UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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DR. SQUATCH, LLC
Petitioner

v.

THE PROCTER & GAMBLE COMPANY
Patent Owner

_____

IPR2024-01105
Patent No. 10,966,915

_____

PETITIONER'S RESPONSE TO PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW

This filing was authorized by the Director (Ex. 3100).

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Petitioner Dr. Squatch submits this response to Patent Owner's ("P&G") Request for Director Review ("Request"). The Request should be denied.

I. BACKGROUND

Dr. Squatch is a U.S. company, based in Marina Del Rey, California, that develops and sells natural personal care products, including deodorants. P&G's Patent No. 10,966,915 ("the '915 Patent"), and this IPR, pertain to routine deodorant stick ingredients and formulation concepts, such as adjusting waxes to achieve a target hardness (e.g., more wax yields a harder stick) as measured by a standard test (ASTM D-1321). The '915 patent does not concern cutting-edge technology, matters of national defense, or other issues warranting extraordinary intervention.

As in related IPR2024-01104, where P&G also filed a Request for Director Review, the FWD reached the only logical conclusions permitted by the record—the claims are unpatentable because they recite well-known deodorant formulations.

II. ARGUMENT

A. The Board Properly Rejected P&G's Attempts to Read into the Claims an Undisclosed and Non-Existent Limitation

Claim 15 of the '915 Patent requires the deodorant stick to have a specified "hardness from about 80 mm*10 to about 140 mm*10, as measured by penetration with ASTM D-1321 needle." Ex. 1001, 16:43-45. There is no dispute that (i) ASTM D-1321, the only hardness test mentioned in the claims, was an established industry standard (*see* FWD, 25-28) and (ii) the prior art, including Bianchi-518 and Bianchi-

254, reported hardness values in the claimed hardness range using the same ASTM D-1321 standard. Thus, the claims are obvious. *See* FWD 25-28, 35.

P&G asks the Director to construe[1] the claims to ***exclude*** the sole hardness test that the claims expressly name. But P&G's interpretation defies the claim language, which expressly recites measuring hardness with an "ASTM D-1321 needle." There is no dispute that a POSA would understand the ASTM D-1321 standard test to utilize a 100 g needle assembly, in which a 50 g weight is used along with other needle equipment that is calibrated to weigh 50 g.

P&G asserts that the claims' recitation of ASTM D-1321 should be ignored in favor of a different hardness test. However, the Board correctly rejected P&G's argument for several reasons, including: (1) P&G misplaced reliance on specification language discussing periodically calibrating the needle to ensure it

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[1] As a threshold matter, P&G waived this argument by choosing not to request claim construction from the Board. *See, e.g., In re Google Tech. Holdings LLC*, 980 F.3d 858, 864 (Fed. Cir. 2020) ("[W]e conclude that Google forfeited its [] argument as to the construction … because Google failed to raise this argument in proceedings before the Board."). P&G thus misrelies on *Phillips v. AWH Corp*., 415 F.3d 1303, 1323 (Fed. Cir. 2005) (Request, 5-8), which addressed claim construction issues that were properly raised.

accurately weighs 50 g; and (2) the lack of language, even in the specification, clearly directing a POSA to deviate from the standard ASTM D-1321 methodology by excluding the 50 g weight when performing the test. FWD, 27-28; *see Phillips*, 415 F.3d at 1320-23 (improper to re-write claim language absent clear redefinition or disclaimer). The Board also noted the testimony of Dr. Squatch's expert, Dr. Michniak-Kohn of Rutgers University, which confirmed that calibrating the needle at 50 g is consistent with the ASTM standard methodology, because one needs to ensure that the needle conforms to the standard's requirements for the needle design, which includes weight. FWD, 27-28. There can be no legitimate dispute that the Board's findings in this regard were well-supported by the evidence and law.

P&G now argues, incorrectly, that the Board improperly relied on extrinsic evidence in the form of Dr. Michniak-Kohn's reply declaration. However, the Board considered that reply declaration when addressing extrinsic evidence first introduced by P&G (i.e., Dr. Lochhead's declaration). FWD, 26 (citing Ex. 2011 ¶ 86). Dr. Michniak-Kohn's reply declaration merely responded—appropriately—to P&G's extrinsic evidence. P&G also ignores that the Board's decision and the reply declaration addressed ***intrinsic*** evidence: i.e., that the claim language and specification "fail[] to expressly disclose" the exclusion of the 50 g weight from the standard ASTM D-1321 test. FWD, 27. In any event, P&G misstates the law, because it is entirely permissible to consult extrinsic expert testimony to understand

how a POSA would apply an industry standard that is expressly referenced in the patent. *See Teva Pharms. USA, Inc. v. Sandoz, Inc*., 574 U.S. 318, 331-32 (2015).

