

Filed on behalf of Western Digital Technologies, Inc.

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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
U.S. Patent No. 11,968,909

**PETITIONER'S OPPOSITION TO MOTION TO
TERMINATE *EX PARTE* REEXAMINATION**

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1027	European Patent Application No. EP1391942A1 to Nagahama et al. (“Nagahama”)
1028	Soukup et al., <i>Voltage-Current Characteristics for Electrical Conduction Through Thin MgO Films</i> , 41 J. Appl. Phys. 3229-3236 (1970) (“Soukup”)
1029	Japanese Patent Application Publication No. JP2002204004A to Sunai et al. (“Sunai”)
1030	Certified English Translation (with Translator Declaration) of Japanese Patent Application Publication No. JP2002204004A to Sunai et al. (“Sunai”)
1031	Simmons, <i>Generalized Formula for the Electric Tunnel Effect between Similar Electrodes Separated by a Thin Insulating Film</i> , 34 J. Appl. Phys. 1793-1803 (1963)
1032	Trasatti, <i>Electronegativity, Work Function, and Heat of Adsorption of Hydrogen on Metals</i> , 67 J. Chem. Soc. 229-236 (1972)
1033	Jullière, <i>Tunneling between ferromagnetic films</i> , 54A Phys. Letters 225-226 (1975)
1034	Miyazaki et al., <i>Giant magnetic tunneling effect in Fe / Al₂O₃ / Fe junction</i> , 139 J. Magnetism & Magnetic Materials L231-L234 (1995)
1035	Moodera et al., <i>Large Magnetoresistance at Room Temperature in Ferromagnetic Thin Film Tunnel Junctions</i> , 74 Phys. Rev. Lett. 3273–3276 (1995)
1036	Wulff et al., <i>Characterization of MgO Layers on Different Alumina and Glass Substrates by Grazing Incidence Diffractometry and Grazing Incidence X-ray Reflectometry</i> , 23 Surface & Interface Analysis 148-154 (1995)

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1037	Castanier et al., <i>Oxygen vacancies on MgO(100)</i> , 364 Surf. Sci. 1-16 (1996)
1038	Moodera et al., <i>Ferromagnetic–insulator–ferromagnetic tunneling: Spin-dependent tunneling and large magnetoresistance in trilayer junctions (invited)</i> , 79 J. Appl. Phys. 4724-4729 (1996)
1039	Tehrani et al., <i>Progress and Outlook for MRAM Technology</i> , 35 IEEE Trans. Magn. 2814-2819 (1999)
1040	Yoon et al., <i>Growth characteristics and surface roughening of vapor-deposited MgO thin films</i> , 60 Phys. Rev. 2839-2843 (1999)
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1042	Pacchioni, <i>Ab initio theory of point defects in oxide materials: structure, properties, chemical reactivity</i> , 2 Solid State Scis. 161-179 (2000)
1043	Heinrich et al., <i>Single Crystal Tunnel Junctions</i> , IEEE (2000)
1044	Butler et al., <i>Spin-dependent tunneling conductance of Fe MgO Fe sandwiches</i> , 63 Phys. Rev. B 054416 (2001)
1045	Klaauw et al., <i>Growth, structure, electronic, and magnetic properties of MgO/Fe(001) bilayers and Fe/MgO/Fe(001) trilayers</i> , 64 Phys. Rev. B. 134411 (2001)
1046	Mathon et al., <i>Theory of tunneling magnetoresistance of an epitaxial Fe/MgO/Fe(001) junction</i> , 63 Phys. Rev. 220403 (2001)
1047	Wulfhekkel et al., <i>Single-crystal magnetotunnel junctions</i> , 78 Appl. Phys. Letters 509-511 (2001)
1048	Bogicevic et al., <i>Effect of oxide vacancies on metal island nucleation</i> , 515 Surf. Sci. L481-486 (2002)
1049	Kim et al., <i>MRAM Technology for High Density Memory Application</i> , 2 J. Semicond. Tech. Sci. 185-196 (2002)
1050	Yuasa et al., <i>A large quantum-well oscillation of the TMR effect</i> , 35 J. Phys. D. 2427-2431 (2002)
1051	Meyerheim, et al., <i>Geometrical and Compositional Structure at Metal-Oxide Interfaces: MgO on Fe(001)</i> , 87 Phys. Rev. Letters 076102 (2001)

