

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.: IPR2024-01494

Patent No.: 11,968,909 B2

Heard before:

THE HONORABLE Justin T. Arbes

THE HONORABLE Monica S. Ullagaddi

THE HONORABLE John D. Hamann

TELEPHONIC HEARING

October 24, 2025

4:00 p.m. to 4:25 p.m.

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Heard Before:

THE HONORABLE Justin T. Arbes, THE HONORABLE Monica S.
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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JUDGE ARBES: This is Judge Arbes. I have with me on the line Judge Ullagaddi and Judge Hamann. This is a conference call in Case IPR2024-01494. Is there counsel for Petitioner on the line?

MS. ARMOND: Yes, Your Honor. This is Michelle Armond of Armond Wilson representing Petitioner, Western Digital, and I'm joined by my colleague and counsel of record, Amy Han.

JUDGE ARBES: And counsel for Patent Owner?

MR. GIUNTA: Good afternoon, Your Honor. This is Rich Giunta from Wolf Greenfield for Patent Owner IP Bridge, and I'm joined by my colleagues, Gerald Hrycyszyn and Adam Wichman.

JUDGE ARBES: Counsel for Patent Owner, I understand you have a court reporter on the line as well.

MR. GIUNTA: We should have one on the line. Is there a court reporter?

COURT REPORTER: Yes. Hi, this is Sue Baxter. I'm the court reporter.

1 JUDGE ARBES: Counsel, please file a
2 transcript of the call as an exhibit in the
3 proceeding as soon as it's available?

4 MR. GIUNTA: Yes, Your Honor.

5 JUDGE ARBES: So the call today was
6 requested by Patent Owner to seek authorization
7 to file a motion to strike, which I understand is
8 opposed by Petitioner, and then a sir reply
9 expert declaration, which I understand is not
10 opposed by Petitioner. So why don't we take both
11 of those requests in turn.

12 So Patent Owner, if you could explain
13 the basis for the motion strike?

14 MR. GIUNTA: Yes, thank you, Your
15 Honor. So I wanted to begin by acknowledging
16 that we recognize that the trial practice guide
17 says motions to strike are an exceptional remedy
18 that will rarely be granted. But we believe it's
19 warranted here.

20 So the trial practice guide says a
21 motion to strike may be appropriate where quote,
22 A reply clearly relies on a new theory, not
23 included in prior briefing, and where addressing
24 this new theory during oral hearing would

1 prejudice the opposing party, end quote. That's
2 precisely what we have here.

3 And the reply clearly relies on a new
4 theory. The petition has two grounds. For each
5 ground, the petition made a single argument for
6 why opposer allegedly would have lowered the
7 barrier in its primary reference. Page 34 for
8 ground one, and pages 57 to 58 for ground two.

9 Petitioner alleged that lowering the
10 barrier height would improve TMR. It is
11 undisputed that improving TMR means increasing
12 TMR. So that alleged motivation is the basis on
13 which Your Honor's instituted this trial.

14 The institution decision at page 14
15 quotes the Petitioner's argument about improving
16 TMR. And at page 18, Your Honors found the
17 Petitioner has supported its contention that
18 opposer would have been motivated to lower the
19 barrier height, to quote, Increase the TMR, end
20 quote.

21 The POR pages 34 to 37 demonstrated the
22 Petitioner did not cite a single piece of
23 evidence supporting its assertion that opposer
24 would have expected lowering the barrier height

1 to increase TMR.

2 At deposition, Petitioner's expert
3 admitted he was unaware of any teaching in the
4 prior art that lowering barrier height would
5 increase TMR. POR page 35 cites more than 10
6 times where he admitted this.

7 The POR then explained that this is
8 fatal to both of the grounds, because the
9 Petitioner cited no evidence to support the only
10 motivation the Petitioner alleged for lowering
11 barrier height.

