

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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OMEGA LINER COMPANY, INC.,

Petitioner

v.

BUERGOFOL GmbH

Patent Owner.

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CASE NO.: IPR2023-01372  
U.S. PATENT NO. 9,657,882

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**DECLARATION OF PATRICK DOODY IN RESPONSE TO PETITIONER'S  
MOTION FOR SANCTIONS**

I, Patrick A. Doody, do hereby declare:

1. I am Senior Counsel at the law firm Pillsbury Winthrop Shaw Pittman LLP, counsel for Patent Owner in this matter. I began my career as a patent examiner at the United States Patent and Trademark Office in early March, 1987, and have been a registered Patent Attorney since the fall of 1992.
2. The statements in this declaration are based on my personal knowledge, and are in response to statements Petitioner made in its Motion for Sanctions, Paper 71.
3. As noted above, I have been involved in the patent field for almost 38 years. During that entire time, I have never been accused of violating any rule of a State bar, the PTO's rules including its ethical rules, or of knowingly making a false statement before any tribunal. That multi decades, un-blemished record came to an end on December 23, 2024, when Petitioner filed Paper 71, which I personally find insulting and which should be an indication to this Honorable Board of Petitioner's counsel's lack of civility and character, which I consider to be unbecoming of a member of the patent bar.
4. On page 9 of Paper 71, Petitioner's counsel refers to me by my full name in a section contending that I personally, and that Patent Owner in general made statements that "shows deliberate deception." Specifically, Petitioner finds it odd for some reason that I would know, as a chemical patent attorney, who worked for two summers making polymeric films at Mobil Chemical

Company, that Constab® PE-SA 270 was not made of 100% EBS. The name itself informs anyone who has worked with films in their career that it is an additive that contains polyethylene – hence, the “PE” designation. Dr. Brant, PO’s expert, noted this as well during his deposition (EX052, pg. 168, ll. 8-11. What is most troubling is that Petitioner has completely mischaracterized what I stated during a meet and confer phone conference. For the benefit of the Board, I will repeat the entirety of the statements from the transcript of that phone conference (EX1074). Paper 71 cites to EX1074, 18:3-8, and 19:14-17 as evidence that I “knew that Constab® PE-SA 270 was not entirely wax or migrating compound before filing PO’s opposition brief.” Here’s what I actually said:

MR. DOODY: But I didn't believe, reading the patent, that Constab PE 270 was 100 percent wax. And I'm a chemical --

MR. NEUSTEL: -- it was, though --

MR. DOODY: -- films my whole life. It was pretty evident to me. I don't think you'll find a person skilled in the art that would ever construe the patent that way. If I told you I'm using an oil and that oil is Kraft Thousand Island or Italian dressing made with, made from, made of Canola oil, are you going to think that that dressing is 100 percent oil? Nobody would. That's what's stated in the patent.

MR. NEUSTEL: So if you knew it wasn't 100 percent wax, why didn't you try to find out what was in it?

MR. DOODY: Why do I care?

MR. NEUSTEL: You should care. You're submitting declarations to the USPTO.

MR. DOODY: That quote the patent?

5. I want to point out that Petitioner falsely stated that I stated that “Constab® PE-SA 270 was not entirely wax *or migrating compound*.” I did not say the additive was not a “migrating compound,” nor could I because the ‘882 patent expressly defines this additive as used in the examples as follows: “The (release) wax Constab PE-SA 270 *made with* ethylene bis stearamide (EBS) made by CONSTAB Polyolefin Additives GmbH *was used as migrating lipophilic compound*.” EX1001, 15:14-17, emphasis added. As a chemical patent practitioner for almost 40 years, it is very clear to me that this additive is not 100% EBS (it says it is “made with”), and that this additive is referred to as the migrating compound. And it is equally clear to me, as it would be clear to anyone skilled in the chemical arts, that when the examples of the ‘882 patent later reference the term “release wax” and specifically refer to the example number, as the ‘882 patent did and as PO and the ‘882 patent inventors quoted, that the reference is to the additive Constab PE-SA 270.

6. What was clearly conveyed to Petitioner's counsel during that exchange was that I thought, and still do think today, that Petitioner's counsel's mistaken belief that the additive Constab PE-SA 270 was 100% wax is inconsistent with how a person having ordinary skill in the art would have known and understood it to be.
7. Petitioner further mischaracterizes what I stated in that phone conference by piece meal quoting only a portion of what I said to give the impression that I somehow admitted that the patent and/or patent owner response contain a knowingly false statement. Petitioner's counsel only quotes a portion of what I said in quoting "I'm sure the patent has more than one false statement. I'm sure my patent owner response has multiple false statements." Paper 71, pg. 9, citing EX1074, 19:4-6. This is a blatant misrepresentation of what was conveyed in that conference call, and should not be entertained by this Board. The point I was making is that we are all human and make mistakes, and because I'm a very literal, technical individual, I was simply stating the unremarkable fact that in any adversarial process, each side always makes one or more false statements. As an example, when this Board finds that Hummel does not anticipate any of the '882 patent claims, as it should, then all of the statements in Petitioner's Petition and Reply that Hummel anticipates any claim will necessarily be false. But in no way does that rise to the level of

