

Petitioner's Demonstratives

October 22, 2025

Dr. Squatch, LLC

v.

The Procter & Gamble Company

IPR2024-01104

IPR2024-01105

IPR2024-01173

IPR2024-01174

VENABLE LLP



DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Exhibit 1088
Dr. Squatch v. P&G
IPR2024- 01104,
01105, 01173, 01174,



Unpatentability Grounds

Grounds ('999 Patent)

IPR2024-01104

Patent 11,540,999 B2

Ground	Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
I	1–7, 9–13, 15–18	103	Lesniak, Phinney, Bianchi '518
II	8	103	Lesniak, Phinney, Bianchi '518, Lamb
III	14	103	Lesniak, Phinney, Bianchi '518, Bianchi '254
IV	1–15, 17, 18	103	Native, Bianchi '254, Easy Homemade
V	16	103	Native, Bianchi '254, Easy Homemade, Millet

Grounds ('915 Patent)

IPR2024-01105

Patent 10,966,915 B2

Ground	Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
I	1, 3–8, 11–14	102/103	Lesniak
II	2, 10	103	Lesniak, Phinney
III	9	103	Lesniak, Lamb
IV	15	103	Lesniak, Bianchi '518,
V	1–2, 5–9, 11–15	103	Native, Bianchi '254
VI	3, 4, 10	103	Native, Bianchi '254, Easy Homemade

Grounds ('706 Patent)

IPR2024-01174

Patent 11,497,706 B2

Ground	Claim(s) Challenged	35 U.S.C. § ¹	Reference(s)/Basis
I	1, 2, 5–7, 10–13, 15	102 or 103	Lesniak
II	3, 14	103	Lesniak, Phinney
III	4	103	Lesniak, Phinney, Lamb
IV	8	103	Lesniak, Bianchi '518
V	16–23	103	Lesniak, Phinney, Bianchi '254, and Anconi
VI	1, 5, 7, 8, 10–12, 15	103	Native, Bianchi '254
VII	2–4, 6, 13, 14	103	Native, Bianchi '254, Easy Homemade
VIII	16–23	103	Native, Bianchi '254, Easy Homemade, Anconi, and Stoia
IX	16–23	103	Squatch, Sturgis

Grounds ('647 Patent)

IPR2024-01173

Patent 10,905,647 B2

Ground	Claim(s) Challenged	35 U.S.C. § ¹	Reference(s)/Basis
I	14–17	102 or 103	Lesniak
II	1, 4–7, 9–12, 18–19	103	Lesniak, Bianchi '518
III	2	103	Lesniak, Bianchi '518, Phinney
IV	3, 13	103	Lesniak, Bianchi '518, Phinney, Nabavi
V	16, 17	103	Native, Bianchi '254
VI	1, 2, 4–7, 9–12, 14, 15, 18, 19	103	Native, Bianchi '254, Easy Homemade
VII	3, 13	103	Native, Bianchi '254, Easy Homemade, Nabavi



Summary of Key Arguments

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Summary of Key Arguments

- **Lesniak Anticipates and/or Renders Obvious the Challenged Claims**
 - Lesniak's antiperspirants are deodorants.
 - Lesniak's composition has no stability issues.
 - The argument that a POSA would never modify a complete formulation conflicts with accepted legal standards.
- **P&G'S Attempt to Distinguish Prior Art Through a "Hardness" Argument Lacks Merit**
 - The claims identify a standard hardness test and a hardness range.
 - Prior art discloses hardness in the claimed ranges using the standard hardness test.
 - P&G's request to read into the claims a requirement to use a different, non-standard hardness test fails where (i) the specification does not support the same and (ii) P&G has presented no claim construction identifying any explicit exclusion of the standard test.
 - The claims are unpatentable under even P&G's proposed hardness test.

Summary of Key Arguments (Cont'd)

- **Native Renders Obvious the Challenged Claims**
 - The argument that a POSA would never modify a complete formulation conflicts with accepted legal standards.
 - Baking soda and magnesium hydroxide were known, interchangeable antimicrobials.
- **Squatch Renders Obvious the Challenged “Picture” Claims Reciting 9-10 Ingredients ('706 Patent Only)**
 - Claims 16-23 of the '706 Patent lack support in the priority applications, which disclose laundry lists of ingredients with no blaze marks for selecting the claimed combinations.
 - Petitioner's declarant confirmed the printed publication status of the Squatch website art—and P&G did not challenge that testimony.



Representative Challenged Claims

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Representative Claims – '999 Patent

1. A deodorant stick comprising:
 - a. at least one antimicrobial comprising magnesium hydroxide; and
 - b. a primary structurant with a melting point of at least about 50° C.; andsaid stick being free of an aluminum salt; and
said stick having a hardness from about 80 mm*10 to about 140 mm*10, as measured by penetration with ASTM D-1321 needle.