12 At deposition, Petitioner's expert,
13 Dr. Bokar, advanced a new argument for why
14 opposer allegedly would have lowered the barrier
15 height. He said that based on a prior reference
16 called Butler, opposer would have expected that
17 lowering the barrier height would result in some
18 change in TMR, but the opposer would not know
19 whether that change would cause the TMR to
20 increase or undesirably decrease.

21 He said that given the known desire to
22 increase TMR, opposer would have tried lowering
23 the barrier height to see whether it increased or
24 decreased. The reply was not to spend the

1 Petitioner's assertion that opposer would have
2 expected lowering the barrier height to increase
3 TMR.

4 Instead, what the reply does is expand
5 on this new theory that Dr. Bokar introduced at
6 deposition, and the reply relies on new evidence.
7 It's not cited in the petition, and it wasn't
8 mentioned by Dr. Bokar at his deposition.

9 The reply alleges that Butler provides
10 the motivation to lower barrier height because
11 Butler allegedly teaches that this would change
12 TMR, despite oppose it being uncertain about how
13 the TMR would change because it could increase or
14 it could decrease. And they argued that this was
15 quote, Legally sufficient motivation, end quote.

16 JUDGE ARBES: I'm sorry to interrupt,
17 but can you point us to the specific pages of the
18 reply that you're referring to?

19 MR. GIUNTA: Yes, Your Honor. So reply
20 24 to 25, they argue that Butler provides the
21 motivation to lower the barrier height. And then
22 there are arguments about being uncertain about
23 the impact and whether it could increase or
24 decrease, and that this is legally sufficient

1 motivation that appears in two places. It's
2 pages seven to eight, and then 13 to 15.

3 May I continue, Your Honor?

4 JUDGE ARBES: Yes. And I presume that
5 those are the pages of the reply that you would
6 be seeking to strike?

7 MR. GIUNTA: We are -- yes. I guess, I
8 mean, what the trial practice guide says is that
9 the board may not sort of parse a paper and
10 decide what's okay and what's not. But we are,
11 we are looking to strike their argument that the
12 motivation to lower the barrier height is derived
13 from Butler, is based on a teaching that was
14 uncertain, and that that was legally sufficient.

15 JUDGE ARBES: Okay. Yes, please
16 proceed.

17 MR. GIUNTA: Thank you, Your Honor. So
18 to purportedly support these arguments, the reply
19 relies on new evidence, including a new exhibit,
20 1106, new portions of Butler that are not signed
21 in the petition and were not mentioned by
22 Dr. Bokar at his deposition. That includes
23 figures three to four cited in the reply at 14,
24 pages two to three, they're cited in the reply at

1 page 15, and their assertion that there's some
2 quote, Data, end quote, in Butler that features a
3 relationship between TMR and barrier height.

4 So our expert looked at this evidence
5 and vehemently disagrees with Dr. Bokar. So we
6 seek the certified declaration from our expert to
7 address this new evidence, and as Your Honor
8 noted, Petitioner does not oppose a certified
9 declaration. But we don't believe that
10 authorizing the certified declaration is
11 sufficient, and we think motion to strike is
12 warranted, too.

13 As I mentioned, motion to strike is
14 appropriate if the reply clearly relies on a new
15 theory that is not in prior briefing, and we're
16 addressing this at all argument would be
17 prejudicial. So we believe it's beyond dispute
18 that the reply relies on a new theory that's not
19 included in prior briefing.

20 Trial practice guide explains that,
21 quote, Petitioner may not submit new evidence or
22 argument in reply that it could have prevented
23 earlier, for example, to make out a prima facie
24 case of unpatentability, end quote.

1 It then explains that an indication
2 that a new issue has been raised includes relying
3 on new evidence to advance, quote, Newly raised
4 rationale to combine the prior art references
5 that was not expressed in the petition, end
6 quote.

7 So as we explained, their reply relies
8 on new evidence to advance a new prima facie
9 obviousness argument based on a new rationale
10 combined for references. During our meet and
11 confer, Western Digital never identified any
12 place where the petition argued that the
13 motivation to lower the barrier height was to
14 achieve some uncertain change in TMR, or where
15 they ever made the legal argument that this was
16 legally sufficient motivation. That's because
17 these arguments are not in the petition.

