

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DSM IP ASSETS, B.V.; DSM PURITY,	)	
B.V.; DSM BIOMEDICAL, B.V.; & DSM	)	
BIOMEDICAL, INC.,	)	
	)	C.A. No. 23-675 (WCB)
Plaintiffs,	)	
	)	<u>DEMAND FOR JURY TRIAL</u>
v.	)	
	)	REDACTED - PUBLIC VERSION
HONEYWELL INTERNATIONAL, INC.,	)	Original filing date: November 27, 2023
	)	Redacted filing date: December 4, 2023
Defendant.	)	

**DEFENDANT HONEYWELL INTERNATIONAL INC.'S
ANSWER TO PLAINTIFFS' COMPLAINT, DEFENSES, AND COUNTERCLAIMS**

Defendant Honeywell International Inc. (“Honeywell” or “Defendant”) responds to Plaintiffs DSM IP Assets, B.V., DSM Purity, DSM Biomedical, B.V., and DSM Biomedical, Inc.’s (collectively “DSM” or “Plaintiffs”) Complaint as follows:

Each numbered paragraph below responds to the same numbered paragraph in the Complaint. Any allegation Honeywell does not expressly admit is denied.

NATURE OF THE ACTION¹

1. Honeywell admits that Plaintiff purports to bring an action for infringement. Honeywell denies that it, directly or through its subsidiaries or intermediaries, has committed or continues to commit any of the wrongdoings alleged in the Complaint in this or any judicial district. Honeywell further denies the remaining allegations of Paragraph 1 of the Complaint.

¹ For ease of reference, Honeywell incorporates the outline headings used in the Complaint. To the extent such headings make factual allegations, Honeywell does not adopt or admit such statement and denies them.

PARTIES

2. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the Complaint, and therefore denies them.

3. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 of the Complaint, and therefore denies them.

4. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 of the Complaint, and therefore denies them.

5. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 of the Complaint, and therefore denies them.

6. Honeywell admits that Honeywell International Inc. is a corporation organized and existing under the laws of the State of Delaware with a principal place of business located at 855 S. Mint Street, Charlotte, North Carolina 28202.

JURISDICTION AND VENUE

7. Honeywell admits that DSM purports to bring an action for patent infringement under the patent laws of the United States, 35 U.S.C. § 1 *et seq.* Honeywell denies that it, directly or through its subsidiaries or intermediaries, has committed or continues to commit any of the wrongdoing alleged in the Complaint in this or any judicial district. Honeywell admits that this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 1338(a).

8. Honeywell admits that Honeywell International Inc. is a corporation organized and existing under the laws of the State of Delaware and that Honeywell has conducted business within the State of Delaware through its facility located at 3 Boulden Circle in New Castle, Delaware 19720. Honeywell denies that it, directly or through its subsidiaries or intermediaries, has committed or continues to commit any of the wrongdoing alleged in the Complaint in this or any judicial district.

9. Honeywell admits that it resides within this District.

10. Honeywell does not contest that venue over this action is proper in this District but denies that it is the most convenient venue and expressly reserves its right to move for transfer for a more convenient venue.

11. Honeywell admits that Honeywell has filed actions for patent infringement in this District. Honeywell does not contest that venue over this action is proper in this District but denies that it is the most convenient venue and expressly reserves its right to move for transfer for a more convenient venue. Honeywell denies the remaining allegations of Paragraph 11 of the Complaint.

DSM'S U.S. PATENT NO. 10,820,532 [sic]

12. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12 of the Complaint, and therefore denies them.

13. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13 of the Complaint, and therefore denies them.

14. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 14 of the Complaint, and therefore denies them.

15. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 15 of the Complaint, and therefore denies them.

16. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 16 of the Complaint, and therefore denies them.

17. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17 of the Complaint, and therefore denies them.

18. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 18 of the Complaint, and therefore denies them.

19. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 19 of the Complaint, and therefore denies them.

20. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 20 of the Complaint, and therefore denies them.

21. Honeywell admits that what appears to be copy of U.S. Patent No. 10,280,532 is attached as Exhibit 1 to the Complaint. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 21 of the Complaint, and therefore denies them.

22. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 22 of the Complaint, and therefore denies them.

23. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 23 of the Complaint, and therefore denies them.

24. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 24 of the Complaint, and therefore denies them.

25. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 25 of the Complaint, and therefore denies them.

26. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 26 of the Complaint, and therefore denies them.

27. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 27 of the Complaint, and therefore denies them.

28. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 28 of the Complaint, and therefore denies them.

29. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 29 of the Complaint, and therefore denies them.

30. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 30 of the Complaint, and therefore denies them.

31. Honeywell admits that claim 1 of the '532 patent recites "a colored multi-filament yarn comprising filaments that have been obtained by gel spinning a mixture containing ultra-high molecular weight polyethylene (UHMwPE) having an intrinsic viscosity (IV) of between about 8 and 40 dg/l, a spin solvent and a pigment, and wherein the filaments consist of UHMwPE, between 0.1 and 7.0 wt % of an inorganic chromium oxide-containing pigment, a residual amount of spin solvent of less than about 500 ppm, and less than 1000 ppm of further constituents." Honeywell lacks knowledge or information sufficient to admit or deny the remaining allegations of Paragraph 31 of the Complaint, and therefore denies them.

32. Honeywell lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 32 of the Complaint, and therefore denies it.

33. Honeywell admits that the cover of the '532 patent shows that it was issued on May 7, 2019. Honeywell denies that the '532 patent is valid. Honeywell lacks knowledge or information sufficient to admit or deny the remaining allegations of Paragraph 33 of the Complaint, and therefore denies them.

