

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
Patent No. 10,680,167

PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE

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Petitioner (“WD”) filed a Reply Declaration (EX1105) in which its expert Bokor testified for the first time that a POSA would have reasonably expected MgO to form with (001) texture “on amorphous surfaces including CoFeB.” EX1105, §IV (i.e., ¶¶6-30), ¶6; Paper 24 (Reply), 7-11 (citing EX1105, ¶¶7-19, 20-22, 25-30). Patent Owner (“IPB”) timely objected (Paper 26, 1-2) and moves to exclude this testimony as inadmissible under Fed. R. Evid. (“Rule”) 702 and 701.

WD does not—and cannot—meet its burden to show that Bokor’s testimony meets the requirements in each section of Rule 702. To the contrary, Bokor is unqualified (Rule 702) and lacks specialized knowledge required to offer testimony on MgO formation on amorphous CoFeB (Rule 702(a)), and his testimony fails the requirements in Rule 702(b)-(d):

Rule 702(b). Bokor’s testimony is not based on sufficient facts or data. *Infra* §I.A. For example, both experts agree that the **substrate material** (e.g., CoFeB) is crucial to determining the texture of material (e.g., MgO) that forms on it. But Bokor **never considered** how **amorphous CoFeB** (a metal) would have affected the texture of MgO formed on it as compared to how **different** (non-metallic) amorphous materials (i.e., SiO₂, Si₃N₄, “glass,” or amorphous MgO) influenced the texture of MgO formed on them.

Rule 702(c)-(d). Bokor’s opinion is not the product of reliable principles and methods (Rule 702(c)) and does not apply reliable principles and methods to the

facts relevant to MgO formation on CoFeB (Rule 702(d)). *Infra* §I.B. For example, not only did Bokor ignore facts he admits were relevant to MgO crystallization, but he ***never considered*** and ***refused to apply*** the principles in the crystal formation literature to MgO formation on CoFeB as compared to other amorphous substrates.

Rule 702, 702(a). Bokor’s failure to meet ***any*** reliability requirement under Rule 702(b)-(d) is unsurprising because Bokor is ***not qualified*** to opine on MgO thin film crystal formation and ***has no specialized knowledge*** that will help the Board determine whether a POSA would have reasonably expected MgO(001) to form on amorphous CoFeB. *Infra* §I.C. Bokor admits that MgO crystal growth is “a very complicated business”; he has “limited understanding” of the parameters that affect crystal formation; and he could not explain various parameters that the literature describes as relevant to crystal formation. Bokor admitted, “***I’m no expert. I’m no crystal grower.***”¹

Each failure to meet a Rule 702 requirement separately warrants exclusion. Bokor’s testimony is also inadmissible lay opinion that fails each prong of Rule 701. Bokor’s testimony in EX1105, §IV (¶¶6-30) should be excluded under Rules 702 and 701.

¹ All emphasis is added unless otherwise specified.

I. BOKOR’S TESTIMONY IS INADMISSIBLE UNDER RULE 702.

The Federal Rules of Evidence apply. 37 C.F.R. §42.62(a). Rule 702 codifies the Board’s gatekeeping obligation under *Daubert* and its progeny to exclude unreliable expert testimony. *EcoFactor v. Google*, 137 F.4th 1333, 1338-1340 (Fed. Cir. 2025) (en banc). WD must demonstrate the admissibility of Bokor’s testimony by showing, by a preponderance of the evidence, that it meets *each* Rule 702 requirement. Rule 702; Rule 702 Adv. Comm. Notes (2023); *EcoFactor*, 137 F.4th at 1339. WD cannot meet that burden. By his own admission Bokor’s testimony that POSAs “would have reasonably expected to form MgO(001) on amorphous... CoFeB” (EX1105, §IV (¶¶6-30)) fails multiple Rule 702 requirements and is inadmissible.

A. Bokor’s Testimony Is Not Based on Sufficient Facts or Data.

Bokor’s testimony is not based on sufficient facts or data. Rule 702(b); *EcoFactor*, 137 F.4th at 1343, 1345-1347.

1. No reference taught forming MgO(001) on CoFeB.

Bokor did not identify a single prior art reference teaching that MgO(001) would form on amorphous CoFeB. EX2085, 180:6-181:9. Instead, he cited references disclosing instances where MgO(001) formed on *different* amorphous materials, *i.e.*, silicon nitride or Si₃N₄ (EX1105, ¶¶9-11, discussing EX1097), “glass” (*id.*, ¶¶14-16, discussing EX1098), oxidized silicon or SiO₂ (*id.*, ¶¶17-19,

discussing EX1099), and amorphous MgO (*id.*, ¶¶20-22, discussing EX1027).

