

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

OMEGA LINER COMPANY, INC.,

Petitioner

v.

BUERGOFOL GmbH

Patent Owner.

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

**DECLARATION OF ABDEL-KADER BOUTRID IN RESPONSE TO
PETITIONER'S MOTION FOR SANCTIONS**

I, Dr. Abdel-Kadel Boutrid, do hereby declare:

1. I am a named co-inventor of U.S. Patent No. 9,657,882 (“the ’882 patent”).
2. The statements in this declaration are based on my personal knowledge.
3. At no time have I had any intent to deceive the U.S. Patent Office.

At no time did I intentionally and knowingly make any false statements in this declaration, or my prior declaration submitted in this proceeding, which I have been informed was submitted as Exhibit 2004.

4. At no time have I violated any duty of candor, or any other duty for that matter, that I owe to the U.S. Patent Office, as those duties have been explained to me over the years.
5. Since September 1998, I have been employed by Patent Owner (PO), Buergofol GmbH. After April 2024, my employment status changed from employee to senior consultant in compliance with German labor and retirement laws. While I was an employee of PO, my job title was “Head of Research and Development.” My job responsibilities included overseeing both the manufacture of, and quality control for Buergofol’s blown extrusion ultraviolet cured-in-place pipe (“UV-CIPP”) films.
6. PO submitted my declaration (EX2004) dated June 24, 2024 in this proceeding, which I understand is designated by the reference IPR2023-

01372. I have been informed and understand that Petitioner has stated in a Reply document (Paper No. 24), and in a Motion for Sanctions (Paper No. 71), that certain statements Petitioner says I made in my previous declaration were false, based on documents at least one or more of which Petitioner possessed prior to my scheduled deposition in early August of 2024.

7. In the paragraphs below, I provide declaration testimony to address these attacks on my credibility. I do wish to point out that Petitioner has not accurately characterized my prior statements, and has over-generalized my prior testimony. Since my prior declaration, I have had the occasion to review internal Buergofol customer visit notes that I did not have when I prepared my original declaration. I have referenced them in this declaration. I provide the following explanation to further explain and elaborate on what I stated in my prior declaration, and hereby to state that prior to the Spring of 2012, I was made aware of adhesion problems with Buergofol's inner film, but they were completely unrelated to the new UV resin containing maleic anhydride, and based on my knowledge and understanding, they would not have been remedied by the use of the novel coating or covering.

A. Petitioner's Fabricated Attack No. 1: So-Called "False Statements" About Knowledge of Adhesion Problems [Paper No. 24, 15:15-16:11] Based on EX1058-EX1063.

8. Petitioner's contention that I denied the existence of "adhesion problems" in

general is a misrepresentation, and an extreme over-generalization of my prior testimony. My prior declaration stated clearly that I had first learned of a very specific problem that caused a specific type of tearing of the inner film to such an extent that large torn pieces of film clogged the sewage pipe, where the problem was caused by an interaction between a new UV resin material that contained maleic anhydride and the outer polyamide layer of the inner tubular film. Some adhesion between the inner tubular film and the carrier material that includes the reactive plastic resin, is both known and expected as a functional requirement of an insertion tube for use in trenchless sewage pipe renovation. My prior testimony clearly conveyed the problem that I first discovered in conjunction with customer visits in the Spring of 2012 – a problem that did indeed result in adhesion and tearing, but it was the cause of the adhesion, and the nature of the tearing that was the problem I previously discussed. The cause of the adhesion was the use of a new UV resin material that contained maleic anhydride, a material used in the adhesion promoter layers of the films described in the ‘882 patent, and that was known by me to adhere and interact very strongly with the polyamide outer layer facing the UV resin. (The adhesion promoter layer contains a polyethylene carrier that adheres to the polyethylene layer and maleic anhydride that adheres to the polyamide layer.) The ‘882 patent describes this interaction as follows:

A typically used adhesive promoter is, for example, Admer NF498E, an LDPE modified with maleic anhydride groups made by the Mitsui Co. Admer® substances are PE copolymers with maleic anhydride groups (MA groups) that adhere strongly to PET, EVOH and PA, can also be processed very well and are as thermally stable as normal PE.