Representative Claims – '915 Patent

1. A deodorant stick comprising:
 - a. at least about 25% of a liquid triglyceride;
 - b. at least one antimicrobial; and
 - c. a primary structurant with a melting point of at least about 50° Celsius; andwherein said stick is free of an aluminum salt.

Representative Claims – '706 Patent

1. A deodorant stick comprising:
at least about 25% by weight liquid triglyceride
and a primary antimicrobial;
said deodorant stick being free of an aluminum
salt.

Representative Claims – '647 Patent

1. A deodorant stick comprising:
 - a. at least 25% by weight **liquid triglyceride**;
 - b. a primary **antimicrobial** having a water solubility of at most about 90 g/L at 25° C.;
 - c. a **fragrance composition** comprising at least about 50% by weight of natural oils, essential oils, or a combination thereof; and
 - d. a primary **structurant** with a melting point of at least 50° C.;said deodorant stick being **free of an aluminum salt**;
and
said deodorant stick having a **hardness** from about 70 mm*10 to about 140 mm*10, **as measured by penetration with ASTM D-1321 needle**.



State of the Art of Deodorant Sticks & The Challenged Patents

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Well-Known Components of Deodorant Sticks

- **Deodorants**

- Deodorants are intended to inhibit the formation and perception of malodor using antimicrobials and/or fragrances. Ex. 1013, 169-83, 189-95, 201.
- In stick form, they typically contain:
 - **Carrier oils** (*e.g.*, triglycerides, silicone oils) to solubilize or disperse ingredients. Ex. 1014, ¶¶[0002], [0037]-[0043]; Ex. 1008, ¶¶[0046], [0050].
 - **Structurants** (*e.g.*, waxes, stearyl alcohol) to solidify the carrier oil. Ex. 1002, ¶¶34, 36-45, 49-54 (citing Ex. 1019-1024, 1026-1032); Ex. 1014, ¶¶[0029], [0030].
 - **Antimicrobials** (*e.g.*, baking soda, magnesium hydroxide) to inhibit odor causing bacteria. Ex. 1013, 190, 171-83; Ex. 1017, 5-8.
 - **Fragrances** (*e.g.*, essential oils) to mask odors. Ex. 1013, 195-96.

*unless indicated otherwise, all citations herein refer to the record in IPR2024-01104

Antiperspirants are a Type of Deodorant

- **Antiperspirants**

- Subcategory of deodorants that contain an **active ingredient** (e.g., aluminum or zinc salts) that may block sweat pores. Ex. 1006, 3:5-11; Ex. 1014, ¶¶[0020]-[0026]; Ex. 1003, 3:39-4:21; Ex. 1015, 5; Ex. 1049, 3-4; Ex. 1002, ¶35.
- “[A]ll antiperspirants are deodorants” Ex. 1036, 2.
 - P&G’s own patents incorporate references that describe “deodorant sticks containing an antiperspirant active.” See Ex. 1001, 10:57-64 (incorporating by reference Ex. 1083, 2:3-31, 5:46-47 (“the antiperspirant active in the deodorant”)).

Optimizing for Desired Hardness In Deodorant Sticks Was Well Known

- Hardening a Deodorant Composition into Stick Form

- Forming a hard stick has long been controlled by adjusting the ratio of structurant (*e.g.*, wax) to carrier oil. Ex. 1014, ¶¶[003], [0028]-[0029], [0037].
- A P&G patent from 1977 acknowledges the hardening process.

“Higher levels of wax lead to lower wear rates, and lower levels of wax tend to give ... a softer, less desirable structure which feels sticky to the user and does not provide adequate shearing action in use . . . The low melting point wax can be used as an adjunct to the high melting point wax to provide structure and as an emollient. The low melting point wax can also be used to adjust the feel of the stick. One skilled in the art will *easily* be able to make a product which feels more brittle, soft, slippery, sticky, rough, etc., by blending various suitable high melting point and low melting point waxes.”

Ex. 1041, 2:64-68, 4:37-44.

The Movement Toward “Natural” Deodorants

- Prior to the Challenged Patents, it was known that consumers were seeking more “natural” deodorants. Ex. 1010, 2; Ex. 1012, 1; Ex. 1023, 40-41.
- Such natural deodorants were known to:
 - **Exclude aluminum.** Ex. 1024, 833; Ex. 1013, 215, 332, Ex. 1023, 40.
 - **Exclude silicone.** Ex. 1026, 1:41-57; Ex. 1027, ¶¶[0003]-[0004].
- Independent formulators were sharing recipes online prior to the critical date. *See* Exs. 1016-1018, 1020.
- By 2016, Native developed and marketed a natural deodorant. Ex. 1007, 5, 11.
 - Acquired by P&G.
 - Contained the same nine most predominant ingredients by weight as “currently marketed” Comparative Formula 1 in the ’999 Patent. Ex. 1007, 5, 11; Ex. 1001, 3:1-45, Table 1, 5:18-19.

