

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

PATENT OWNER'S MOTION TO STRIKE

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2001	Kittel, C., <i>Introduction to Solid State Physics</i> , 6th Edition, 1986, pgs. 13-15, 18, 23 (“Kittel”)
2002	Duke, C.B., <i>Tunneling in Solids</i> , Solid State Physics: Advances in Research and Applications, 1969, pgs. 1, 6-7, 34-35, 78-79 (“Duke”)
2003	Definition of “ferromagnetism,” Oxford English Reference Dictionary, Second Edition, pg. 513 (“Oxford English Reference Dictionary”)
2004	“Ferromagnetism,” The New Encyclopaedia Britannica: Volume 4, 15th Edition, 2003, pgs. 748-749 (“Britannica”)
2005	Zhu, J.G., et al., <i>Magnetic tunnel junctions</i> , Materials today, Volume 9, Number 11, November 2006, pgs. 36-45 (“Zhu”)
2006	Wulfhekel, W., et al., <i>Single-crystal magnetotunnel junctions</i> , Applied Physics Letters, Volume 78, Number 4, January 2001, pgs. 509-511 (“Wulfhekel”)
2007	Hard disk Market – Global Industry Analysis and Forecast (2025-2032), https://www.maximizemarketresearch.com/marketreport/global-hard-disk-market/63888/
2008	Yuasa citations, https://scholar.google.com/citations?view_op=view_citation&hl=en&user=kb5EQcsAAAAJ&citation_for_view=kb5EQcsAAAAJ:3fE2CSJlr18C
2009	Yuasa citations 2, https://scholar.google.com/citations?view_op=view_citation&hl=en&user=kb5EQcsAAAAJ&citation_for_view=kb5EQcsAAAAJ:kNdYIxmWkoC
2010	Wang, S.X., et al., <i>Magnetic Information Storage Technology</i> (Academic Press 1999) (Chapter 6)
2011	RESERVED

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2012	Parkin, S.P, et al., <i>Giant tunneling magnetoresistance at room temperature with MgO (100) tunnel barriers</i> , Nature Materials, 3 (2004), 862-867
2013	Transcript of Deposition of Jeffrey Bokor, Ph.D. (June 24, 2025)
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2015	Djayaprawira, D., et al., <i>230% room-temperature magnetoresistance in CoFeB/MgO/CoFeB magnetic tunnel junctions</i> , Applied Physics Letters, 86(9) (2005)
2016	Yuasa, S., et al., <i>High Tunnel Magnetoresistance at Room Temperature in Fully Epitaxial Fe/MgO/Fe Tunnel Junctions due to Coherent Spin-Polarized Tunneling</i> , Japanese Journal of Applied Physics, 43(4B), (2004) L588
2017	Yuasa, S., et al., <i>Giant room-temperature magnetoresistance in single crystal Fe/MgO/Fe magnetic tunnel junctions</i> , Nature Materials, 3(12) (2004), 868-871
2018	Statutory Disclaimer Under 37 C.F.R. § 1.321(a)
2019	Marrows, C.H., <i>Spin-polarised currents and magnetic domain walls</i> , Advances in Physics, 52(8), (2005) 585-713
2020	Tsymbal, E., et al., <i>Handbook of Spin Transport and Magnetism</i> , 2012
2021	Nagamine, Y, et. al., <i>Ultralow resistance-area product of $0.4 \Omega (\mu\text{m})^2$ and high magnetoresistance above 50% in CoFeB/MgO/CoFeB magnetic tunnel junctions</i> , Applied Physics Letters, 89 (2006), 16507
2022	Nakatani, T., et al., <i>Read sensor technology for ultrahigh density magnetic recording</i> , MRS Bulletin, Materials Research Society, 43(2), (2018) 106-111
2023	Jiang, B., et al., <i>Tunneling magnetoresistive devices as read heads in hard disk drives</i> , Journal of Magnetism and Magnetic Materials, 571 (2023) 170546