18 That's reinforced by the fact that when
19 the reply tries to support these new arguments
20 that Butler teaches lowering the barrier height
21 to change TMR in some uncertain way, especially
22 needed to rely entirely on new evidence that's
23 not in the petition, including the evidence that
24 I identified a few moments earlier.

1 JUDGE ARBES: Okay, I think -- I think
2 we understand your position. I'd like to get
3 some clarification, though. Exactly what relief
4 is being requested? So you're requesting
5 authorization for a motion to strike, what will
6 that motion be arguing should be -- should be
7 stricken?

8 MR. GIUNTA: We're going to ask that
9 you strike the portions of the reply that advance
10 a new motivation combine the references based
11 upon Butler, and then specifically the assertion
12 that Butler teaches that changing the barrier
13 height would have an uncertain impact on TMR, and
14 then legally -- and that that was legally
15 sufficient motivation.

16 JUDGE ARBES: Okay. And that is at the
17 pages that you pointed us to earlier?

18 MR. GIUNTA: Yes.

19 JUDGE ARBES: I see. And are you
20 seeking to strike anything else in the record,
21 any of the exhibits you mentioned, new evidence,
22 the expert declaration that was filed with the
23 reply? Are you just seeking to strike the reply
24 or anything else?

1 MR. GIUNTA: Well, the new evidence
2 that they are relying on to make this in property
3 work as well.

4 JUDGE ARBES: I see. Can you tell us
5 exactly what that is?

6 MR. GIUNTA: So the new evidence is
7 Exhibit 1106. The new portions of Butler that
8 they rely on, which are figures three to four,
9 pages two to three, and some alleged quote, Data,
10 end quote.

11 JUDGE ARBES: Counsel, correct me if
12 I'm wrong, but Butler is part of the record.
13 That was part of the record with the petition,
14 right?

15 MR. GIUNTA: They cited page one of
16 Butler in the petition, Your Honor, to make a
17 different argument. So the petition cites Butler
18 to teach that Butler theorized that a high TMR
19 could be achieved by using magnesium oxide
20 barrier layers because of something called
21 electron symmetry.

22 JUDGE ARBES: Counsel --

23 MR. GIUNTA: It's disputed --

24 JUDGE ARBES: Sorry. I think I

1 understand that. But you mentioned Butler.
2 You're not seeking to strike Butler itself,
3 right?

4 MR. GIUNTA: No. We're seeking to
5 strike their reliance in the reply on these parts
6 of Butler that are not mentioned in the petition
7 and relied on to get different arguments.

8 JUDGE ARBES: Okay. So the purpose of
9 the call today is just to determine whether we
10 should authorize a motion to strike. But what
11 I'm trying to find out is exactly what you
12 believe should be stricken so that we can make
13 that determination.

14 So you mentioned the portions of the
15 reply, Exhibit 1106. Anything else?

16 MR. GIUNTA: Yes. Their reliance on
17 pages two to three of Butler.

18 JUDGE ARBES: Again, Counsel, we're not
19 talking about striking Butler. So you are -- you
20 pointed at the portions of the reply that you
21 believe should be stricken. Another exhibit. Is
22 that the universe of what you would be --

23 MR. GIUNTA: I understand. Then, yes,
24 the reply declaration, the portion of the reply

1 declaration that advances this new argument,
2 citing those new portions of Butler.

3 JUDGE ARBES: Which paragraph of the
4 reply declaration?

5 MR. GIUNTA: So they have section four
6 of the reply declaration, and in particular
7 section 4A(1) talks about Butler. Certainly
8 paragraph seven to 12. And I apologize, Your
9 Honor, I have not really thought through every
10 single paragraph. That would be something we
11 would identify in the future.

12 JUDGE ARBES: Okay. Well, why don't we
13 hear from -- is there anything else more that
14 you'd like to say about the sir reply issue?