EX1001 at col. 15, ll. 1-6. The nature of the tearing became severe enough that large chunks of film tore off and clogged the sewage pipe and had to be removed with high-pressure steam washing, whereas incidents of adhesion that had occurred prior to the Spring of 2012 were due to improper removal of the inner film and/or bursting of the inner film (e.g., due to “splice”) during inflation prior to resin curing (*see, e.g.*, EX2038, a customer visit report I recently reviewed). In this customer visit report, the customer lists “blanket complaints” during prior years that the customer states involved tearing of the film after resin curing, but I had not been made aware of those complaints prior to the Spring of 2012, nor am I aware of the nature of the problem and/or why the inner film might have had some tearing. I believe that in those incidences, there were longitudinal stresses placed on the inner film so that if it were pulled out at a single point, the film would tear longitudinally and then the remainder would need to be removed by pulling on the film at a different point or points, as Mr. Schleicher stated in his first declaration (EX2003, ¶23: “That was the first time that I recognized that the inner film was tearing because portions of the inner film were sticking to the cured resin and not just

because of the longitudinal stresses caused by pulling the entire length of the film by just one location on the film.”)

9. None of those incidents was brought to my attention prior to the Spring of 2012, and I was not aware of them, presumably because they were not severe enough to warrant complaints to Buergofol and were not generally experienced by Buergofol’s other customers, as noted in my email to the customer dated June 4, 2012 (EX2037, pg. 1, emphasis added: “The information you have received from your fellow competitors is incorrect. Now that we are running campaigns, not only should problems arise for you, but also for other customers. ***This is not the case.***”). Dr. Stark knew that the customer had not yet made any such complaints to Buergofol (EX2037, pg. 1, emphasis added: “***Then you don’t know this (see below) yet?***”). Dr. Stark himself was not aware of such complaints regarding tearing prior to June 1, 2012 when he wrote in an email to Dr. Franz Schleicher: “Urgently requests a visit, as there are problems with our inner tube film. He speaks of incidents in the form of tears. ***Do we have any complaints?***” EX2036, pg. 1, emphasis added.
10. Some adhesion between the inner film and the carrier material is necessary, and sometimes there is in fact “excessive adhesion,” but what causes the “excessive adhesion” and what causes the “tearing” was important to me. Excessive adhesion and tearing can only be prevented if one knows what

causes it, and most if not all of prior adhesion and tearing problems that I personally was aware of concerned improper installation techniques (e.g., installation in cold temperatures, “winter problem”), the use of polymers in the external layer adjacent the curable resin with melting points that were too low, resulting in melting of the polymer during the exothermic curing process, or stresses in the inner film due to “splice” upon inflation or due to removal at a single point. I do not believe that a coating or covering could or would prevent or cure these “adhesion” or “tearing” issues.

11. As a person who works in this field would readily know and understand, adhesion of the inner film to the carrier material during installation and curing is needed for the proper installation and use of the tubular films for trenchless sewage pipe repair. If the inner film does not adhere sufficiently during installation, it risks collapsing into the curing area. Such a collapse would not only compromise the curing process but also create significant safety hazards, including potential fires due to direct contact with the UV lamps. It is my understanding that Dr. Brant recognized this issue in his declaration (EX2001, at paragraph 63), and it was known to our customers (EX2039). This condition aligns with the preferred embodiment described in Nagai, who states that use of a coating can completely prevent adhesion between the inner film and curable resin in the carrier material (EX 2009, pg. 9, paragraph [0027]).

While such conditions may be acceptable in hot water curing systems due to the immense hydraulic pressure pressing the inner tubular film to the carrier material and preventing its collapse, it could prove disastrous in our UV curing system, which do not fill the inner tube with water.