sanctionable conduct – it is trial advocacy. Petitioner knows full well that this was the point I was making, but then cites to only a small portion of what I said in a deliberate attempt to mislead this Board into believing I said something different. I find that extremely troubling and I trust that this Board will find it equally troubling. Petitioner’s mischaracterizations and partial quotes are not advocacy – they are dishonest and are purposefully deceptive. For the Board’s convenience, I repeat the entirety of my statement, instead of only a select portion, so the Board has the full context:

MR. DOODY: Michael, I'm sure the patent has more than one false statement. I'm sure my patent owner response has multiple false statements, and I'm sure everything you've ever filed or stated has false statements. Does that rise to the level of inequitable conduct, and is it a knowingly false statement? Those are the things you have to show to show any kind of sanctionable conduct. And I can assure you that I have never submitted once in my life, and never will, a knowingly false statement.

8. Petitioner continues mischaracterizing my statements by stating I admitted the ‘882 patent has false statements (“Despite admitting the ‘882 Patent has false statements...” – Paper 71, pg. 9), and tries to tie the broad statement quoted above that “I’m sure the patent has more than one false statement” to the ‘882 patent’s disclosure in its examples that refer to 6 percent wax, citing EX1074, 19:22-23. Petitioner chops my statement to pieces in its continued deliberate

attempt to mislead this tribunal when it only quotes, and highlights, the following small portion – “I quoted from the patent what the patent said: 6 percent wax.” Here’s what I said, from EX1074, pg. 20, l. 20 to pg. 21, l. 4:

MR. DOODY: Yeah. Well, show me where I said it was 100 percent wax, those words, "100 percent wax," and I'll stand corrected. I quoted from the patent what the patent said, "6 percent wax" --

MR. NEUSTEL: Okay.

MR. DOODY: -- "(Example 6.)" Go to Example 6. You don't bother to quote Example 6 unless it's in a different place in your letter, at least. In the declarations, it explains it all. You read it all in order, I don't know how you come to that conclusion.

9. As can be seen from the transcript, Petitioner’s counsel interrupted me in the middle of a statement, and then only selected to quote to this Board the portion before his interruption. Again, I was pointing out to Petitioner that the ‘882 patent mentions 6 percent wax with the parenthetical (Example 6), and then informed Petitioner’s counsel to refer to example 6, which unequivocally discloses that the example contains 6% Constab PE-SA 270, which was previously defined as the “release wax.”
10. The final mischaracterization of my statements during that phone conference comes at the end of the paragraph where Petitioner states that “[w]hen pressed on whether PO’s opposition brief and declarations were ‘100 percent truthful,’

Mr. Doody responded, 'No, I can't tell you that.' (EX1074, Tr., 23:1-5.)" Yet again, Petitioner's counsel takes this statement entirely out of context.

Petitioner's counsel first asked if my position was that nothing was false in the declarations or PO's response brief, and I replied that I found nothing false, I didn't see it, and that I did not see that Petitioner showed me any evidence that anything was false. My statement in response to a question as to whether everything is 100% truthful is, again, my very literal statement of the irrefutable truth that no one can make an absolute guarantee that everything he or she says is 100% truthful. For the Board's convenience, the following is taken from EX1074, pg. 23, l. 21 to pg. 24, l.9 (emphasis added):

MR. NEUSTEL: So your position is that nothing's false that was in any of the declarations or Buergofol's response brief? Is that your position?

MR. DOODY: I can't find it. I don't see it. I don't see that you supported it.

MR. NEUSTEL: I'm just asking a question. If you believe that everything's 100 percent truthful, that's all I need to hear from you. Is everything 100 percent truthful?

MR. DOODY: No, I can't tell you that.

MR. NEUSTEL: Why not?

MR. DOODY: *All I can tell you is that there's nothing in here that's knowingly false. If it's false, it wasn't made knowingly.*

11. Petitioner's counsel purposefully left out the emphasized part to mislead the Board into believing that I made a knowingly false statement. What I made repeatedly clear during that call, and what Petitioner failed to mention in its Motion, is that not a single statement in any of the inventor's declarations, the expert declaration, the '882 patent, or any of PO filings was knowingly false.

I declare that all statements made herein on my own knowledge are true and that all statements made on information and belief are believed to be true, and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Date: January 7, 2025

By:   
Patrick A. Doody