15 MR. GIUNTA: The other -- the only
16 thing I would like to explain, Your Honor, to
17 explain the prejudice. There's some fairly
18 unique facts here that I think are relevant that
19 I think Your Honor should be aware of.

20 JUDGE ARBES: Okay. Just a brief
21 explanation, please, and then we'll hear from
22 Petitioner and then you'll get the last word.

23 MR. GIUNTA: Right. So, their argument
24 is based on their expert's assertion that Butler

1 has this teaching about barrier height impacting
2 TMR. At deposition, he admitted that Butler's
3 paper doesn't explore the effect of changing
4 barrier height on TMR, quote, Within the confines
5 of the paper.

6 So this Butler paper, Your Honor, it's
7 undisputed. This is a famous paper that has been
8 cited more than for almost 3,000 times. And when
9 we asked their expert at deposition, he admitted
10 he was -- he could not find a single reference
11 that has characterized this Butler famous paper
12 as having this teaching in it.

13 In addition, their expert testified
14 Butler was an extremely complicated reference.
15 He said it's a very advanced theory, and that he
16 had a hard time determining from Butler what the
17 impact of TMR would be from changing the barrier
18 height.

19 So what we're talking about in terms of
20 prejudice, is that we would have to spend a
21 substantial portion at the oral hearing talking
22 about this extremely complicated reference that's
23 been cited 3,000 times that he admits no one has
24 ever seen this teaching in this reference, and

1 that he, in the deposition for the first time,
2 never discussed in petition, invented this
3 teaching in this reference.

4 So it would be highly prejudicial for
5 us to have to spend our time at the oral hearing
6 refuting this new theory.

7 JUDGE ARBES: Okay. That is the
8 information that you would like to also provide
9 in the sir reply, in the sir reply declaration,
10 right?

11 MR. GIUNTA: Well, for sure, we're
12 going to have our expert explain to you why he's
13 wrong, right. The reason why we think a motion
14 to strike is appropriate is, as the trial
15 practice guide says, we're going to have to spend
16 a lot of our time at the oral hearing explaining
17 why this theory is wrong. And that's highly
18 prejudicial, and it's very clearly not in the
19 petition.

20 JUDGE ARBES: All right. Why don't we
21 hear from the Petitioner next and then we may
22 have a few additional questions. Counsel for
23 Petitioner.

24 MS. ARMOND: Good afternoon, Your

1 Honor. This is Michelle Armond for Petitioner.
2 So I think we can dispose of this pretty quickly.
3 IP Bridge has moved their motion to strike
4 because they've requested a sir reply expert
5 declaration, which we do not oppose.

6 And according to the trial practice
7 guide, and also the decisions of this Court,
8 which I can cite to you, sir replies are
9 recognized as an alternative to a motion to
10 strike.

11 All of these points that you have
12 heard, IP Bridge can make them in their sir reply
13 and to the unopposed expert declaration that they
14 have -- that they will be providing. And most
15 importantly, the motion to strike is improper,
16 because all of these points about Butler and
17 motivation to combine are all proper rebuttal.

18 If you look at paragraphs seven to 12
19 in Dr. Bokar's reply to the declaration, which is
20 Exhibit 1105, as you can see there, he is
21 expressly responding to opinions that Dr. Ross
22 offered for the first time in the Patent Owner
23 response.

24 And the key, or one of the key opinions

1 that Dr. Ross offered for the first time was,
2 quote, Butler does not provide any data
3 connecting a barrier height with a TMR.

4 And that is just factually inaccurate.
5 And so all Dr. Bokar and our sir reply, which has
6 already been filed, has pointed out is that
7 Butler, in figures three and four, show exactly
8 what that relationship is and how it affects the
9 Fermi energy.

10 And so all of these opinions are
11 actually relying and responding to a factually
12 inaccurate statement by Dr. Ross that Butler does
13 not have this data. And that is the same as
14 Exhibit 1106, which is just further support that
15 Dr. Bokar cited to show that the Fermi energy,
16 and of course, the barrier height, therefore, can
17 be changed by introducing oxygen stake at
18 (indiscernible).

