactor* for “the Board’s gatekeeping obligation under *Daubert*,” Mot., 3 (citing *EcoFactor v. Google*, 137 F.4th 1333, 1338-40 (Fed. Cir. 2025) (en banc)), but the en banc decision evaluated the Western District of Texas’ gatekeeping function, not the Board’s, *EcoFactor*, 137 F.4th at 1336.

Contrary to IPB’s mischaracterization, “[t]he Board has broad discretion to assign weight to be accorded expert testimony.” Consolidated Trial Practice Guide (“CTPG”), 35. Indeed, “the policy considerations for excluding expert testimony, such as those implemented by the gatekeeping framework established by the

Supreme Court in *Daubert* ... are less compelling in bench proceedings such as *inter partes* reviews than in jury trials.” *Unified Patents*, 2022 WL 443888, at *4 (citation omitted). The “PTAB is permitted to weigh expert testimony and other record evidence and, in so doing, rely on certain portions of an expert’s declaration while disregarding others.” *Icon Health and Fitness v. Strava*, 849 F.3d 1034, 1041 (Fed. Cir. 2017). IPB offers no justification for the exclusion of Dr. Bokor’s testimony in view of the Board’s ability to weigh expert testimony.

B. IPB’s Motion Fails To Support Its Requested Relief For Many Paragraphs Of Dr. Bokor’s Reply Declaration

Nowhere in its Motion did IPB articulate why it is entitled to have Dr. Bokor’s ¶¶6-30 in EX1105 excluded under this tribunal’s rules. *See generally* Mot. This alone should be sufficient to deny its Motion. Further, IPB provides no justification for exclusion of ¶¶6, 12, 23-25, and 28-30. *See generally* Mot. Paragraph 6 provides the bases for his opinion. Paragraphs 12 and 23-25 are Dr. Bokor’s responses to Dr. Ross’ opinions on Wang (EX1055), Sunai (EX1030), Jimbo (EX1060), and Petrov (EX2065). Paragraphs 28-30 are Dr. Bokor’s opinions based on Renault’s (EX1104) interpretation of Aboelfotoh’s (EX2067) data. IPB’s Motion to Exclude plainly did not meet its burden to show ¶¶6, 12, 23-25, and 28-30 should be excluded. *See* 37 C.F.R. § 42.20(c).

C. IPB’s Motion Seeks A Third Bite At The Merits Apple

IPB’s Motion can also be denied as an improper use of this tribunal’s evidentiary motion practice. A motion to exclude “may not be used to challenge the sufficiency of the evidence to prove a particular fact.... [A]rguments regarding weight should appear *only* in the merits documents. Nor should a motion to exclude address arguments or evidence that a party believes exceeds the proper scope of reply or sur-reply.” CTPG, 79 (emphasis added).

Despite this guidance, IPB’s fifteen-page motion simply parrots its substantive challenges of Dr. Bokor’s opinions regarding prior art disclosure of growing MgO(001) on amorphous substrates based on Wang 1997, Inaba, Tonouchi (EX1097-1099), and Nagahama (EX1027) already in its Sur-reply (Paper 32) and/or Motion to Strike (“MTS,” Paper 31). *Compare, e.g.,* Mot., 4 (arguing that the position that MgO(001) could be grown on amorphous CoFeB was based on Dr. Bokor’s “naked say-so”), *with* Sur-reply, 17 (same) and MTS, 10 (same); Mot., 4-5 (arguing Dr. Bokor did not “consider[] the impact” of the “material” MgO was grown on (emphasis omitted)), *with* Sur-reply, 18-19 (same); *see also* MTS, 10 (arguing Dr. Bokor’s testimony that MgO(001) forming on other amorphous substrates was based on statements of others in the literature). IPB’s third attempt to brief these same substantive arguments should be rejected.

II. DR. BOKOR’S TESTIMONY IS ADMISSIBLE

IPB fails to even discuss Dr. Bokor’s credentials much less show that they are inadequate to support the testimony he’s proffered. *See generally* Mot.