Based on this, Bokor opined that POSAs would have expected MgO(001) to form on amorphous CoFeB. *Id.*, ¶6; EX2085, 153:6-11 (“I have given opinions based on prior art findings. I have not formed independent opinions[.]”). Bokor did not cite any principle, method, or teaching in the art suggesting that MgO(001) formation on Si₃N₄, “glass,” SiO₂, or amorphous MgO predicted that MgO(001) would form on CoFeB. And Bokor ignored literature that suggested the opposite. *Infra* §I.B.

Bokor’s testimony that POSAs expected MgO(001) to form on amorphous CoFeB has no support other than his naked say-so that studiously ignores the facts Bokor admits are relevant to crystalline formation. That is not enough. *EcoFactor*, 137 F.4th at 1345-1346 (expert testimony fails Rule 702(b) and is inadmissible where the opinion is “unsupported by the evidence” the expert relied upon); *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997) (“[N]othing in... *Daubert* or the Federal Rules of Evidence requires a... court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert.”).

2. Bokor never considered how an amorphous CoFeB rather than a non-CoFeB substrate would affect MgO crystal formation even though he admits the substrate material was crucial to determining the texture of MgO formed on it.

The experts agree that MgO crystal formation “depended crucially on multiple factors,” including the substrate material. EX2053, ¶164 (Ross); EX2085, 154:13-155:2 (Bokor agreement), 178:3-179:3 (similar). Bokor admits that crystal

growth depends “*crucially on the material of the substrate*” (*id.*, 154:13-155:2), on the “*surface energy of the substrate*” (*id.*, 158:8-18), and other parameters (*id.*, 152:17-158:18).

But Bokor *never considered* the impact that changing the *material* on which MgO was formed—from SiO₂, Si₃N₄, or “glass” to *amorphous CoFeB*—would have had on whether and how MgO might crystallize. *Id.*, 179:7-22, 176:10-178:4; *see also id.*, 178:5-179:4 (Bokor was “*not prepared*” to answer how the substrate material affected MgO film formation and would need to “study up” to “testify about this topic.”).

Bokor never considered any differences between the atomic bonds that Mg, O, or MgO would form with an amorphous CoFeB substrate during deposition, and the bonds they would form with a SiO₂, Si₃N₄, or “glass” substrate, or how such differences would affect texture formation in the MgO layer. EX2085, 168:5-177:23, 178:5-179:22.

Bokor admits that he did “not undertake[] a detailed analysis of the mechanism involved and all the different parameters” impacting whether and how MgO might crystallize on CoFeB. *Id.*, 152:17-153:15. Bokor admitted it would take an “extensive independent study [to] answer questions about the precise mechanisms for the formation of the highly oriented MgO on any particular surface” like amorphous CoFeB—and he *never did* that study. *Id.*, 153:2-15.

3. Nagahama, Inaba, and Tonouchi do not provide a sufficient basis for Bokor's testimony.

To demonstrate a reasonable expectation of success in meeting the claimed MgO(001) layer, Bokor needed to show that POSAs reasonably expected MgO to form as crystalline(001) at the surface with amorphous CoFeB. EX2085, 123:18-22 (Bokor admitting); EX1046, 4. The evidence Bokor cited shows that MgO(001) does *not* form at the interface with every amorphous material. Bokor's testimony thus fails Rule 702(b) and should be excluded. *EcoFactor*, 137 F.4th at 1346 ("Where... the relevant evidence is contrary to a critical fact upon which the expert relied, the... court fails to fulfill its responsibility as gatekeeper by allowing the expert to testify at trial.").

Bokor cited MgO "seed layer" teachings in Nagahama and a new reference Inaba (EX1098). EX1105, ¶¶14-16 and 20-22. Bokor admitted "seed layers" are not MgO *barrier* layers as claimed. *Id.*, ¶13. The *claimed* MgO(001) layer must be crystalline(001) at the interface with the surface on which it was formed. EX2085, 123:18-22 (Bokor admitted); EX1046, 4. Nagahama's and Inaba's seed layers are amorphous at the interface with the surface on which the MgO was formed and became crystalline only at a distance away from that surface. EX1105, ¶20 (Bokor admitted for Nagahama); Nagahama (EX1027), Fig. 12 and [0056]-[0059]; Inaba (EX1098), 2373 ("MgO initial layer shows no clear crystallographic structure up to around a few nm from the Si substrate"). Thus, Nagahama and Inaba show that

MgO(001) did **not** form at the interface with surface on which it was formed as required to form the claimed MgO(001) layer.