34. Honeywell denies the allegations of Paragraph 34 of the Complaint.

35. Honeywell admits that the cover of the '532 patent states that "[s]ubject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 281 days." Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 35 of the Complaint, and therefore denies them.

36. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 36 of the Complaint, and therefore denies them.

37. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 37 of the Complaint, and therefore denies them.

38. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 38 of the Complaint, and therefore denies them.

39. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 39 of the Complaint, and therefore denies them.

40. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 40 of the Complaint, and therefore denies them.

COUNT 1: [ALLEGED] INFRINGEMENT OF U.S. PATENT NO. 10,280,532

41. Honeywell incorporates the foregoing paragraphs of this Answer as if set forth here in full.

42. Honeywell admits that DSM and Honeywell compete in the medical grade UHMWPE fiber market. Honeywell denies the remaining allegations of Paragraph 42 of the Complaint.

43. Honeywell denies the allegations of Paragraph 43 of the Complaint.

44. Honeywell denies the allegations of Paragraph 44 of the Complaint.

45. Honeywell denies the allegations of Paragraph 45 of the Complaint.

46. Honeywell denies the allegations of Paragraph 46 of the Complaint.

47. Honeywell denies the allegations of Paragraph 47 of the Complaint.

48. Honeywell denies the allegations of Paragraph 48 of the Complaint.

49. Honeywell denies the allegations of Paragraph 49 of the Complaint.

50. Honeywell denies the allegations of Paragraph 50 of the Complaint.

51. Honeywell denies the allegations of Paragraph 51 of the Complaint.

52. Honeywell denies the allegations of Paragraph 52 of the Complaint.

53. Honeywell denies the allegations of Paragraph 53 of the Complaint.

54. Honeywell denies the allegations of Paragraph 54 of the Complaint.

55. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 55 of the Complaint, and therefore denies them.

56. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 56 of the Complaint, and therefore denies them.

57. Honeywell denies the allegations of Paragraph 57 of the Complaint.

58. Honeywell denies the allegations of Paragraph 58 of the Complaint.

59. Honeywell admits that Honeywell makes and continues to make SPECTRA[®] Blue Products in the United States. Honeywell is without knowledge or information sufficient to admit or deny the remaining allegations of Paragraph 59 of the Complaint, and therefore denies them.

60. Honeywell denies the allegations of Paragraph 60 of the Complaint.

61. Honeywell admits that Honeywell sold and continues to sell SPECTRA[®] Blue Products in the United States. Honeywell is without knowledge or information sufficient to admit or deny the remaining allegations of Paragraph 61 of the Complaint, and therefore denies them.

62. Honeywell admits that Honeywell has offered and continues to offer SPECTRA[®] Blue Products in the United States. Honeywell is without knowledge or information sufficient to admit or deny the remaining allegations of Paragraph 62 of the Complaint, and therefore denies them.

63. Honeywell denies the allegations of Paragraph 63 of the Complaint.

64. Honeywell denies the allegations of Paragraph 64 of the Complaint.

65. Honeywell admits that Honeywell and DSM are competitors in the medical grade UHMWPE fiber market. Honeywell denies the remaining allegations of Paragraph 65 of the Complaint.

66. Honeywell denies the allegations of Paragraph 66 of the Complaint.

67. Honeywell denies the allegations of Paragraph 67 of the Complaint.

68. Honeywell denies the allegations of Paragraph 68 of the Complaint.

69. Honeywell admits that DSM provided Honeywell with knowledge of the '532 patent and its claims on the date which the Complaint was filed and served on Honeywell. Honeywell denies the remaining allegations of Paragraph 69 of the Complaint.

70. Honeywell denies the allegations of Paragraph 70 of the Complaint.

71. Honeywell denies the allegations of Paragraph 71 of the Complaint.

72. Honeywell denies the allegations of Paragraph 72 of the Complaint.

73. Honeywell denies the allegations of Paragraph 73 of the Complaint.

74. Honeywell denies the allegations of Paragraph 74 of the Complaint.

75. Honeywell denies the allegations of Paragraph 75 of the Complaint.

76. Honeywell denies the allegations of Paragraph 76 of the Complaint.

77. Honeywell denies the allegations of Paragraph 77 of the Complaint.

78. Honeywell denies the allegations of Paragraph 78 of the Complaint.

79. Honeywell denies the allegations of Paragraph 79 of the Complaint.

80. Honeywell denies the allegations of Paragraph 80 of the Complaint.

81. Honeywell denies the allegations of Paragraph 81 of the Complaint.

82. Honeywell denies the allegations of Paragraph 82 of the Complaint.

PRAYER FOR RELIEF

Honeywell denies the Plaintiff is entitled to any of the relief requested in the Prayer for Relief.

JURY TRIAL DEMAND

No response is necessary to Plaintiff's demand for trial by jury. Honeywell also demands a trial by jury on all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

DEFENSES

Upon information and belief, and subject to its responses above, Honeywell alleges and asserts the following defenses in response to the allegations of the Complaint, without admitting or acknowledging that Honeywell bears the burden of proof as to any of them or that any must be pleaded as defenses. Honeywell expressly reserves the right to amend or raise additional defenses pursuant to any docket control order or as additional information becomes available through further investigation and discovery.

FIRST AFFIRMATIVE DEFENSE **(Failure to State a Claim)**

Plaintiff has failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE **(Non-Infringement)**

Honeywell does not infringe and has not infringed the Asserted Patent literally, directly, indirectly, contributorily, by way of inducement, under the doctrine of equivalents and/or in any other manner.

THIRD AFFIRMATIVE DEFENSE **(Invalidity)**

The claims of the Asserted Patent are invalid for failure to comply with the requirements of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§ 102, 103, 112,

and/or 116. For example, each claim is invalid as claiming concepts already known to the public at the time of the alleged invention. Prior art that invalidates the Asserted Claims² will be set forth in Honeywell's invalidity contentions, amendments, and proposed amendments thereto.