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2024	The 23rd (FY2022) Japan Society of Applied Physics Achievement Award Recipients (with English translation), The Japan Society of Applied Physics, https://www.jsap.or.jp/outstanding-achievementaward/recipients/recipients23
2025	JSAP Outstanding Achievement Award Recipients, The Japan Society of Applied Physics, https://www.jsap.or.jp/english/awards/outstanding-achievementaward/recipients
2026	2021 New Fellows, IEEE Japan Council, https://ieeejp.org/en/kaiin/fellow/fellow21.html
2027	JST owned patent wins Future Creative Invention Prize at the National Invention Award 2021, Japan Science and Technology Agency, https://www.jst.go.jp/report/2021/210525_e.html
2028	Dr. Shinji Yuasa profile, https://www.jst.go.jp/impact/sahashi/en/system/index.html
2029	AIST wins three Science and Technology Awards in the 2016 Minister of Education, Culture, Sports, Science and Technology Commendation for Science and Technology, https://www.aist.go.jp/aist_j/news/prize/pr20160412_3.html
2030	Yuasa, S., <i>Magnetoresistance and Spin-Transfer Torque in Magnetic Tunnel Junctions</i> , IEEE Transactions on Magnetics, IEEE Magnetics Society Distinguished Lecturers for 2012, Vol. 48, No. 1, 2012
2031	Shinji Yuasa – IEEE Magnetics Society, https://ieeemagnetics.org/contact/shinji-yuasa#biography
2032	AIST: 20th Tsukuba Prize winner, https://www.aist.go.jp/aist_j/news/prize/itemid025-000077.html
2033	Announcing the winners for “Tsukuba Prize,” “Esaki Leona Prize,” and “Tsukuba Encouragement Prize”: Ibaraki Prefectural Science and Technology Promotion Foundation (with English translation), https://www.tsukuba-sci.com/cms/?p=9853

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2034	AIST: 34th Inoue Harunari Prize, https://www.aist.go.jp/aist_j/news/prize/itemid025-000082.html
2035	RESERVED
2036	RESERVED
2037	Saito, Y. et al. <i>Correlation between barrier width, barrier height, and dc bias voltage dependences on the magnetoresistance ratio in Ir-Mn exchange biased single and double tunnel junctions</i> , Jpn J. Appl. Phys. 39, L1035–L1038 (2000)
2038	Maat, S., et al., <i>Physics and Design of Hard Disk Drive Magnetic Recording Read Heads</i> , Handbook of Spintronics, 2014
2039	Soukup, R.J., <i>Hot Electron Transport in Vacuum Deposited Thin Film Emission Diodes</i> , University of Minnesota, Ph.D., Physics, solid state, 1969, pgs. 1-209 (“Soukup-Dissertation”)
2040	U.S. Patent Application Publication No. 2006/0003185 A1
2041	J. C. Slonczewski, <i>Conductance and exchange coupling of two ferromagnets separated by a tunneling barrier</i> , Phys. Rev. B 39, 6995-7002 (1989)
2042	RESERVED
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2048	RESERVED
2049	RESERVED

Exhibit	Description
2050	RESERVED
2051	RESERVED
2052	RESERVED
2053	Declaration of Caroline A. Ross, Ph.D.
2054	<i>Curriculum Vitae</i> of Caroline A. Ross, Ph.D.
2055	U.S. Application No. 10/824835 File History (Partial)
2056	Citations to Butler: https://scholar.google.com/scholar?hl=en&as_sdt=0%2C22&q=Butler+et+al.%2C+Spin-dependent+tunneling+conductance+of+Fe%7CMgO%7CFe+sandwiches%2C+63+Phys.+Rev.+B+054416+%282001%29&btnG=
2057	Citations to Soukup: https://scholar.google.com/scholar?hl=en&as_sdt=0%2C22&q=Soukup+et+al.%2C+Voltage-Current+Characteristics+for+Electrical+Conduction+Through+Thin+MgO+Films%2C+41+J.+Appl.+Phys.+3229-+3236+%281970%29&btnG=
2058	Errata to EX2013
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2060-2071	RESERVED
2072	EX2024 - The 23rd (FY2022) Japan Society of Applied Physics Achievement Award Recipients (with English translation), The Japan Society of Applied Physics, https://www.jsap.or.jp/outstanding-achievementaward/recipients/recipients23 with Amended Certification of Translation [SUPPLEMENTAL EVIDENCE - NOT FILED]
2073	Certified English Translation of EX2029 - AIST wins three Science and Technology Awards in the 2016 Minister of Education, Culture,