This is not the first time P&G, supported by Dr. Lochhead, has unsuccessfully advanced a similar theory. In *Conopco Inc. v. The Procter & Gamble Co*., the Board rejected P&G's attempt to limit shampoo-related claims to a non-standard testing method where the claims themselves did not impose that restriction. The Board in *Conopco* rejected P&G's argument because "[n]either the express claim language, nor the disclosure, limits the methods that may be used" to evaluate the properties. IPR2013-00505, Paper 69 at 7 (P.T.A.B. Feb. 10, 2015), *aff'd*, No. 2015-1680 (Fed. Cir. Aug. 8, 2016). This reasoning applies with even greater force here, where the claims expressly reference the "ASTM D-1321" standard, and the prior art discloses overlapping hardness ranges measured under that standard. Thus, the Board correctly found the hardness limitation satisfied by the prior art.

B. P&G's Attacks Against the Well-Supported Findings of Motivations to Combine Fail

P&G asserts that the Petition lacked proper motivation to combine different deodorant references, that P&G's declaration testimony on this point was "unrebutted," and that the FWD failed to address P&G's argument in this regard. The record disproves each of those assertions.

Contrary to P&G's allegation that Dr. Lochhead's testimony was "unrebutted," in Dr. Michniak-Kohn's original declaration presented with the

Petition, she thoroughly addressed the combinations and how a POSA would achieve the long-known hardness range by balancing structurants and carrier oils. Ex. 1002, ¶¶ 40 ("[s]tructurants with different melting point temperatures were used, often in combination, to adjust … hardness"), 41, 44-46, 64, 67, 77, 80, 97-101("a POSA would know that a stick composition could be made less hard by reducing the relative amount of the structurant relative to, typically, the carrier oil component"), 103-104, 106-111, 118, 137, 142, 145-148. Indeed, even the Petition's Introduction explains that achieving the known hardness range for deodorant sticks was long known to be a simple issue of adjusting the amount of structurant relative to the carrier oil. Paper 2, 3-4; *see also id*., 11-15, 41-48. Dr. Michniak-Kohn's reply declaration also rebutted Dr. Lochhead's unsupported speculation that ingredients other than the structurant and carrier oil affect hardness. Ex. 1086, 6; Reply, 22-23.

Furthermore, Dr. Squatch presented P&G's admissions—from as far back as the 1970s—that adjusting the hardness through structurants was something a person "skilled in the art" could "easily" do. Ex. 1041, 4:37-44. P&G tries to distance itself from these admissions because they allegedly were made in the context of discussing deodorants containing aluminum and/or silicone (ingredients that some of the challenged claims exclude). This argument is meritless because, as the Board noted, the '915 Patent itself treats aluminum- and silicone-containing deodorant disclosures as relevant sources for "suitable" ingredients. FWD, 32 (citing Reply, 23; Ex. 1001,

5:66–6:4, 10:57–64; Ex. 1041; Ex. 1083; Ex. 1081, 46:22–52:22).

Underlying P&G's argument is the notion that only prior art expressly discussing hardness in the context of "natural" deodorant is relevant. But this argument distorts the '915 Patent, which gives no guidance on how to control hardness and instead offers broad ranges of ingredients that may be used, leaving it to the POSA to achieve the hardness based on his/her own knowledge. *See* Paper 34 at 69:22-71:12. Indeed, the only hint the '915 Patent gives about how to adjust hardness is the very same explanation P&G admitted was known since, at least, the 1970s—i.e., a POSA could adjust the structurant(s). Ex. 1001, 3:5-57, 5:45-52, 7:50-53 ("The concentration and type of solid structurants … will vary depending upon the desired product hardness."); *see* Paper 2, 9; Ex. 1002, ¶¶ 27-28.

In fact, even Dr. Lochhead admitted that formulators of natural deodorants would look to references describing aluminum- and silicone-containing deodorants—because "that's what a POSA does." Ex. 1081, 46:22–52:22. The Board cited this testimony, along with Dr. Michniak-Kohn's similar testimony that, "a POSA would look to other references in the same field—personal care compositions, including deodorants and/or antiperspirants—to determine how much of each ingredient should be used." FWD, 32 (citing Ex. 1002 ¶¶ 105-112).