Bokor cited Tonouchi (EX1099)’s statement that MgO(001) is known to form “regardless of substrate selection.” EX1105, ¶¶17-19 (*citing* EX1099, 962). Again, to meet the ***claimed MgO layer*** the MgO must be crystalline(001) at the interface with the surface on which it was formed. EX2085, 123:18-124:5; EX1046, 4. Tonouchi does **not** say—and did not show—that MgO(001) would form at an interface “regardless of substrate selection.” Instead, ***Tonouchi teaches the opposite***. Tonouchi deposited MgO on multiple substrates. EX1099, 962-964. Bokor seized on MgO(001) allegedly forming at the surface of a single substrate (SiO₂)—which Tonouchi attributed to “structural surface deformation” on the SiO₂. EX1105, ¶19; EX1099, 964. Bokor ignored Tonouchi’s teaching that MgO(001) did **not** form at the surface of two other substrates (InP and GaAs). EX1099, 963-964. Tonouchi demonstrates that MgO(001) does **not** form at the interface with all substrate materials. This ***refutes*** Bokor’s testimony that MgO(001) was reasonably expected to form at the surface with CoFeB because it does so at the surface with every material. “Where... the relevant evidence is contrary to a critical fact upon which the expert relied, the... court fails to fulfill its responsibility as gatekeeper by allowing the expert to testify at trial.” *EcoFactor*, 137 F.4th at 1346.

4. Wulff, Wang, and Yoon do not provide a sufficient basis for Bokor's testimony.

Bokor cited Wulff (EX1036)'s teaching that MgO(001) formed on alumina, sapphire, and float glass. EX1105, ¶17; EX1036, 150. Bokor ignores that Wulff only achieved MgO(001) in films with thickness exceeding 100 nm that are not relevant to the MgO barrier layer in an MTJ. EX1036, 150; EX2053, ¶¶153-154. Bokor cites Wulff's reference to MgO growth "regardless of the substrate selection" wherein—after a sentence citing Tonouchi (Wulff reference 8)—Wulff reprints *Tonouchi's* language. EX1036, 148. As discussed *supra* §I.A.3, Tonouchi taught that MgO(001) did **not** form at the *interface* with every substrate surface on which it is grown as required to form the claimed MgO barrier layer.

Bokor alleged that Yoon (EX1040) cited Wang 1997 (EX1097) to support Yoon's alleged assertion that MgO(001) forms "regardless of the substrate materials." EX1105, ¶11, citing Yoon, 2840. Wang 1997 studied forming MgO(001) on a single substrate material, Si₃N₄, and has no teaching that MgO(001) would form "regardless of the substrate materials." EX1097, 2955. Yoon's statement that MgO(001) formed "regardless of the substrate" was not, as Bokor contends, a general teaching but referred to the MgO film growth on the Si(111), Si(100), GaAs(100), and fused quartz substrates that Yoon investigated. Yoon, 2840, Fig. 1(b). Yoon **does not say**—and **did not investigate** whether—MgO(001) would form on every amorphous material or "regardless of substrate"

other than the particular (non-CoFeB) substrates that Yoon investigated.

5. Bokor’s reliance on phantom findings is inadmissible.

Bokor purported to rely on “experts” who allegedly said MgO(001) “would grow on any amorphous surface.” EX2085, 176:25-178:4. On its face this testimony is unreliable because no Bokor-cited reference says that. *Supra* §§I.A.1, I.A.3-I.A.4. The evidence does not support—and contradicts—the critical fact that forms the entire basis of Bokor’s opinion. That fails Rule 702(b) and renders Bokor’s testimony inadmissible. *EcoFactor*, 137 F.4th at 1346 (testimony is inadmissible where “the relevant evidence is contrary to a critical fact upon which the expert relied”). No credible scientist would have alleged that MgO(001) forms on amorphous surfaces that they did not test, particularly given that crystal formation is complicated and critically dependent on the substrate material. EX2085, 154:13-155:2, 178:5-179:4 (Bokor admitting). Bokor cited references showing that MgO(001) formed on a small number of substrates, then drew the entirely unsupported and unreliable inference that this somehow meant MgO(001) would form on any and every amorphous substrate including CoFeB.