Exhibit	Description
	Sports, Science and Technology Commendation for Science and Technology, <i>available at</i> https://www.aist.go.jp/aist_j/news/prize/pr20160412_3.html [SUPPLEMENTAL EVIDENCE - NOT FILED]
2074	Certified English Translation of EX2032 - AIST, “Winner of the 20th Tsukuba Award,” <i>available at</i> https://www.aist.go.jp/aist_j/news/prize/itemid025-000077.html [SUPPLEMENTAL EVIDENCE - NOT FILED]
2075	Certified English Translation of EX2034 - AIST: 34th Inoue Harunari Prize, <i>available at</i> https://www.aist.go.jp/aist_j/news/prize/itemid025-000082.html [SUPPLEMENTAL EVIDENCE - NOT FILED]
2076	RESERVED
2077	RESERVED
2078	Declaration of Dara Del Rosario [SUPPLEMENTAL EVIDENCE - NOT FILED]
2079	Transcript of October 24, 2025 Board Conference Call
2080	RESERVED
2081	RESERVED
2082	RESERVED
2083	RESERVED
2084	RESERVED
2085	RESERVED
2086	Transcript of Deposition of Jeffrey Bokor, Ph.D. (October 31, 2025)

I. STATEMENT OF RELIEF REQUESTED

Patent Owner (“IPB”) requests that the Board strike: (1) the below-identified arguments (Reply, 6-10, 13-16 and 23-25) alleging that Butler and/or Mathon motivated a POSA to lower barrier height in Bowen and Nagahama to achieve an uncertain impact on TMR which is legally sufficient motivation; and (2) new evidence: EX1106; EX1105, § IV (¶¶7-12); EX2013, 116:16-117:9, 119:15-124:11, 187:15-189:6; and EX2014, 39:11-14, 39:22-40:5, 214:24-215:4 and 216:15-17.

II. REASONS SHOWING GOOD CAUSE FOR REQUESTED RELIEF

A motion to strike is warranted where “a reply clearly relies on a new theory not included in prior briefing, and where addressing this new theory during oral hearing would prejudice the opposing party.” Trial Practice Guide (“TPG”), 80-81.

A. The Reply “Clearly Relies on a New Theory Not Included in Prior Briefing”

1. The Petition Alleged a POSA Would Have Lowered Barrier Height to Increase TMR

The Petition alleged a POSA was motivated to increase TMR, which IPB does not dispute. Petition, 33-37 and 57-59. The Petition alleged a POSA seeking a higher TMR would have lowered the barrier height in each primary reference—which IPB does dispute—and offered a single argument as to *why*: “[a]ccording to the equation for TMR, lowering the resistance (barrier height) for parallel electrons

(R_p) would **improve TMR**.”¹ Petition, 34; *see also id.*, 57-58 (similar). Improving TMR means increasing TMR. Petition, 34-35 (POSAs wanted to “increase TMR”).

The Petition’s “increase TMR” alleged motivation is the basis on which the Board instituted trial. Paper 9 (“DI”) at 14 (quoting the Petition’s argument about “**improv[ing]** TMR”), 17 (finding that in EX1024, ¶169 Dr. Bokor testified that lowering barrier height would lower R_p compared to R_{ap} and thereby “**improve[] TMR**”) and 18 (finding “sufficient support for [**Petitioner’s**] **contention**” that a POSA would have lowered barrier height to “**increase** the TMR”).

Bokor admitted that EX1024, ¶169—cited (DI, 17)—did **not** say lowering barrier height would lower R_p compared to R_{ap} and thereby increase TMR. EX2013, 133:11-20. The Petition cited **no evidence** supporting its assertion that a POSA would have expected lowering the barrier height to increase TMR. Paper 18 (“POR”), 34-37. The Board preliminarily found that EX1035 (cited Petition, 34) appeared to support the Petition’s argument that lowering barrier height would “improve TMR.” DI, 17-18. The POR showed that EX1035 taught the opposite of what Petitioner alleges—that lowering barrier height would undesirably **decrease** TMR. POR, 37-43. In response, despite the Petition’s “improve TMR” sentence having cited it, the Reply alleges a POSA would not have expected EX1035 to “predict[] the impact of barrier height on TMR in MgO.” Reply, 12.