12. Dr. Brant's declaration supports this conclusion (*See* EX2001 ¶ 63), and this principle has been referenced in PO's Response. Adhesion in UV-curable systems must balance sufficient stickiness for stability during curing with the ability to remove the inner film without tearing post-curing. A customer report dated September 13, 2012 also fully supports this conclusion:

6. inner foil

RELIN is satisfied with our inner tube film (except for sticking in cold temperatures, "winter problem" with small diameters, less than 600 mm flat width), but they are always open to improvements. We mentioned our better separating inner films and that we will probably be sampling them in Nov. 2012. ***However, the film must not separate too well because it could fall onto the very hot UV lamp after the compressed air is released and catch fire.***

EX2039, pg. 3, emphasis added. (Reline customer visit notes).

13. In its Motion for Sanctions, Petitioner makes the following false and misleading statement regarding my prior testimony:

PO submitted inventor declarations falsely representing they had no knowledge, prior to the "spring of 2012," of any customer reporting

“a problem with inner film tearing when it was pulled out of the cured liner because the inner film stuck to the cured resin.” (EX2003, ¶24, *see also*, ¶21-23; EX2004, ¶18, *see also*, ¶¶12, 14, 19).

Paper 71, pp. 4 and 5, emphasis in original. Petitioner falsely states that Dr. Stark identified this statement as “being false,” which he clearly did not for the reasons stated below (all that Dr. Stark stated in his email was that he could not confirm the statement). Petitioner only quoted a portion of my declaration and failed to quote or refer to paragraphs 15-17 that explained the nature of the adhesion and tearing issue that was first discovered during the Spring of 2012, which in my opinion was the most important part of my prior declaration. After making the statement quoted above, Petitioner cites a customer complaint dated February 26, 2009 (EX1060- EX1063) from Nils Fuechtjohann of Saertex, a former PO customer, that uses the word “massive,” inviting the reader to conclude that the statement in the Saertex complaint pertained to the tearing problem referred in my declaration. This is incorrect. Mr. Fuechtjohann acknowledged in other writings that the problem of film breaking (Bruch) was related to cold temperatures. Petitioner continues to mischaracterize my prior testimony by relying on a Quality Management Agreement (EX1058) that I signed in 2006 which Petitioner contends is my acknowledgement of “[s]trong adhesion of the film to the laminate after curing” demonstrates PO’s awareness of “adhesion issues” long

before the “spring of 2012.” Paper 71, pg. 5.

14. Contrary to Petitioner’s incorrect statement that my and Gregor Schleicher’s declarations “falsely claim” that there never were any “adhesion and tearing issues” with PO’s inner film, paragraphs 12 and 14-19 of my declaration are entirely correct (Petitioner did not refer to paragraphs 15-17). Section 2 of my declaration is titled “Recognition of the Problem.” The problem I referred to in Section 2, which was the problem that led to conception of the invention of the ‘882 Patent, involved a specific type of tearing because of sticking due to an interaction between a new UV resin material that contained maleic anhydride and the polyamide outer layer of the inner tubular film. The Saertex complaint (EX1060- EX1063) does not mention tearing and refers to an entirely different problem – one that in my experience could not be solved by use of a coating or covering. The Saertex email dated February 26, 2009, does not relate to the particular tearing problem that we recognized in 2012. The Saertex issue, which did not involve tearing, was a “strong adhesion” problem due to Saertex’s improper installation of liners at cold temperatures (referred to as a “winter problem” by another customer – EX2039, page 3). I will explain the two different problems below (the Saertex 2009 email, and the 2006 Quality Agreement), and why neither one of them is similar to the problem that led to the ‘882 patent invention, and neither of them, in my experience, would be

preventable by the use of a coating or covering.