FOURTH AFFIRMATIVE DEFENSE
(Statutory Limit on Damages)

Plaintiff's claim for damages, equitable relief, and/or costs is statutorily limited by 35 U.S.C. §§ 286, 287, and/or 288. For example, Plaintiff is barred from recovering damages in this case due to Plaintiff's, Plaintiff's licensees', or Plaintiff's predecessors in interest's failure to mark.

FIFTH AFFIRMATIVE DEFENSE
(No Willful Infringement)

Plaintiff is not entitled to enhanced or increased damages for willful infringement, under 35 U.S.C. § 284 or otherwise, because Plaintiff has failed to meet, and cannot meet as a matter of law, the requirements for willful infringement. Plaintiff has failed to state a claim for willful infringement for failing to identify any pre-suit factual basis that Honeywell had actual knowledge of or was willfully blind to the Asserted Patent or Honeywell's alleged infringement.

SIXTH AFFIRMATIVE DEFENSE
(No Exceptional Case)

Plaintiff cannot prove that this is an exceptional case justifying award of attorney fees against Honeywell pursuant to 35 U.S.C. § 285.

² DSM asserted claims 1-9 of the '532 Patent in its complaint. On November 2, 2023, the Court dismissed DSM's allegations with respect to claim 8, and therefore claim 8 is no longer asserted in the present litigation.

SEVENTH AFFIRMATIVE DEFENSE
(Waiver, Estoppel, Acquiescence, Unclean Hands)

Plaintiff's claims are barred, in whole or in part, or their remedies limited, by the doctrines of waiver, implied waiver, estoppel, acquiescence, and/or unclean hands.

EIGHTH AFFIRMATIVE DEFENSE
(Prosecution History Estoppel)

Plaintiff's claims for relief are barred in whole or in part by prosecution history estoppel and/or prosecution history disclaimer based on amendments, statements, admissions, omissions, representations, disclaimers, and/or disavowals made by the applicant for the Asserted Patent.

NINTH AFFIRMATIVE DEFENSE
(No Injunctive Relief)

Plaintiff's claims for relief are barred in whole or in part because Plaintiff is not entitled to injunctive relief. Any alleged injury to Plaintiff is not immediate or irreparable and Plaintiff has an adequate remedy at law.

TENTH AFFIRMATIVE DEFENSE
(License, Implied License, Exhaustion)

Plaintiff's claims for patent infringement are precluded in whole or in part (i) to the extent that any allegedly infringing products or components thereof are supplied, directly or indirectly, to Honeywell by any entity or entities having express or implied licenses or covenant not to use or assert the Asserted Patent and/or (ii) under the doctrine of patent exhaustion.

ELEVENTH AFFIRMATIVE DEFENSE
(Reservation of Defenses)

Honeywell reserves all affirmative defenses under Rule 8(c) of the Federal Rules of Civil Procedure, the patent laws of the United States, and any other defenses at law or in equity that may exist now or may be available in the future, including (but not limited to) those related to the unenforceability of any claim of the Asserted Patent based on inequitable conduct, based on

discovery and further factual investigation in this action. Assertion of a defense is not a concession that Honeywell has the burden of proving the matter asserted.

HONEYWELL'S COUNTERCLAIMS

Without admitting any of the allegations of the Complaint other than those expressly admitted herein, and without prejudice to the right to plead any additional counterclaims as the facts of the matter warrant, pursuant to Rule 13 of the Federal Rules of Civil Procedure, Honeywell International Inc. (“Honeywell” or “Counterclaim Plaintiff”) asserts the following Counterclaims against DSM IP Assets, B.V., DSM Purity, B.V., DSM Biomedical B.V., and DSM Biomedical, Inc. (collectively “DSM” or “Counterclaim Defendants”):

INTRODUCTION

1. Ultra-high molecular weight polyethylene (“UHMWPE”) fiber is the standard for non-absorbable sutures in many implantable surgical applications. UHMWPE fiber is 15 times stronger than steel and offers better abrasion and irritation resistance than materials like polyester. For certain applications, such as arthroscopic and soft-tissue surgical procedures, medical professionals require a colored UHMWPE fiber that provide a sharp visual contrast with blood and other sutures.

2. Since 2010, DSM has been a monopoly seller of blue-colored implantable-grade UHMWPE fiber, which it sells under the tradenames DYNEEMA PURITY® VG and DYNEEMA PURITY® TG (collectively, “DSM’s PURITY® Products”). According to DSM, DSM’s PURITY® Products are protected by U.S. Patent No. 10,280,532 (the “’532 patent”).

3. The ’532 patent has limited scope. In fact, DSM originally sought broad patent coverage when it submitted its application for what is now the ’532 patent. The USPTO rejected those broad claims that merely included UHMWPE, a spin solvent and a pigment, because the USPTO was aware of prior art references that described UHMWPE, a spin solvent and a pigment.

The USPTO issued a patent to DSM only after DSM specifically limited its claims to a multi-filament yarn having a specific intrinsic viscosity of UHMWPE, a specific weight of an inorganic chromium oxide-containing pigment, a residual spin solvent of less than about 500 ppm, and less than 1000 ppm of further constituents.

4. In 2022, Honeywell launched its own line of blue-colored UHMWPE fibers under the tradenames SPECTRA® MG10 BIO Blue, SPECTRA® MG13 BIO Blue, and SPECTRA® MG21 BIO Blue (collectively, “Honeywell’s SPECTRA® Bio Blue Products”). Although available in the same FDA-approved blue tint as DSM’s PURITY® products, Honeywell’s SPECTRA® BIO Blue Products do not read on the ’532 patent. Specifically, Honeywell’s SPECTRA® BIO Blue Products do not include the specific limitations of the claims that DSM had to add during prosecution of its patent at the PTO in order to avoid the disclosure of the prior art identified by the USPTO.