Bokor’s willingness to adopt a phantom teaching from “*experts who were presumably familiar*” with all of [the] details of MgO crystal formation and allegedly stated MgO(001) would form “on any amorphous substrate” (EX2085, 176:25-178:4) is particularly unreliable because the evidence Bokor’s declaration

cited demonstrates it is not true. E.g., *supra* §I.A.3 (Nagahama, Inaba and Tonouchi all taught that MgO(001) did **not** form at the interface with at least some surfaces).

B. Bokor’s Testimony Is Not the Product of Any Scientific Principle or Method.

Bokor’s testimony is not the product of any reliable scientific method or principle. Rule 702(c). Bokor’s “analysis” was limited to citing “references” Bokor alleged taught “that results obtained [] in that particular study indicated that [MgO(001)] would grow on any amorphous surface. And [CoFeB] falls within the category of any amorphous surface.” EX2085, 180:22-181:7, 176:25-177:19 (similar). Bokor “relied on statements in the literature by *experts who were presumably familiar* with all of those details that stated that [MgO] growth would proceed on any amorphous substrate.” *Id.*, 176:25-178:4. But as explained above, not one of the statements that Bokor cites involved MgO(001) formation on amorphous CoFeB and not one supports a general statement that MgO(001) was expected to form on the surface of amorphous CoFeB. Bokor’s testimony relies on misrepresenting the literature he cites.

On the other hand, Aboelfotoh (EX2062) explained why—consistent with his results that MgO had “random orientation” when deposited on an amorphous substrate and grown up to 50 nm thickness (EX2062, 624, discussed EX2053, ¶159)—a POSA would **not** have expected MgO to form with (100) texture on

amorphous CoFeB. Aboelfotoh explained that where deposit ions (i.e., Mg and O) had a “high binding energy” with a “substrate surface” the deposition would achieve “no preferred orientation” (i.e., no crystalline texture) due to “the random arrangement of substrate atoms.” EX2062, 625. Consistent with Aboelfotoh’s description of a “random arrangement of substrate atoms,” Bokor testified that an amorphous material—like amorphous CoFeB—“is virtually completely disordered,” i.e., the atoms are randomly arranged. EX2086, 74:11-75:1. By contrast, Aboelfotoh explained that “if the interfacial interaction between the deposit ions and the substrate atoms is weak,” MgO(100) could be expected to form on the substrate to minimize MgO interfacial and surface free energy. EX2062, 625.

Bokor was “familiar” with Aboelfotoh (EX2085, 182:6-11) but *never considered or applied* this principle in forming his opinion. Bokor never considered—and at deposition *refused* to consider—how a difference in Mg and O deposit ion binding energy with amorphous CoFeB, rather than with SiO₂, Si₃N₄, or “glass,” would create an expectation that no preferred MgO texture would form on amorphous CoFeB (i.e., the MgO would form with grains having random orientation). EX2085, 186:4-187:4 (“I can’t answer that question.”); *id.*, 182:12-185:6. This fails Rule 702(c) and (d). Indeed, Bokor could not even explain what “interfacial energy” or “surface free energy” was (*id.*, 185:10-186:3), confirming (*infra* §I.C)

his testimony fails Rule 702(a).

C. Bokor Has No Specialized Knowledge Helpful to Understand MgO Formation on Amorphous CoFeB.

Bokor’s failure to meet any reliability criteria in Rule 702(b)-(d)—and his inability and/or unwillingness to apply the principles articulated in the literature (or even understand many of the factors relevant to crystal formation)—is not surprising because he is not qualified to opine on thin film crystal formation under Rule 702.

While Bokor might have expertise in some area, he admits that he has no expertise that qualifies him to opine that POSAs would have reasonably expected MgO(001) to form on amorphous CoFeB because it allegedly formed on different (non-CoFeB) amorphous surfaces. “Testimony on subject matters unrelated to the witness’s area of expertise is prohibited by Rule 702.” *Louis Vuitton Malletier v. Dooney & Bourke*, 525 F. Supp. 2d 558, 642 (S.D.N.Y. 2007); *see also XpertUniverse v. Cisco Sys.*, No. 09-cv-157, 2013 WL 865974, at *3 (D. Del. Mar. 7, 2013) (excluding expert testimony “beyond [the witness’s] expertise and knowledge, and therefore in the realm of speculation”).

1. Bokor admits he is “no expert.”

When asked to explain crystal formation without a lattice match from a substrate he admitted “*I’m no expert. I’m no crystal grower.*” EX2018, 77:9-78:3; *see also* EX2085, 156:23-157:11 (Bokor has a “limited understanding” of the

parameters impacting crystal formation), 185:10-186:3 (Bokor does not understand many of the factors impacting crystal formation), 173:4-176:23 (Bokor does not know what kind of bond Mg, O, or MgO would form with CoFeB).