A. Dr. Bokor Is A Qualified Expert

Dr. Bokor has extensive experience in the field of spintronics and magnetic tunnel junctions as well as nanoscale manufacturing. *See generally* EX1025 (Dr. Bokor’s CV). Prior to his university work, from 1980 to 1993 he was employed by AT&T Bell Laboratories where he “worked on semiconductor surface and interface physics, CMOS device physics, advanced lithography for integrated circuit manufacturing, and integrated circuit process technology.” EX1024 ¶5. He then became a “Professor of Electrical Engineering and Computer Sciences (‘EECS’) at the University of California (UC), Berkeley, with a joint appointment as a Faculty Scientist in the Materials Science Division at the Lawrence Berkeley National Laboratory (‘LBNL’)” from 1993 until July 1, 2024. *Id.* ¶6. As he also explained and is not disputed, “I led the Nanoelectronics and Nanostructures research group at UC Berkeley, which focused on a wide range of topics, including magnetic tunnel junctions, voltage control of magnetism, spintronics, spin-based quantum computing, and ultrafast magnetism.” *Id.* ¶7. Dr. Bokor “demonstrated spin transfer torque switching in sub-10 nm size magnetic tunnel junctions and ultrafast spin-orbit torque based magnetic switching....” *Id.* He has published “at least 90 papers

relating to magnetic and/or spin-based devices dating back to 2002” and has “12 patents in the areas of electronic devices, nanofabrication technologies, including 5 patents on magnetic memory and magnetic/spin-based devices.” *Id.* ¶8. Dr. Bokor has also supervised graduate students who were fabricating magnetic tunnel junctions. EX2017, 31:24-32:6. Dr. Bokor is more than qualified to testify regarding manufacturing techniques of magnetic tunnel junctions.

IPB makes no effort to show any reason why Dr. Bokor’s qualifications are insufficient to permit him to testify regarding the use of an amorphous substrate to grow MgO(001), as was its burden under 37 C.F.R. § 42.20(c). *See generally* Mot. This also renders IPB’s reliance on *Louis Vuitton* and *XpertUniverse* misplaced. *See* Mot., 12. Thus, its Motion should be denied.

B. Dr. Bokor’s Testimony Is Admissible Under Rule 702(b)-(d)

Dr. Bokor’s opinion that a skilled artisan would have reasonably expected to be able grow MgO(001) on amorphous surfaces including CoFeB is not *ipse dixit*, *see* Mot., 3-4 (citing *Gen. Elec. Co.*), or based on an “unsupported and unreliable inference,” *id.*, 9. Dr. Bokor’s opinion is based on Parkin’s disclosure of growing MgO(001) over amorphous CoFeB, EX1024 (First Decl.) ¶¶129, 144-48, including Parkin’s inverted Figure 3 embodiment (which includes Figure 11), EX2085, 94:7-95:5 (testifying Parkin disclosed that the bottom layer could be amorphous CoFeB and annealing resulted in crystallized CoFeB adjacent to crystallized MgO). This

also refutes IPB’s argument that Dr. Bokor did not “identify a single prior art reference teaching that MgO(001) would form on amorphous CoFeB.” Mot., 3-4.

In its remaining arguments, *see* Mot., 4-12, IPB’s mischaracterizations of Dr. Bokor’s testimony to support its disagreements are merits arguments that, even if correct—and they are not—at most address the weight to be given his testimony rather than its admissibility. *See, e.g., Palo Alto Networks v. Finjan*, IPR2016-00151, 2017 WL 1040254, at *9 (P.T.A.B. Mar. 15, 2017) (denying patentee’s motion to exclude: “To the extent the [expert] testimony has been shown to be inadequately supported, contradictory, or irrelevant, we have taken notice and weighed it accordingly”), *vacated on other grounds*, 752 F. App’x 1017, 1021 (Fed. Cir. 2018).

For example, IPB’s assertion that Dr. Bokor “***never considered*** the impact that changing the ***material*** on which MgO was formed... would have had on whether and how MgO might crystallize,” Mot., 5, would affect only the weight to be given his testimony, not its admissibility. Even so, what Dr. Bokor actually stated was that he “did not undertake an independent analysis at the atomic level such as what you’re describing, regarding MgO deposition....” EX2085, 179:15-180:4. He further testified that he was “not prepared to answer” whether he agreed that “if magnesium oxide forms a stronger bond on a cobalt iron boron substrate than it would form on a silicon dioxide substrate, then that magnesium oxide will have a lower diffusivity on the cobalt iron boron substrate.” EX2085, 178:5-13; *see also* Mot., 5

(misrepresenting this passage). Again, this testimony has no bearing on the correctness of his declaration opinions, much less on their admissibility. The remaining highly detailed questions IPB sought answers to are similarly irrelevant to both the correctness of Dr. Bokor's opinions and their admissibility. *See, e.g.*, EX2085, 152:17-153:25, 168:5-178:1 ("Nothing in my second declaration went anywhere near this level of, you know, microscopic detail about surface bonding.").