5. Honeywell’s SPECTRA® BIO Blue Products threatened to erode DSM’s market share and eat into DSM’s monopoly profits. As a result, DSM immediately responded to the competitive threat by filing this objectively baseless lawsuit against Honeywell in bad faith, knowing that there is no legitimate claim that Honeywell’s SPECTRA® BIO Blue Products infringe the ’532 patent. DSM has samples of Honeywell’s SPECTRA® BIO Blue Products and could have easily ascertained that these products do not infringe the ’532 patent by conducting minimal diligence. DSM either failed to conduct the reasonable diligence that would be expected of a patent litigant in its position or, more likely, pressed this lawsuit despite affirmatively knowing that Honeywell’s products do not infringe. And not only did DSM press these objectively baseless claims through this lawsuit, it also embarked on a campaign to stymie competition by issuing a press release about this lawsuit and communicating directly with Honeywell’s prospective

customers, leveraging these baseless claims to dissuade customers from purchasing Honeywell's competing product.

6. DSM's anticompetitive conduct is not justified by any procompetitive purpose. Instead, it was intended solely to allow DSM to illegally maintain its monopoly position over blue-colored UHMWPE fibers. Absent DSM's objectively baseless lawsuit and other anticompetitive conduct, Honeywell would have successfully marketed its product, bringing competition to the market, and reducing prices for direct customers and end patients.

7. DSM's actions violate federal and state law. Accordingly, Honeywell brings these Counterclaims.

THE PARTIES

8. Counterclaim Plaintiff Honeywell International Inc. is a Delaware corporation with its principal place of business at 855 S. Mint Street, Charlotte, North Carolina 28202.

9. Counterclaim Defendant DSM IP Assets, B.V. is a corporation organized and existing under the laws of The Netherlands with a principal place of business at Het Overloon 1, 6411 TE Heerlen, The Netherlands.

10. Counterclaim Defendant DSM Purity, B.V. is a corporation organized and existing under the laws of The Netherlands with a principal place of business at Urmonderbaan 22, 6167 RD Geleen, The Netherlands.

11. Counterclaim Defendant DSM Biomedical, B.V. is a corporation organized and existing under the laws of The Netherlands with a principal place of business at 22, 6167 RD Geleen, The Netherlands.

12. Counterclaim Defendant DSM Biomedical, Inc. is a corporation organized and existing under the laws of the State of Delaware with a principal place of business at 735 Pennsylvania Drive, Exton, Pennsylvania 19341.

JURISDICTION AND VENUE

13. Honeywell's counterclaims arise under the patent laws of the United States, Title 35, United States Code; the Sherman Act, 15 U.S.C. § 2; and state law. The jurisdiction of this Court is proper under at least 25 U.S.C. § 271 *et seq.* and 28 U.S.C. §§ 1331, 1338, and 2201–02.

14. This Court has personal jurisdiction over DSM. DSM consented to personal jurisdiction by commencing this action in this judicial district.

15. DSM has consented to venue in this Court by bringing this action against Honeywell, and thus venue for Honeywell's counterclaims is proper in this District, although a different venue may be more convenient.

16. DSM filed suit in this Court against Honeywell for alleged infringement of one or more claims of the Asserted Patent in this action. Accordingly, there is an actual, continuing, and justiciable controversy arising under the Patent Act, 35 U.S.C. § 1 *et seq.*, between DSM, on the one hand, and Honeywell, on the other, concerning the alleged infringement by Honeywell of the Asserted Patent.

HONEYWELL'S INNOVATION

17. Honeywell traces its roots to 1904 and an engineer named Mark Honeywell from Wabash, Indiana, who developed and installed the first hot-water-heating system in the United States. Honeywell would later play a key role in U.S. war efforts, inventing and manufacturing the first electronic autopilot system. After entering the computer business through a merger with Raytheon Corporation in 1957, Honeywell developed and engineered the instruments that safely

landed Neil Armstrong and Buzz Aldrin on the moon. Research is one of the keys to Honeywell's success and provides the necessary cornerstone for its cutting-edge products.

18. One such cutting-edge development is Honeywell's line of medical grade ultra-high-strength, ultra-lightweight polyethylene multi-filament products that are commercialized, advertised, and sold under the trademark SPECTRA® MG Bio. SPECTRA® MG Bio is the best choice for sutures, surgical robots, catheters and ACL/PCL reconstruction. It is biocompatible, reducing body inflammation and irritation. It is 15 times stronger than steel.

19. On April 12, 2022, Honeywell announced the expansion of its SPECTRA® MG Bio fiber portfolio with a blue-colored fiber that provides a strong visual aid to better differentiate between multiple suture sets in more complex surgeries (Honeywell's SPECTRA® BIO Blue Products). By creating clear color contrast, Honeywell's SPECTRA® BIO Blue Products enable healthcare professionals to operate more accurately and efficiently, promoting greater safety and comfort for patients.

ANTICOMPETITIVE CONDUCT

20. At the time Honeywell launched its SPECTRA® BIO Blue Products, DSM was the only other company selling blue-colored UHMWPE fibers for surgical applications in the United States. DSM launched its competing, blue-colored fiber (the PURITY® Products) in 2010, and maintained its monopoly position as the only seller of blue-colored UHMWPE fibers for more than a decade. Over that period, DSM charged supracompetitive prices and offered inflexible contract terms for its PURITY® Products, resulting in higher prices for direct customers, the healthcare system, and ultimately the patients requiring the types of surgeries where DSM's products are used.

