

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 EXCLUDE EVIDENCE

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I. STATEMENT OF RELIEF REQUESTED

Pursuant to 37 C.F.R. § 42.64(c), Patent Owner (“IPB”) requests that the Board exclude EX1105, ¶¶ 8 and 10-12 as inadmissible under FRE 701 and 702.

II. INTRODUCTION

Dr. Bokor’s Reply Declaration offered the new opinion that “Butler would have motivated one of skill to explore lower barrier heights to improve TMR” (EX1105, ¶8) because Butler Figs. 3-4 allegedly show that “a change in barrier height was expected to affect majority and minority channel tunneling” (*id.*, ¶10), which “unquestionably will change TMR” (*id.*, ¶11), so Butler allegedly “connects changing barrier height to changing TMR” (*id.*, ¶12). For that testimony to be admissible as an expert opinion under FRE 702, Petitioner must show that Dr. Bokor has specialized expertise that qualifies him to offer that opinion and that his opinion reflects an application of reliable principles and methods to sufficient facts or data. Petitioner did neither. Dr. Bokor was unqualified to offer his opinion that Butler taught that changing the barrier height would change TMR and his opinion is facially unreliable. It fails to comply with FRE 702 and should be excluded.

Dr. Bokor admitted that Butler never mentions a TMR/barrier height relationship: “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. Bokor was not qualified to read into Butler an alleged teaching of a TMR/barrier height

relationship because he admitted he lacks “*the level of expertise required* to analyze and evaluate [Butler’s] gory details.” EX2086, 48:3-16. Bokor admitted Butler is “complicated” and POSAs could not determine from Butler how changing barrier height might impact TMR. EX2013, 64:9-21, 72:8-25, 123:5-23; EX2014, 37:2-24. He said POSAs 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.” EX2013:72:13-25. Because Bokor was not “qualified as an expert by knowledge, skill, experience, training, or education” to offer his opinion that Butler teaches a TMR/barrier height relationship, that opinion testimony is inadmissible under FRE 702.

Dr. Bokor’s opinion testimony is also inadmissible because it does not reflect a reliable application of reliable methods and principles to the facts of the case as required by FRE 702(c)-(d). IPB’s expert, Dr. Ross, explained that “Butler’s model predicts nothing about the effect of lowering the barrier height on TMR.” EX2053, ¶92. She explained that “Butler does not provide any data for any structure other than the one the authors modeled and a POSA would not have drawn any conclusions beyond those reached by Butler, let alone any conclusion that would have motivated a POSA to lower the barrier height in Bowen’s or Nagahama’s MTJs.” *Id.*, ¶96. Bokor was unqualified to dispute Ross’s testimony

because he lacks the “expertise required to analyze and evaluate [Butler’s] gory details.” EX2086, 46:18-48:16.

Given that he lacks the expertise to understand Butler’s “details,” Bokor said he could only “trust in this paper that it’s well accepted by others who are those experts. And I just go by [Butler’s] ... **bottom line conclusions.**” *Id.*, 48:3-16; *see also id.*, 47:10-16 (“I give opinions based on the **bottom line** -- essentially the **higher level conclusions** of the [Butler] paper, without going into the gory details”). But Bokor’s opinion that Butler teaches a TMR/barrier height relationship is the furthest thing from “trust[ing]” or “accept[ing]” a “bottom line” “higher level conclusion[]” of Butler because Bokor admitted that Butler never “explores” a TMR/barrier height relationship (EX2013, 71:22-72:7) and never even mentions barrier height (EX2086, 65:15-66:3).

Rather than accept a conclusion in Butler, Bokor’s opinion was based on moving the Fermi level on Butler’s Figs. 3-4. EX1105, ¶11. But Bokor admitted “it is **not quite as simple** as” that. *Id.* Bokor said “**Butler’s calculations would need to be repeated to see what would happen**” to TMR if the barrier height were lowered. *Id.* But Bokor never “repeated” Butler’s “calculations” because he lacked the expertise to do so. EX2086, 103:5-15 (“I can’t repeat” Butler’s calculations).