IPB argues that Nagahama, Inaba, Tonouchi, Wulff, Wang 1997, and Yoon "do not provide a sufficient basis for" Dr. Bokor's testimony. *See* Mot., 5-8. But IPB does not challenge the accuracy of the disclosures themselves. Instead, IPB disagrees with Dr. Bokor's interpretation of these disclosures, which goes to weight, not admissibility. *Palo Alto Networks*, 2017 WL 1040254, at *9.

For example, in responding to IPB's false assertion that one of skill would not have expected MgO(001) to form on amorphous CoFeB, Dr. Bokor relied upon Tonouchi's statement that MgO(001) is known to form "regardless of substrate selection." Mot., 7 (quoting EX1105 ¶¶17-19 (citing EX1099, 962)). IPB asserts that to meet the claimed MgO barrier layer, "the MgO must be crystalline(001) at the interface with the surface on which it was formed." Mot., 5-7. But Yuasa's own MgO layer is not crystallized at the interface when it is deposited as his own paper concedes. *See* EX2013, 2 ("[W]e concluded that the MgO layer ***begins to crystallize*** when $t_{\text{MgO}} \geq 5 \text{ ML}$." (emphasis added)); EX2053 ¶45 (EX2013 represents Dr.

Yuasa's published "work on CoFeB/MgO/CoFeB MTJs described in the '134 patent"). Dr. Yuasa's admission defeats IPB's distinction over Nagahama and Inaba as well. *See* Mot., 6 ("Nagahama's and Inaba's seed layers ... became crystalline only at a distance away from [the interface with the underlying surface].").

IPB next asserts that Tonouchi attributed its crystallized MgO on SiO₂ to "structural surface deformation" on the SiO₂, Mot., 7, but fails both to explain the significance of this fact or to address Tonouchi's actual disclosure: "the mechanism of the epitaxy cannot be explained by the epitaxial growth of MgO but rather by the *natural orientation or* the graphoepitaxy of MgO," EX1099, 964 (emphasis added). Thus, Tonouchi also offered the explanation that MgO(001)'s growth was its "natural orientation." Tonouchi's authors stated, "MgO is known to grow with strong preferential (100) orientation *regardless of the substrate selection.*" EX1099, 962 (emphasis added). That is sufficient to support Dr. Bokor's opinions and their admissibility.

IPB's additional argument that no reference ("phantom") said that MgO grows with strong preferential (001) orientation regardless of the substrate selection, Mot., 9-10, is of course directly contradicted by Tonouchi. And IPB's sleight of hand argument that Nagahama, Inaba, and Tonouchi "all taught that MgO(001) did *not* form at the interface with at least some surfaces," Mot., 9-10 (underlining added), again disingenuously requires more of the prior art than Yuasa claimed to have

invented, *see* EX2013, 2 (“[W]e concluded that the MgO layer *begins to crystallize* when $t_{\text{MgO}} \geq 5 \text{ ML}$.” (emphasis added)).

C. Dr. Bokor’s Testimony Is The Product Of Scientific Principles

IPB also misrepresents that Dr. Bokor’s opinion did not consider Aboelfotoh’s (EX2067) disclosures, *see* Mot., 10-12, but Dr. Bokor relied on Renault (EX1104) to support his opinion that the “random orientation” observed in Aboelfotoh (EX2067) “was attributable to the deposition parameters” selected. EX1105 ¶30. Unsurprisingly, IPB does not mention Renault. *See generally* Mot.

D. Dr. Bokor Is Qualified To Testify Under Rule 702

IPB misrepresents Dr. Bokor’s deposition testimony in its attempt to show that he is not qualified as an expert or that his written testimony is inadmissible under Rule 701. *See* Mot., 12-15. Dr. Bokor’s responses regarding his expertise, *see* Mot., 12-13, 15, were to IPB’s counsel’s overly broad and/or out-of-scope questions, *see* EX2018, 77:9-78:3 (stating he was not a “crystal grower” in his response to what would happen “if you had a crystalline layer where the lattice constant was different from the material you hoped to crystallize on top of it?”); *see also id.* 76:4-10, 76:23-24; EX2085, 156:23-157:11 (explaining his “limited understanding” in response to the question that “the process of magnesium oxide nucleation and grain growth depends crucially on the deposition rate?”), 178:15-179:6 (explaining that he agreed that MgO grain formation depended upon various parameters and could vary from

system to system but was not prepared at his deposition to testify to those specifics), 185:10-186:3 (responding to questions regarding the “interfacial interaction” between deposition and substrate ions), 173:4-176:23 (answering questions about chemical bonding including between Co, Fe, and B). None of the cited testimony even addresses his declaration testimony, much less its admissibility.