Bokor admitted that Bowen's crystalline Fe(001) layer acted as a template for MgO(001) to form atop it because "the lattices of the two layers match." EX2018, 76:4-21. In Petitioner's Ground 1 combination that replaced Bowen's Fe(001) layer with amorphous CoFeB, the amorphous CoFeB would not provide any lattice match to promote MgO(001) formation. But when asked what would happen when MgO was deposited with no lattice match from the layer it was formed on (i.e., the combination's amorphous CoFeB), Bokor admitted *he lacked the expertise to answer*. *Id.*, 77:9-78:3. He was only "somewhat familiar" with "how crystal layers grow one on top of each other when there is not commensurate lattice constants" and because he is "*no expert*" and "*no crystal grower*" he "can't really answer" the question. *Id.*

Bokor's own admissions preclude WD from showing that he had any specialized expertise helpful to understanding MgO formation on amorphous CoFeB. This fails Rule 702(a) and renders Bokor's testimony inadmissible.

2. Bokor misrepresents and purports to parrot the opinion of others that are "presumably" qualified.

Bokor simply adopted alleged opinions of others he believed to be "experts." That fails Rule 702(a). Bokor alleged that an unidentified reference taught "that

results obtained [] in that particular study indicated that [MgO(001)] would grow on any amorphous surface. And [CoFeB] falls within the category of any amorphous surface.” EX2085, 180:22-181:7; 176:25-177:19 (similar). Rather than provide any independent analysis, Bokor “relied on statements in the literature by *experts who were presumably familiar* with all of those details that stated that [MgO] growth would proceed on any amorphous substrate.” *Id.*, 176:25-178:4; *id.*, 153:6-11 (“I have given opinions based on prior art findings. I have not formed independent opinions[.]”). Rule 702 does not permit Bokor to adopt without independent analysis the alleged opinions of others he assumes were “experts.” “[T]he entirety of [an expert’s] testimony cannot be the mere repetition of ‘the out-of-court statements of others.’” *United States v. Luna*, 649 F.3d 91, 105 (1st Cir. 2011); *see also Eberli v. Cirrus Design Corp.*, 615 F. Supp. 2d 1357, 1364 (S.D. Fla. 2009) (The “expert must make some findings and *not merely regurgitate another expert’s opinion.*”).

Bokor also misrepresents the literature. Bokor purported to rely on “experts” who allegedly said MgO(001) “would grow on any amorphous surface.” EX2085, 176:25-178:4. But no expert said that. Bokor’s willingness to adopt a phantom teaching from “*experts who were presumably familiar* with all of [the] details of MgO crystal formation and allegedly stated MgO(001) would form “on any amorphous substrate” (EX2085, 176:25-178:4) is particularly unreliable because

the evidence Bokor’s declaration cited demonstrates it is not true. *Supra* §§I.A.1, I.A.3-I.A.5.

Bokor’s opinion fails to comply with *any* Rule 702 requirement. The failure to meet any individual prong of Rule 702 confirms that the testimony is unreliable and renders Bokor’s testimony inadmissible.

II. BOKOR’S TESTIMONY IS INADMISSIBLE UNDER RULE 701.

Bokor’s testimony fails each prong of Rule 701 and is inadmissible. Bokor’s testimony is not rationally based on his “perception” and fails Rule 701(a).

EX2085, 177:13-178:4 (Bokor has no personal knowledge but “relied on statements in the literature” by others), 153:6-11 (similar). Bokor’s testimony is also not “helpful to clearly... determining a fact in issue” (Rule 701(b)) for the reasons explained *supra* §I. Bokor admits that crystal formation is “a very complicated business.” EX2085, 178:15-179:3. WD cannot evade Rule 702 by offering Bokor’s unreliable expert testimony as lay opinion. Rule 701(c); *United States v. Garcia*, 413 F.3d 201, 215 (2d Cir. 2005) (“If the opinion rests ‘in any way’ upon scientific, technical, or other specialized knowledge, its admissibility must be determined by reference to Rule 702, not Rule 701.”).

Respectfully submitted,
Godo Kaisha IP Bridge I

Date: December 29, 2025

By: /Adam R. Wichman/

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CERTIFICATE OF SERVICE UNDER 37 C.F.R. § 42.6 (e)(4)

I certify that on December 29, 2025, a copy of the foregoing document, including any exhibits filed therewith, is being served via electronic mail, as previously consented to by Petitioner, upon the following:

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