

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BUNGE LODERS CROKLAAN USA,	)	
LLC,	)	
	)	
Plaintiff,	)	C.A. No. 24-884-RGA
	)	
v.	)	
	)	
CARGILL, INC.,	)	JURY TRIAL DEMANDED
	)	
Defendant.	)	

**DEFENDANT’S ANSWER TO AMENDED COMPLAINT FOR PATENT
INFRINGEMENT, DEFENSES, AND COUNTERCLAIMS**

Defendant and Counterclaim-Plaintiff Cargill, Incorporated (“Cargill”), by its undersigned attorneys, hereby submits this Answer to the Amended Complaint for Patent Infringement of Plaintiff and Counterclaim-Defendant Bunge Lodgers Croklaan USA, LLC (“BLC”). Cargill further asserts its defenses and counterclaims.

Cargill denies that it infringes or has infringed any valid and enforceable patent rights at issue in this action. Cargill further denies any liability to BLC, or that BLC has suffered any legally cognizable damage for which Cargill is responsible. The responses below reflect the current status of Cargill’s knowledge and belief regarding the subject matter of the allegations to which they respond. Cargill reserves the right to supplement, modify, and/or amend its responses, defenses, and counterclaims through its discovery responses, expert disclosures, and presentation of evidence based on any additional facts or developments that become available or that arise after the filing of this Answer.

Except as expressly admitted below, Cargill denies each and every allegation averred in the Amended Complaint, including without limitation the headings, sub-headings, and diagrams contained in the Amended Complaint, including any attachments and/or exhibits to the Amended

Complaint. Any admissions herein are for the purposes of this matter only. Any factual allegation admitted below is admitted only as to the specific admitted facts, and not as to any purported conclusions, characterizations, implications, or speculations that might follow from the admitted facts. Cargill responds to the numbered paragraphs of the Amended Complaint as follows. The paragraph numbering in these responses corresponds to the numbered paragraphs in the Amended Complaint. Subject to the foregoing, Cargill states as follows:

PARTIES

1. Cargill is currently without knowledge or information sufficient to form a belief as to the truth of the allegations and characterizations contained in Paragraph 1 of the Amended Complaint, and therefore denies them.

2. Cargill admits that it is incorporated in Delaware, with its principal place of business in Wayzata, Minnesota. Cargill denies any remaining allegations and characterizations in Paragraph 2 of the Amended Complaint.

JURISDICTION AND VENUE

3. Paragraph 3 alleges legal conclusions to which no response is required. To the extent a response is required, Cargill does not dispute that this Court has subject matter jurisdiction over the patent claims in the Amended Complaint.

4. Paragraph 4 alleges legal conclusions to which no response is required. To the extent a response is required, Cargill does not dispute that this Court has personal jurisdiction over Cargill for the purposes of this action, as pleaded in this current version of the Amended Complaint, only.

5. Paragraph 5 alleges legal conclusions to which no response is required. To the extent a response is required, Cargill does not dispute that venue is proper in this district for the purposes of this action, as pleaded in this current version of the Amended Complaint, only.

PATENT-IN-SUIT

6. Cargill acknowledges that Exhibit A to the Amended Complaint purports to be a copy of U.S. Patent No. 7,645,473 (the “’473 patent”). Cargill admits that the first page of Exhibit A lists the title and issue date as identified in Paragraph 6 of the Amended Complaint. Cargill denies that the ’473 patent should have been issued. Cargill is without knowledge or information sufficient to admit or deny the remaining allegations of Paragraph 6 and therefore denies the same.

7. Cargill admits that the ’473 patent states in the “BACKGROUND OF THE INVENTION” section that “the invention relates to a vegetable fat composition comprising glycerides and to its applications in baked products and iced confectionery products.” Ex. A at 1:6-8. Cargill denies the remaining allegations and characterizations contained in Paragraph 7 of the Amended Complaint.

8. Cargill denies the allegations and characterizations contained in Paragraph 8 of the Amended Complaint.

9. Cargill is currently without knowledge or information sufficient to form a belief as to the truth of the allegations and characterizations contained in Paragraph 9 of the Amended Complaint, and therefore denies them.