Nor does Dr. Bokor’s testimony support IPB’s argument that Dr. Bokor purportedly “adopt[ing] alleged opinions of others he believed to be ‘experts’” “fails Rule 702(a).” *See* Mot., 14-15. Again, IPB misrepresents Dr. Bokor’s responses to overly broad and/or out-of-scope questions to support its argument. *See* EX2085, 176:25-178:4 (responding that he did not “undertake a fundamental analysis of the physics” of the “atomic bonding between cobalt iron boron and a magnesium or oxygen atom”), 180:22-181:7 (similar), 152:20-153:17 (stating he relied on the prior art disclosures in forming his opinion and did not “independent[ly] study” MgO nucleation and grain growth). Dr. Bokor’s testimony addressed the obviousness standard, which requires consideration of the knowledge of a person of ordinary skill in the art at the time of alleged invention, using extant printed publications as of that date. There is no serious dispute that is admissible testimony.

IPB’s reliance on EX2059, 42:6-21, an excerpt of Dr. Bokor’s testimony in an unrelated IPR between unrelated parties regarding an unrelated technology, is also unpersuasive. *See* Mot., 13. IPB provides no support or context for why this

testimony should be considered when it plainly has no relevance to MgO(001) formation on CoFeB. *See* EX2059, 42:10-21 (“I’m aware there’s a large field of material science called composite materials.... I’m not particularly well versed in that field.”).

IPB’s relied-upon deposition testimony does not support finding Dr. Bokor unqualified under Rule 702(a) to opine on the Challenged Claims, which have no requirement regarding lattice constants, physics of grain growth or nucleation, interfacial interaction, specific chemical bonding details, or deposition parameters. Nor does it support finding Dr. Bokor’s testimony is inadmissible lay opinion under Rule 701, which is irrelevant since Dr. Bokor is a qualified expert. This renders IPB’s reliance on *Luna* and *Eberli* misplaced and confirms that Dr. Bokor’s testimony is not lay opinion testimony, rendering Rule 701 irrelevant. *See* Mot., 14-15.

Together, IPB has not met its burden to show its entitlement to have Dr. Bokor’s testimony in ¶¶6-30 of EX1105 excluded.

III. CONCLUSION

WD respectfully requests the Board deny IPB’s Motion to Exclude.

Western Digital v. Godo Kaisha IP Bridge
U.S. Patent No. 8,405,134 – IPR2024-01447

ARMOND WILSON LLP

Dated: January 5, 2026

By: /Michelle E. Armond/

Michelle E. Armond (Reg. No. 53,954)

Douglas R. Wilson (Reg. No. 54,542)

Joseph Li (Reg. No. 74,998)

Monica Arnold (Reg. No. 77,262)

Yue Han (Reg. No. 80,950)

Attorneys for Western Digital Technologies, Inc.

CERTIFICATE OF SERVICE

The undersigned certifies that pursuant to 37 C.F.R. § 42.6(e), a true copy of the foregoing **PETITIONER’S OPPOSITION TO MOTION TO EXCLUDE EVIDENCE** is being served electronically on January 5, 2026 to the following counsel for Patent Owner to the following email addresses:

Gerald B. Hrycyszyn
GHrycyszyn-PTAB@wolfgreenfield.com

Jie Xiang
JXiang-PTAB@wolfgreenfield.com

Thomas A. Franklin
TFranklin-PTAB@wolfgreenfield.com

Richard F. Giunta
RGiunta-PTAB@wolfgreenfield.com

Adam R. Wichman
AWichman-PTAB@wolfgreenfield.com

Scott A. McKeown
SMcKeown-PTAB@wolfgreenfield.com

ARMOND WILSON LLP

Dated: January 5, 2026

By: /Michelle E. Armond/

Michelle E. Armond (Reg. No. 53,954)

Douglas R. Wilson (Reg. No. 54,542)

Joseph Li (Reg. No. 74,998)

Monica Arnold (Reg. No. 77,262)

Yue Han (Reg. No. 80,950)

Attorneys for Western Digital Technologies, Inc.