Butler taught that to predict the TMR of an Fe/MgO/Fe MTJ, it was “**necessary to have a reliable physical model**” of that MTJ. EX1044, 1. Bokor

alleged a POSA would have changed the physical structure of the MTJ that Butler modelled by introducing oxygen defects into the MgO layer to lower barrier height. EX1105, ¶9. Bokor admitted that Butler did not model the effect of oxygen defects. EX2086, 33:8-17, 43:25-44:4, 55:6-56:3, 91:22-92:10, 132:23-134:25. To understand what (if any) impact a lower barrier height resulting from MgO defects would have had on TMR, Bokor admitted a “different” model was needed but because he is “*not an expert in this*” Bokor could not opine on “how much” Butler’s model would need to change. EX2086, 56:4-15. Bokor admitted that a model accounting for MgO defects would have been far more complicated than Butler’s model (*id.*) and that building such a model was beyond Bokor’s capabilities. EX2086, 60:16-61:7 (“*I couldn’t do that*”), 63:11-65:7 (Bokor looked for but failed to find anybody in the art who modified Butler’s model to account for oxygen defects); 85:25-87:8 (POSAs “would not have the capability to make a calculation at this level of sophistication”).

Bokor did not follow Butler’s methodology for calculating what the TMR would be for an MTJ with an MgO barrier layer because Butler’s methodology required “a reliable physical model” (EX1044, 1) that Bokor lacked the expertise to make for Bokor’s proposed MTJ with oxygen defects in the MgO layer. Bokor’s opinion that Butler would have motivated POSAs to lower barrier height to improve TMR because Butler allegedly taught a TMR/barrier height relationship

does not reflect a reliable application of reliable methods and principles as required by FRE 702(c)-(d). It should be excluded for that additional reason.

III. BOKOR OPINED THAT BUTLER TEACHES A TMR/BARRIER HEIGHT RELATIONSHIP

Dr. Bokor opined that “Butler would have motivated one of skill to explore lower barrier heights to improve TMR” (EX1105, ¶8) because Butler Figs. 3-4 allegedly show that “a change in barrier height was expected to affect majority and minority channel tunneling” (*id.*, ¶10) which “unquestionably will change TMR” (*id.*, ¶11), so Butler “connects changing barrier height to changing TMR” (*id.*, ¶12). Petitioner relied on this new testimony. Paper 24 (“Reply”), 14-16.

Bokor’s opinion was based on moving the Fermi level on Butler’s Figs. 3-4 to purportedly change the density of states (DOS). EX1105, ¶11. That is a meaningless exercise that Butler nowhere describes. EX2087, ¶¶8-12, 24-32. Instead, Butler says that to calculate the TMR of an Fe/MgO/Fe MTJ, it was “necessary to have a reliable physical model” of that MTJ. EX1044, 1. Butler developed a “model” for an Fe/MgO interface and “used [this model] for calculations of the electronic and magnetic structures ... described in Sec. III.” EX1044, 1. Butler’s Section III includes Figs. 3-4 which show the result of Butler’s model-based calculations. EX1044, 2-3 (DOS “was calculated” from the model); EX2087, ¶¶13-16; EX2086, 23:5-11. Bokor admitted that determining the impact of lowering the barrier height on TMR is not as “simple” as moving the

Fermi level in Butler's Figs. 3-4. EX1105, ¶11. That's because the Fermi level is a property of a particular structure – it is not a variable POSAs could simply “mov[e].” EX2087, ¶¶8-12.

Bokor proposed changing Butler's Fermi level by introducing oxygen defects into the MgO to lower barrier height. EX1105, ¶9. That would yield a *different* physical structure than Butler modelled. EX2087, ¶16; EX2053, ¶96. Butler provides *no* information about the DOS or Fermi level of Bokor's modified physical structure because Butler *only* modelled *defect-free* MgO. EX1044, 1-3; EX2053, ¶¶47-49, 95-96, 101-102; EX2086, 33:8-17 (Bokor admitting Butler “didn't model vacancy defects”), 43:25-44:4, 55:6-56:3, 91:22-92:10 (admitting Butler's Figs. 3-4 “do not account ... for ... oxygen vacancies”), 132:23-134:25.

To understand what (if any) impact a “lower” barrier height resulting from MgO defects would have had on TMR, POSAs would have needed to develop a *different model* than Butler's. EX1044, 1-3; EX2087, ¶¶13-16; EX2086, 56:4-15 (Bokor admitted a “different” model was needed but because he is “*not an expert in this*” Bokor could not opine on “how much” would have to change). A different model accounting for MgO defects would have been more complicated than Butler's model (EX2087, ¶16) and Bokor admitted that developing such a model was beyond Bokor's and a POSA's capabilities. EX2086, 60:16-61:7 (“*I couldn't do that calculation*” to model oxygen vacancies which is “even more complicated”

than Butler's model), 96:12-99:17 (same), 63:11-65:7 (Bokor failed to find anybody who modified Butler's model to account for oxygen defects); 85:25-87:8 (POSAs "would not have the capability to make a calculation at this level of sophistication" and "I can't testify as to how much they would have to change the model"), 49:14-50:2 (Bokor is "*not an expert*" so he was "uncomfortable" opining on the sensitivities of changing Butler's model), 52:6-53:1 (same).