P&G's Challenged Patents

- **None of the challenged claims recite what P&G purports to have invented**
 - The '706 and '647 Patents describe the “invention” as compositions comprising the following unclaimed features:
 - a specific antimicrobial, piroctone olamine,
 - “in combination with [other] appropriate antimicrobials” and “a chelating agent,”
 - “in particular ratios,” and
 - “at particular particle sizes.” (Ex. 1001 ['706 Patent], 1:45-2:8).

P&G's Challenged Patents

- **The Challenged Claims primarily recite basic aluminum-free deodorants with various combinations of:**
 - at least about 25% liquid triglyceride (carrier oil);
 - a primary structurant with a melting point of at least about 50° C;
 - the Challenged Patents acknowledge waxes and stearyl alcohol to be known qualifying structurants (Ex. 1001, 5:6-27, 5:53-61)
 - at least one antimicrobial; and
 - a hardness range measured by penetration with an ASTM D-1321 needle.



The Claimed Hardness Properties Were Known in the Art and a Matter of Routine Optimization

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Standard Test to Measure Hardness: ASTM D-1321

- Deodorant hardness has been commonly measured by an accepted standard: **ASTM D-1321** – “Standard Test Method for Needle Penetration of Petroleum Waxes.” Ex. 2018.
- Since the 1990s the “**typical[]**” deodorant hardness (measured by ASTM D-1321) was known to range from about **7.0 mm to about 14.0 mm**. Ex. 1006, 2:56-58, 6:23-29.
- The claimed hardness range was known to be important to consumers.
 - Sticks outside of the typical hardness range “typically generate low consumer acceptance ratings.” Ex. 1006, 6:23-29; *see also* Ex. 1014, ¶¶[0003] -[0005] (discussing adjusting structurants to achieve “satisfactory strength and hardness while exhibiting aesthetically pleasing attributes”).

The Claims Refer to Only One Hardness Test: the ASTM D-1321 Standard

- Exemplary claim feature:

said stick having a hardness from about 80 mm*10 to about 140 mm*10, as measured by penetration with ASTM D-1321 needle.

- ASTM D-1321
 - Defined testing protocol. *See* Ex. 2018.
 - The test involves using, in part:
 - a penetrometer;
 - a specific needle assembly design (*e.g.*, 2.5 g needle and 47.5 g plunger); and
 - a 50-gram weight. Ex. 1086, ¶2; Ex. 2018, 5.

It Is Undisputed That the Prior Art Teaches the Claimed Hardness Range Using the Standard ASTM D-1321 Test

- **Exemplary claimed hardness range:** about 80 mm*10 to about 140 mm*10
- **Issues Not in Dispute**
 - Bianchi-518 teaches:
 - “hardness from about 7.0 mm to about 14.0 mm [70 mm*10 to about 140 mm*10] as shown by the above mentioned [ASTM D-1321] needle penetration test”; and
 - this range was “typical[]” for consumer acceptance. Ex. 1006, 2:56-58, 6:23-29.
 - Bianchi-254 teaches:
 - “hardness values of from 8 to 15 mm [80 mm*10 to about 150 mm*10], preferably 8 to 10 mm, measured pursuant to the Hardness Method set forth below [DIN 51-579].” Ex. 1008, ¶¶[0026], [0117]).
 - P&G acknowledges that DIN 51-579 is “the same as the ASTM [D-1321].” Ex. 1081, 113:1-7; Ex. 1001, 11:45-12:15 (“DIN 51-579”).

P&G's Argument: Claimed Hardness Must Not Be Measured Using ASTM D-1321

- **P&G's Position**

- “ASTM D-1321 needle” (as claimed) should be read as “[***a 50-g total force***] ASTM D-1321 needle.” POR, 39.
 - Seeks to exclude the ASTM D-1321 standard's use of the 50-gram weight.

P&G presented no claim construction argument in support.

The Claims Cannot Exclude the Only Hardness Test (ASTM D-1321) that They Mention

- **Challenged Claims require only an “ASTM D-1321 needle”**
 - The law precludes “reading limitations from the specification into the claims” absent a disclaimer or express definition. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005) (en banc).
 - ***P&G does not identify any disclaimer or redefinition of “ASTM D-1321 needle.”***
- **The Board has previously rejected this type of argument by P&G and its expert**
 - “Neither the express claim language, nor the disclosure, limits the methods that may be used to evaluate the four” properties. *Conopco Inc. v. The Procter & Gamble Co.*, IPR2013-00505, Paper No. 69, at 7 (PTAB Feb. 10, 2015), *aff’d*, No. 2015-1680 (Fed. Cir. Aug. 8, 2016) (rejecting P&G’s attempt to read into the claims unique tests mentioned in the specification); *see also id.* at 22 (finding “the clear disclosure ... is more credible than Dr. Lochhead’s contradictory testimony”).