21. DSM is the owner of the '532 patent, which DSM alleges covers DSM's PURITY® Products. But the '532 patent is limited in scope and does not cover all blue-colored UHMWPE fibers. DSM originally sought broad patent coverage when it submitted its application for what is now the '532 patent. The USPTO rejected those broad claims that merely included UHMWPE, a spin solvent and a pigment, as those concepts were described in prior art identified by the USPTO at that time. The USPTO issued a patent to DSM only after DSM specifically limited its claims to a multi-filament yarn having a specific intrinsic viscosity of UHMWPE, a specific weight of an inorganic chromium oxide-containing pigment, a residual spin solvent of less than about 500 ppm, and less than 1000 ppm of further constituents.

22. Honeywell does not infringe the claims of the '532 Patent. Specifically, Honeywell's SPECTRA® BIO Blue Products do not include the specific limitations of the claims that DSM had to add during prosecution of its patent at the USPTO in order to avoid the disclosure of the prior art.

23. Within months of Honeywell's launch of its SPECTRA® BIO Blue Products, DSM responded to the competitive threat by filing this objectively baseless lawsuit against Honeywell in bad faith, knowing that there is no legitimate claim that Honeywell's SPECTRA® BIO Blue Products infringe the '532 patent.

24. In its patent lawsuit, DSM alleges that Honeywell's SPECTRA® BIO Blue Products infringe the '532 patent. But that contention rests solely on the fact that Honeywell offers a competing blue-colored UHMWPE fiber. DSM did not conduct any meaningful diligence to determine whether Honeywell's product actually infringes the Asserted Patent. Had DSM conducted any meaningful diligence, DSM would have readily determined that Honeywell does not make, use, sell, or offer to sell any product that practices every element of any claim of the

'532 patent. Honeywell does not make, use, sell, or offer to sell “[a] colored multi-filament yarn comprising filaments that have been obtained by gel spinning a mixture containing ultra-high molecular weight polyethylene (UHMwPE) having an intrinsic viscosity (IV) of between about 8 and 40 dl/g, a spin solvent and a pigment, wherein the filaments consist of UHMwPE, between 0.1 and 7.0 wt. % of an inorganic chromium oxide-containing pigment, a residual amount of spin solvent of less than about 500 ppm, and less than 1000 ppm of further constituents.”

25. Thus, DSM filed this case when it knew or should have known that it did not have a valid patent infringement claim against Honeywell.

26. The lawsuit was filed in bad faith solely for the purpose of discouraging competition instead of vindicating legitimate patent rights. On June 22, 2023, the date it filed the Complaint in this action, DSM issued a press release announcing its baseless lawsuit against Honeywell. John Witkowski, President at DSM Biomedical, is quoted saying: “As the market leader in UHMWPE fibers for medical use, and the first company to produce and market colored UHMWPE medical-grade fibers, our intent is to protect our investments when we discover infringements of our patented technologies.”

27. DSM knew that filing and publicizing this baseless lawsuit would prevent customers from switching to Honeywell’s competing products when they otherwise would be willing to change suppliers.

28. DSM made statements to Honeywell’s potential customers with the purpose of discouraging them from switching to or purchasing Honeywell’s SPECTRA® BIO Blue Products. Before and after DSM issued the press release, agents and employees of DSM informed customers that Honeywell is infringing DSM’s patents and discouraged them from purchasing Honeywell’s SPECTRA® BIO Blue Products.

29. [REDACTED]

[REDACTED]

[REDACTED]

30. [REDACTED]

[REDACTED]

[REDACTED]. The process of qualifying a new raw material supplier is costly and would not be undertaken by a customer unless they were likely to switch suppliers.

31. [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

32. [REDACTED]

[REDACTED]

[REDACTED]

33. On information and belief, DSM sent similar letters to Honeywell's current and potential customers.

34. On information and belief, if recipients of DSM's letters contacted a DSM representative, they were encouraged to refrain from purchasing Honeywell's SPECTRA® BIO Blue Products.

35. DSM's anticompetitive conduct directly affected Honeywell's ability to compete with DSM's PURITY® Products by selling Honeywell's SPECTRA® BIO Blue Products.

RELEVANT MARKET

36. The relevant product market in this case is blue-colored UHMWPE fiber used in minimally invasive surgical procedures and medical devices for surgeries performed in the United States.

37. UHMWPE fibers are sold to medical device companies for incorporation in surgical kits and medical devices used in various types of surgeries. Medical device companies, in turn, are required under U.S. law to obtain appropriate regulatory clearance for their devices, a process that includes identifying and securing approval for any polyethylene fiber incorporated into their products.

38. The FDA regulates the color additives that may be used to add pigment to UHMWPE fibers. Medical device makers must identify any UHMWPE fiber used in their product and confirm that the fiber and any color additives comply with FDA requirements. *See, e.g.*, 21 C.F.R. § 878.5000.

39. Honeywell's Spectra® BIO Blue products use the same FDA-approved pigmentation in DSM's PURITY® Products. Depending on the description of the medical device, a medical device maker may face limited obstacles to switch from DSM's Purity® Products to Honeywell's SPETRA® Blue products. The regulatory hurdles and associated costs that would be required if a medical device maker were to switch to a different colored fiber would be far more

substantial, and significant enough to discourage device makers from changing fiber colors once their device is approved with a fiber of a specific pigment.

40. Blue-colored UHMWPE fiber provides an advantage to white (sometimes referred to as “clear”) UHMWPE fiber because it creates a vibrant color contrast, enabling healthcare professionals to operate more accurately and efficiently. The decision on whether to use blue or clear fiber depends on the application and whether the fiber is being used in an environment where visibility is important to a successful procedure.