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1052	Faure-Vincent et al., <i>High tunnel magnetoresistance in epitaxial Fe/MgO/Fe tunnel junctions</i> , 82 App. Phys. Letters 4507-4509 (2003)
1053	Mitani et al., <i>Fe/MgO/FeCo(100) epitaxial magnetic tunnel junctions prepared by using in situ plasma oxidation</i> , 93 J. Appl. Phys. 8041-8043 (2003)
1054	Goniakowski et al., <i>Electronic States and Schottky Barrier Height at Metal/MgO(100) Interfaces</i> , 12 Interface Science 93–103 (2004).
1055	Wang et al., <i>70% TMR at Room Temperature for SDT Sandwich Junctions With CoFeB as Free and Reference Layers</i> , 40 IEEE Trans. Magn. 2269-2271 (2004)
1056	U.S. Patent Publication No. 2004/0136232A1 (“Hosomi”)
1057	Dieny et al., <i>Introduction to Magnetic Random-Access Memory</i> (IEEE Press 2017) (excerpts)
1058	Amodeo et al., <i>Dislocations and Plastic Deformation in MgO Crystals: A Review</i> , 8 Crystals 240 (2018)
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1062	U.S. Patent No. 7,270,896 (“Parkin”)
1063	Complaint, <i>Godo Kaisha IP Bridge I v. Western Digital Corporation</i> , Case No. 24-cv-00342-RGA (D. Del. Mar. 15, 2024) (without exhibits)
1064	Claim Chart for ’403 Patent, Exhibit D to Complaint, <i>Godo Kaisha IP Bridge I v. Western Digital Corporation</i> , Case No. 24-cv-00342-RGA (D. Del. Mar. 15, 2024)

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1065	Claim Chart for '263 Patent, Exhibit E to Complaint, <i>Godo Kaisha IP Bridge I v. Western Digital Corporation</i> , Case No. 24-cv-00342-RGA (D. Del. Mar. 15, 2024)
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1078	U.S. District Courts – Combined Civil and Criminal Federal Court Management Statistics (Dec. 31, 2023), https://www.uscourts.gov/statistics-reports/federal-court-management-statistics-december-2023 (excerpts)
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1083	U.S. Patent No. 8,914,970 ('970 Patent)
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1101	Transcript of Deposition of Caroline A. Ross, Ph.D., taken September 18, 2025
1102	Transcript of Deposition of Caroline A. Ross, Ph.D., taken September 19, 2025
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1105	Reply Declaration of Jeffrey Bokor, Ph.D.
1106	Giordano et al., <i>Characteristics of Pd adsorption on the MgO(100) surface: Role of oxygen vacancies</i> , 64 Physical Review B 075417 (2001)
1107	Transcript of Deposition of Caroline A. Ross, Ph.D., taken December 11, 2025
1108	Petitioner's Demonstratives for Oral Hearing
1109	Transcript of January 13, 2026 Conference Call with Patent Trial and Appeal Board
1110	Request for <i>Ex Parte</i> Reexamination of U.S. Patent No. 11,968,909, Control No. 90/016,097 (Mar. 29, 2026)

Western Digital’s reexamination request shows the subject matter of the ’909 Patent claims are unpatentable based on the Kishi prior art, which IPB conceded during prosecution of the ’909 child application and only *after* WD filed the present IPR Petition. EX1110 at 12-13.¹ Instead of directly explaining to the Office’s Central Reexamination Unit why the ’909 claims are patentable over Kishi, IPB instead asks this panel to prematurely terminate a reexamination that has not been ordered. It offers no authority supporting its astonishing request. Instead, this Motion is based on an estoppel that does not exist, proposed Office rules that it admits “are not in effect,” Mot. at 1, and an *Ariosa* decision that the Board has declined to extend to terminating reexaminations raising distinct grounds.