P&G's Interpretation of the Specification Fails

- **The Specification Lacks Any Disclaimer or Redefinition of the ASTM D-1321 Standard**
 - The specification reports hardness measured by “a needle penetration test under ASTM D-1321 (as described herein).” Ex. 1001, 3:5-10.
 - The specification does not mention a 50-g “**force**.”
 - The section relied upon by P&G—“the total weight of the shaft and needle is 50±0.2 grams”—is part of the “[p]eriodic calibration” to “confirm” that the equipment is in proper working order. Ex. 1001, 12:20-29.
 - This calibration comports with the standard: the “weight of the needle shall be 2.5 g” and the “weight of the plunger shall be 47.5 g” (*i.e.*, 50-g total weight of the needle assembly). Ex. 2018, 5.
 - The specification describes calibration separately from testing, and a POSA would understand the differences between those steps. Ex. 1001, 12:30-67.
- ***The Specification Does Not Mandate Using the ASTM D-1321 Needle in an Unconventional Way***

P&G's Hardness Theory Contradicts Its Own Logic

- P&G uses the opposite logic in interpreting the prior art
 - Bianchi-254's "Hardness Method" identifies the relevant needle ("a 2.5 gm brass/steel tapered needle (DIN 51-579)") ***without describing any additional weight*** according with the DIN 51-579 standard. Ex. 1008, [0117].
 - Yet P&G asserts that a POSA following the teachings of Bianchi-254 would consult and ***adhere to the standard, including its use of a 50-g weight*** not explicitly called for in Bianchi-254. Ex. 1081, 112:11-114:6.

P&G's Hardness Argument Rests on an Incorrect Speculation

- **P&G's Hardness Argument Rests on a Faulty Premise of No Overlap of Ranges**
 - P&G's argument requires acceptance of Dr. Lochhead's assertion that the claimed hardness range (using P&G's test) **does "not overlap[] at all"** with the prior art ASTM ranges. Ex. 2011, ¶94.
 - ***Dr. Lochhead provided no support for that assertion.*** See Ex. 2011, ¶94.
 - ***Dr. Lochhead admits to not regularly performing the test.*** Ex. 1081, 115:7-124:19.
 - ***Independent testing contradicts Dr. Lochhead's unsupported assertion.***
 - The same deodorant can fall within the claimed range under both tests. Ex. 1086, ¶4; see Ex. 1078.
 - The average delta between the two tests is about 37 mm*10. Ex. 1086, ¶5; see Ex. 1078.
 - P&G's Native deodorant—marked with the relevant patent numbers (Ex. 1080)—falls within the claims ***only under the standard ASTM D-1321 test.*** See Ex. 1078.

For overlapping ranges, P&G bears the burden to overcome a presumption of obviousness. EI DuPont de Nemours & Co. v. Synvina CV, 904 F.3d 996, 1006 (Fed. Cir. 2018).

P&G's Hardness Test Results in a Range Overlapping with the Range from the Standard Test

Testing per ASTM D1321 Penetration of Waxes							TEST METHOD: Modification of ASTM D1321 Penetration of Waxes						
using standard ASTM D1321 test procedure at 75°F and 50% R.H.							using Client supplied testing instructions for the						
Units = 1/10 mm							"non-standard" test procedure at 75°F and 50% R.H.						
Attn: Bo Michniak-Kohn							Attn: Bo Michniak-Kohn						
Product Name	Lab Number	Stick 3 Pen #1	Stick 3 Pen #2	Stick 4 Pen #3	Stick 4 Pen #4	Average	Product Name	Lab Number	Stick 1 Pen #1	Stick 1 Pen #2	Stick 2 Pen #3	Stick 2 Pen #4	Average
BILLIE	25070714	143	143	141	143	142.5	BILLIE	25070714	91	89	86	91	89.3
DOVE	25070715	155	151	156	155	154.3	DOVE	25070715	106	103	109	107	106.3
LUME	25070716	140	133	141	132	136.5	LUME	25070716	110	110	120	116	114.0
NATIVE	25070717	111	109	118	114	113.0	NATIVE	25070717	76	75	78	79	77.0
OLD SPICE	25070718	124	122	123	125	123.5	OLD SPICE	25070718	97	99	95	98	97.3
PAPATUI	25070719	125	127	127	123	125.5	PAPATUI	25070719	79	81	79	80	79.8
SEPHORA	25070720	120	118	116	117	117.8	SEPHORA	25070720	80	80	79	82	80.3
TOMS	25070721	101	99	103	106	102.3	TOMS	25070721	76	77	75	76	76.0

Ex. 1078.

