

From: [Trials](#)
To: [Grace Kim](#); [Trials](#)
Cc: [IPR55973-0002IP1](#); [Palmer, Erick J.](#); [Mahoney, Joseph A.](#); [Rambarat, Cecilia G.](#); [December, Molly](#)
Subject: RE: IPR2024-00070
Date: Monday, April 15, 2024 10:03:24 AM

Counsel,

From the Board –

The POPR was filed on 2/29/24. Petitioner does not explain the delay of six weeks in seeking authorization to file a reply to the POPR. Petitioner's request is denied.

Regards,

Esther Goldschlager
Supervisory Paralegal Specialist
Patent Trial & Appeal Board
U.S. Patent & Trademark Office

From: Grace Kim <gkim@fr.com>
Sent: Thursday, April 11, 2024 12:36 PM
To: Trials <Trials@USPTO.GOV>
Cc: IPR55973-0002IP1 <IPR55973-0002IP1@fr.com>; Palmer, Erick J. <EJPalmer@mayerbrown.com>; Mahoney, Joseph A. <jamahoney@mayerbrown.com>; Rambarat, Cecilia G. <CRambarat@mayerbrown.com>; December, Molly <MDecember@mayerbrown.com>
Subject: IPR2024-00070

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To the Honorable Board,

Petitioner Mara Renewables respectfully seeks leave to file a reply to the POPR in IPR2024-00070 challenging the '363 Patent. The reply would be limited to ten (10) pages addressing the following three issues raised by Patent Owner DSM in its POPR:

First, Petitioner seeks to address Patent Owner's implicit argument with respect to Ground 1 that anticipation requires disclosure of a single embodiment or example that meets every limitations of the claims. In so arguing, Patent Owner presents an unforeseeable and overly narrow interpretation of the legal standard for anticipation, and so good cause exists for Petitioner to be given the opportunity to respond on this issue and clarify for the Board the standard and how the disclosures in Radianingtyas still meet that standard.

Second, Petitioner seeks to address Patent Owner's argument with respect to Ground 2 that a skilled artisan would have expected application of Kralovec's method to result in increased DPA and ARA in addition to the desired increase in DHA. Patent Owner's argument was unforeseeable, is unsupported by expert testimony and is wrong with respect to the science. Thus, good cause exists for Petitioner to be given the opportunity to explain why Patent Owner's interpretation of the science is incorrect. This additional briefing will assist the panel in determining whether or not to institute.

Third, Petitioner seeks to address Patent Owner's unforeseeable and overly narrow interpretation of the Ground 3 references Bijl and Barclay that, again, are unsupported by expert testimony and impose restrictions not required by the claims. Therefore, good cause exists for Petitioner to be given the opportunity to explain why this narrow interpretation is incorrect as wrong as a matter of both law and fact.

Parties have been meet and conferring, however, there is a dispute between the parties regarding the level of detail required for the meet and confer.

Petitioner respectfully requests it be permitted to submit its ten (10) page reply brief within five (5) business days after the Board grants leave. In the interest of fairness and ensuring the Board is fully briefed, should it decide to allow briefing, Petitioner will not oppose a Sur-Reply by Patent Owner of the same length due at a time the Board sees fit.

The parties have conferred by email and Patent Owner provided the following position: Given that Petitioner has repeatedly declined to provide to Patent Owner the factual basis for the assertions set forth in Petitioner's request, Patent Owner opposes. The arguments raised in PO's Preliminary Response were foreseeable and are consistent with the arguments raised in IPR2023-01167 and IPR2023-01342, both of which were denied institution by the Board and, in the case of the latter proceeding, the Director. Petitioner's request appears to seek authorization, in view of those previous denials, to re-argue the merits of each ground raised in the present proceeding in contravention of the word count limitations. This is not good cause. Moreover, after waiting almost six weeks to seek such authorization, Petitioner's original demand that Patent Owner be given only 5 business days to respond to Petitioner's new arguments is unreasonable.

The parties are available at the following times for a call with the Board:

Monday, April 15: 9am -1pm EST

Tuesday, April 16: 11am – 4 pm EST

Wednesday, April 17: 9am -12pm, 1-5pm EST

Thursday, April 18: 9am -10:30am, 2-3pm, 4-5pm EST

Friday, April 19: 12 – 5pm EST

Respectfully,

Grace Kim
Counsel for Petitioner

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