Notably, the presence of silicone in Bianchi-518 does not undermine its relevance. As the Board appreciated, Dr. Squatch did not rely on Bianchi-518's

disclosure of silicone structurants to provide a hardness within the claimed range. Rather, Dr. Squatch relied on Bianchi-518 for motivation for formulating a deodorant stick within the claimed range to accommodate consumer preferences. FWD, 28. Thus, Bianchi-518 is cited because it teaches which hardnesses (measured under ASTM D-1321) consumers prefer, which a POSA would be motivated to achieve and the evidence shows could be "easily" achieved by adjusting structurants.

The Board's analysis was consistent with the Supreme Court's instruction that a "combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int'l Co. v. Teleflex Inc*., 550 U.S. 398, 416 (2007). P&G's demand for a categorical rule insulating "natural" deodorant claims from the broader personal care formulation art is exactly the kind of rigid approach *KSR* rejected.

P&G's Request also rehashes criticisms of the Lesniak/Phinney combination, arguing that Phinney's disclosure of water-based compositions and different zinc compounds somehow defeats any motivation to add magnesium hydroxide to Lesniak's zinc oxide deodorant sticks. Request 14. The Board correctly rejected that argument. The relevant inquiry is not whether Phinney's preferred embodiments are identical to Lesniak's anhydrous sticks, but whether a POSA would have had a reasonable expectation that magnesium hydroxide would function as a deodorizing agent if combined with Lesniak's composition. The record confirms that magnesium

hydroxide was known as an effective deodorant agent and that zinc-based systems were understood to benefit from complementary antimicrobial components. Indeed, Phinney teaches that: (i) zinc oxide has "low activity" as a "deodorant agent"; (ii) magnesium hydroxide is "an effective deodorant"; and (iii) zinc and magnesium compounds have synergistic effects—directly motivating a POSA to add magnesium hydroxide to Lesniak's zinc oxide deodorants. FWD, 21 (citing Ex. 1004, 1:13–3:16, 5:61–67). It is irrelevant whether (as P&G suggests) zinc oxide converts to zinc hydroxide in certain Phinney embodiments. *See* FWD, 21-23 (citing *In re Fulton*, 391 F.3d 1195, 1200 (Fed. Cir. 2004) ("Our case law does not require that a particular combination must be the preferred, or the most desirable combination.")).

P&G's emphasis on certain water-dependent embodiments in Phinney does not defeat motivation to combine or reasonable expectation of success. The law does not require that a single prior art reference disclose the precise embodiment in order to support an invalidating combination. Nor does it require that embodiments of multiple prior art references be "physically combinable," as the Board recognized. FWD, 22 (quoting *Allied Erecting and Dis. Co., Inc. v. Genesis Att*., LLC, 825 F.3d 1373, 1381 (Fed. Cir. 2016)). Here, as Dr. Michniak-Kohn explained, a POSA would reasonably expect that adding a known antimicrobial such as magnesium hydroxide to a deodorant stick containing zinc oxide would enhance odor control, regardless of whether the stick is anhydrous. Reply, 11 (citing Ex. 1072, 1–2, 5; Ex. 1081, 100:14–

106:8; Ex. 1086 ¶ 9); *see* FWD, 22. Nothing in the record demonstrates incompatibility or technical barriers to that routine formulation adjustment.

C. P&G's New RPI Argument is Meritless and Misrepresents the Law and Record

P&G, for the very first time, asks for institution to be vacated—and Dr. Squatch's Petition to be retroactively dismissed—due to an alleged failure to disclose all RPIs. P&G is attempting to exploit the Director's recent decisions concerning RPIs—even though, as discussed below, ***those decisions all address an entirely different situation in which the petition failed to disclose all RPIs at the time of institution.*** P&G's argument should be rejected for several reasons, including that (1) Dr. Squatch's RPI disclosures were indisputably accurate and complete in the Petition and through institution, (2) Dr. Squatch has always been, and even now is, the only RPI, and (3) the Director's guidance does not support dismissing an IPR based on a post-institution change in the petitioner's ownership.

As a starting point, it is critical to consider the relevant chronology:

- June 5, 2024: P&G filed a district court suit asserting the '915 Patent and related patents against Dr. Squatch. *See* Ex. 1040.
- June 28, 2024: Dr. Squatch filed the Petition, naming itself as the RPI. There is no dispute that Dr. Squatch was the only RPI at this point.
- January 27, 2025: The Board instituted trial (Paper 12). There is no dispute that Dr. Squatch was the only RPI at this point.