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Reply, 15-16; Sur-Reply 8-15

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Modifying Hardness is Routine Optimization

- **Routine Optimization**

- “[I]t is not inventive to discover the optimum or workable ranges by routine experimentation.” *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997).
- Board has found claims obvious where prior art did not even specify: P&G’s new tests for measuring claimed indices; (2) the claimed values for those indices; or (3) ways to “convert[] the prior art assay values into the [claimed] index values.” *Conopco*, IPR2013-00505, Paper No. 69, at 24 (finding it “sufficient that a [POSA] would have had the desire, and the tools, to formulate a shampoo in which the four properties are optimized”; an awareness of meeting the [claimed] index values is not required”).
- It was known to adjust the amount of structurant (*e.g.*, beeswax, stearyl alcohol) to achieve a desired hardness. Ex. 1086, ¶6; Ex. 1002, ¶¶37-39; Ex. 1041, 2:64-68, 4:37-44.
 - ***P&G agrees***: “One skilled in the art will easily be able to make a product which feels more brittle, soft, slippery, sticky, rough, etc., by blending various suitable high melting point and low melting point waxes.” Ex. 1041, 2:64-68, 4:37-44.

Lesniak Discloses Deodorants With the Claimed Ingredients in the Claimed Amounts

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Disclosure of Lesniak

- **Lesniak's Disclosure:**

- Teaches sticks that can “be an antiperspirant” comprising:
 - >25% **liquid triglyceride** (e.g., caprylic/capric triglyceride);
 - a primary **structurant** with a melting point above 50°C (e.g., beeswax);
 - a secondary structurant (e.g., hydrogenated castor oil);
 - an **antimicrobial** (zinc oxide); and
 - essential oil (**fragrance**). Ex. 1003, 9:31-10:27.
- After issuance of the Challenged Patents, the Examiner recognized the applicability of Lesniak, **rejecting** P&G's arguments in a continuation application that: “Lesniak does not disclose deodorant compositions and focuses on sunscreens and diaper creams,” and “to be considered an antiperspirant in the US, an aluminum salt must be used.” *See* Ex. 1034, 5-15; Ex. 1077, 7-8.

P&G's "Stability" Argument Misapprehends the Law

- P&G's Stability Arguments Misstate the Law on Enablement

- "Enablement of prior art [only] requires that the reference teach a skilled artisan to make or carry out what it discloses *in relation to the claimed invention*." *In re Antor Media Corp.*, 689 F.3d 1282, 1290-91 (Fed. Cir. 2012) (emphasis original).
 - No challenged claim recites **any** stability requirement, let alone at Lesniak's "high" temperatures, which are well above ambient conditions (49°C (120°F)). See Ex. 1003, Table 2.
 - No Challenged Patent discloses **any** stability data.
- Regardless, non-enabled references can still render claims obvious. See *Raytheon Techs. Corp. v. General Elec. Co.*, 993 F.3d 1374, 1380 (Fed. Cir. 2021).

P&G's "Stability" Argument Misapprehends the *Facts*

- Lesniak's Compositions Were Stable

- Lesniak achieved stability.
 - "[P]hysically stable at high and low temperatures." Ex. 1003, 5:23-32.
 - P&G misplaces reliance on "**comparative**" formulations.
 - Both tested inventive formulations with a higher melting point secondary structurant (castor wax) were stable at even high temperatures. Ex. 1003, Table 2 (nos. 8 and 11).
- The Challenged Patents confirm enablement.
 - "It is **known** that to formulate a solid antiperspirant or deodorant stick, the structurants generally have a melting point above 50° C. **to provide a stable structure** to the stick." Ex. 1001, 3:46-48.
 - P&G's expert testified that P&G's compositions are stable because (1) they were tested for hardness, (2) they do not contain water, and/or (3) a POSA would "know" how to make them stable. Ex. 1081, 35:23-43:24.

TABLE 2

Sunscreens.											
	Composition#										
	1*	2*	3*	4*	5*	6*	7*	8	9*	10*	11
	Weight %										
Zinc Oxide	20	20	20	20	20	20	20	20	20	20	20
Sunflower oil	57	30	10	10	10	10	10	10	10	10	12.5
Caprylic/Capric Triglyceride	5	35	55	53	53	54	54	53	53	50	52
Beeswax	13	15	15	17	17	15	15	15	15	15	13.5
Shea butter	5	0	0	0	0	0	0	0	0	0	0
CastorWax MP80 hydrogenated castor oil	0	0	0	0	0	0	0	2	0	0	2
Tapioca starch	0	0	0	0	0	0	1	0	0	0	0
Cetyl Alcohol	0	0	0	0	0	0	0	0	2	0	0
Thickener silica	0	0	0	0	0	1	0	0	0	0	0
Natural jelly	0	0	0	0	0	0	0	0	0	5	0
High temp. stability (49° C.)	Fail	Fail	Fail	Fail	Fail	Fail	Fail	Pass	Fail	Fail	Pass

