

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Taiwan Semiconductor Manufacturing Company Limited
Petitioner,

v.

Godo Kaisha IP Bridge 1
Patent Owner.

Inter Partes Review No. IPR2016-01264
U.S. Patent No. 6,538,324

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

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I. INTRODUCTION

Patent Owner denies the authenticity of a copy of the invalidity contentions it received in litigation, Exhibit 1037, even though Patent Owner refused to explain why this exhibit is different from the one it received. *See* Ex. 1040. Patent Owner did not even submit its own copy of the invalidity contentions to identify any differences. Exhibit 1037 is authentic on its face, and the other evidence TSMC submitted confirms its authenticity.

The Board should also reject Patent Owner's hearsay objection because TSMC did not submit Exhibit 1037 to prove the truth of the contents of the document, but rather to show Patent Owner was aware of certain information it failed to bring to the Board's attention when filing its Contingent Motion to Amend the Claims. *See* Paper 20.

II. ARGUMENT

A. Patent Owner Was Served with Exhibit 1037 in a Related Litigation and Cannot Deny Exhibit 1037 Is Authentic.

Exhibit 1037 is a document Patent Owner was served with during a related litigation it brought in the Eastern District of Texas. *See* Ex. 1039A. Patent Owner can determine whether the document is the same as the copy it received rather than burden the Board with this unnecessary exercise. On June 2, 2017, TSMC asked Patent Owner to do so or withdraw its objection for lack of authenticity. Ex. 1040. Patent Owner refused, but never identified any reason to justify its authenticity

objection to Exhibit 1037. *Id.* Its motion to exclude still does not justify its objection to authenticity

TSMC asks the Board to presume Exhibit 1037 is authentic unless Patent Owner can identify a specific reason why it is not (which it cannot do). *Cf.* Fed. R. Evid. 1004(c).

B. Exhibit 1037 Is Admissible Under Fed. R. Evid. 901(b)(4) Because Its Authenticity Is Apparent on Its Face.

Fed. R. Evid. 901(a) requires parties to provide “evidence sufficient to support a finding that the item is what the proponent claims,” a low threshold. *McQueeney v. Wilmington Trust Co.*, 779 F.2d 916, 927 (3d Cir. 1985) (“The burden of proof for authentication is slight”). “If in the court’s judgment it seems reasonably probable that the evidence is what it purports to be, the command of Rule 901(a) is satisfied.” *United States v. Dhinsa*, 243 F.3d 635, 658 (2d Cir. 2001) (internal quotation marks omitted); *see* Fed. R. Evid. 901(a).

Under Fed. R. Evid. 901(b)(4), the requirements for proving authenticity are met if the “appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances,” indicate the document is what it purports to be. The evidence may come from the documents themselves, including the “official appearance of the documents.” *Link v.*

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