19 And if you have more questions, but
20 that's all I have.

21 JUDGE ARBES: Just one question. If
22 you could respond to Patent Owner's argument
23 about pages seven to eight of the reply that
24 mentioned the uncertain theory. Can you respond

1 to that?

2 MS. ARMOND: One second, Your Honor.
3 You said pages seven to eight?

4 JUDGE ARBES: Yes. Patent Owner had
5 argued that that is part of a new theory that you
6 are making for the first time in your reply.

7 MS. ARMOND: It's not. And if you look
8 at the sir reply that we filed, we explained in
9 the petition, and we do cite to our petition at
10 34 to 35, that our petition showed the motivation
11 was coming from Butler and (indiscernible)
12 recognition of higher TMRs with magnesium oxide,
13 MTJs and (indiscernible) was providing the
14 mechanism. And our expert, Dr. Bokar, if you
15 look on page six, we walk through this. And so
16 our discussion here is showing how this
17 motivation was in our petition originally.

18 So there's no basis to strike. If IP
19 Bridge wants to respond, they have a sir reply
20 brief.

21 JUDGE ARBES: Thank you. Counsel for
22 Patent Owner, can we hear your response? And can
23 you respond specifically to Petitioner's
24 assertion that the motion to strike is really

1 moot given the agreement to have a sir reply
2 declaration in that process?

3 MR. GIUNTA: Yes, Your Honor. So it's
4 not moot for the reasons I explained, right. The
5 trial practice guide says it's appropriate if the
6 argument is clearly new and if it would be
7 prejudicial to us. And so it would be
8 prejudicial to us to have to devote our time
9 responding to an argument that's clearly new.

10 Counsel pointed to a place in the
11 petition. You asked her about the uncertain
12 theory. I will note she didn't point to you any
13 place where they said it would have an uncertain
14 effect. Page 34 of the petition that she cites
15 talks about increasing TMR. It talks about
16 improved TMR. There's no discussion about
17 uncertainty.

18 She also cited the paragraph about
19 Butler. If Your Honor reads that paragraph, what
20 it says is Butler and McClan (phonetic) thought
21 you'd achieve higher TMR through improved
22 symmetry. It is undisputed that it has nothing
23 to do with barrier height.

24 So she did not show you any place in

1 the petition where this argument is made, because
2 it's not there.

3 Then the last thing I'll respond to,
4 Your Honor, is she suggested that this is proper
5 reply because it's responding to what our expert
6 has to say. And this is what happened in the
7 case. We demonstrated in the POR that the
8 Petitioner's argument was not correct. So what
9 they did is their expert came up with a new
10 theory at deposition.

11 She is suggesting that puts a Patent
12 Owner in a hot seat choice situation. If we
13 didn't have our expert address whatever he said
14 in the deposition, and we came now and asked for
15 a declaration, we for sure would hear from them
16 that, Oh, you were on notice of this. Our expert
17 explained this theory. Why didn't you have your
18 expert respond to it.

19 So to the extent she understood the
20 theory as explained in the deposition, she
21 disagreed with it and explained why that's wrong.
22 None of that is a license for them to come back
23 and reply and change the argument that they made
24 in the petition.

1 And so again, we seek to strike it
2 because it's undeniably new. I don't think she
3 has demonstrated to you that these arguments are
4 in the petition, and it'd be prejudicial for us
5 to respond at the oral hearing.

6 JUDGE ARBES: Thank you, Counsel.
7 Anything else from the parties before the panel
8 confers?

9 MR. GIUNTA: Not from us.

10 JUDGE ARBES: The parties can stay on
11 the line for just a moment, and we'll be back
12 shortly.

13 (Off the record)

14 JUDGE ARBES: This is Judge Arbes
15 again. The panel is going to take the matter
16 under advisement. We will issue in the order,
17 what is authorized, if anything.