Lesniak Discloses Non-Aluminum Compositions Consistent with the Challenged Claims

- Lesniak's compositions do not list aluminum as an ingredient.
 - “[A] reference need not state a feature’s absence in order to disclose a negative limitation.” *Almirall, LLC v. Amneal Pharms. LLC*, 28 F.4th 265, 273 (Fed. Cir. 2022).
- Lesniak's compositions uses **non-aluminum actives**. Ex. 1003, 3:39-4:21, 8:46-48, 10:27 (describing zinc-based antiperspirant compositions).
- The Challenged Patents expressly allow for non-aluminum actives. See Ex. 1001 [’706 Patent], 16:40-62 (“[T]he antiperspirant actives **may include any of the antimicrobial[s]** discussed above [e.g., baking soda, zinc carbonate, magnesium hydroxide], or may also include astringent metallic salts, especially inorganic and organic salts of aluminum, zirconium and **zinc**, as well as mixtures thereof.”); see also Ex. 1081, 57:5-61:18.
- FDA regulations are not relevant to obviousness. *Persion Pharms. LLC v. Alvogen Malta Ops. Ltd.*, 945 F.3d 1184, 1193 (Fed. Cir. 2019) (“FDA’s approval requirements do not undermine the force of the evidence as to obviousness”).

The Argument that Lesniak Fails to Disclose a Deodorant Lacks Credibility

- Lesniak Discloses a Deodorant Consistent with the Challenged Patents

- “[A]ll antiperspirants are deodorants” Ex. 1036, 2.
- An antiperspirant falls within the deodorant genus according to a book edited by **P&G’s expert, Dr. Lochhead**. Ex. 1081, 92:21-94:18; Ex. 1084, 33 (“[T]he main mechanisms through which deodorant products intended to combat body odors ... were the usage of antiperspirants that prevent perspiration[.]”)
- P&G’s own patents incorporate references that confirm this understanding. Ex. 1001, 10:57-64; Ex. 1083, 2:3-31, 5:46-47 (discussing “deodorant sticks containing an antiperspirant active” and “the antiperspirant active in the deodorant”).
- Lesniak discloses sticks with at least 25% liquid triglyceride, a primary structurant (e.g., beeswax), and an antimicrobial (zinc oxide).
 - Dr. Lochhead conceded that, per the Challenged Patents, a stick with those ingredients “would be considered a deodorant.” Ex. 1081, 26:23-27:7.

The Argument that Lesniak Fails to Disclose a Deodorant Lacks Credibility (cont.)

- Lesniak's zinc oxide concentrations (11-20%) do not prevent the compositions from being deodorants
 - There is no dispute that:
 - The claims require an antimicrobial, with no limitation on its amount.
 - Zinc oxide is an “antimicrobial.” *See* Ex. 1081, 87:15-23, 99:4-21.
 - The Challenged Patents state that a deodorant's antimicrobial may be present in a concentration **up to 30% by weight**. Ex. 1001, 7:7-19.
 - Other deodorants were known to contain **up to 20%** zinc oxide. *See* Ex. 1072, 1-2 (“from 0.5 to 20%”).

Lesniak Modifications Were Obvious

- **Completeness Does Not Defeat Motivation to Modify**
 - That a deodorant composition is complete does not vitiate any motivation to modify or improve the composition. *See* Ex. 1081, 43:25-44:18 (P&G's expert admitting "there was a motivation to make [deodorants] better," notwithstanding that they were "complete").

Lesniak + Phinney Establish Unpatentability

- **Obvious to Add Magnesium Hydroxide**

- Phinney (Ex. 1004) teaches:
 - zinc oxide has “low activity” as a “deodorant agent”;
 - magnesium hydroxide is “an effective deodorant”; and
 - zinc and magnesium compounds have synergistic effects. Ex. 1004, 1:13-3:16, 5:61-67.
- That potassium chloride might have additional benefits does not affect obviousness.
 - *See 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[.]”).

Lesniak + Lamb Establish Unpatentability

- **Obvious to Add Baking Soda**

- Lamb teaches that baking soda is an “excellent deodorant.” Ex. 1005, 132-33.
- That baking soda caused skin irritation for **some** users is not relevant to obviousness.
 - *See Allied Erecting & Dismantling Co. v. Genesis Attachments, LLC*, 825 F.3d 1373, 1381 (Fed. Cir. 2016) (“[A] given course of action often has simultaneous advantages and disadvantages, and this does not necessarily obviate motivation to combine.”).
- Lesniak’s antimicrobial—zinc oxide—was thought to have low efficacy (Ex. 1004, 1:13-3:16) and baking soda was known to be an “excellent” antimicrobial for deodorants. Ex. 1002, ¶53; Ex. 1005, 132-33.