41. DSM’s and Honeywell’s customers do not make decisions on whether to use blue or white fiber based on price. While customers would switch from DSM’s PURITY® Products to Honeywell’s SPECTRA® BIO Blue Products, customers who use blue fiber within their medical device or with medical equipment would not switch from a blue UHMWPE fiber to white UHMWPE fiber because of the unique benefits blue fiber affords. Those benefits are universally recognized, and blue fiber has become standard in procedures involving certain orthopedic and arthroscopic surgeries, in particular surgeries to repair muscles and tendons and other soft-tissue surgical procedures.

42. UHMWPE fiber also provides unique benefits superior to other forms of biomaterials used in minimally invasive surgeries and medical devices, such as polyester, nylon, titanium, and alloy. UHMWPE fiber is significantly more durable and abrasion-resistant than polyester lines of comparable weight. It is also stronger and smaller in size than both polyester and nylon. Thus, polyester and nylon are not adequate substitutes for UHMWPE fiber.

43. Meanwhile titanium and alloy belong to fundamentally different material chemistries. UHMWPE fiber thus has advantages over titanium and alloy in terms of strength,

weight, wear resistance, and chemical stability. Therefore, their performance is so dissimilar to UHMWPE fiber that it is not an adequate substitute.

44. DSM's blue-colored UHMWPE fibers are already priced above competitive levels. On average, blue-colored UHMWPE fibers are priced approximately 20% higher than the price for white UHMWPE fibers. On information and belief, DSM's profit margin on blue-colored UHMWPE fiber exceeds its profit margin on its line of white UHMWPE fibers.

45. DSM and Honeywell are the only two companies who currently offer blue-colored UHMWPE fibers that can be used in medical devices or equipment for surgical procedures in the United States.

46. A small, but significant, non-transitory increase in price (SSNIP) on UHMWPE blue fiber would not cause a loss of sales to other biomaterial products, including white UHMWPE fibers or UHMWPE fibers that are pigmented with a color other than blue.

47. Accordingly, these other biomaterials used in minimally invasive surgeries and medical devices are not clinical substitutes for UHMWPE blue fiber. Moreover, these other biomaterials used in minimally invasive surgeries and medical devices do not exhibit substantial cross-price elasticity for UHMWPE blue fiber, and thus are not economic substitutes for, nor reasonably interchangeable with, UHMWPE blue fiber.

48. The relevant geographic market is the United States. Medical devices and equipment incorporating UHMWPE fibers sold in the United States obtain regulatory approval, including specific approval for the fiber and the blue hue. Given that regulation, customers will only turn to other providers who provide UHMWPE blue fiber that has met U.S. FDA regulations. Moreover, even if the market were viewed as an international market, DSM and Honeywell are

currently the only two sellers globally that offer a blue-colored UHMWPE fiber that meets the FDA's regulatory requirements for medical devices used in U.S. surgeries.

49. Before Honeywell launched its competing SPECTRA® BIO Blue Products, DSM was the only seller of blue-colored UHMWPE fiber available for use in surgeries conducted in the United States. As a result, DSM possessed a 100% share of the relevant market.

50. DSM's anticompetitive conduct has allowed DSM to maintain a monopoly share (over 95%) of the relevant market even after Honeywell's launch of a competing product.

51. There are significant barriers to entry into the market for UHMWPE blue fiber that serve to protect and preserve DSM's market power, including DSM's use of sham litigation solely in order to eliminate competitors in the relevant market.

52. DSM has also been able to create a lock-in effect with its customers. Medical device companies must obtain regulatory approval for their products, which includes identifying the specified color for any fibers used with its medical devices or equipment. Once a device maker has obtained approval of a fiber with a particular FDA-approved hue, there is substantial cost and burden associated with switching to a product of a different color.

ANTICOMPETITIVE EFFECTS AND ANTITRUST INJURY

53. For 10 years, DSM's conduct has harmed competition in the relevant market. Because DSM endeavors to eliminate and prevent competition, it has directly limited output of competing blue UHMWPE fiber.

54. Absent robust competition, DSM charges supracompetitive prices for its blue-colored UHMWPE fibers. Those supracompetitive prices directly impact medical device makers who purchase UHMWPE fibers for incorporation in their medical devices and surgical equipment kits. But those higher prices are also inevitably added to the healthcare system where

they are ultimately borne by patients either in the form of higher medical costs or increased insurance premiums.

FIRST COUNTERCLAIM: DECLARATION OF NON-INFRINGEMENT

55. Honeywell re-alleges and incorporates by reference, as if fully set forth herein, all preceding paragraphs above.

56. DSM alleges that Honeywell has infringed and continues to infringe claims 1–7 and 9 of the of the '532 patent under 35 U.S.C. § 271(a).

57. Honeywell denies that it infringes any valid claim of the '532 patent.

58. Honeywell does not make, use, sell, or offer to sell any product that practices every element of any claim of the '532 patent, including but not limited to claim 1, at least because Honeywell does not make, use, sell, or offer to sell “[a] colored multi-filament yarn comprising filaments that have been obtained by gel spinning a mixture containing ultra-high molecular weight polyethylene (UHMwPE) having an intrinsic viscosity (IV) of between about 8 and 40 dl/g, a spin solvent and a pigment, wherein the filaments consist of UHMwPE, between 0.1 and 7.0 wt. % of an inorganic chromium oxide-containing pigment, a residual amount of spin solvent of less than about 500 ppm, and less than 1000 ppm of further constituents.”

59. For these, and other reasons to be established through discovery, Honeywell denies that it infringes any valid claim of the '532 patent.

