

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. IPR2024-01493
U.S. Patent No. 10,680,167

PETITIONER'S REPLY IN SUPPORT OF MOTION TO STRIKE

TABLE OF CONTENTS

I.	Exhibits 2080-2081 Are Unauthorized New Evidence	1
II.	WD Will Be Prejudiced By The Admission Of Exhibits 2080-2081	4

All emphasis is added in quoted material unless otherwise indicated.

TABLE OF AUTHORITIES

<i>Apple v. Corephotonics</i> , 81 F.4th 1353 (Fed. Cir. 2023).....	4
<i>Ascend Perf. Materials v. Samsung SDI</i> , IPR2020-00349, 2021 WL 3007981 (P.T.A.B. July 15, 2021).....	3, 4
<i>Cisco v. TQ Delta</i> , IPR2016-01466, 2017 WL 4317622 (P.T.A.B. Sept. 26, 2017)	1, 2
<i>ClearOne v. Shure Acquisition Holdings</i> , IPR2019-00683, 2020 WL 1930192 (P.T.A.B. Apr. 20, 2020).....	2
<i>Hamilton Techs. v. Tehrani</i> , IPR2020-01199, 2021 WL 6339598 (P.T.A.B. Dec. 28, 2021)	1
<i>Parus Holdings v. Google</i> , 70 F.4th 1365 (Fed. Cir. 2023).....	3
<i>Resi Media v. Boxcast</i> , IPR2022-00067, Paper 56 (P.T.A.B. Apr. 12, 2023)	4
<i>Satco Prods. v. Seoul Semiconductor</i> , IPR2020-00836, 2021 WL 5197168 (P.T.A.B. Oct. 22, 2021).....	2

OTHER AUTHORITIES

37 C.F.R. § 42.7	1
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The Opposition confirms EX2080-2081 were unauthorized and should be stricken. IPB's November 11 email requesting WD's consent shows it knew the rules. After WD opposed, IPB unilaterally filed EX2080-2081, Paper 30, viii, and cited no rule permitting its filing. Instead, IPB blames WD, raises red herrings, and concocts excuses. Because both parties' cited authorities demonstrate a violation of Board rules that would prejudice WD and violate the APA, both EX2080-2081 and IPB's sur-reply arguments about them should be stricken and expunged.

I. Exhibits 2080-2081 Are Unauthorized New Evidence

IPB claims "no rule prohibit[s] new evidence with IPB's Motion" to Strike. Paper 42 ("Opp."), 3. *Air Bud* rules do not apply to IPRs, and Board "rules do not permit a party to file exhibits without authorization." *Compare Air Bud* (1997) ("Ain't no rule that says a dog can't play basketball."), with *Hamilton Techs. v. Tehrani*, IPR2020-01199, 2021 WL 6339598, at *21 (P.T.A.B. Dec. 28, 2021) (citing 37 C.F.R. § 42.7(a)).

IPB's claim that "the Board's order imposed no such prohibition," Opp., 3 (citing Paper 29), glaringly omits that IPB never asked for Board authorization to file its new exhibits with its Motion to Strike. Paper 29, 1-3. IPB concedes *Cisco* bars IPB's exact conduct: "the Board would not have provided patent owner 'an opportunity to submit new evidence'" with a "motion to strike." Opp., 4 (quoting

Cisco, 2017 WL 4317622, at *1). Because IPB neither sought nor received authorization to file new EX2080-2081, they should be stricken and expunged.

IPB's undisputed November 11, 2025 email seeking authorization to file EX2080-2081 as sur-reply exhibits shows it understood the rules, *see* Opp., 4, and demonstrates its new excuses for violating Board rules are red herrings. It variously asserts that WD should have filed EX2080-2081 itself, Opp., 1, that the exhibits are “‘inconsistent with’ WD’s ‘position,’” *id.*, 2, or that they “refute the Reply’s and Dr. Bokor’s new arguments that Parkin Fig.11’s MgO(001) forms on amorphous CoFeB,” *id.*, 6-7. IPB could have made these arguments in its substantive Response briefs or in a motion seeking leave to file supplemental evidence but did not. *Satco Prods. v. Seoul Semiconductor*, IPR2020-00836, 2021 WL 5197168, at *32 (P.T.A.B. Oct. 22, 2021) (finding such gamesmanship “is not well-taken”); *ClearOne v. Shure Acquisition Holdings*, IPR2019-00683, 2020 WL 1930192, at *1 (P.T.A.B. Apr. 20, 2020) (“The requirement that Patent Owner file a motion, rather than request such relief in response to Petitioner’s Motion, is not merely a matter of form.”).