Lesniak + Bianchi-254 Establish Unpatentability

- Obvious to Add Stearyl Alcohol

- Lesniak describes formulating deodorant compositions with “fatty alcohols.” Ex. 1003, 8:31-32.
- P&G does not dispute that stearyl alcohol was ***a known fatty alcohol*** and structurant that had been successfully used to thicken deodorant compositions.
- Bianchi-254 teaches that stearyl alcohol was of “particular interest” as a structurant and describes using it as the primary structurant. Ex. 1008, ¶¶[0001], [0018], [0019], [0058].
 - “[N]o express suggestion would have been needed to prompt one to substitute a known, interchangeable alternative for another, to perform a common function.” *Conopco*, IPR2013-00505, Paper No. 69, at 23; *see Almirall*, 28 F.4th at 273 (obvious to “substitute one known” option for another).



Native Lists the Relative Amounts of the Claimed Ingredients and Renders Obvious the Claims

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Native + Bianchi-254 Establish Unpatentability

- **Disclosure of Native: Ingredients and Relative Amounts**

Ingredients

Caprylic/capric triglyceride (which is a fancy way of saying fractionated coconut oil), arrowroot powder, stearyl alcohol, baking soda, shea butter, coconut oil, hydrogenated castor oil, polyglycerol-3 beeswax (which is a fancy way of saying cera bellina wax), jojoba esters, tocopherol (which is a fancy way of saying Vitamin E), L. acidophilus (which is a natural bacteria found in your body already), dextrose, glyceryl caprylate, glyceryl undecylenate. Our scented deodorants include oils. Lavender & Rose is made with Lavender Oil and Geranium Oil. Eucalyptus & Mint is made with Eucalyptus Oil and Spearmint Oil. Due to FDA recommendations, we use the term “fragrance” to refer to these oils.

- **Disclosure of Bianchi-254: Overlapping Hardness and Amounts**

- Teaches overlapping hardness range.
- Teaches quantitative amounts of ingredients.



Native + Bianchi-254 Establish Unpatentability (Cont'd)

- **Bianchi-254 Teaches the Claimed Ingredient Amounts**

- P&G argues that a POSA could not have combined Native with Bianchi-254 because Bianchi-254 describes using aluminum and silicone. POR, 55.
- However:
 - ***Native already achieved a silicone and aluminum-free deodorant stick***, along with disclosing the full ingredients of the stick. *See* Ex. 1007.
 - Bianchi-254 simply provides guidance on known quantitative amounts of Native's listed ingredients. Ex. 1002, ¶¶62-63.
 - Bianchi-254 teaches the ***total*** amount of carrier oil to be used. Ex. 1002, ¶¶59-61.
 - That the total can be a mix of different oils is of no moment. Ex. 1002, ¶75.

Native + Bianchi-254 Establish Unpatentability (Cont'd)

- **A POSA Would Have Modified Native Based on Bianchi-254's Guidance**
 - P&G asserts that a POSA would not have been motivated to modify Native because Native itself does not identify any deficiencies with the deodorant. POR, 53-54.
 - A motivation to combine may exist “even absent any hint of suggestion in the references themselves.” *DyStar Testilfarben GmbH v. C.H. Patrick Co.*, 464 F.3d 1356, 1368 (Fed. Cir. 2006).
 - P&G asserts that a POSA formulating an aluminum-free deodorant would not have “consider[ed]” Bianchi-254 for guidance. POR, 55.
 - The Challenged Patents contradict that assertion. Ex. 1001, 5:66-6:4, 10:57-64 (incorporating patents disclosing aluminum-containing compositions for formulation guidance).
 - P&G’s expert contradicts that assertion. Ex. 1081, 46:22-52:22 (admitting a POSA would look to aluminum-containing formulations because “that’s what a POSA does”).

Native + Easy Homemade Establish Unpatentability

- **Baking Soda and Magnesium Hydroxide Were Known Alternatives**
 - Native describes using baking soda, a known antimicrobial. Ex. 1005, 132-33; Ex. 1007, 11.
 - Baking soda causes irritation for **some** and magnesium hydroxide was a known substitute. Ex. 1002, ¶¶63-64; Ex. 1081, 53:6-55:12.
 - Easy Homemade states that “baking soda can easily be swapped for magnesium hydroxide.” Ex. 1009, 6, 9.
 - “Nothing more is required to show a motivation to combine under *KSR*.” *Intel Corp. v. PACT XPP Schweiz AG*, 61 F.4th 1373, 1380-81 (Fed. Cir. 2023).