FACTUAL BACKGROUND

10. Cargill is currently without knowledge or information sufficient to form a belief as to the truth of the allegations and characterizations contained in Paragraph 10 of the Amended Complaint, and therefore denies them.

11. Cargill is currently without knowledge or information sufficient to form a belief as to the truth of the allegations and characterizations contained in Paragraph 11 of the Amended Complaint, and therefore denies them.

12. Cargill admits that certain food products contain triglyceride fats, which include a glycerol moiety bound to three fatty acid chains. Cargill denies the remaining allegations and characterizations in Paragraph 12 of the Amended Complaint.

13. Cargill admits that triglyceride fats may be characterized in terms of the fatty acid contents of their fatty acid chains. Cargill admits that the fatty acid contents can be saturated (no double bonds), or unsaturated (one or more double bonds); cis or trans; and possess various carbon chain lengths. Cargill is currently without knowledge or information sufficient to form a belief as to the truth of the allegations and characterizations contained in the third sentence of Paragraph 13 of the Amended Complaint, and therefore denies them.

14. As the allegations and characterizations contained in Paragraph 14 of the Amended Complaint are vague and ambiguous, including the phrases “unique chemical structures and properties” and “varying characteristics of different triglyceride components”, Cargill is currently without knowledge or information sufficient to form a belief as to the truth of those allegations and characterizations contained in Paragraph 14 of the Amended Complaint, and therefore denies them.

15. Cargill admits that the '473 patent states:

Due to perceived health benefits, there is a desire amongst consumers for food products that have a low content of trans fatty acids and a low content of saturated fatty acids (SAFA). In order to achieve these aims, it is necessary to modify the triglyceride composition of the fats. However, this is a complex problem since most fats rely on the fatty acids of the component triglycerides, for example the saturated fatty acids, in order to achieve the correct balance of organoleptic properties. Simply lowering the SAFA

content of the fat will not necessarily lead to a product that is acceptable to the consumer.

Exhibit A at 1:9–19. Cargill denies the remaining allegations and characterizations contained in Paragraph 15 of the Amended Complaint.

16. The first sentence in Paragraph 16 of the Amended Complaint is without a subject, vague, and confusing and therefore Cargill is without knowledge or information sufficient to form a belief as to the truth of the allegation, and therefore denies the same. Cargill admits that in certain spaces there is a market for products with reduced trans and saturated fats. Cargill denies the remaining allegations and characterizations contained in Paragraph 16 of the Amended Complaint.

17. Cargill admits that in certain spaces there is a market for products with reduced trans and saturated fats. Cargill is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 17 of the Amended Complaint and therefore denies them.

18. Cargill is currently without knowledge or information sufficient to form a belief as to the truth of the allegations and characterizations contained in Paragraph 18 of the Amended Complaint, and therefore denies them.

19. Cargill is currently without knowledge or information sufficient to form a belief as to the truth of the allegations and characterizations contained in Paragraph 19 of the Amended Complaint, and therefore denies them.

20. Cargill admits that Cargill researches, develops, produces, offers, and sells edible oils for baking and confectionary applications. Cargill admits that Cargill expends resources in research and development of its products. Cargill admits that its website states: “In summer 2018, Cargill’s global edible oils business commissioned a new pilot scale lab specifically for bakery shortening development and production.” Cargill is currently without knowledge or information

sufficient to form a belief as to the truth of the allegations and characterizations concerning BLC contained in Paragraph 20 of the Amended Complaint, and therefore denies them. Cargill denies the remaining allegations and characterizations contained in Paragraph 20 of the Amended Complaint.

21. Cargill admits that it has a line of palm oil shortenings. Cargill admits that it has a product line named PalmAgility®. Cargill admits that Exhibit J states “next-generation oil and shortening solutions like PalmAgility®.” Ex. J at 8. Cargill admits that Exhibit B states “The PalmAgility® shortening products were created and tested by our bakery applications experts on our R&D team.” Cargill denies the remaining allegations and characterizations contained in Paragraph 21 of the Amended Complaint.

