

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 REPLY TO PETITIONER'S OPPOSITION TO
MOTION TO EXCLUDE EVIDENCE**

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¹ All emphasis is added throughout unless otherwise indicated.

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I. INTRODUCTION

IPB is well aware that the Board “rarely” excludes expert testimony. Paper 44 (“Opp.”), 1. But this is no ordinary case. Exclusion is compelled under FRE 702 because in reply Bokor offered a new opinion fabricated out of whole cloth.

II. WD MISSTATES THE LAW ON THE APPLICATION OF FRE 702

WD admits Bokor’s challenged testimony is inadmissible under FRE 701. Opp., 15. Yet, WD alleges it bears no burden to show that Bokor’s testimony is admissible as an expert opinion under FRE 702. Opp., 1-3. That is not the law.

WD does not dispute that the Federal Rules of Evidence apply in this proceeding. 37 C.F.R. § 42.62(a); Paper 43 (“Mot.”), 8. FRE 702 is explicit that a qualified witness may only offer an expert opinion “*if the proponent demonstrates to the court that it is **more likely than not** that*” the requirements of FRE 702(a)-(d) are met. WD’s assertion that it bears no burden to demonstrate that Bokor’s testimony is qualified under FRE 702 is plainly wrong. IPB has met its *different* “burden as the ‘moving party’” (Opp., 1-2) by showing that WD failed to demonstrate to the Board that Bokor’s testimony is admissible under FRE 702.

WD’s separate assertion that it is not “necessary” for the Board to apply FRE 702 (Opp., 1-3) invites legal error. FRE “702 applies whether the trier of fact is a judge or a jury.” *UGI Sunbury v. A Permanent Easement for 1.7575 Acres*, 949 F.3d 825, 832–34 (3d Cir. 2020). The Board has no “discretion” to weigh alleged

expert testimony that is inadmissible under FRE 702. WD cites no authority to the contrary. In *Siemens* and *Unified Patents* (cited Opp., 2) the Board ***applied*** FRE 702 and found the testimony admissible thereunder.

III. BOKOR WAS UNQUALIFIED TO OFFER THE CHALLENGED TESTIMONY

Lauding Bokor’s credentials to offer ***some*** expert testimony (Opp., 6-8) ignores that the law says this does not authorize Bokor to opine on topics on which he lacks specialized expertise (Mot., 9-10). IPB never alleged Bokor was not qualified to “opin[e] on Butler at all.” Opp., 13. Indeed, IPB has not sought to exclude other Bokor testimony on Butler. *See e.g.*, EX1024, ¶¶56, 64-65, 68, 141. WD’s attempt to cabin Bokor’s lack of expertise to insignificant details in Butler (Opp., 9-11) is belied by Bokor’s own admissions. He said he lacked the expertise² to do anything but trust Butler’s bottom line conclusions. Mot., 3. Given that, Bokor was unqualified to offer an opinion that fabricates a teaching in Butler of a TMR/barrier height relationship Butler nowhere describes “explicitly.” Opp., 14.

IV. WD FAILS TO SHOW COMPLIANCE WITH FRE 702(C)-(D)

Bokor’s challenged opinion testimony is inadmissible under FRE 702(c)-(d) because WD fails to demonstrate that it “reflects a ***reliable*** application of [***reliable***]

² Conversely, Ross never said she lacked the expertise to understand anything in Butler, including the technique she had not personally coded with. Opp., 13.

principles and methods to the facts of the case.” FRE 702(c)-(d); Mot., 12-15.

Bokor alleges Butler motivated POSAs to lower the barrier height to change TMR so POSAs would have introduced oxygen defects to lower the barrier height. Mot., 5-6. Butler taught that “to calculate the electronic and magnetic properties of Fe/MgO/Fe sandwiches it is **necessary to have a reliable physical model.**” Butler, 1. WD does not dispute that Bokor failed to follow Butler’s methodology because Bokor lacked the ability to make a reliable physical model accounting for oxygen defects. Mot., 14. WD’s assertion that a new model was “**not necessary** to extend ... the **teachings Butler already provided**” (Opp., 12) is directly refuted by Butler. Butler’s “teachings” were that a reliable model is “necessary.” Butler, 1; Mot., 14.

