

Filed on behalf of Godo Kaisha IP Bridge 1

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TAIWAN SEMICONDUCTOR MANUFACTURING COMPANY LIMITED,
and GLOBALFOUNDRIES U.S. INC.,
Petitioners,

v.

GODO KAISHA IP BRIDGE 1,
Patent Owner.

Case IPR2016-01246¹
U.S. Patent No. 7,126,174

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

¹ Case IPR2016-01247 has been consolidated with this proceeding.

GlobalFoundries U.S. Inc.'s motions for joinder in Cases IPR2017-00925 and IPR2017-00926 were granted.

**I. PATENT OWNER’S OBJECTION TO EXHIBIT 1014 IS
TIMELY AND THE EXHIBIT SHOULD BE EXCLUDED**

Petitioner asserts that Patent Owner’s objection to *Ueda* is irrelevant because *Ueda* is not being relied upon under 35 U.S.C. 102(e). Paper 40, pp. 1-2.

Petitioner changed its grounds of reliance on *Ueda*. It initially relied at pages 21, 25, and 70 on col. 22: 1. 22:49-52 for the general proposition that the invention of *Ueda* could be applied to trench systems as well as LOCOS systems. Petitioner never relied upon *Ueda* to teach that its trench system could be substituted into LOCOS systems. However, in its Reply (Paper 21), Petitioner eliminates *Noble* and *Ogawa* and specifically noted: “Instead of LOCOS, raised STI 113 (of *Lee*) is formed by any of the well-known processes discussed above. *Id.*” Reply, p. 19. Petitioner points to *Ueda* as one of the “well known” processes specified and it relies upon Fig. 12(c) of Exhibit 1014. Reply, p. 16.

Once Petitioner argued substituting the actual trench of *Ueda* into *Lee*, this became an argument for invalidity under 35 U.S.C. 103/102(e) regardless of how Petitioner chooses to characterize it. The Reply was the first time that such an argument was made.

Patent Owner requested leave to strike the entire Reply, in part based upon the assertion on p. 19 of the Reply. Exhibit 2057, 10:17-11:8.

In footnote 2 of Paper 40, Petitioner points for the first time to Exhibits 1030 and 1031 as evidence that *Ueda* was otherwise publicly available. Petitioner does not establish that the documents are the same. The language upon which the Board relied (*Ueda* (Exhibit 1014), 22:49-52) does not seem to appear in Ex. 1030/1031. In light of the reliance on *Ueda* in the Reply having morphed into an argument of invalidity under 35 U.S.C. 102(e)/103, the Motion to Exclude is not irrelevant.

Based on Patent Owner's original objection, Petitioner knew that the date of *Ueda* was being challenged because it served Japanese Patent Application No. JPH07183518A to *Ueda* et al. (served as Exhibits 1025 and 1026, but filed as Exhibits 1030 and 1031) on January 31, 2017 in response to Patent Owner's Objections to Evidence (Paper 12).

There was no need to challenge the availability of *Ueda* under 35 U.S.C. 102(e)/103 based upon the Petition since it was relied only as background state of the art. However, once the Reply relied upon *Ueda*, amongst others, as the basis of a 102(e)/103 rejection, it became appropriate to challenge the availability of *Ueda* as a reference. Reply, p. 19. An objection was filed on June 21, 2017. Paper 26.

II. EXHIBITS 2061-2076 ARE NOT IRRELEVANT OR IMPROPER

Exhibits 2061-2076 are not irrelevant or improper for the reasons noted above. Patent Owner asserted common ownership as a basis for eliminating *Ueda*

as a reference, supplying Exhibits 2061-2076 in support thereof. Petitioner has not otherwise challenged these Exhibits or Patent Owner's position.

**III. EXHIBITS 1032, 1034-1035, 1042 -1043, 1055 AND 1057-1058
SHOULD BE EXCLUDED**

It is simply *impossible* for Petitioner to maintain a consistent position on the numerous new Exhibits. The Reply maintained that the additional references were "duplicative" and "non-essential." Reply p. 17. Petitioner now maintains that they "differ." Paper 40, p. 6.

The entire basis of the Petition was *Lowrey/Lee v. Noble/Ogawa*. These newly cited references confuse the record such that it is impossible to pin down exactly what Petitioner's position is. Petitioner itself cannot maintain a single consistent position on the issue.

Patent Owner has had no fair opportunity to have its Expert assess and respond to the applicability of any of these references, given the briefing constraints placed upon it by the Board Order, which stated that "Patent Owner is not authorized to file new evidence with its sur-reply." Paper 28, p. 3.

Petitioner is impermissibly relying upon these additional Exhibits in order to shift its position away from its original grounds of rejection, and to incorporate these new Exhibits to form a new rejection. The Exhibits are irrelevant and confuse the issues, and should be excluded.

IV. EXHIBITS 1003, 1005-1009, 1011-1014,1016,1018,1025-1055 AND 1058 SHOULD BE EXCLUDED

The Exhibits should be excluded for the reasons stated in Patent Owner's Motion to Exclude (Paper 32). As to Exhibits 1049 and 1051, the Reply fails to establish that phosphorous would have been present in a detectable amount in *Lowrey's* L-shaped sidewalls. Dr. Banerjee confirmed that he did not know whether the threshold values of the equipment he cited were enough to render visible an L-shaped member. Exhibit 2078, 275:11-277:2. He also did not know the level of doping into the sidewalls. *Id.*, 277:17-278:3. As such, pointing to equipment, which cannot be established to visualize the unknown levels of dopant because the thresholds of measurement are unknown, has no probative value.

In addition to having no probative value, Exhibits 1049 and 1051 are further irrelevant because they have dates after the relevant date.

V. EXHIBITS 1025-1055 AND 1057-1058 SHOULD BE EXCLUDED

In Response to Patent Owner's Motion to Exclude, Petitioner has now provided a matrix chart intended to show how their new evidence is to be used. Petitioner ignores its allegations in its Reply that the newly cited references are duplicative and non-essential. They should all be excluded if only for this reason.

Petitioner has now classified and characterized its 27 references in a chart without explanation as to how any of these relate to the rejections in its Petitions or

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