22. Cargill admits that Paragraph 22 of the Amended Complaint contains an excerpt from Exhibit B related to PalmAgility® 516. Cargill denies the remaining allegations and characterizations contained in Paragraph 22 of the Amended Complaint.

23. This allegation contains legal conclusions to which no response is required. Cargill admits that samples of icing containing a shortening blend were made and available at the 2022 International Baking Industry Exposition. Cargill either lacks information sufficient to form a belief and therefore denies or denies the remaining allegations and characterizations contained in Paragraph 23 of the Amended Complaint.

24. Cargill admits that a limited number of samples of the PalmAgility® 516 product were made available between September 2022 and May 2023. Cargill denies the remaining allegations and characterizations contained in Paragraph 24 of the Amended Complaint.

25. Cargill admits that a limited number of samples of the PalmAgility® 516 product were made available between September 2022 and May 2023. Cargill either lacks information

sufficient to form a belief and therefore denies or denies the remaining allegations and characterizations contained in Paragraph 25 of the Amended Complaint.

26. Cargill admits that BLC sent a letter to Cargill on April 27, 2023. Ex. F. Cargill admits that the April 27, 2023 letter states “I am writing on behalf of Loders Croklaan USA LLC (‘Bunge’) to notify Cargill of U.S. Patent No. 7,645,473 (‘the ’473 patent’).” *Id.* Cargill admits that the April 27, 2023 letter further states “We believe that Cargill’s PalmAgility® 516 product overlaps with the features of the vegetable fat compositions described in Bunge’s ’473 patent.” *Id.* Cargill admits that the April 27, 2023 letter further states “If you conclude that the PalmAgility® 516 product is not covered by claim 1 of the ’473 patent, please provide a detailed explanation of the basis for your conclusion. . . . If, on the other hand, your evaluation reveals that the PalmAgility® 516 product is covered by claim 1 of the ’473 patent, then we request that Cargill immediately discontinue this product and cease and desist from making, using, selling, offering for sale, or importing the PalmAgility® 516 product.” *Id.* Cargill denies the remaining allegations and characterizations contained in Paragraph 26 of the Amended Complaint.

27. Cargill admits that it sent a letter to BLC on May 24, 2023. Ex. G. Cargill admits that its May 24, 2023 letter states “The shortening product Cargill identified as ‘PalmAgility® 516’ is not in production, on sale, or being offered for sale by Cargill as of the date of this letter.” *Id.* Cargill admits that its May 24, 2023 letter further states “For clarity, because Cargill is not currently producing, selling, or offering for sale the PalmAgility® 516 product we will not be pursuing further investigation or product analysis.” *Id.* Cargill admits that as of May 24, 2023, Cargill was not producing, selling, or offering for sale the PalmAgility® 516 product. Cargill is currently without knowledge or information sufficient to form a belief as to the truth of the allegations and characterizations concerning what did or did not appear to BLC or any other actions that BLC did

or did not take as set forth in Paragraph 27 of the Amended Complaint, and therefore denies those allegations and characterizations. Cargill denies the remaining allegations and characterizations contained in Paragraph 27 of the Amended Complaint.

28. Cargill denies the allegations and characterizations contained in Paragraph 28 of the Amended Complaint. Cargill further denies that it or its products infringe or have infringed any valid and enforceable claim of the '473 patent.

29. Cargill is without information or belief as to what did or did not appear to BLC and therefore on that basis denies the first sentence of Paragraph 29 of the Amended Complaint. Cargill admits that it offers for sale an icing shortening product known as the Advantage® PNC-111.” Cargill denies the remaining allegations and characterizations contained in Paragraph 29 of the Amended Complaint.

30. Cargill admits that in July and August 2024, parties exchanged confidential emails for settlement purposes, including a draft of Cargill’s petition to institute an inter partes review of the '473 patent. Cargill denies the remaining allegations and characterizations contained in Paragraph 30 of the Amended Complaint.