15. **Difficult-To-Remove Problem:** The problem of the 2009 Saertex complaint, which did not involve tearing, was due to Saertex's customers making ill-advised installations of liners in colder winter temperatures. The complaint was made on February 26 regarding recent installation projects. At low temperatures, the polyamide of the inner film becomes increasingly stiff and brittle. In addition, a proper moisture (water) level must be maintained in the polyamide to reduce its stiffness, and at cold temperatures that moisture may freeze. By a combined mechanical effect that, to my knowledge, is not entirely understood, a mechanical adhesion is observed between the inner film containing polyamide and the resin at low temperatures, even low temperatures slightly above freezing. This mechanical adhesion is not chemical bonding and can be avoided by heating or proper installation at warmer temperatures. As a result of the mechanical adhesion, the inner film becomes difficult to remove from the liner after the resin has cured. That the inner film described in the 2009 Saertex complaint may have been difficult to remove does not mean that there was tearing. This is the "adhesion problem" Saertex customers were having, and it was due to their installation of the liners at low temperatures.
16. Saertex used the word "massive" in several customer complaints, including

the February 26, 2009 Saertex complaint from Mr. Fuechtjohann, in an attempt to obtain warranty rebates and price reductions. PO supplied dozens of other orders of inner film to Saertex in the months prior to the 2009 Saertex complaint that were all made in the same manner with the same few recipes. Yet only two of the film orders led to the purported customer complaints “on a massive scale.” It is evident that from the dozens of orders, only the film from the two particular orders listed in the 2009 Saertex complaint was “extremely difficult to remove” because the liners that happened to contain film from those two orders were installed on cold days. I do not recall that Saertex ever complained about film being difficult to remove from liners during warm summer months. Petitioner has submitted as EX1084 a later email from Mr. Fuechtjohann dated March 13, 2009, asking me to respond to his complaint dated February 26, 2009, which I had ignored. I also did not respond to Mr. Fuechtjohann’s email of March 13, 2009 (EX1084), and Mr. Fuechtjohann never followed up on the complaint that he had described as “massive” in his email of February 26, 2009. Mr. Feuchtjohann’s failure to follow up demonstrates that the adhesion problem had not been “massive,” that the adhesion problem went away after the colder winter months, and that the adhesion problem was a different problem than the one that I first recognized in the Spring of 2012 and that led me to invent the novel coating and covering.

17. The Saertex problem is fundamentally unrelated to the tearing issue addressed by the '882 patent. While the former is easily avoided by adhering to proper installation instructions and conditions, the latter required the innovative solution described in the '882 patent—a coating or covering to prevent excessive chemical bonding caused by the use of maleic anhydride in UV Resins. The use of a coating or covering would not have prevented the “difficult to remove” issue of the Saertex 2009 complaint because that did not involve any interaction or reaction with the UV curable resin, but rather was primarily due to the moisture (e.g., water) in and on the outer layer of the inner tubular film freezing at cold temperatures and to polyamide becoming stiffer at cold temperatures.
18. The customer complaint from Saertex (EX1060-EX1063) was an email dated February 26, 2009 from Nils Fuechtjohann of Saertex to PO's salesman Tobias Abfall. Although I and five other people were cc'd on the email, I do not recall reading the email at that time. I later learned that the email states that Mr. Fuechtjohann sent PO's salesman a sample of the inner film that was purportedly difficult to remove from a liner and asked the salesman for comments on the film sample. I do not believe that the salesman ever responded to the email from Mr. Fuechtjohann. After a couple of weeks, Mr. Fuechtjohann sent a reminder email (EX1084) to the salesman and to me, but neither one of us responded to that email either. As best as I can

recall, we did not hear from Saertex again about this alleged problem that one of its customer had experienced.

