

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SYNAFFIX B.V.,
Petitioner

v.

HANGZHOU DAC BIOTECH CO., LTD.,
Patent Owner

IPR2022-01531
Patent No 10,131,682

**PATENT OWNER'S PRE-INSTITUTION RESPONSE TO
PETITIONER'S BRIEF**

Petitioner's material misrepresentation accusations are entirely baseless and its Brief (Paper 15) should be seen for exactly what it is—Petitioner's **third attempt** at claim construction. Petitioner argues that Patent Owner DAC's Surreply materially misrepresented compounds 75, 119, and 138. It did not. As explained in the Surreply (Paper 14 at 4), compounds 75, 119, and 138 do not contradict DAC's proposed claim constructions because those structures do not disclose a **vinyl alone as Z** (rather they disclose a **vinyl sulfone as Z**). This argument is wholly consistent with DAC's past briefing and there is no misrepresentation or misleading argument.

Petitioner now raises claim construction arguments for **other limitations** (m/n) in what appears to be an attempt to narrow the scope of the claims. But Petitioner ignores that the actual terms for construction (Y/Z/Q/T) are used across multiple claims of the '682 patent, including claims that have different "m" and "n" language that Petitioner apparently now seeks to construe. "[T]he principle that the same phrase in different claims of the same patent should have the same meaning is a strong one, overcome only if it is clear that the same phrase has different meanings in different claims." *In re Varma*, 816 F.3d 1352, 1363 (Fed. Cir. 2016) (reversing Board's construction and vacating rejections). Here, Petitioner has not addressed this "strong" principle, let alone provided any evidence to depart from it and use other terms (that have not been briefed) to construe the Y/Z/Q/T terms. Nor should Petitioner be permitted to continue its serial attempts to reargue claim construction.

Date: August 3, 2023

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served in its entirety on August 3, 2023 upon the following parties via Electronic Mail:

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