31. Cargill denies the allegations and characterizations contained in Paragraph 31 of the Amended Complaint. Cargill further denies that it or its products infringe or have infringed any valid and enforceable claim of the '473 patent.

32. Cargill denies the allegations and characterizations contained in Paragraph 32 of the Amended Complaint. Cargill further denies that it or its products infringe or have infringed any valid and enforceable claim of the '473 patent.

33. Cargill hereby repeats and re-alleges its answers to the above allegations. Cargill admits that a limited number of samples of the PalmAgility® 516 product or other shortening

blends were made available between September 2022 and May 2023. Cargill denies the remaining allegations and characterizations contained in Paragraph 33 of the Amended Complaint. Cargill further denies that it or its products infringe or have infringed any valid and enforceable claim of the '473 patent.

34. As the phrase “same time periods” is vague and ambiguous, Cargill is currently without knowledge or information sufficient to form a belief as to the truth of those allegations and characterizations contained in Paragraph 34 of the Amended Complaint, and therefore denies them.

35. Cargill admits that BLC sent a letter to Cargill on April 27, 2023. Ex. F. Cargill admits that the April 27, 2023 letter states “I am writing on behalf of Loders Croklaan USA LLC (‘Bunge’) to notify Cargill of U.S. Patent No. 7,645,473 (‘the ’473 patent’).” *Id.* Cargill admits that the April 27, 2023 letter further states “We believe that Cargill’s PalmAgility® 516 product overlaps with the features of the vegetable fat compositions described in Bunge’s ’473 patent.” *Id.* Cargill denies the remaining allegations and characterizations contained in Paragraph 35 of the Amended Complaint. Cargill further denies that it or its products infringe or have infringed any valid and enforceable claim of the ’473 patent.

36. Cargill denies the allegations and characterizations contained in Paragraph 36 of the Amended Complaint.

37. Cargill admits that, based on a current review of publicly-available information, it appears that the ’473 patent published as U.S. Publication No. 2007/0286940 A1 on December 13, 2007. Cargill admits that, based on a current review of publicly-available information, it appears that (1) U.S. Publication No. 2007/0286940 was cited, along with a number of other references, in Brazilian Patent No. 0903778-0; (2) Brazilian Patent No. 0903778-0 lists July 17, 2009 as its filing

date; and (3) Brazilian Patent No. 0903778-0 lists Cargill, Incorporated among its holders. Cargill admits that, based on a current review of publicly-available information, it appears that (1) U.S. Publication No. 2007/0286940 was cited, along with a number of other references, in International Publication No. WO 2011/006222 A1, entitled “VEGETABLE-FAT FOOD COMPOUND CONTAINING COTTONSEED OIL”; (2) International Publication No. WO 2011/006222 A1 lists PI0903778-0 under “Priority Data”; and (3) International Publication No. WO 2011/006222 A1 lists Cargill Agrícola S.A. as one of the patent applicants. Cargill is currently without knowledge or information sufficient to form a belief as to the truth of the allegations and characterizations concerning Cargill Agrícola S.A. contained in Paragraph 37 of the Amended Complaint, and therefore denies them. Cargill denies the remaining allegations and characterizations contained in Paragraph 37 of the Amended Complaint.

38. Cargill admits that on November 20, 2019, Cargill filed a Notice of Opposition to European Patent No. 2194792, titled “Composition suitable for use in baking.” Cargill admits that Cargill cited WO 2007/144132 in the November 20, 2019 Notice of Opposition. Cargill admits that, based on a current review of publicly-available information, it appears that under “Priority Data,” WO 2007/144132 lists US Application No. 11/451,606—the Appl. No. of the ’473 Patent. Cargill denies the remaining allegations and characterizations contained in Paragraph 38 of the Amended Complaint.