19. Saertex frequently exaggerated its concerns by using the word “massive” to describe its complaints. I recall receiving another complaint from Saertex in the winter of 2010 unrelated to removing film from liners in which the technical director of Saertex complained of “massive problems” with film bursting when it was inflated in the pipe to be renovated. I rejected those warranty claims because there was nothing wrong with PO’s film. The film was bursting when placed under pressure at the installation sites because the film was stiff and brittle in the cold weather. I also recall that in 2010 Saertex described aesthetically unwanted spots and creases in PO’s film as being “massive” problems in an attempt to negotiate a lower price and to obtain warranty rebates. I rejected the warranty claims for nearly all of these “massive” problems because there was nothing wrong with PO’s film.
20. **Tearing Problem:** The specific tearing problem that my co-inventors and I recognized and that led to the invention of the ‘882 Patent was not the Saertex “difficult to remove” problem, or other possible tearing problems that were not communicated to me prior to the Spring of 2012 (see EX2038) but rather involved the tearing of Buergofol inner film due to an interaction between the UV curable resin material’s maleic anhydride and the

polyamide outer layer. To my knowledge, Saertex customers did not experience any tearing, and certainly did not experience the particular problem of inner film tearing as it was being pulled out of a cured liner due to the inner film becoming stuck to the cured UV-curable resin due to maleic anhydride interacting with the polyamide outer layer. Even after reviewing the recently reviewed customer reports, I am not aware, prior to the Spring of 2012, and Dr. Stark confirmed that I was not aware (nor was he apparently) of any customer complaining of the inner film tearing due to an interaction between the UV curable resin material's maleic anhydride and the polyamide outer layer. *See* EX2037.

21. As I explained in my declaration (EX2004, ¶15), Dr. Stark and I learned in 2012 that two Buergofol customers had started using UV-curable resin that included maleic anhydride (MAH). I believed that the maleic anhydride in the new UV-curable resin was likely chemically bonding to the polyamide of the outer film layer adjacent to the UV-curable resin. This bonding is not mere mechanical adhesion due to freezing or melting. As my declaration states, I believed that the maleic anhydride in the resin could be prevented from adhering to the outer polyamide layer of the inner film by creating a coating or covering over the outer facing side of the polyamide in order to separate (i.e., act as a sort of barrier) the resin from the polyamide. And the tearing that resulted was extensive, not the type of tearing due to splicing or

bursting of the inner film during inflation prior to curing, or tearing due to longitudinal stresses caused by removing the inner film at a single point after curing.

22. **Adhesion in the 2006 Quality Agreement:** In Petitioner's Motion (Paper No. 71), Petitioner makes the following attack on my credibility:

PO entered into a 'Quality Agreement' ('2006 Quality Agreement') with its customer Saertex multiCom GmbH ("Saertex'). (EX1058; EX1059). The 2006 Quality Agreement included a section titled 'Processing of Complaints by Buergofol' that specifically identified "**[s]trong adhesion of the film to the laminate after curing**" as one of four problems with PO's inner film. (EX1058, p. 6 at §7).

(Paper 71, pp. 4 and 5, emphasis in original). Petitioner continued:

PO, Dr. Boutrid and Gregor Schleicher were plainly aware of these issues and, therefore, knowingly submitted false testimony that they somehow were 'not aware' of these 'strong adhesion' issues with its inner film that resulted in tearing of the inner film upon removal leaving film fragments inside the pipe prior to the "spring of 2012."

(Paper No. 71, pg. 6). Petitioner in both instances states that the phrase in the Quality Agreement (EX1058) regarding "[s]trong adhesion of the film to the laminate after curing" demonstrates that in 2006 I was aware of and

acknowledged the problem of PO's film strongly adhering "to the laminate" after curing. While I certainly was aware of the possibility of this happening, I was not aware of it actually happening, nor is the strong adhesion of the film to the laminate a tearing problem, much less is it even similar to the tearing problem I first learned of in the Spring of 2012 caused by the chemical interaction between the maleic anhydride in the UV curable resin and the polyamide layer.