¹ All emphasis is added.

Dr. Bokor admitted repeatedly that he was unaware of *any* teaching in the prior art that lowering barrier height would increase TMR. POR, 34-35. The POR explained that this was fatal to the grounds because the Petition cited no evidence supporting its assertion that a POSA would have lowered the barrier height in Bowen or Nagahama because they expected this to increase TMR. POR, 47.

2. The Reply Does Not Defend the Petition’s Argument and Instead Improperly Offers Different Motivation to Combine Arguments Based on New Evidence

Unable to defend the Petition’s argument, the Reply advances three new arguments, based on new evidence, alleging that: (1) *Butler* would have motivated a POSA to lower the barrier height in Bowen/Nagahama to increase TMR because (2) *Butler* allegedly teaches this would change TMR in an “*uncertain*” way which (3) is “*legally sufficient* motivation.” Reply, 6-10, 13-16, 23-25.

a. The Reply’s Assertions that the Motivation to Lower Barrier Height Was to Achieve an “Uncertain” Change in TMR Which is “Legally Sufficient Motivation” Are Clearly New Arguments

The Reply newly argues that the alleged motivation for its combinations is that POSAs would have expected “TMR would change” but be “*uncertain*” if TMR would increase or *undesirably decrease* which is “*legally sufficient* motivation.” Reply, 7-8 (“barrier height [was] an identified and predictable (if *uncertain*) strategy to increase TMR”; POSAs expecting TMR to change “even if they were *not ‘certain* which way it would go” is “legally sufficient motivation”;

“*50/50 chance*” of increasing TMR suffices). Petitioner’s counsel responded to the Board’s question about whether this “uncertain theory” was new with a non-answer. EX2079, 18:21-19:20 (alleging the Petition, 34-35 cited Butler). Petitioner never identified anyplace on pages 34-35 where the Petition argued that the motivation was to achieve an “uncertain” impact on TMR which was allegedly “legally sufficient motivation.” That’s because the Petition never made these arguments. Petition, 34-35 (the motivation was to “improve”/“increase” TMR).

That the Reply’s arguments are new is reinforced by the Reply citing authority (*KSR*) the Petition’s challenge to claims 5-6 never cites (Reply, 7) and by the Reply relying on new evidence to make these arguments: Exhibit 1106 (Reply, 15), new portions of Butler (EX1044) not cited in the Petition including “data” (Reply, 14), Figs. 3-4 (*id.*) and pages 2-4 (*id.*, 15-16), and new testimony from Dr. Bokor not cited in the Petition including his Reply declaration EX. 1105 (Reply, 15-16) and deposition testimony EX2013-EX2014 (Reply, 6-10, 13-16 and 24).

b. The Assertion that Butler Motivated Lowering Barrier Height Because it Taught an Uncertain Change to TMR is an Improper New Argument

The Reply’s allegation that “the motivation to lower barrier height comes from...Butler/Mathon” (Reply, 24-25) is new. The *Petition’s* assertion that lowering barrier would improve TMR did *not* cite Butler—it cited EX1035, EX1024 ¶169, the ‘909 Patent (EX1017), EX1027 (Nagahama) and EX1055

(Wang). Petition, 34 and 58. The Reply never disputes that none of this Petition-cited evidence says that lowering barrier height would increase TMR. POR, 34-35.

Petitioner alleged a motion to strike was not warranted because “this motivation was in our petition originally.” EX2079, 19:7-17 (alleging the Petition, 34-35 “showed the motivation was coming from Butler[’s]” teaching of higher TMR from MgO). To the extent “this motivation” referred to a motivation to lower barrier height, the Petition never relied on Butler for that. That is reinforced by the fact that in trying to make its belated argument that Butler allegedly teaches a relationship between barrier height and TMR, the Reply bases that argument on disclosure in Butler the Petition never cited: Figs. 3-4 and pages 2-4. Reply, 14-16.