39. Cargill admits that, based on a current review of publicly-available information, it appears that U.S. Publication No. 2007/0286940 A1 was published on December 13, 2007, and its patent application issued as the ’473 patent. Cargill admits that, based on a current review of publicly-available information, it appears that (1) U.S. Publication No. 2007/0286940 was cited, along with a number of other references, in Brazilian Patent No. 0903778-0; (2) Brazilian Patent

No. 0903778-0 lists July 17, 2009 as its filing date; and (3) Brazilian Patent No. 0903778-0 lists Cargill Incorporated among its holders. Cargill admits that, based on a current review of publicly-available information, it appears that (1) U.S. Publication No. 2007/0286940 was cited, along with a number of other references, in International Publication No. WO 2011/006222 A1, entitled “VEGETABLE-FAT FOOD COMPOUND CONTAINING COTTONSEED OIL”; (2) International Publication No. WO 2011/006222 A1 lists PI0903778-0 under “Priority Data”; and (3) International Publication No. WO 2011/006222 A1 lists Cargill Agrícola S.A. as one of the patent applicants. Cargill admits that on November 20, 2019, Cargill filed a Notice of Opposition to European Patent No. 2194792. Cargill admits that Cargill cited WO 2007/144132 in the November 20, 2019 Notice of Opposition. Cargill admits that, based on a current review of publicly-available information, it appears that under “Priority Data,” WO 2007/144132 lists US Application No. 11/451,606—the Appl. No. of the ’473 Patent. Cargill is currently without knowledge or information sufficient to form a belief as to the truth of the allegations and characterizations concerning Cargill Agrícola S.A. contained in Paragraph 39 of the Amended Complaint, and therefore denies them. Cargill denies the remaining allegations and characterizations contained in Paragraph 39 of the Amended Complaint.

40. Cargill denies the allegations and characterizations contained in Paragraph 40 of the Amended Complaint.

COUNT I

Cargill’s Infringement of the ’473 Patent under 35 U.S.C. § 271(a)

41. Cargill restates, re-alleges, and incorporates by reference each of its answers to other allegations of this Amended Complaint as though fully set forth herein.

42. Paragraph 42 alleges legal conclusions to which no response is required. To the extent a response is required, Cargill denies the allegations and characterizations contained in

Paragraph 42 of the Amended Complaint. Cargill further denies that it or its products infringe or have infringed any valid and enforceable claim of the '473 patent.

43. Cargill admits that Paragraph 43 reproduces the language of claim 1 of the '473 patent. Cargill denies the remaining allegations and characterizations contained in Paragraph 43 of the Amended Complaint.

44. Paragraph 44 contains legal conclusions to which no response is required. Further, as the phrase “satisfies the requirements of the vegetable fat composition defined in Claim 1 of the ‘473 Patent” is vague and ambiguous, Cargill is currently without knowledge or information sufficient to form a belief as to the truth of those allegations and characterizations contained in Paragraph 44 of the Amended Complaint, and therefore denies them.

45. Cargill admits that Paragraph 45 reproduces the language of claim 1 of the '473 patent. Paragraph 45 contains legal conclusions to which no response is required. Further, as the phrase “the ‘473 Patent requires” is vague and ambiguous, Cargill is currently without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and characterizations contained in Paragraph 45 of the Amended Complaint, and therefore denies them.

46. Cargill admits that PalmAgility® 516 contains a vegetable fat composition comprising glycerides. Cargill admits that PalmAgility® 516 contains palm oil and canola oil as ingredients, which both include triglycerides.

47. Cargill admits that Paragraph 47 reproduces the language of claim 1 of the '473 patent. Paragraph 47 contains legal conclusions to which no response is required. Further, as the phrase “the ‘473 Patent requires” is vague and ambiguous, Cargill is currently without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and characterizations contained in Paragraph 47 of the Amended Complaint, and therefore denies them.

48. Cargill is currently without knowledge or information sufficient to form a belief as to the truth of those allegations and characterizations contained in Paragraph 48 of the Amended Complaint, and therefore denies them.

49. Cargill admits that Paragraph 49 reproduces the language of claim 1 of the '473 patent. Paragraph 49 contains legal conclusions to which no response is required. Further, as the phrase "the '473 Patent requires" is vague and ambiguous, Cargill is currently without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and characterizations contained in Paragraph 49 of the Amended Complaint, and therefore denies them.