Bokor admitted POSAs would have expected MgO defects to cause scattering which would degrade TMR. EX2086, 93:20-96:11. Yet, Bokor alleges it was "reasonable to expect" that lowering barrier height *might* "overcome the degradation of TMR that comes from scattering" despite POSAs being unable to "predict" if that were true and despite Bokor not doing any experimentation to test his theory. EX2086, 93:20-96:11; *see also id.*, 99:18-101:3 (admitting neither Bokor nor POSAs could figure out how oxygen defects would affect Butler's calculations), 79:12-82:19 (POSAs could not "predict" the impact on TMR of a lower barrier height or from scattering due to defects).

Bokor admitted that Butler never "explores" the TMR/barrier height relationship Bokor allegedly finds in Butler (EX2013, 71:22-72:7) and that Butler never even mentions barrier height (EX2086, 65:15-66:3). Bokor also admitted that Butler's 24-year-old paper is "famous" – having been cited almost *three thousand times* — and that *no* publication has ever characterized Butler as

teaching a TMR/barrier height relationship. POR, 49-50; EX2014, 41:16-25 (“I haven’t found a publication that explicitly discusses that”); EX2086, 21:4-22:7.

IV. IPB TIMELY OBJECTED TO DR. BOKOR’S TESTIMONY

IPB timely objected to EX1105, ¶¶ 8 and 10-12 as inadmissible. Paper 26, 1.

V. REASONS SHOWING GOOD CAUSE FOR REQUESTED RELIEF

A. Petitioner Bears the Burden to Show Admissibility Under FRE 702 of Bokor’s Opinion that Butler Teaches a TMR/Barrier Height Relationship

The Federal Rules of Evidence apply. 37 C.F.R. § 42.62(a). To offer an expert opinion, the witness must be “qualified as an expert by knowledge, skill, experience, training, or education.” FRE 702. Additionally, a qualified expert’s opinion is only admissible if the proponent demonstrates that: “(a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert’s opinion reflects a reliable application of the principles and methods to the facts of the case.” *Id.* Petitioner must demonstrate admissibility of Bokor’s testimony by a preponderance of the evidence. *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579, 592 n.10 (1993).

B. Bokor Was Not Qualified to Offer an Expert Opinion that Butler Teaches a TMR/Barrier Height Relationship Because Bokor Lacks the Required Expertise

Bokor’s own admissions demonstrate that he was not qualified to offer an

expert opinion that Butler teaches an alleged TMR/barrier height relationship (EX1105, ¶¶8 and 10-12) because Bokor admitted he is “*not an expert in this*” and “*I do not have the level of expertise required* to analyze and evaluate [Butler’s] gory details.” EX2086, 48:3-16, 56:4-15.

Even if Bokor meets the qualifications of a POSA (EX1024, ¶29), “being a [POSA]” does not “automatically entitle[] a witness to testify as an expert.” *Sundance, Inc. v. DeMonte Fabricating Ltd.*, 550 F.3d 1356, 1363 (Fed. Cir. 2008). A witness being qualified to offer expert opinions on some topics relevant to a case does not mean the witness can offer expert opinions on other topics on which the witness lacks specialized expertise. *Id.*; *Lebron v. Sec’y of Fla. Dep’t of Child. & Fams.*, 772 F.3d 1352, 1368 (11th Cir. 2014). “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) (citing *Seatrax v. Sonbeck Int’l*, 200 F.3d 358 (5th Cir. 2000)). Determining admissibility under FRE 702 requires “‘compar[ing] the area in which the witness has superior knowledge, education, experience, or skill with the subject matter of the proffered testimony,’ and ensur[ing] that the expert will actually be testifying ‘on issues or subject matter within his or her area of expertise.’” *523 IP v. CureMD.Com*, 48 F. Supp. 3d 600, 642 (S.D.N.Y. 2014) (internal citations omitted); *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”).