After making at least four allegations of “gamesmanship,” IPB then straight-up asks the Board to suspend the statutory deadline and delay issuing its Final Written Decision for months until after any reexamination is ordered. IPB again provides no authority for its gambit. WD respectfully requests this preposterous Motion be entirely denied.

¹ The Board authorized filing the reexamination request as an exhibit via email on April 6, 2026. WD hereby files a legible, color copy of the reexamination request it served on IPB as EX1110.

I. THERE ARE NO CURRENT PARALLEL PROCEEDINGS TO TERMINATE

Because *ex parte* reexamination has not been ordered, IPB fails to carry its burden under 35 U.S.C. § 315(d) to show that “another proceeding or matter involving the patent is before the Office” during the pendency of the IPR. IPB’s Motion may be denied on this basis alone.

IPB nonsensically asserts that WD’s reexamination request constitutes “a different proceeding before the Office challenging the ’909 Patent,” Paper 54 (“Mot.”) at 2, while also conceding that reexamination proceedings have not yet been ordered, Mot. at 1; *see also* Control No. 90/016,097. Because “no reexamination proceeding has been ordered for the [’909] patent based on the recently filed request for reexamination[,] ... there is no occasion for Patent Owner to file, in this proceeding, a Motion to Terminate Reexamination.” *Toyota Motor v. Am. Vehicular Scis.*, IPR2013-00419, Paper 57 at 3 (P.T.A.B. Dec. 12, 2014).

Presently there are no parallel pending proceedings on the ’909 Patent, and the Board has no authority to terminate an unordered reexamination under 35 U.S.C. § 315(d) or 37 C.F.R. § 42.122(a). *See id.*; *FuboTV Media v. DISH Techs.*, IPR2024-00917, Paper 23 at 3 (P.T.A.B. Jan. 28, 2025) (patents “currently the subject of two proceedings before the Office” if both IPRs instituted and reexaminations ordered).

II. NO GOOD CAUSE SUPPORTS GRANTING IPB’S MOTION

Even if IPB had shown any basis for the Board to terminate a hypothetical reexamination, IPB offers no authority for termination and fails to show why the Board should do so here. Even should reexamination be ordered, concurrent proceedings are contemplated and sanctioned under the rules. IPB’s Motion does little more than grasp at straws, urging termination based on a Section 315(e) estoppel that does not exist, proposed Office rules that are not in effect, and a singular *Ariosa* decision providing no basis for terminating reexaminations raising distinct grounds.

A. IPB’s Premature Effort To Apply Section 315 Estoppel Should Be Rejected

IPB’s Motion amounts to little more than an improper effort to prematurely apply estoppel under Section 315(e).

IPB argues that “Petitioner knew, or should have known, about” Parkin and Kishi “when the Petition was filed.” Mot. at 2. IPB provides nothing to back up this argument, and even if it had, prior knowledge is not a consideration for whether reexamination should be terminated. *See* 35 U.S.C. § 315(d); 37 C.F.R. § 42.122(a). IPB skips over its momentous decision to concede unpatentability of the subject matter ’909 Patent claims by abandoning identical claims in its child continuation application on January 14, 2025—four months *after* the IPR Petition was filed. EX1086 at 263 (IPB affirmatively abandoning the ’576 application claims following

Kishi rejection); Paper 24 at 1, 5 (discussing same); EX1110 at 13. Its Motion provides no reason why the '909 Patent claims should have issued when it quickly surrendered them soon after in its continuation application. *See* Mot. at 2-3.