50. Cargill is currently without knowledge or information sufficient to form a belief as to the truth of those allegations and characterizations contained in Paragraph 50 of the Amended Complaint, and therefore denies them.

51. Cargill admits that Paragraph 51 reproduces the language of claim 1 of the '473 patent. Paragraph 51 contains legal conclusions to which no response is required. Further, as the phrase "the '473 Patent requires" is vague and ambiguous, Cargill is currently without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and characterizations contained in Paragraph 51 of the Amended Complaint, and therefore denies them.

52. Cargill is currently without knowledge or information sufficient to form a belief as to the truth of those allegations and characterizations contained in Paragraph 52 of the Amended Complaint, and therefore denies them.

53. Cargill admits that claim 1 of the '473 patent recites "10 to 39 SU₂," "wherein S is a saturated fatty acid residue having 16 to 24 carbon atoms and U is an unsaturated fatty acid residue having at least 18 carbon atoms and all percentages are by weight based on the total triglycerides present in the composition." Paragraph 53 contains legal conclusions to which no

response is required. Further, as the phrase “the ‘473 Patent requires” is vague and ambiguous, Cargill is currently without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and characterizations contained in Paragraph 53 of the Amended Complaint, and therefore denies them.

54. Cargill is currently without knowledge or information sufficient to form a belief as to the truth of those allegations and characterizations contained in Paragraph 54 of the Amended Complaint, and therefore denies them.

55. Cargill admits that Paragraph 55 reproduces the language of claim 1 of the ‘473 patent. Paragraph 55 contains legal conclusions to which no response is required. Further, as the phrase “the ‘473 Patent requires” is vague and ambiguous, Cargill is currently without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and characterizations contained in Paragraph 55 of the Amended Complaint, and therefore denies them.

56. Paragraph 56 contains legal conclusions to which no response is required. Further, Cargill is currently without knowledge or information sufficient to form a belief as to the truth of those allegations and characterizations contained in Paragraph 56 of the Amended Complaint, and therefore denies them.

57. Cargill admits that Paragraph 57 reproduces the language of claim 1 of the ‘473 patent. Paragraph 57 contains legal conclusions to which no response is required. Further, as the phrase “the ‘473 Patent requires” is vague and ambiguous, Cargill is currently without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and characterizations contained in Paragraph 57 of the Amended Complaint, and therefore denies them.

58. Paragraph 58 contains legal conclusions to which no response is required. Further, Cargill is currently without knowledge or information sufficient to form a belief as to the truth of

those allegations and characterizations contained in Paragraph 58 of the Amended Complaint, and therefore denies them.

59. Cargill admits that Paragraph 59 reproduces the language of claim 1 of the '473 patent. Paragraph 59 contains legal conclusions to which no response is required. Further, as the phrase "the '473 Patent requires" is vague and ambiguous, Cargill is currently without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and characterizations contained in Paragraph 59 of the Amended Complaint, and therefore denies them.

60. Cargill is currently without knowledge or information sufficient to form a belief as to the truth of those allegations and characterizations contained in Paragraph 60 of the Amended Complaint, and therefore denies them.

61. Cargill admits that Paragraph 61 reproduces the language of claim 1 of the '473 patent. Paragraph 61 contains legal conclusions to which no response is required. Further, as the phrase "the '473 Patent requires" is vague and ambiguous, Cargill is currently without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and characterizations contained in Paragraph 61 of the Amended Complaint, and therefore denies them.

62. Cargill is currently without knowledge or information sufficient to form a belief as to the truth of those allegations and characterizations contained in Paragraph 62 of the Amended Complaint, and therefore denies them.

63. Cargill admits that Paragraph 63 reproduces the language of claim 1 of the '473 patent. Paragraph 63 contains legal conclusions to which no response is required. Further, as the phrase "the '473 Patent requires" is vague and ambiguous, Cargill is currently without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and characterizations contained in Paragraph 63 of the Amended Complaint, and therefore denies them.

64. Cargill is currently without knowledge or information sufficient to form a belief as to the truth of those allegations and characterizations contained in Paragraph 64 of the Amended Complaint, and therefore denies them.

