

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

GODO KAISHA IP BRIDGE 1,
Patent Owner.

Case No. IPR2016-01379¹
Patent Number 6,197,696

Before JUSTIN T. ARBES, MICHAEL J. FITZPATRICK, and
JENNIFER MEYER CHAGNON, *Administrative Patent Judges*.

**PATENT OWNER'S OPPOSITION TO PETITIONERS' CONSOLIDATED
MOTION TO EXCLUDE EVIDENCE UNDER 37 C.F.R. §§ 42.62 AND 42.64**

¹ GlobalFoundries U.S. Inc., who filed Petition IPR2017-00924, has been joined as
a petitioner in this proceeding.

In response to Petitioner Taiwan Semiconductor Manufacturing Company, Ltd.'s ("Petitioner") Motion to Exclude Evidence, Patent Owner respectfully submits that that the Board, sitting as a non-jury tribunal with administrative expertise, is well-positioned to determine and assign appropriate weight to the evidence presented, without resorting to formal exclusion that might later be held reversible error. *See Corning Inc. v. DSM IP Assets B.V.*, IPR2013-00053, Pap. 66, at 19. But even strictly applying the Rules of Evidence, *cf.* 77 Fed. Reg. 48,612, 48,616 (Aug. 14, 2012) ("42.5(a) and (b) permit [APJs] wide latitude ... to balance the ideal of precise rules against the need for flexibility to achieve reasonably fast, inexpensive, and fair proceedings"), Patent Owner's evidence here is entirely proper, and Petitioner's objections to EX2015 and EX2018-EX2019 under FRE 401, 402 and 403 are meritless.

I. Summary of the Law

Evidence is relevant if it has "any tendency to make a fact more or less probable than it would be without the evidence" and "the fact is of consequence in determining the action." FRE 401. Both the Federal Circuit and the Board have recognized that there is a "low threshold for relevancy." *OddzOn Prods., Inc. v. Just Toys, Inc.*, 122 F.3d 1396, 1407 (Fed. Cir. 1997); *Laird Techs., Inc. v. GrafTech Int'l Holdings, Inc.*, IPR2014-00025, Pap. 45 at 44.

FRE 403 permits the exclusion of relevant evidence if its probative value is substantially outweighed by, for example, prejudice, confusion or waste of time, but the Board has previously emphasized that because patentability proceedings “before the Board are not jury trials; in the absence of a jury, the risk of unfair prejudice against which Rule 403 guards is diminished, if not eliminated entirely.” *See Neste Oil Oyj v. Reg Synthetic Fuels, LLC*, IPR2013-00578, Pap. 53 at 10-11; *see also SK Innovation Co. v. Celgard, LLC*, IPR2014-00679, Pap. 58, at 50.

II. Argument

Two of the issues in this case are: (1) the proper construction of the term “using the [designated layer] as a mask,” and (2) whether a person of ordinary skill in the art (“POSITA”) would have been motivated to combine Grill and Aoyama in view of Grill’s explicit warning against loss of critical dimension (CD) control caused by photoresist profiles having widely varied thicknesses. As detailed below, the documents that Petitioner seeks to exclude are contrary to Petitioner’s arguments and expert’s testimony regarding the aforementioned issues, and are thus relevant and admissible under FRE 401-403.

A. Exhibits 2015 and 2018 and the proper construction of “using the [designated] layer as a mask”

The Eastern District of Texas has previously construed “using [the designated layer] as a mask” to mean using the designated layer “to define areas for etching.” *See* EX3002 22. In contrast, Petitioner argues the proper BRI

construction of the term excludes a designated intermediate layer having “a vertical sidewall ‘in line and flush with an edge of an overlying layer,’” even though this construction adds a negative limitation to, and is narrower than, the construction adopted by the district court. *See* Paper 26 (“Reply”) at 3. As explained by Patent Owner in its Response, Paper 19 (“POR”) at 7-18, Petitioner’s construction is not only inconsistent with the intrinsic evidence and case law, which precludes a “broadest reasonable construction” from being narrower than a Federal Court construction under the *Phillips* standard, but is also inconsistent with the extrinsic evidence, including multiple editions of a textbook *edited by Petitioner’s expert* (EX2017-EX2018)² as well as multiple editions of another reference (EX2015, EX2027).³

² EX2017 includes excerpts of two chapters from a textbook published in 1998 and edited by Petitioner’s expert Dr. Smith. EX2018-EX2019 includes excerpts of the same two chapters from a later edition of the textbook, published in 2007, and also edited by Dr. Smith.

³ Petitioner concedes that EX2027 was properly served as supplemental evidence. *See* Paper 30 (“Motion”) at 2 n.2. EX2027 is being filed in this proceeding concurrently with this paper.

The discussions of the multi-layer resist in EX2015, EX2017, EX2018 and EX2027 are consistent with and relevant to a POSITA's understanding of the phrase "using the [designated layer] as a mask" in the '696 patent, which repeatedly refers to an intermediate layer having an edge that is in line and flush with an overlying layer as a mask. *See* POR 17-18; EX1001 19:50-54, FIGS. 16(c)-16(d), 17:34-40, FIGS. 13(b)-13(c), 26:15-29, FIGS. 28(b)-29(a).

1. **EX2018 belies Petitioner's and its Expert's assertions regarding the meaning of "using the [designated layer] as a mask"**

EX2018 is relevant because it demonstrates that Patent Owner's construction of "using the [designated layer] as a mask" is correct and belies Petitioner's and its expert's assertions regarding the proper construction.

In EX2017 (published 1998) and EX2018 (published 2007), Dr. Smith explains that multi-layer resists composed of multiple layers (*e.g.*, including an imaging layer, an intermediate etch stop layer, and a planarizing layer) could be used collectively to etch an underlying substrate layer.⁴ EX2017 at 0061, 0079;

⁴ EX2018 was also used without objection during the deposition of Dr. Smith on March 23, 2017. *See, e.g.*, EX2010 at 49:6-50:9 (introducing EX2018 as Smith Ex. 3), 50:10-52:10, 58:8-59:1, 64:5-65:8.

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