Contrary to the express language of 35 U.S.C. § 315(e)(1), IPB's argument effectively seeks to apply estoppel *before* the final written decision issues. *See* 35 U.S.C. § 315(e)(1) (applying to petitioner in a proceeding "that results in a final written decision" to preclude raising a ground of invalidity that the petitioner raised or reasonably could have raised); *Emerson Elec. v. SIPCO*, IPR2017-00359, Paper 62 at 11 (P.T.A.B. Mar. 21, 2019) ("Here, it is undisputed that the... reexaminations were already pending when any § 315(e) estoppel attached...."). IPB cites no authority for departing from the statutory requirements, and its premature request is unwarranted.

B. IPB Improperly Relies On Proposed Rulemaking

IPB argues the Office's proposed rules at 90 Fed. Reg. 48335-48341, that it admits "are not in effect," Mot. at 1, should govern the Board's current decision making, *id.* at 3-4. But the proposed rules "ha[ve] no current effect, and it cannot be reliably predicted what, if any, effect [they] will come to have." *Apple v. Squires*, 166 F.4th 1349, 1356 (Fed. Cir. 2026) (agreeing with PTO Director that the announcement of proposed rules in 90 Fed. Reg. 48335-48341 have no current impact and "do not render the dispute before us moot").

Current, controlling legal authority and Office guidance both contemplate and permit concurrent IPR and reexamination proceedings. *See* 35 U.S.C. § 302 (“Any person at any time may file a request for reexamination by the Office of any claim of a patent....”); 37 C.F.R. § 1.510(a); *see also* EX1110 at 3 (WD certifying it is not estopped from filing its Reexam Request under Section 315(e)(1)). The Office has in place guidance for handling parallel IPR and reexamination proceedings. *See* Notice Regarding Options for Amendments by Patent Owner Through Reissue or Reexamination During a Pending AIA Trial Proceeding, 84 Fed. Reg. 16654-16658 (Apr. 22, 2019). This current guidance “indicates that there is nothing *per se* improper about parallel *ex parte* reexaminations and *inter partes* reviews.” *See ResMed v. Cleveland Med.*, IPR2025-00160, Paper 11 at 9 (P.T.A.B. June 13, 2025) (declining to discretionarily deny the petition based on a pending reexamination). IPB’s citation to *PacifiCorp* is inapplicable because it addresses the filing of multiple IPR petitions. Mot. at 4 (citing *PacifiCorp v. Birchtech*, IPR2025-00687, Paper 40, at 2-3 (Squires Jan. 12, 2026) (precedential)).

The rationale behind the proposed rule IPB cites in fact supports that reexamination is warranted here: “Because reasonable minds may, and frequently do, disagree about whether a particular patent claim meets the statutory requirements, patents cannot serve their economic function if they are perpetually subject to *de novo* review.” 90 Fed. Reg. at 48335. Here there is no risk of

reasonable minds disagreeing because IPB already has *conceded* that the claimed subject matter in the '909 Patent is unpatentable. EX1086 at 263; EX1110 at 13.

C. There Is No Waste, Risk Of Inconsistent Results, Or Prejudice

IPB's assorted arguments alleging the reexamination would result in waste, inconsistent results, or prejudice lack any merit. *See* Mot. at 4-7.

Citing only the proposed rules, IPB asserts that considering the reexamination "would be a waste of the Office's limited resources." Mot. at 4-5. Because the rules are not currently in force, they have no impact here. *Apple*, 166 F.4th at 1356. Even if they were controlling, the Office's stated purpose of avoiding having "the Office... allow unpatentable claims," 90 Fed. Reg. at 48338, certainly supports reexamination here given IPB's concession that the '909 Patent claimed subject matter is unpatentable. EX1086 at 263; EX1110 at 13.

IPB next speculates that the purpose of the reexamination is to "get a different *inconsistent* result from a different part of the Office." Mot. at 5 (emphasis original). But IPB concedes the reexamination is based on "*different grounds*" than the IPR, Mot. at 3 (emphasis original), mooting any risk of inconsistent results. In reality, the only risk of inconsistent results would be terminating the reexamination, which expressly asks the Office to reexamine the '909 Patent claims in view of the same Kishi prior art that indisputably rendered them invalid during prosecution of the child application. *See* EX1110 at 13.