Native + Easy Homemade Establish Unpatentability (Cont'd)

- Easy Homemade Was Public Accessibility to Interested Persons

- Indexing evidence is **not** needed where the publication was “available to the extent that persons interested” could locate it with “reasonable diligence.” *Voter Verified, Inc. v. Premier Election Soln’s*, 698 F.3d 1374, 1380 (Fed. Cir. 2012).
- Easy Homemade contains reviews demonstrating that interested persons **actually did locate the website**. Ex. 1009, 7-8; Ex. 1016, 7-8; Ex. 1018, 6.
- In line with *Voter Verified*, the Board has found such evidence sufficient. *LG Elecs., Inc. v. Multimedia Techs. Pte. Ltd.*, IPR2024-00353, Paper No. 28, at 21-25 (P.T.A.B. May 12, 2025) (finding lack of indexing evidence inconsequential because the prior art had an associated review that showed “an interested person actually found the [reference] online”).

Squatch Is Prior Art Based on Uncontroverted Testimony and Renders Obvious the “Picture” Claims

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The '706 Patent Is Not Entitled to Its Priority Date

- The '706 Patent's claims 16-23 recite combination of 9-10 ingredients.
 - The combination lacks written description support in the priority applications because the ingredients were retroactively assembled from various laundry list disclosures, including, at least:
 - **twenty-five** potential emollients, including broad classes such as “plant oils” (Ex. 1053, 18:40-51);
 - **twenty-five** potential antimicrobials (Ex. 1053, 9:21-42); and
 - **twenty-five** potential structurants, including broad classes such as “fatty alcohols” (Ex. 1053, 16:9-22).
 - Such laundry list disclosures do not provide written description support for a particular claimed combination. *Purdue Pharma L.P. v. Iancu*, 767 F. App'x 918, 924 (Fed. Cir. 2019); *In re Ruschig*, 379 F.2d 990, 995 (C.C.P.A. 1967).

*citations in this Section refer to the record in IPR2024-01174.

Squatch + Sturgis Establish Unpatentability

- Squatch lists relative amounts of the claimed ingredients.

INGREDIENTS: Caprylic/Capric Triglyceride, Manihot Esculenta (Arrowroot) Powder, Stearyl Alcohol, Magnesium Hydroxide, Beeswax, Butyrospermum Parkii (Shea) Butter, Cocos Nucifera (Coconut) Oil, Triethyl Citrate, Simmondsia Chinensis (Jojoba) Seed Oil, Natural Fragrance, Jojoba Esters, Charcoal Powder, Helianthus Annuus (Sunflower) Seed Oil, Tocopherol, Lactobacillus Ferment, Maltodextrin.

Ex. 1059, Ex. A.

- Sturgis has the same disclosure as Challenged Patents and provides the quantitative amounts of those ingredients.

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Pet., 62-64



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Squatch Qualifies as a Printed Publication

- ***P&G's only challenge:*** alleging lack of corroboration in the Declaration of Mr. Pinto (Ex. 1059).
- But P&G failed to address Mr. Pinto's corroborating evidence, including:
 - a marketing repository with the actual photographs published on the website at the time of its launch (Ex. 1059, ¶¶4-5 (citing Exs. A, D, and E));
 - quality assurance records (Ex. 1059, ¶5 (citing Ex. H));
 - website visitor records showing over 12.5 million views (Ex. 1059, ¶7);
 - timestamped Shopify records (Ex. 1059, ¶5 (citing Ex. G)); and
 - a timestamped YouTube video (Ex. 1059, 6).
- ***P&G did not even attempt to controvert the declarant's evidence (e.g., by deposition)***
 - *GoPro, Inc. v. Contour IP Holding LLC*, 908 F.3d 690, 692-94 & n.4 (Fed. Cir. 2018) (rejecting a challenge to an interested witness's testimony on public availability where "Patent Owner did not cross-examine [the employee], and [did] not point to any reason to doubt the veracity of his testimony.") (citation omitted).

P&G's Own Priority Argument Confirms Obviousness

- **P&G's Premise:** To allege *priority*, P&G argues that a POSA could readily pick and choose deodorant ingredients from a laundry list.
 - P&G states that one could select various deodorant ingredients from lists by “relying on the **background knowledge** of a POSA.” ’706 Patent POR, 69, 70 (“a POSA would have known that these ingredients could be selected per their **background knowledge**”).
- **Response:** For purposes of *obviousness*, if P&G’s “background knowledge” argument is accepted, then the POSA would necessarily have had the ability and motivation to make those *very same* ingredient choices in connection with the Lesniak and Native grounds’ application to the picture claims.
 - The bar for written description is higher than the bar for obviousness. *See Lockwood v. Am. Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997) (explaining that a “description which renders obvious the invention” does not suffice for § 112).

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