18 One last question that we had for
19 Patent Owner is, for the motion to strike, what
20 number of pages and timing would you request
21 should that motion be authorized?

22 MR. GIUNTA: We can have it filed
23 within a week, Your Honor. If we filed it in a
24 week, and you gave them a week to oppose, and

1 then a week for us to reply, that would be two
2 months before the oral hearing. Your Honors,
3 together, will want it. I mean, that's standard
4 motion practice of 15 pages would certainly be
5 sufficient. If you wanted it to be shorter, I
6 suppose we could probably do it in 10 pages.

7 JUDGE ARBES: And what is the timing,
8 remind me when the sir reply is due?

9 MR. GIUNTA: The sir reply is due --

10 MR. HRYCYSZYN: November 19th, Your
11 Honor.

12 MR. GIUNTA: -- November 19th.

13 JUDGE ARBES: So that timing would
14 obviously not put the board in a position to be
15 able to decide the motion to strike before the
16 sir reply then.

17 MR. GIUNTA: That's right. I mean,
18 being aware of how rare this remedy is, we have
19 not -- we are not asking that the board make the
20 decision before the sir reply declaration,
21 although we would love for that to happen. Given
22 the practical circumstances, we would be content
23 if you could rule on it before the oral hearing.

24 JUDGE ARBES: Okay. Counsel for

1 Petitioner, do you have a response just on the
2 number of pages and timing that's being
3 requested?

4 MS. ARMOND: We would want the same
5 amount of time and the same number of pages. And
6 if it's helpful to the court, I have two
7 decisions from the PTAB finding a sir reply with
8 a motion to strike, which I can give you the
9 citations, if it's helpful.

10 JUDGE ARBES: That's fine, Counsel.
11 We're aware of the case law. Okay. I think we
12 have everything from the parties. Anything else
13 to discuss before we complete the call?

14 MR. HRYCYSZYN: Yes, Your Honor --

15 MR. GIUNTA: Sorry, Gerry. Let me just
16 quickly before -- so Your Honor, is it my
17 understanding that the board still hasn't decided
18 on the sir reply declaration, even though it's
19 unopposed?

20 JUDGE ARBES: The panel will confer on
21 that and get you a decision as soon as possible.

22 MR. GIUNTA: All right. Thank you,
23 Your Honor. And then go ahead. My colleague's
24 general position, there was an email on related

1 cases that I think he wanted to mention. Whether
2 now would be a good time to address that email as
3 well?

4 JUDGE ARBES: Yeah, the board will
5 respond to that in due course. That has to do
6 with separate cases, I believe.

7 MR. GIUNTA: That's correct.

8 JUDGE ARBES: Okay. So we do encourage
9 the parties to confer with each other before
10 contacting the board, but we'll respond
11 separately to that issue.

12 MS. ARMOND: And, Your Honor, to that
13 end, on that second email, Patent Owner Counsel
14 omitted our position in these related cases, and
15 so if the board would like our full position, I
16 can email that after this hearing.

17 JUDGE ARBES: Why don't we deal with
18 that separately. This call today was just about
19 this case.

20 MS. ARMOND: Thank you, Your Honor.

21 JUDGE ARBES: Okay. We thank both
22 parties. That concludes the call for today.

23 MR. GIUNTA: Thank you, Your Honor.

24 MS. ARMOND: Thank you. Have a good

1 weekend.

2

3 (Whereupon, the hearing was adjourned

4 at 4:25 p.m.)

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C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF PLYMOUTH, SS

I, Susan Baxter, a Professional Court
Reporter and Notary Public in and for the Commonwealth
of Massachusetts, do hereby certify:

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

I FURTHER CERTIFY that I am neither a
relative nor employee of nor counsel for any of the
parties, nor am I financially interested directly or
indirectly in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my
hand and Notary Seal this 25th day of October, 2025.

Susan Baxter

Susan Baxter, Notary Public

My Commission Expires:

February 12, 2032

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