65. Cargill denies the allegations and characterizations contained in Paragraph 65 of the Amended Complaint. Cargill further denies that it or its products infringe or have infringed any valid and enforceable claim of the '473 patent.

66. Paragraph 66 alleges legal conclusions to which no response is required. To the extent a response is required, Cargill denies the allegations and characterizations in Paragraph 66 of the Amended Complaint. Cargill further denies that it or its products infringe or have infringed any valid and enforceable claim of the '473 patent.

67. Cargill denies the allegations and characterizations in Paragraph 67 of the Amended Complaint. Cargill further denies that it or its products infringe or have infringed any valid and enforceable claim of the '473 patent.

68. Cargill denies the allegations and characterizations in Paragraph 68 of the Amended Complaint.

69. Cargill denies the allegations and characterizations in Paragraph 69 of the Amended Complaint. Cargill further denies that it or its products infringe or have infringed any valid and enforceable claim of the '473 patent.

70. Cargill denies the allegations and characterizations in Paragraph 70 of the Amended Complaint. Cargill further denies that it or its products infringe or have infringed any valid and enforceable claim of the '473 patent.

COUNT II

Cargill's Indirect Infringement of the '473 Patent under 35 U.S.C. § 271(b)

71. Cargill restates, re-alleges, and incorporates by reference each of its answers to other allegations of this Amended Complaint as though fully set forth herein.

72. Paragraph 72 alleges legal conclusions to which no response is required. To the extent a response is required, Cargill denies the allegations and characterizations contained in Paragraph 72 of the Amended Complaint. Cargill further denies that it or its products infringe or have infringed any valid and enforceable claim of the '473 patent.

73. Paragraph 73 alleges legal conclusions to which no response is required. To the extent a response is required, Cargill denies the allegations and characterizations contained in Paragraph 73 of the Amended Complaint. Cargill further denies that it or its products infringe or have infringed any valid and enforceable claim of the '473 patent.

74. Cargill admits that BLC sent a letter to Cargill on April 27, 2023. Ex. F. Cargill admits that the April 27, 2023 letter states "I am writing on behalf of Loders Croklaan USA LLC ('Bunge') to notify Cargill of U.S. Patent No. 7,645,473 ('the '473 patent')." *Id.* Cargill denies the remaining allegations and characterizations contained in Paragraph 74 of the Amended Complaint.

75. Cargill denies the allegations and characterizations contained in Paragraph 75 of the Amended Complaint.

76. Cargill admits that a limited number of samples of the PalmAgility® 516 product were made available during 2022. Cargill denies the remaining allegations and characterizations contained in Paragraph 76 of the Amended Complaint.

77. Cargill denies that the '473 patent is valid or enforceable and on that basis denies the allegations and characterizations contained in Paragraph 77 of the Amended Complaint.

78. Paragraph 78 alleges legal conclusions to which no response is required. To the extent a response is required, Cargill denies the allegations and characterizations in Paragraph 78 of the Amended Complaint. Cargill further denies that it or its products infringe or have infringed any valid and enforceable claim of the '473 patent.

79. Paragraph 79 alleges legal conclusions to which no response is required. To the extent a response is required, Cargill denies the allegations and characterizations in Paragraph 79 of the Amended Complaint. Cargill further denies that it or its products infringe or have infringed any valid and enforceable claim of the '473 patent.

80. Paragraph 80 alleges legal conclusions to which no response is required. To the extent a response is required, Cargill denies the allegations and characterizations in Paragraph 80 of the Amended Complaint. Cargill further denies that it or its products infringe or have infringed any valid and enforceable claim of the '473 patent.

81. Paragraph 81 alleges legal conclusions to which no response is required. To the extent a response is required, Cargill denies the allegations and characterizations in Paragraph 81 of the Amended Complaint. Cargill further denies that it or its products infringe or have infringed any valid and enforceable claim of the '473 patent.

82. Paragraph 82 alleges legal conclusions to which no response is required. To the extent a response is required, Cargill denies the allegations and characterizations in Paragraph 82 of the Amended Complaint. Cargill further denies that it or its products infringe or have infringed any valid and enforceable claim of the '473 patent.