23. The four possible grounds for complaints listed at §7 of EX1058 (EX1059 English translation of the Quality Agreement), including the adhesion of film to the laminate, were not actual complaints made by Saertex at the time the agreement was entered into in 2006. The four issues listed in §7 were not any acknowledgment of any problems that existed, but rather were simply proposals for how to deal with certain quality issues, if they were to arise. The four grounds for possible complaints were developed during a brainstorming session as possible quality deficiencies that PO would recognize if the film did not fall within the allowed tolerances of the listed tests for the particular grounds for the complaint. The testing tolerances for the quality deficiency of strong adhesion of film to the laminate include the melting point of the polyethylene and polyamide in the film as indicated in Section 2.4 of the agreement. (*See* EX1058, Page 6 of 7) The hypothetical

quality deficiency that we envisioned as “strong adhesion of the film to the laminate after curing” was not the problem of inner film tearing as it was being pulled out of a cured liner due to the film interacting with and/reacting with a chemical in the cured resin. Rather, the “strong adhesion” mentioned in Section 7, which then references the melting point Section 2.4, concerned use of a polymer with a melting point that was too low thereby causing the polymer to melt due to the exothermic heat generated as the UV resin cured and the heat from the UV light bulbs. Preventing this problem, as noted in the Quality Agreement, was to ensure that the polymers used have melting points within the tolerance limits set out in Section 2.4. This potential problem mentioned in the Quality Agreement would not, and could not, have been prevented by use of any coating or covering.

24. Section 7 of the Quality Agreement (EX1058, Page 6 of 7) does not recognize the problem of inner film tearing as it is being pulled out of a cured liner due to the inner film becoming stuck to the cured resin due to an interaction or chemical reaction between the outer polyamide layer and the UV resin. The type of “adhesion” and “tearing” is important in the context of the ’882 patent because not all adhesion or tearing problems can be remedied with a coating or covering. For example, the Quality

Agreement discusses a possible issue that may arise if the outer layer of the inner film is made from a polymer with a melting point that is too low causing the inner film to melt due to the heat generated during the exothermic UV reaction that cures the resin and by the UV light bulbs. If such a polymer were used, the melting of that polymer and fusing with the carrier material and cured resin could not be prevented by a coating or covering. Rather the problem would be remedied in the manner discussed in the Quality Agreement: by using a polyamide with a melting point that is high enough to not melt during the exothermic UV curing reaction (*See* EX1058, § 2.4).

25. Thus, the “adhesion” or generic “tearing” issues discussed in the two documents cited by Petitioner are entirely different from the problem that led to the surprising discovery of the ’882 patent. The newly discovered problem was that the maleic anhydride (the same compound used in the examples of the ’882 patent’s “adhesion promoter layer”) present in a brand-new UV resin being used by the customer was reacting or interacting with the polyamide and forming a very tight bond. This problem was solved through the use of a coating or covering—a solution that would not have solved either of the alleged “adhesion” problems discussed in the February 26, 2009 Saertex email or the Quality Agreement. Petitioner’s statements that these documents

provide proof that my prior testimony was false are unfounded and baseless – these documents relate to an entirely unrelated problem that would not be solved by use of a coating or covering.

B. Credibility Attack 2: So-Called “False Statements” About EBS Wax in Examples B4-B6 [Paper No. 24, 16:15-16:11] Based On EX1050-EX1051.

26. In the Reply paper (Paper No. 24, 16:13) and its Motion for Sanctions (Paper 71, pages 7-9), Petitioner attacks my credibility using documents EX1050-EX1051 that Petitioner had in hand before my scheduled deposition on August 8, 2024. After citing to my declaration stating that Constab PE-SA 270 was made with ethylene bis stearamide (EBS) as a migrating compound, Petitioner asserts that PE-SA 270 is not EBS wax and that my statement that PE-SA 270 is made with EBS wax is false:

However, Constab® PE-SA 270 is not a “release wax,” “EBS wax,” or a “migrating lipophilic compound.” Based on available information, it is an “Antiblock-Slip Masterbatch” comprised mainly of *polyethylene* as a carrier with *calcium carbonate* as an antiblock and an unknown “slow migration antiblock additive.”