The Petition’s challenge to the barrier height claims cited just the *first page* of each of Butler and Mahon in a single sentence that says nothing about lowering barrier height: “Butler and Mathon taught that MgO barriers would achieve higher TMRs *due to improved symmetry matching between the MgO barrier and ferromagnetic electrodes*, facilitating tunneling of parallel electrons across the barrier compared to antiparallel tunneling. EX1044 [Butler] at 1; EX1046 [Mathon] at 1; EX1024 [Bokor] ¶170.” Petition, 34; *id.*, 58 (similar for Ground 2).

“Improved symmetry” refers to coherent tunneling enhancement (POR, 12-14) based on electron symmetry between the ferromagnetic layers and the barrier layer and “had nothing to do with barrier height” (*id.*, 36). The Reply never

disputed this. Indeed, Petitioner admits “symmetry” refers to “matching between the electrodes and MgO” (Reply, 9) and endorses Dr. Ross’s explanation that electrons with different symmetries decay at different rates (*id.*, 11). Dr. Bokor’s admission that Butler does not describe the effect of barrier height on TMR “within the confines of the paper” (EX2013, 71:22-72:7) confirms that Butler’s “symmetry matching” teaching is unrelated to barrier height because “symmetry matching” is undeniably “within the confines of” Butler. Butler, 1 (Abstract). Butler predicted that **increasing** barrier **thickness**—the width of the insulator layer which is indisputably a different property from barrier **height** (EX2086, 116:13-16; EX2013, 70:20-71:13, 74:21-75:14, 150:9-151:1)—would improve TMR. Butler, 1. The Petition cited Butler only for Butler’s theory that higher TMRs could be achieved using MgO barriers due to a phenomenon—symmetry matching (Petition, 34)—that is indisputably unrelated to barrier height (POR, 36).

The Reply newly argues that “Butler provides **data** leading one of skill to conclude that lowering barrier height would change TMR” (Reply, 14-16) and that “the motivation to lower barrier height comes from...Butler/Mathon” (*id.*, 24-25). *See also id.*, 7-8 (“Butler’s predictions ... rendered an identified and predictable (if **uncertain**) strategy to increase TMR”). These new arguments rely on new evidence not cited in the Petition: EX1106, new disclosures in Butler (pages 2-4, Figs. 3-4 and “data”), Bokor’s **reply** declaration (EX1105) (all *cited* Reply, 14-16)

and Bokor's deposition testimony EX2013-EX2014 (*cited* Reply, 7-8 and 24).

The Petition's citation to Butler does not entitle Petitioner to cite *different* parts of Butler in Reply to advance a *different* argument. *Ariosia Diagnostics v Verinata Health, Inc.*, 805 F.3d 1359, 1367 (Fed. Circ. 2015) (affirming Board's refusal to consider Reply arguments relying "on previously unidentified portions of a prior-art reference to make a meaningfully distinct contention" and *citing* Rule 104(b)(5)). Rule 104 imposes requirements on the Petition's "content" and requires ("must") that the Petition identify "*specific portions* of the *evidence* that support the challenge." 37 C.F.R. §42.104(b)(5). The Petition never cited Butler pages 2-4, Figs 3-4, or "data" that the Reply belatedly cites. Reply, 7-8 and 14-16.

The Reply impermissibly "proceed[s] in a new direction" by "rais[ing] a new issue" in an attempt to belatedly establish *prima facie* obviousness. TPG, 73-74. The Reply's new arguments that Butler teaches that "lowering barrier height would change TMR" in an "uncertain" way which is "legally sufficient motivation" (Reply, 6-10, 13-16 and 23-25) are clearly improper new arguments.

c. Unveiling its New Unpatentability Theory at Dr. Bokor's Deposition Does Not Save Petitioner

Dr. Bokor unveiled at deposition Petitioner's new theory that Butler allegedly teaches an uncertain relationship between barrier height and TMR and that a "50/50 chance" that TMR might improve was sufficient motivation. *See e.g.*, Reply, 7-8 and 24 (citing deposition testimony in EX2013-EX2014). The POR

explained why this new theory was not in the Petition, should not be considered, and why Dr. Bokor is wrong about Butler's teachings. POR, 47-51.