Finally, IPB fails to carry its burden to show any prejudice. IPB next asserts that “Petitioner was not shy about trying to take full advantage of this information in its Reexam Request.” Mot. at 6 (citing EX1110 at 1, 14-16, 15). But each of the cited passages merely notes that, just like IPB did during the original prosecution of the ’909 Patent, IPB’s IPR arguments hinged patentability of the ’909 claims on the recited tunnel barrier heights. EX1110 at 1, 14-16. Thus, the IPR provides no more advantage than the original prosecution of the ’909 Patent.

IPB cites *Ariosa* to argue that “Petitioner had the benefit of a *full IPR trial*.” Mot at 6-7 (emphasis original). But IPB’s concession that the reexamination is based on “*different grounds*” than those presented in the IPR, Mot. at 3 (emphasis original), distinguishes this reexamination from *Ariosa* where termination was ordered because “the arguments are ‘substantially the same’” between the IPR and reexamination, *Ariosa Diagnostics v. Illumina*, IPR2014-01093, Paper 81 at 13 (P.T.A.B. May 24, 2016) (granting termination in part on Section 325(d) because “the arguments are ‘substantially the same’”). Other panels have declined to follow *Ariosa* in similar circumstances where the prior art disclosures relied upon in the parallel reexamination proceeding filed near the statutory deadline for the final written decision were “significantly different” compared to those in the IPR petition. See, e.g., *Emerson Electric*, IPR2017-00359, Paper 62 at 6-7 (comparing IPR and

reexamination grounds), 17-18 (distinguishing the instant facts from those in *Ariososa*).

IPB next attempts to show prejudice by disingenuously implying that district court litigation “has been stayed for nearly 18 months pending the outcome of this IPR” over its objection. Mot. at 7. IPB has not been prejudiced because it voluntarily agreed to staying the district court litigation four times: IPB stipulated to a stay until institution decisions were issued in the IPRs, EX1085, and since then has stipulated three more times to extending the stay, *e.g.*, *Godo Kaisha IP Bridge 1 v. Western Digital Techs*, 24-cv-06555-RS (N.D. Cal), ECF Nos. 65 (stipulated continuance until September 2025), 67 (stipulated continuance until June 2026), and 73 (same).

D. IPB Concedes That Section 315(e)(1) Is Inapplicable

IPB spills considerable ink arguing that Section 315(e)(1) would be undermined absent termination, Mot. at 7-9, before admitting that Section 315(e)(1) in fact does not apply here and arguing instead that Section 315(d) governs its Motion, *id.* at 8-9. IPB provides no new reason to grant its motion under Section 315(d), instead imploring that if the Board “is disinclined to grant this motion, the Board should issue any denial *before issuing the FWD*” so IPB can seek Director Review. *Id.* at 9 (emphasis original).

IPB provides no authority, under Section 315(d) or otherwise, for delaying the final written decision or extending the statutory deadline for issuing the decision, simply to facilitate a Director Review. *See* Mot. at 10. Section 315(d) does not apply because IPR and reexamination do not overlap and certainly will not overlap after the final written decision issues here. In fact, asking the Board to concoct overlapping proceedings would be exactly the improper “gamesmanship” of which IPB vociferously complains. Mot. at 8; *see also id.* at 7, 9, 10 (“gamesmanship,” “gamesmanship,” and “gamesmanship”). IPB cites no authority supporting its gambit.

III. CONCLUSION

Because there is simply no basis for the Board to terminate a reexamination that has not been ordered, WD respectfully requests denial of IPB’s Motion.

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CERTIFICATE OF SERVICE

The undersigned certifies that pursuant to 37 C.F.R. § 42.6(e), a true copy of the foregoing **PETITIONER’S OPPOSITION TO MOTION TO TERMINATE *EX PARTE* REEXAMINATION and EXHIBIT 1110** are being served electronically on April 13, 2026 to the following counsel for Patent Owner to the following email addresses:

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