- July 25, 2025: Dr. Squatch's trial briefing concluded (Reply, Paper 20). There is no dispute that Dr. Squatch was the only RPI at this point.
- September 2, 2025: Unilever PLC ("Unilever") becomes an indirect owner of Dr. Squatch by virtue of a corporate acquisition.
- October 21, 2025: Dr. Squatch filed an Updated Mandatory Notice stating that Dr. Squatch remains ***the*** RPI, even while noting that it had become indirectly owned by Unilever (which was not identified as an RPI). Paper 33.
- October 22, 2025: During the oral hearing, P&G asked that "petitioner be required to state on the record, not necessarily today, maybe in a filing, whether or not they contend Unilever PLC would be estopped ***should estoppel attach at the end of these IPRs***." Paper 34, 31:5-18 (emphasis added). This is the only request that P&G made to the Board related, even tangentially, to the RPI issue.[2]

As discussed in greater detail below, 35 U.S.C. 312(a)(2) requires that a petition must completely and accurately disclose RPIs when it is filed and considered

[2] Even if P&G's RPI argument had merit (it does not) P&G waived it by failing to argue to the Board that Unilever should have been named as an RPI and that the IPR should be vacated based on that notion. *See Apple Inc. v. Gesture Tech. Partners, LLC*, 129 F.4th 1367, 1374 (Fed. Cir. 2025) (holding "Gesture has forfeited its [RPI] argument 'because it failed to present those arguments before the Board'").

for institution. Here, it is ***undisputed*** that, at filing and through institution, Dr. Squatch was correctly identified in the Petition as the one and only RPI.

Long after the IPR had been instituted and Dr. Squatch's briefing had been completed, Dr. Squatch became indirectly owned by Unilever. However, as Dr. Squatch confirmed in its uncontroverted Updated Mandatory Notice, Dr. Squatch remains the only RPI. P&G now asks the Director to decide—based on nothing more than speculation—that Unilever is an RPI. But, as discussed in greater detail below, a corporate parent or owner is not automatically or necessarily an RPI. Rather, it was P&G's burden to prove that Unilever funded, directed or controlled this IPR. P&G has not done so, nor can it. Tellingly, even as P&G asks the Director to take the extraordinary step of dismissing this IPR, P&G does not attempt to prove that P&G was an RPI under the relevant, fact-intensive inquiry.

Moreover, even if P&G could satisfy its burden, there is no legal authority supporting the notion that a post-institution change in RPIs (much less a post-institution change in ownership) results in the retroactive invalidation of a properly instituted IPR proceeding. The touchstone for analyzing this issue is 35 U.S.C. 312(a)(2), which sets forth the "[r]equirements of the Petition" to institute an IPR. Specifically, "[a] petition … may be considered only if … [it] identifies all real parties in interest." 35 U.S.C. 312(a)(2). Thus, the statute requires that, in order to be considered for institution, the petition must correctly identify all RPIs.

This understanding of the statute is confirmed by the rules and *Corning Optical*, which the Director has designated as precedential. The rules make clear that "[a] ***petition to institute*** *inter partes* review will not be accorded a filing date until the petition satisfies all of the [] requirements," such that an incomplete petition will be afforded a filing date only once complete. 37 C.F.R. §§ 42.106, 42.104, 42.8 (emphasis added). *Corning Optical* confirms that the issue is whether the ***Petition***, as filed and through institution, named all RPIs. *Corning Optical Comms. RF, LLC v. PPC Broadband, Inc*., IPR2014-00440, Paper 68 at 20 (P.T.A.B. Aug. 18, 2015) (analyzing which entities paid for an controlled the preparation of the petition), 24 (identifying the issue as being one of completeness of the petition under § 312(a)(2)), 14-15 (discussing control of the petition), 16 (stating that the "Petition[] should have named [other entities]"), 17 (discussing "pre-existing" relationships), 18 (discussing whether an entity "could have controlled the filing"), 20 (addressing what entity "paid for the IPR[]"), 21, 23 (citing § 312(a)(2) and discussing changes to a "Petition" as the basis for a new filing date), 24 (citing § 312(a)(2) and discussing requirements of the "petition").

Thus, *Corning Optical* is abundantly clear that the relevant question is whether a petition's failure to name all RPIs precludes consideration of the petition "***at the time of institution***." *Id.* at 25 (emphasis added). Here, there is absolutely no dispute that: (1) the Petition named the proper, sole RPI—Dr. Squatch, and (2) at the

time of institution Dr. Squatch was the proper, sole RPI. These facts alone dispose of P&G's argument.