Regardless, its arguments are meritless. IPB cites no authority supporting that incorporation by reference in another exhibit pre-authorizes its filing. *See* Opp., 3. Unauthorized exhibits remain unauthorized, and IPB’s claim that improper “new” exhibits may be permissibly cited in later filings because then “they were not new,” Opp., 4, is both unsupported and nonsensical.

IPB's next argument that EX2080 "was not unauthorized in IPB's Sur-reply" because IPB introduced it at Dr. Bokor's deposition, Opp., 4, is not even supported by its own cited caselaw. *Ascend* rejected IPB's premise of universal authorization:

[S]uch a rule would give parties the incentive to raise completely new evidence during a deposition, and then introduce that evidence into the record with a sur-reply, depriving the opposing party the opportunity to fully address that evidence.

Ascend Perf. Materials v. Samsung SDI, IPR2020-00349, 2021 WL 3007981, at *5 (P.T.A.B. July 15, 2021), *vacated/remanded on other grounds by*, 2021 WL 12277636 (P.T.A.B. Nov. 1, 2021). IPB points to nothing in EX2080-2081 that contradicts Dr. Bokor's testimony, Opp., 4, and even *Ascend* clarified that new exhibits should not be considered "as evidence supporting the party's [merits] arguments" *Ascend*, 2021 WL 3007981, at *5.

IPB ducks WD's cited authority regarding waiver. Opp., 5 (citing Mot., 3 (citing *Parus Holdings v. Google*, 70 F.4th 1365, 1373 (Fed. Cir. 2023))). IPB has no answer for the fact that its reliance on Figure 11 as an inverted version of Figure 3A proves that IPB understood the relevance of Parkin's Figure 11 early in this IPR. See IPR2024-01447, Paper 8, 46-47 (relying on Figure 11 as an example of the "Petition stat[ing] that 'Parkin itself teaches that the top and bottom electrodes in Figure 3A may be "inverted.'" [134 IPR] Petition, 40"). Moreover, the Petition's reliance on Figure 3A, Pet., 26, was sufficient because Parkin also disclosed that its

“MgO tunnel barrier 120’ [in Figure 3A] is then formed... using the method described in U.S. patent application Ser. No. 10/824,835 [EX2080].” *See* EX1062, 17:21-23. The relevance of these exhibits was evident based on Figure 3A alone.

Finally, IPB’s assertion that WD did not identify the sur-reply arguments to be stricken, *Opp.*, 5-6, lacks any merit. The Motion’s “Statement of Relief Requested” listed the specific sur-reply pages citing EX2080-2081 or relying on arguments about them,” *Mot.*, 1 (citing *Sur-reply*, 3, 8, 12-18, 29-30).

II. WD Will Be Prejudiced By The Admission Of Exhibits 2080-2081

IPB has no answer for WD’s showing of prejudice, *see Opp.*, 7, dictating EX2080-2081 be stricken, *Resi Media v. Boxcast*, IPR2022-00067, Paper 56, 48-49 (P.T.A.B. Apr. 12, 2023) (striking patentee’s new, unauthorized evidence explaining potential prejudice cannot be initially evaluated if evidence is filed without leave).

Petitioners are also protected by the APA. *See, e.g., Apple v. Corephotonics*, 81 F.4th 1353, 1361-62 (Fed. Cir. 2023) (finding petitioner’s APA rights violated when the Board provided no reasoning for rejecting its obviousness theory). IPB’s flimsy effort to cabin *Nike* and *Dell* as applying only to patent owners does not explain how WD would be afforded an opportunity to respond to EX2080-2081 as required by the APA. *See Opp.*, 7-8. IPB’s *Ascend* recognizes that new sur-reply exhibits are prejudicial because they “depriv[e] the opposing party the opportunity to fully address that evidence.” *Ascend*, 2021 WL 3007981, at *5 (cited *Opp.*, 4).

Western Digital v. Godo Kaisha IP Bridge
U.S. Patent No. 10,680,167 – IPR2024-01493

ARMOND WILSON LLP

Dated: December 18, 2025

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 REPLY IN SUPPORT OF MOTION TO STRIKE** is being served electronically on December 18, 2025 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: December 18, 2025

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.