Thus, even if Dr. Bokor was qualified to offer expert testimony on *some* subject matter in this case, he indisputably lacks the qualifications to offer his opinion that “Butler would have motivated one of skill to explore lower barrier heights to improve TMR” (EX1105, ¶8) because Butler Figs. 3-4 allegedly show that “a change in barrier height was expected to affect majority and minority channel tunneling” (*id.*, ¶10) which “unquestionably will change TMR” (*id.*, ¶11), so Butler “connects changing barrier height to changing TMR” (*id.*, ¶12). His own admissions demonstrate that he lacks the expertise required to offer that opinion.

Bokor admitted Butler is “complicated” and “very advanced” and that POSAs would not have been able to determine from Butler how changing barrier height might impact TMR. EX2013, 64:9-21, 72:8-25, 123:5-23; EX2014, 37:2-24. Bokor said POSAs would have thought it “equally likely” that lowering barrier height would cause TMR to 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.” EX2013:72:13-25. He admitted that determining the impact of lowering the barrier height on TMR was “*not quite as simple* as moving the energy level on [Butler’s] static Figures 3 and 4” and that “*Butler’s calculations would need to be repeated*

to see what would happen” (EX1105, ¶11) but he lacked the expertise to do so. EX2086, 103:5-15. Dr. Bokor admitted he is “*not an expert in this*” and “*I do not have the level of expertise required* to analyze and evaluate [Butler’s] gory details.” EX2086, 48:3-16, 56:4-15. That is reason enough why his new Reply opinion on Butler should be excluded under FRE 702. But there is more.

Bokor proposed changing Butler’s Fermi level by introducing oxygen defects into the MgO to adjust barrier height. EX1105, ¶9. But it is undisputed that Butler *only* modelled *defect-free* crystalline MgO. EX1044, 1-3; EX2053, ¶¶47-49, 95-96, 101-102; EX2086, 33:8-17 (Bokor admitting Butler “didn’t model vacancy defects”), 43:25-44:4, 55:6-56:3, 91:22-92:10 (admitting Butler’s Figs. 3-4 “do not account ... for the introduction of oxygen vacancies”), 132:23-134:25. To understand what (if any) impact a “lower” barrier height resulting from MgO defects would have had on TMR, POSAs would have needed to develop a *different model* than Butler’s. EX1044, 1-3; EX2087, ¶¶13-16; EX2086, 56:4-15 (Bokor admitting the model would have to be “different” but because he is “*not an expert in this*” Bokor could not say “how much” would have to change).

Developing a more complicated model to address MgO defects was beyond Bokor’s capabilities. EX2086, 60:16-61:7 (“*I couldn’t do that calculation*” to model oxygen vacancies which is “even more complicated”), 96:12-99:17 (same), 63:11-65:7 (Bokor looked for but failed to find anybody in the art who modified

Butler’s model to account for oxygen defects); 85:25-87:8 (POSAs “would not have the capability to make a calculation at this level of sophistication” and “I can’t testify as to how much they would have to change the model”), 49:14-50:2 (Bokor is “*not an expert*” so he was “uncomfortable” opining on the sensitivities of changing Butler’s model), 52:6-53:1 (same).

Dr. Bokor’s admission that he lacks the expertise required to evaluate Butler’s “details” and to modify Butler’s model to account for what (if any) impact oxygen defects would have had on TMR prohibits him, under FRE 702, from offering an expert opinion that Butler taught a TMR/barrier height relationship and would have motivated POSAs to lower barrier height – by adding oxygen defects (EX1105, ¶¶9) – to change TMR. *Id.*, ¶¶8 and 10-12. That opinion testimony should be excluded. *Louis Vuitton*, 525 F. Supp. 2d at 642 (“Testimony on subject matters unrelated to the witness’s area of expertise is prohibited by Rule 702.”); *XpertUniverse*, 2013 WL 865974 at *3 (excluding expert testimony “beyond [the witness’s] expertise and knowledge, and therefore in the realm of speculation”).

C. Bokor’s Opinion Testimony Fails to Meet FRE 702(c)-(d)

Even if Bokor is considered to be “qualified as an expert by knowledge, skill, experience, training, or education [to] testify in the form of an opinion” on Butler’s alleged teaching of a TMR/barrier height relationship, Bokor’s opinion fails to satisfy at least FRE 702(c)-(d) and should be excluded because it does not

reflect a reliable application of reliable principles and methods to the facts.