60. There is an actual and justiciable controversy between DSM and Honeywell arising under the Patent Act, 35 U.S.C. § 1 *et seq.*, concerning DSM’s allegations that Honeywell infringes the '532 patent.

61. Honeywell is entitled to a judicial declaration that it has not and does not infringe directly or indirectly, or under the doctrine of equivalents, any valid, enforceable claim of the '532 patent.

62. Absent a declaration that Honeywell does not infringe the '532 patent, DSM will continue to wrongfully assert the '532 patent against Honeywell and thereby cause Honeywell irreparable harm and injury.

**SECOND COUNTERCLAIM: MONOPOLIZATION AND ATTEMPTED
MONOPOLIZATION (15 U.S.C. § 2)**

63. Honeywell re-alleges and incorporates by reference, as if fully set forth herein, all preceding paragraphs above.

64. DSM has monopolized and engaged in activities with the specific intent to monopolize the market for UHMWPE blue fiber in Europe and the United States.

65. DSM has attempted to maintain its monopoly by asserting knowingly baseless claims of patent infringement with the intent that those claims would hinder competition in the UHMWPE blue fiber market. Indeed, in light of the differences between DSM's and Honeywell's products, no reasonable litigant could realistically allege infringement or expect success on the merits. DSM engaged in that conduct and brought this lawsuit not for a legitimate purpose of enforcing patent rights but to suppress competition in the UHMWPE blue fiber market and maintain its monopoly power.

66. The unlawful activities alleged above facilitate the unlawful acquisition or maintenance of DSM's monopoly power in the relevant product and geographic markets in violation of the prohibition on actual monopolization under 15 U.S.C. § 2.

67. The unlawful activities alleged above also create a dangerous probability of DSM maintaining its monopoly power in the relevant product and geographic markets in violation of the prohibition on attempted monopolization under 15 U.S.C. § 2.

68. DSM's anticompetitive conduct has caused and will continue to cause anticompetitive effects in the UHMWPE blue fiber market. But for DSM's anticompetitive

conduct, customers would enjoy the direct benefits of reduced prices and flexible contracting options. Instead, DSM is passing on to device manufacturers and consumers higher costs in the form of monopoly rents that are extracted by DSM as a result of its anticompetitive conduct.

69. DSM's conduct is also harming Honeywell in the form of damage to the reputation of Honeywell's business and products, lost profits, lost business opportunities, and attorneys' fees incurred in conjunction with defending against DSM's sham allegations of patent infringement.

THIRD COUNTERCLAIM: UNFAIR COMPETITION UNDER DELAWARE LAW

70. Honeywell re-alleges and incorporates by reference, as if fully set forth herein, all preceding paragraphs above.

71. Honeywell reasonably expected to sell and continue to sell its non-infringing SPECTRA® BIO Blue Products, enter into business relationships related to those products, and explore business opportunities related to those products. DSM's actions have wrongfully interfered with Honeywell's legitimate expectancy and has caused it harm.

72. [REDACTED]

73. [REDACTED]

74. [REDACTED]

75. [REDACTED]

[REDACTED]

[REDACTED]

76. DSM has continued to assert that Honeywell has infringed and continues to infringe the '532 Patent even though DSM knew or should have known that the '532 Patent is not infringed.

77. DSM has wrongfully interfered with Honeywell's business in violation of Delaware unfair competition law.

78. Honeywell has suffered and will continue to suffer harm because of DSM's unfair competition in the form of lost business, lost profits, and lost business opportunities.

FOURTH COUNTERCLAIM: UNFAIR TRADE PRACTICES (N.C. Gen. Stat. § 75-1.1)

79. Honeywell re-alleges and incorporates by reference, as if fully set forth herein, all preceding paragraphs above.

80. By its conduct, DSM has engaged in an unfair act or practice. DSM's conduct offends established public policy and it is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers.

81. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

82. [REDACTED]

[REDACTED]

[REDACTED]

83. [REDACTED]

84. [REDACTED]

85. DSM's conduct was in or had an effect on commerce.

86. Honeywell has its principal place of business in Charlotte, North Carolina.

87. Honeywell was injured in its business or property as a result of DSM's conduct.

That ultimate harm fell on Honeywell, as a North Carolinian entity.

**FIFTH COUNTERCLAIM: TORTIOUS INTERFERENCE WITH PROSPECTIVE
BUSINESS RELATIONS UNDER DELAWARE LAW**

88. Honeywell re-alleges and incorporates by reference, as if fully set forth herein, all preceding paragraphs above.

89. As part of Honeywell's business, Honeywell conducts business and/or has business relations with other entities in or that support the UHMWPE blue fiber market, which provides a likelihood of future economic benefit for Honeywell.

90. As a result of DSM's actions, Honeywell's business relations with other entities were disrupted, resulting in lost business opportunities.

91. [REDACTED]

92. [REDACTED]

93. [REDACTED]

94. [REDACTED]

95. On information and belief, DSM was aware of Honeywell's business relations and business opportunities with other customers.

96. DSM was aware of the potential for Honeywell to acquire new business relationships.

97. On information and belief, DSM disrupted Honeywell's business opportunities with an intent to harm Honeywell.

98. On information and belief, DSM disrupted Honeywell's business opportunities by improper means, including by asserting and continuing to assert that Honeywell has infringed and continues to infringe the '532 Patent when DSM knew or should have known the '532 Patent was not infringed.

99. DSM's actions constitute tortious interference with Honeywell's prospective business in violation of Delaware law.

100. Honeywell has suffered and will continue to suffer harm because of DSM's tortious interference with prospective business relations in the form of lost business, lost profits, and lost business opportunities.