P&G makes no cogent argument as to why post-institution activities have any bearing on § 312(a)(2)'s requirement pertaining to the completeness of a petition as filed and instituted. Nor could it, given the clear language of the statute, rules, and *Corning Optical*. Moreover, P&G's argument ignores the importance of institution, as it is in that critical moment that the inquiry shifts from whether to institute the proceeding to whether the claims are patentable. *St. Jude Medical, Cardiology Div. v. Volano Corp.*, 749 F.3d 1373, 1375 (Fed. Cir. 2014).

In any event, there simply is no evidence in the record to support P&G's suggestion that Unilever is an RPI. As an initial matter, *Corning Optical* makes clear that "[i]f a patent owner raises an RPI issue after institution ... the burden of proof [for proving improper naming of an RPI] is on the patent owner." IPR2014-00440, Paper 68 at 13. Thus, even if the post-institution activity could justify a retroactive dismissal of the petition, it was P&G's burden to prove that Unilever was an RPI.

P&G never even tries to satisfy its burden. It offers no evidence that Unilever was an RPI under the recognized standard for determining if a party is an RPI. The ***only*** fact P&G relies on is that, long after institution, Unilever became an indirect corporate parent of Dr. Squatch. However, *Corning Optical*, makes clear that a parent-subsidiary relationship is not sufficient to make a parent an RPI. *Id.* at 16, 18;

see also TRW Auto. US LLC v. Magna Elecs. Inc., IPR2014-00293, Paper 18 at 12–13 (P.T.A.B. June 27, 2014) (rejecting RPI challenge where patent owner offered no facts beyond disclosure as "related" entities in mandatory notice).[3]

Corning Optical sets forth criteria to consider when analyzing the "highly fact-dependent question" of whether a party should be considered an RPI. *Corning Optical*, at 14 (citing 77 Fed. Reg. at 48,759 (citing *Taylor v. Sturgell*, 533 U.S. 880 (2008))). The criteria include "whether the non-party exercised or could have exercised control over a party's participation in a proceeding (*Corning Optical* at 14 (citing 77 Fed. Reg. at 48,759, *Reflectix, Inc. v. Promethean Insulation Tech. LLC*, Case IPR 2015-00039, slip op. At 12 (PTAB Apr. 24, 2015)); "whether a non-party 'funds and directs and controls' an IPR petition or proceeding" (*Corning Optical* at 14 (citing 77 Fed. Reg. at 48,759; 48,760; *Taylor*, 553 U.S. at 893-95 & n.6 (2008)); "the non-party's relationship with the petitioner" (*id.*); "the non-party's relationship to the petition itself, including the nature and/or degree of the involvement in the filing (*id.*); and "the nature of the entity filing the petition" (*id.*).

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[3] *Curium US LLC v. Universität Heidelberg*, IPR2025-01582, Paper 11 (P.T.A.B. Feb. 25, 2026) (informative) lends no support to P&G's argument because the case addresses pre-institution RPIs, and the updated mandatory notice in that case (Paper 6) expressly stated that the relevant parties were RPIs.

Nothing in P&G's Request or the record remotely permits the conclusion that Unilever controlled, funded, or directed the filing of the Petition, the conduct of the IPR, or the positions taken on the merits. To the contrary, ***the chronology establishes that Dr. Squatch drafted and filed the petition, obtained institution, prepared arguments, and drafted and submitted briefs and supporting evidence well before the Unilever acquisition***. Thus, P&G cannot meet its burden on this issue.

Finally, P&G's proposed rule would destabilize routine corporate transactions by converting post-institution ownership changes into retroactive jurisdictional defects. Under P&G's theory, whenever a petitioner experiences a change in direct or indirect ownership—even if long after institution—the new owner becomes an RPI and the original petition must be re-filed. If the change in ownership occurs more than a year after the filing of a district court lawsuit, under P&G's theory, the result must be a dismissal of the IPR due to § 315(b)'s time bar. That is not the law, as nothing in § 312(a)(2), the rules, or precedential decisions supports such a result. The Director should reject an interpretation that would transform ordinary and often beneficial corporate transactions into a basis for retroactive dismissal. Finding otherwise would have a harmful chilling effect on corporate M&A activity.

CONCLUSION

For the foregoing reasons, Patent Owner's Request for Director Review should be denied and the Final Written Decision should remain undisturbed.

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Respectfully submitted,

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The undersigned certifies that a complete copy of the foregoing document was served on P&G's counsel of record, on this date:

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