Rather than follow Butler’s reliable-model-based methodology, Bokor added lines to Butler’s Figs. 3-4 to artificially “move” the Fermi level. Mot., 5-6. WD never disputes: (1) Bokor admitted it was not “as simple” as that; (2) Butler’s calculations would need to be repeated which Bokor failed to do; (3) Bokor could not explain what the alleged TMR/barrier height relationship was that Butler allegedly taught; and (4) no one else has seen a TMR/barrier height relationship teaching in Butler despite Butler having been cited thousands of times. *Id.*, 13-15.

It is WD’s burden to show that Bokor’s approach is reliable. *Supra* § II. In the leading case on FRE 702, the Supreme Court listed factors judges should consider in assessing “whether the reasoning or methodology underlying the

testimony is ***scientifically valid***.” *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579, 592-94 (1993). Those factors include: (1) whether the methodology “can be (and has been) tested”; (2) whether it “has been subjected to peer review and publication”; (3) whether the methodology has a “known or potential rate of error”; and (4) whether it has gained “[w]idespread acceptance.” *Id.* (techniques with minimal support in the community “may properly be viewed with skepticism”).

WD did not even attempt to show that any of these factors is met. None is. There is no ***evidence of anyone having ever applied the methodology Bokor applied***.

Bokor fabricated this methodology out of whole cloth. That is the furthest thing from reliable expert testimony. *Daubert v. Merrell Dow Pharmaceuticals*, 43 F.3d 1311, 1319 (9th Cir. 1995) (on remand from USSC: “We’ve been presented with only the experts’ qualifications, their conclusions and their assurances of reliability. Under *Daubert*, that’s not enough.”).

WD’s suggestion that Bokor’s methodology is reliable because Dr. Ross “largely agrees” is extraordinary. Opp., 4-5. WD badly mischaracterizes Ross’s testimony. Ross disagreed with far more than “Bokor’s ultimate conclusion” and never said Butler disclosed a TMR/barrier height relationship “already known in the art.” Opp., 4-5. Ross’s sur-reply declaration (EX2087) is devoted to explaining why moving the Fermi level on Butler’s DOS figures is not based on any teaching in Butler – it could be done on any DOS figures (*id.*, ¶¶24-32) – and is a

meaningless exercise POSAs would not have engaged in (*id.*, ¶¶8 and 12) because the Fermi level is not a variable that can be moved and instead must be calculated for a specific structure (*id.*, ¶11). Because a different Fermi level would only result from a different structure, moving the Fermi level Butler calculated for its modelled structure does not “predict anything about” what the DOS states “would look like for an unknown different structure having a different Fermi energy” (*id.*, ¶12). Ross’s testimony does not help WD meet its burden. It does the opposite. Ross explains in detail why Bokor’s fabricated methodology is entirely **unreliable**.

The only evidence WD cites to support its assertion that Bokor’s methodology is reliable is Bokor’s naked say-so. Opp., 14 (“According to Dr. Bokor”). That fails as a matter of law. *Daubert*, 43 F.3d at 1319 (“the experts’ ... assurances of reliability” are “not enough”); *United States v. Pon*, 963 F.3d 1207, 1221 (11th Cir. 2020) (a bald ipse dixit assertion by the expert “cannot carry the *Daubert* burden”); *General Electric v. Joiner*, 522 U.S. 136, 146 (1997) (“Nothing in either *Daubert* or the [FRE] requires a district court to admit opinion evidence that is connected to existing data only by the ipse dixit of the expert.”).

V. CONCLUSION

Striking EX1105 ¶¶7-12 (Paper 29) would moot IPB’s Motion to Exclude. If that evidence is not struck, then EX1105 ¶¶8 and 10-12 must be excluded under FRE 702. It would be legal error to admit this testimony as an expert opinion.

Respectfully submitted,
Godo Kaisha IP Bridge I

Date: January 8, 2026

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

I certify that on January 8, 2026, 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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