(Paper No. 24, 17:7-11) (emphasis in original). Petitioner further contends that “PO and its counsel knowingly misled the Board, fully aware that Constab® PE-SA 270 consists mainly of non-migrating compounds.” (Paper No. 71, pp. 9 and 10). Petitioner relies on a Constab PE-SA 270 “Product Information” sheet (EX1051) that does not mention ethylene bis

stearamide (EBS), implying that Constab PE-SA 270 may not have included any EBS wax, and that my declaration statements about Constab PE-SA 270 being “made with” or “containing” the migrating compound EBS in the examples of the ‘882 Patent were false. (*See* EX2004, ¶36).

27. As of August 23, 2024, Petitioner’s counsel knew of my deposition and had a transcript, as indicated by a letter dated August 23, 2024, from Petitioner’s counsel to PO’s counsel, an excerpt of which appears below:

During the improper *ex parte* deposition on August 8, 2024, Dr. Boutrid stated the following regarding Constab PE-SA 270 used in Examples B4, B5 and B6 of the ‘882 Patent:

- In 2012, prior to filing for the ‘882 Patent, he knew that Constab PE-SA 270 was not 100% EBS wax and in fact did not even have over 20% EBS wax. (Boutrid Dep. Tr., pp. 30-31.)
- In 2023, prior to submitting his declaration in the IPR proceeding, he verbally confirmed again that Constab PE-SA 270 was not 100% EBS wax and in fact did not even have over 20% EBS wax. (Boutrid Dep. Tr., pp. 31-32.)
- On August 8, 2024, Dr. Boutrid again verbally confirmed that Constab PE-SA 270 was not 100% EBS wax and that it did not have over 20% EBS wax. (Boutrid Dep. Tr., pp. 32-33.)

(Letter from Petitioner’s counsel to PO’s counsel dated August 23, 2024 – EX2040).

28. At the time Petitioner wrote the Reply and filed its Motion for Sanctions, referring to the “unknown slow migration antiblock additive,” with Petitioner underlining the word “unknown,” (Paper 71, pg. 8), Petitioner was aware of the transcript of my August 8, 2024 deposition. During my deposition, given under penalty of perjury before a certified court reporter,

I testified that in the year 2012 (before the filing date of the ‘882 Patent) I had confirmed with a Mr. Hoenig of Constab that the Constab PE-SA 270 product contained 20 percent EBS wax. In other words, I did what Dr. Brant said he would do if he were going to use an additive in a film – he’d call the supplier to find out what was in it and would not rely solely on the information in a data sheet. (EX1052, pg. 24, ll. 4-21). I further testified that I reconfirmed this in 2023. I further testified that on the very morning of my deposition (August 8, 2024) I reconfirmed the matter again.

I testified:

Q. Was there any other time when you reconfirmed, when was that?

A: Today I - - over the phone, I called Constab, and they did confirm that the information I received of the 20 percent back in 2023 is correct.

29. The information about Constab PE-SA 270 that I provided in my deposition, is inconsistent with Petitioner’s argument that Constab PE-SA 270 might not include any EBS wax. Petitioner’s counsel knows that Constab® PE-SA 270 contains 20% or less of EBS wax, and has known this at least as early as August 23, 2024 (EX2040).
30. The ‘882 patent defines the release wax used in the examples as “[t]he (release) wax Constab PE-SA 270 made with ethylene bis stearamide (EBS) made by CONSTAB Polyolefin Additives GmbH was used as migrating

lipophilic compound.” EX2001, col. 15, ll. 14-17. It is my understanding that defining the release wax in this manner informs the reader of the patent, a person having ordinary skill in the art, that each time the expression “release wax” or “migrating lipophilic compound” is used in the examples, it is referring to Constab PE-SA 270. It further is my opinion that a person having ordinary skill in the art could readily ascertain the precise amount of EBS wax used in Constab PE-SA 270 in a matter of minutes simply by doing what Dr. Brant informed Petitioner’s counsel he would do, and by doing what I actually did – call the supplier.