Because Bokor does “not have the level of expertise required to analyze and evaluate [Butler’s] gory details,” Bokor said he could “just go by [Butler’s] ... *bottom line conclusions*.” EX2086, 48:3-16; *see also id.*, 47:10-16 (“I give opinions based on the *bottom line* -- essentially the *higher level conclusions* of the [Butler] paper”). That provides no “reliable” basis under FRE 702(c)-(d) for Bokor’s opinion that Butler teaches a TMR/barrier height relationship because Bokor admitted that Butler never mentions a TMR/barrier height relationship: “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) and never even mentions barrier height (EX2086, 65:15-66:3).

Bokor did not rely on any high level conclusion from Butler. Instead, Bokor’s opinion was predicated on moving the Fermi level on Butler’s Figs. 3-4. EX1105, ¶11. Petitioner must show by a preponderance of the evidence that Bokor’s moving the Fermi level on Butler’s figures was a “reliable” method for determining the impact of barrier height on TMR. FRE 702; *supra* §V.A. Dr. Ross explained that it is not (EX2087, ¶¶8-32) and Petitioner cites no contrary evidence. Indeed, Bokor admitted “it is not quite as simple as” moving the Fermi level on Butler’s figures. EX1105, ¶11. Bokor said “Butler’s calculations would need to be repeated to see what would happen.” *Id.* But Bokor never did the “calculations”

Bokor himself said “need[ed]” to be done and Bokor admitted he lacked the expertise to do so. EX2086, 103:5-15 (“I can’t repeat” Butler’s calculations).

Butler taught that to determine the TMR for an Fe/MgO/Fe MTJ it was “***necessary to have a reliable physical model.***” EX1044, 1. It is undisputed that to understand what (if any) impact a “lower” barrier height resulting from MgO defects² would have had on TMR, POSAs would have needed to develop a ***different model*** because Butler’s model did not account for defects in the MgO layer. EX1044, 1-3; EX2087, ¶¶13-16; EX2086, 56:4-15 (Bokor admitting the model would have to be “different”). Bokor did not do that either because once again it was beyond his capabilities. EX2086, 60:16-61:7 (“***I couldn’t do that calculation***” to model oxygen vacancies which is “even more complicated” than Butler’s model), 103:5-15 (“***I can’t repeat***” ***Butler’s calculations***).

Thus, the “reliable principles and methods” Butler taught for calculating the TMR of an MTJ with an MgO barrier layer was to build a reliable physical model. EX1044, 1. Bokor did not follow that approach because he lacked the expertise to do so. Instead, Bokor moved the Fermi level on Butler’s Figs. 3-4 despite admitting “it is not quite as simple as” that, and despite admitting that “Butler’s calculations would need to be repeated to see would happen” (EX1105, ¶11), which Bokor failed to do because he lacked the expertise to do so (EX2086, 103:5-15).

² Bokor said that is how POSAs would have lowered barrier height. EX1105, ¶9.

Petitioner cannot carry its burden to show that Bokor applied “reliable principles and methods” under FRE 702(c)-(d). Indeed, if Bokor’s methodology provided a reliable indication of the impact on TMR of lowering the barrier height by introducing oxygen defects, Bokor would have been able to explain what a POSA would have expected that impact to be. He could not. Bokor said POSAs would have thought it “equally likely” that TMR would undesirably decrease as increase: “*I’m not completely sure* ... Butler is a pretty *complicated* paper. ... I have a *hard time* being able to *hand-wave* my way one way or the other.” EX2013, 72:13-25. Dr. Bokor should not have “hand-wav[ed]” at all. But that is precisely what he did to allegedly “find” a phantom teaching in Butler’s “famous” 24-year-old paper that no one else has ever seen despite Butler having been cited almost *three thousand times*. POR, 49-50; EX2014, 41:16-25 (“I haven’t found a publication that explicitly discusses that”); EX2086, 21:4-22:7. Bokor’s testimony identified *supra* §I is not the product of a reliable application of reliable principles and methods as required by FRE 702(c)-(d). It should be excluded for that additional reason.

D. Bokor’s Testimony is Inadmissible under FRE 701

Bokor’s testimony identified *supra* § I is inadmissible under FRE 701 because it is not a lay opinion “based on the witness’s perception.” FRE 701.

VI. CONCLUSION

IPB respectfully requests that the Board exclude EX1105, ¶¶8 and 10-12.

Respectfully submitted,
Godo Kaisha IP Bridge I

Date: December 29, 2025

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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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