Petitioner told the Board that a motion to strike is not warranted because the Reply properly responds to Dr. Ross's testimony refuting the new theory Dr. Bokor unveiled at deposition. EX2079, 17:14-18:18. That is baseless. Because the Board had not yet ruled that Petitioner's argument is new and will not be considered, IPB needed to address the merits in case the Board ultimately rules that the argument is proper in Reply. Petitioner's suggestion that having its expert unveil a clearly new argument at deposition presents a Hobson's choice so IPB must only argue that the argument is new *or* address the merits is baseless.

This motion to strike is warranted because the "reply clearly relies on a new theory not included in prior *briefing*" (TPG, 80-81) in an attempt to make a *prima facie* case of unpatentability by establishing a new rationale for combining the references (*Id.*, 73-74). The new argument unveiled at Dr. Bokor's deposition was not "included in prior *briefing*" and should be struck. *Id.*, 80-81.

B. IPB Would Be Prejudiced By Having to Respond to Petitioner's New Theory at Oral Hearing

A motion to strike is appropriate "where addressing this new theory during oral hearing would prejudice the opposing party." TPG, 81. While the sur-reply declaration allows IPB to respond to the merits of Petitioner's new *evidence* in case the Board ultimately considers it on the merits, the motion to strike protects

IPB from prejudice from having to address Petitioner's clearly new *arguments* and evidence at oral hearing. If the Board does not strike Petitioner's new arguments, IPB will be prejudiced by having to devote substantial time at oral hearing explaining why Petitioner's new arguments fail on the merits. There are unique facts here compounding that prejudice.

Petitioner's new arguments are based on the naked say-so of Petitioner's expert that Butler teaches that lowering barrier height would impact TMR. At deposition Dr. Bokor admitted: "Butler's paper *doesn't* explore [the effect of changing barrier height on TMR] within the confines of the paper." EX2013, 71:22-72:7. Butler is an indisputably famous paper that has been cited almost *three thousand* times, yet Bokor admitted he could not find a *single* prior art reference characterizing Butler as having the teachings he purportedly finds relating TMR to barrier height. POR, 49-50; EX2014, 41:16-25 ("I haven't found a publication that explicitly discusses that").

If Butler taught a relationship between barrier height and TMR, Dr. Bokor should have been able to explain what that alleged relationship is. He could not. Dr. Bokor said a POSA would have thought it "equally likely" that TMR would undesirably decrease as increase: "*I'm not completely sure* ... Butler is a pretty *complicated* paper. It's a *very advanced level of theory*. ... I have a *hard time* being able to *hand-wave* my way one way or the other." EX2013, 72:8-25. Dr.

Bokor should not “hand-wave” at all. But that is precisely what he did. Bokor’s “analysis” is based on moving the Fermi energy level on Butler’s Figs. 3-4. EX1105, ¶11. But Bokor admitted “it is *not quite as simple* as moving the energy level on static Figures 3 and 4.” *Id.* Bokor says “*Butler’s calculations would need to be repeated to see what happens.*” *Id.* But Bokor never did the “calculations” he said “would need” to be done for *any* lower barrier height value, let alone the 0.33 eV barrier height the Grounds are based on. Petition, 34-35, 57-58.

It would be highly prejudicial to IPB to have to devote a significant portion of its oral hearing time addressing the Reply’s motivation to combine argument because it is clearly new and based on *nothing but the naked say-so of Petitioner’s expert* who allegedly finds a phantom teaching about an “uncertain” TMR/barrier height relationship in a “complicated” paper he admits “doesn’t explore” that relationship, and where no one has ever attributed such a teaching to this famous paper despite it having been cited almost three thousand times.

III. CONCLUSION

The “clearly new” and “prejudice” requirements for granting this motion are met. TPG, 81. The Reply arguments and evidence cited *supra* § I should be struck.

/Richard Giunta /
Richard Giunta, Reg. No. 36,149

Dated: November 4, 2025

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

I certify that on November 4, 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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