

Filed on behalf of Godo Kaisha IP Bridge 1

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**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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

v.

GODO KAISHA IP BRIDGE 1,  
Patent Owner.

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Case No. IPR2016-01264<sup>1</sup>  
U.S. Patent No. 6,538,324

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**PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE**

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<sup>1</sup> GlobalFoundries U.S. Inc.'s motion for joinder in Case IPR2017-00920 was granted.

Pursuant to 37 C.F.R. § 42.64, Patent Owner moves to exclude Exhibit 1037 for the reasons discussed herein.

Exhibit No.	Description
1037	Invalidity Contentions, <i>Godo Kaisha IP Bridge 1 v. Broadcom Limited, et al.</i> , Case No. 2:16-cv-134

### I. EXHIBIT 1037 SHOULD BE EXCLUDED

The Federal Rules of Evidence (“FRE”) govern the admissibility of evidence in *inter partes* review proceedings. 37 C.F.R. § 42.62; Office Patent Trial Practice Guide, 77 Fed. Reg. 48,758 (Aug. 14, 2012). Under the Federal Rules of Evidence, the proponent of an exhibit is required to “produce evidence sufficient to support a finding that the item is what the proponent claims it is.” FRE 901(a); *Standard Innovation Corp. v. Lelo, Inc.*, IPR2014-00148, Paper 41, at 11 (PTAB 2015). Furthermore, the Federal Rules of Evidence prohibit the use of hearsay. FRE 801-803.

Patent Owner timely objected to Exhibit 1037 for lack of authentication under FRE 901, as irrelevant under FRE 401-403, and to the extent Petitioner relied on this Exhibit for the truth of the statements set forth therein, Patent Owner objected to it as inadmissible hearsay under FRE 802. *See* Patent Owner’s Objections, filed May 26, 2017 (Paper 22, pp. 2-3). Petitioner cited to Exhibit 1037 in Petitioner’s Opposition to Patent Owner’s Contingent Motion To Amend,

filed May 22, 2017 (Paper 20, pp. 2-3). In response to Patent Owner's Objections, on June 12, 2017, Petitioner served supplemental evidence (TSMC Exhibit 1039, and its cited exhibits TSMC Exhibits 1039A-1039F), but the supplemental evidence does not overcome these rejections.

As explained in more detail below, Exhibit 1037 should be excluded for lack of authentication and inadmissible hearsay.

#### **A. Exhibit 1037 Has Not Been Properly Authenticated**

Fed. R. Evid. 901 requires that the proponent produce sufficient evidence to support a finding that an item is what the proponent claims it is. In response to Patent Owner's objections, Petitioner served supplemental evidence. In an attempt to authenticate Exhibit 1037, Petitioner served a declaration from Thomas E. Gorman (identified as TSMC Exhibit 1039), an attorney representing Petitioner TSMC. TSMC is not a party to the IP Bridge litigation *Godo Kaisha IP Bridge I v. Broadcom Limited, et al.*, Case No. 2:16-cv-134. Mr. Gorman states he was "provided" a copy of the document which TSMC filed as Exhibit 1037. Exhibit 1039, ¶ 3. Mr. Gorman further states that "Exhibit 1037 is a true and correct copy ... as received from defendants' counsel." Exhibit 1039, ¶ 4. Mr. Gorman, however, lacks first-hand personal knowledge to authenticate Exhibit 1037. At best, Mr. Gorman can testify that a document was provided to him by defendants' counsel and that the document was marked as Exhibit 1037. Mr. Gorman is not

representing a party in the IP Bridge litigation, and therefore lacks first-hand personal knowledge about documents which may have been served in the litigation but are not filed on the public record. Mr. Gorman's declaration is therefore inadequate to authenticate Exhibit 1037. For reasons known only to TSMC, it chose not to file a declaration by a person with first-hand personal knowledge about the document marked as Exhibit 1037. Accordingly, Exhibit 1037 should be excluded for lack of authentication under FRE 901.

Additionally, it is notable that Petitioner raised substantially the same objection against Patent Owner's Exhibits 1045 and 1046. *See* Petitioner's Objections To Patent Owner's Exhibits 2045 And 2046, Paper 27, filed June 28, 2017 ("Petitioner's Objections"). In Petitioner's Objections, Petitioner objected stating that the "paralegal did not further identify any particular 'litigation counsel'" which provided the unredacted version of the document marked as Exhibit 2045. Mr. Gorman likewise did not identify the counsel for the defendants who provided the document marked by TSMC as Exhibit 1037.

Petitioner also objected stating that the paralegal did not "explain how or why" Exhibit 2045 was confirmed to be "correct" copy. Again, Mr. Gorman cannot confirm Exhibit 1037 is true and correct other than to say he received it from a counsel for the defendants.

Mr. Gorman lacks first-hand personal knowledge to authenticate Exhibit 1037. Moreover, in view of Petitioner's substantially similar objections with respect to Patent Owner's Exhibits 2045 and 2046, Exhibit 1037 should be excluded. Accordingly, Exhibit 1037 should be excluded for lack of authentication under FRE 901.

**B. Exhibit 1037 Contains Inadmissible Hearsay**

Exhibit 1037 should also be excluded as hearsay under FRE 802 as it is not subject to any of the FRE 803 hearsay exceptions. Petitioner's reliance on the contentions for the truth of any of the matters presented therein constitutes impermissible hearsay. *Shimano, Inc. v. Globberide, Inc.*, IPR2015-00273, Paper 40, at 27 (PTAB 2016) ("The hearsay and authentication problems associated with Exhibits 2002–2023 are glaring. Globberide provided no evidence to establish that any of Exhibits 2002–2023 were authentic. Globberide also failed to explain how any exception to the rule against admitting hearsay applied to any of Exhibits 2002–2023 or why any of Exhibits 2002–2023 contained statements that were not hearsay. We conclude that Fed. R. Evid. 802 and 901 both justify excluding Exhibits 2002–2023 from evidence.").

For this additional reason, Exhibit 1037 should be excluded as inadmissible hearsay under FRE 802.

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