**SIXTH COUNTERCLAIM: TORTIOUS INTERFERENCE WITH PROSPECTIVE
ECONOMIC ADVANTAGE UNDER NORTH CAROLINA LAW**

101. Honeywell re-alleges and incorporates by reference, as if fully set forth herein, all preceding paragraphs above.

102. As part of Honeywell's business, Honeywell conducts business and/or has business relations with other entities in or that support the UHMWPE blue fiber market, which provides a likelihood of future economic benefit for Honeywell.

103. As a result of DSM's actions, Honeywell's business relations with other entities were disrupted, resulting in lost business opportunities.

104. [REDACTED]

105. [REDACTED]

106. [REDACTED]

107. [REDACTED]

108. On information and belief, DSM was aware of Honeywell's business relations and business opportunities with other customers.

109. DSM was aware of the potential for Honeywell to acquire new business relationships.

110. On information and belief, DSM disrupted Honeywell's business opportunities with an intent to harm Honeywell.

111. On information and belief, DSM disrupted Honeywell's business opportunities by improper means, including by asserting and continuing to assert that Honeywell has infringed and continues to infringe the '532 Patent when DSM knew or should have known the '532 Patent was not infringed.

112. There is no excuse or justification for DSM's conduct.

113. DSM's actions constitute tortious interference with Honeywell's prospective economic advantage in violation of North Carolina law.

114. Honeywell has suffered and will continue to suffer harm because of DSM's tortious interference with prospective economic advantage in the form of lost business, lost profits, and lost business opportunities. Absent DSM's wrongful conduct, there is a reasonable likelihood that Honeywell would have been able to enter business opportunities for its SPECTRA® BIO Blue Products. That ultimate harm fell upon Honeywell as a North Carolinian entity.

DEMAND FOR JURY TRIAL

In accordance with Rule 38 of the Federal Rules of Civil Procedure, Honeywell demands a trial by jury on all issues so triable in this action.

REQUEST FOR RELIEF

Honeywell respectfully requests that this Court enter judgment as follows:

1. A judgment dismissing DSM's Complaint against Honeywell with prejudice;
2. A judgment in favor of Honeywell on all of its Defenses;

3. A judgment denying any relief whatsoever, including but not limited to injunctive relief, in favor of DSM;
4. A judgment in favor of Honeywell on its Counterclaims;
5. A judgment that Honeywell has not infringed or induced others to infringe, either directly or indirectly, any valid claim of the Asserted Patent;
6. A judgment that this action is an exceptional case within the meaning of 35 U.S.C. § 285 and that Honeywell is entitled to recover its reasonable attorneys' fees upon prevailing in this action;
7. A judgment that DSM violated 15 U.S.C. § 2 and award damages and/or restitution to Honeywell sufficient to compensate Honeywell for DSM's violation of 15 U.S.C. § 2, in an amount to be proven at trial pursuant to 15 U.S.C. § 15, including trebled damages, attorney's fees and prejudgment interest and enjoin Defendants, pursuant to 15 U.S.C. § 26, from making any further allegations that Honeywell's SPECTRA® BIO Blue Products have infringed or are infringing the '532 Patent;
8. A judgment that DSM engaged in unfair competition under Delaware law, award damages to Honeywell in an amount to be proven at trial as well as attorney's fees, costs, and enjoin DSM from making any further allegations that Honeywell's SPECTRA® BIO Blue Products have infringed or are infringing the '532 Patent;
9. A judgment that DSM violated N.C. Gen. Stat. § 75-1.1 and award damages to Honeywell in an amount to be proven at trial, disgorgement of profits, attorney's fees, and costs, and enjoin DSM from making any further allegations that

Honeywell's SPECTRA® Blue Products have infringed or are infringing the '532 Patent.

10. A judgment that DSM engaged in tortious interference with prospective business relations under Delaware and tortious interference with prospective economic advantage under North Carolina law and award damages to Honeywell in an amount to be proven at trial, as well as attorney's fees and costs, and enjoin DSM from making any further allegations that Honeywell's SPECTRA® Blue Products have infringed or are infringing the '532 Patent;
11. An award to Honeywell of its fees and expenses of litigation, including but not limited to attorneys' fees and costs;
12. A judgment limiting or barring DSM's ability to enforce the Asserted Patent in equity;
13. Such other relief as this Court may deem just and proper.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Rodger D. Smith II

OF COUNSEL:

S. Benjamin Pleune
M. Scott Stevens
Lauren N. Griffin
Matthew M. Turk
Erin Beaton
ALSTON & BIRD LLP
1120 South Tryon Street
Suite 300
Charlotte, NC 28203-6818
(704) 444-1000

Rodger D. Smith II (#3778)
Benjamin Yenerall (#7132)
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19801
(302) 658-9200
rsmith@morrisnichols.com
byenerall@morrisnichols.com

Attorneys for Defendants

November 27, 2023

CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the foregoing document to be served on November 27, 2023, upon the following in the manner indicated:

Kenneth L. Dorsney, Esq.
Cortlan S. Hitch, Esq.
MORRIS JAMES LLP
500 Delaware Avenue, Suite 1500
Wilmington, DE 19801
Attorneys for Plaintiffs

VIA ELECTRONIC MAIL

Erick J. Palmer, Esq.
MAYER BROWN LLP
71 South Wacker Drive
Chicago, IL 60606
Attorneys for Plaintiffs

VIA ELECTRONIC MAIL

Joseph A. Mahoney, Esq.
Cecilia G. Rambarat, Esq.
MAYER BROWN LLP
300 South Tryon Street
Suite 1800
Charlotte, NC 28202
Attorneys for Plaintiffs

VIA ELECTRONIC MAIL

/s/ Rodger D. Smith II

Rodger D. Smith II (#3778)