31. In addition, the ‘882 patent, when read in its entirety fully informs a person having ordinary skill in the art that Constab PE-SA 270 is not entirely EBS wax, not only because it is defined as being “made with ethylene bis stearamide (EBS),” but also by referencing the amount of lipophilic compound in the layer in question:

The proportion of the at least one migrating, lipophilic or hydrophilic compound in the layer in question is preferably at least 0.1% by weight, more preferably at least 0.5% by weight and even more preferably at least 1% by weight.

EX2001, col. 6, ll. 16-19. Just prior to that paragraph, the ‘882 patent discloses a number of specific migrating, lipophilic compounds including waxes (EX2001, col. 5, l. 39 to col. 6, l. 9, although the examples define the

migrating lipophilic compound differently as Constab PE-SA 270 – EX2001, col. 15, ll. 14-17). The examples use 1%, 4%, and 6%, of Constab PE-SA 270, respectively, which would inform a person having ordinary skill in the art that Constab PE-SA 270 cannot be 100% wax, but likely contains on the order of 10%-20% (1% Constab PE-SA 270 used in Example B4 would result in 0.1% by weight wax (EX2001, col. 6, ll. 16-19) if it contained 10% wax, and 6% Constab PE-SA 270 used in Example B6 would result in 1% or more wax if it contained more than 16.7% wax. The ‘882 patent itself therefore makes it clear that Constab PE-SA 270 does not contain 100% wax.

C. Dr. Stark’s Comments

32. After reviewing Dr. Stark’s marked-up declaration, I reviewed the statements that Dr. Stark stated that he “could not confirm.” Petitioner makes far too much of Dr. Stark’s notations of items Dr. Stark allegedly underlined noting that he “could not confirm,” and conflates that with Dr. Stark identifying the statements as somehow being false. Paper 71, pg. 5 states: “Dr. Stark, the lead inventor, identified this same statement as being false in the declaration PO attempted to coerce him into signing. (EX 1072, ¶32).” Dr. Stark did not, nor could he without himself lying, make a statement that my statements in my prior declaration regarding my personal knowledge were “false.” All Dr. Stark

is indicating, and what he clearly conveyed to Petitioner's counsel in the cover email of EX1072, is that he could not confirm certain statements. I am not at all surprised that Dr. Stark could not confirm statements of fact that occurred over a decade ago without any notes (which he should not have in his possession), since I just recently was provided copies of some of Buergofol's internal emails and visit reports that have refreshed my recollection. These documents clearly show that as of June 1, 2012, Dr. Stark was not aware of complaints of tearing (EX 2036), and that Dr. Stark knew that I was unaware of complaints of tearing (EX2037).

33. I do find it interesting that Dr. Stark stated that he could not confirm basic facts that were within his knowledge, such as his own dates of employment at Buergofol. Dr. Stark's name is present on each of the documents I discussed above (EX2036 and EX2037) that show he was not aware of, and that he knew that I was not aware of, customer complaints of tearing of the inner film after curing, and therefore Dr. Stark's underlining that he could not confirm statements made in paragraphs 26-30 are not an indication that these statements are false, but merely that Dr. Stark could not confirm them.

D. Materials That I Reviewed.

34. Prior to signing this declaration, I reviewed the following materials:
Petitioner's Reply (Paper No. 24), Declaration of Abdel-Kader Boutrid

(EX2004), the transcript of my deposition on August 8, 2024, the exhibits EX1050-EX1051, EX1058-EX1063, and EX1070-EX1072, the letter dated August 23, 2024 from Petitioner's counsel; Dr. Brant's declaration (EX2001); Dr. Brant's deposition transcript (EX1052); email correspondence from Dr. Stark (EX2036); email correspondence regarding customer complaints of tearing (EX2037); Customer visit report dated June 5, 2012 (EX2038); Customer visit report dated September 13, 2012 (EX2039), Saertex letter (EX1084); and Petitioner's Motion for Sanctions (Paper 71) and accompanying exhibits. I also reviewed German translations, to the extent needed, and I discussed the documents with counsel to make sure I understood them adequately.

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 06, 2025 in Siegenburg, Germany

By:


Abdel-Kader Boutrid