

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 No. IPR2016-01264¹
U.S. Patent No. 6,538,324

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

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

Petitioner's Motion To Exclude Evidence ("Motion") seeks to exclude Exhibits 2002-2004, 2016-2017, 2022-2027, 2034-2035, 2037 and 2045. For the reasons set forth herein, Petitioner's objections have no merit and none of Patent Owner's exhibits should be excluded.

I. Exhibit 2002

Exhibit 2002, a portion of the prosecution history of the *Ding* patent (Exhibit 1005), is not irrelevant. Exhibit 2002 is evidence of how a person having ordinary skill in the art ("PHOSITA") would have understood *Ding* at the relevant time period. Exhibit 2011, ¶¶101-103. Regardless of the availability of *Ding*'s prosecution history, a PHOSITA reading *Ding* would have understood *Ding* to teach the desirability of a layer of pure tantalum for contacting a copper layer, which is simply confirmed by *Ding*'s prosecution history. Exhibit 2011, ¶103.

In *In re Hogan*, 559 F.2d 595 (CCPA 1977), the Court stated: "This court has approved the use of later publications as evidence of the state of the art *existing on the filing date* of an application." *Id.* at 605 (emphasis in original); *see also Gould v. Quigg*, 822 F.2d 1074, 1078 (Fed. Cir. 1987)("It was not legal error for the district court to accept the testimony of an expert who had considered a later publication in the formulation of his opinion..."); *Plant Genetic Sys., N.V. v. DeKalb Genetics Corp.*, 315 F.3d 1335, 1344 (Fed. Cir. 2003) ("[T]he district

court properly used later reports as evidence of the state of the art existing in 1987.”).

For at least these reasons, Exhibit 2002 is not irrelevant, and in any event, the Board should take judicial notice under FRE 201 of undisputed statements contained therein, and afford Exhibit 2002 whatever weight it deems appropriate. Accordingly, Exhibit 2002 should not be excluded.

II. Exhibit 2003 and 2004

Exhibits 2003 and 2004 are dictionary definitions for “amorphous” and “nitride.” Petitioner’s objections to Exhibits 2003 and 2004 have no merit.

In response to Petitioner’s objections, Patent Owner served as supplemental evidence, and later filed as Exhibits 2008 and 2009, earlier dated dictionary definitions for “amorphous” and “nitride.” Petitioner does not seek to exclude Exhibits 2008 and 2009. Not surprisingly, the definitions of “amorphous” and “nitride” have not changed. Thus, although the definitions may be cumulative due to Petitioner’s original meritless objections, this is truly an argument of form over substance, and unnecessarily distracts the Board from pertinent matters.

In *Google Inc. v. Intellectual Ventures II LLC*, IPR2014-01031, Paper 41 (December 7, 2015), Intellectual Ventures moved to exclude a dictionary definition taken from an on-line dictionary, arguing that the dictionary definition was published long after the priority date so it was not relevant. The Board held that

“Intellectual Ventures’s motion **is without merit.**” *Id.* at 10 (emphasis added).

The Board explained:

It is well settled that judges are free to consult dictionaries at any time in order to better understand the underlying technology. *See Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1585 n.6 (Fed. Cir. 1996). Judges may also consult dictionary definitions when construing claim terms so long as the dictionary definition does not contradict any definition found in or ascertained by a reading of the patent documents. *Id.*

Id.

The above rationale is applicable to the present Motion, and accordingly, Petitioner’s Motion “is without merit” and should be denied. Accordingly, Exhibits 2003 and 2004 should not be excluded.

III. Exhibits 2016, 2017, 2022-2027, 2034, and 2035²

Petitioner originally objected to the following ten (10) English translations submitted by Patent Owner: Exhibits 2014, 2016, 2018, 2020, 2022, 2024, 2026, 2028, 2030, and 2034. Petitioner asserted that “there is insufficient evidence to support a finding that these exhibits are true and accurate translations by qualified

² The Exhibits referenced in this section and the following sections, *i.e.*, Exhibits 2016, 2017, 2022-2027, 2034, 2035, 2037 and 2045 relate to the Contingent Motion To Amend.

translators.” Paper 17, p.3. In the Motion, Petitioner seeks to exclude five (5) of these translations, *i.e.*, Exhibits 2017, 2023, 2025, 2027 and 2035.

Exhibits 2017, 2023, 2025, 2027 and 2035 are English translations of Japanese documents Exhibits 2016, 2022, 2024, 2026 and 2034. Each translation includes a certification attesting to the accuracy of the translation. Petitioner has not cited any basis for its assertion that there is insufficient evidence to support a finding that these exhibits are true and accurate translations. Petitioner has not pointed to any inaccuracies, or any good faith basis to doubt the accuracy of any of the translations. Rather, petitioner challenges the certification accompanying each translation. Petitioner’s objections to the translations have no merit. The certification accompanying each translation satisfies the requirements of 37 C.F.R. §42.63(b).

37 C.F.R. §42.63(b) states: “When a party relies on a document or is required to produce a document in a language other than English, a translation of the document into English and an affidavit attesting to the accuracy of the translation must be filed with the document.” A declaration under 28 U.S.C. 1746 may be used as an affidavit. 37 C.F.R. § 42.2. A declaration may be used in lieu of an oath if the declarant is, on the same document, warned that willful false statements and the like are punishable by fine or imprisonment. 37 C.F.R. § 1.68.

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