83. Paragraph 83 alleges legal conclusions to which no response is required. To the extent a response is required, Cargill denies the allegations and characterizations in Paragraph 83

of the Amended Complaint. Cargill further denies that it or its products infringe or have infringed any valid and enforceable claim of the '473 patent.

84. Paragraph 84 alleges legal conclusions to which no response is required. To the extent a response is required, Cargill denies the allegations and characterizations in Paragraph 84 of the Amended Complaint. Cargill further denies that it or its products infringe or have infringed any valid and enforceable claim of the '473 patent.

85. Cargill denies the allegations and characterizations in Paragraph 85 of the Amended Complaint. Cargill further denies that it or its products infringe or have infringed any valid and enforceable claim of the '473 patent.

86. Cargill denies the allegations and characterizations in Paragraph 86 of the Amended Complaint.

87. Cargill denies the allegations and characterizations in Paragraph 87 of the Amended Complaint. Cargill further denies that it or its products infringe or have infringed any valid and enforceable claim of the '473 patent.

88. Cargill denies the allegations and characterizations in Paragraph 88 of the Amended Complaint. Cargill further denies that it or its products infringe or have infringed any valid and enforceable claim of the '473 patent.

RESPONSE TO PRAYER FOR RELIEF

The remaining allegations are part of a prayer for relief that do not require admissions or denials by Cargill. Cargill denies that BLC is entitled to the relief sought against Cargill in its Prayer for Relief and accompanying Paragraphs (A)–(H) of the Amended Complaint or any relief at all for the allegations relating to Cargill made in the Amended Complaint. Based on its denials of the allegations in the Amended Complaint, Cargill prays that the Court dismiss the Amended

Complaint in its entirety with prejudice, that BLC not be awarded any of the relief, recovery or damages sought in its Prayer for Relief, and that the Court deem this case exceptional and award Cargill all costs and fees in this action, including without limitation Cargill's attorneys' fees and expenses.

JURY DEMAND

BLC's Jury Demand is a demand, not an allegation, and does not require admission or denial. Cargill demands a jury trial for all issues triable to a jury.

AFFIRMATIVE AND ADDITIONAL DEFENSES

Cargill asserts the following affirmative and additional defenses without assuming any burden that it would not otherwise have, including without admitting or acknowledging that it bears the burden of proof as to any of them.

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

BLC's Amended Complaint fails to state any claim against Cargill upon which relief may be granted.

SECOND DEFENSE **(Invalidity)**

The claims of the '473 patent are invalid for failure to satisfy one or more of the conditions for patentability specified in Title 35 of the United States Code, without limitation to those specified in 35 U.S.C. §§ 101, 102, 103, 112, and/or judicially created doctrines such as double patenting, because one or more of the claims are invalid inasmuch as they are unpatentable; and/or because they are taught by, suggested by, anticipated by, and/or obvious in view of the prior art; and/or because one or more of the claims lack definiteness, are not enabled, and/or are unsupported by the written description of the invention.

THIRD DEFENSE
(Non-infringement)

Cargill has not infringed, and does not infringe (literally, under the doctrine of equivalents, directly, indirectly, contributorily, by inducement, willfully or otherwise) any valid and enforceable claim of the '473 patent.

FOURTH DEFENSE
(Damages, Costs, and 35 U.S.C. §§ 286, 287, and/or 288)

The relief requested in the Amended Complaint is barred due to the failure by BLC to satisfy all of the conditions precedent to bringing this action. BLC is not entitled to damages, costs, fees, or any other kind of relief because there has been no infringement of the '473 patent, the '473 patent is invalid, BLC has suffered no harm, and the balance of equities weighs against granting BLC any relief. BLC's claims for relief are also barred or, at least, limited by 35 U.S.C. §§ 286, 287, and/or 288. BLC's claims for damages and/or costs are barred or limited, in whole or in part, pursuant to 35 U.S.C. § 286, which prohibits recovery for activities committed more than six years before the filing of the Amended Complaint. Moreover, to the extent that BLC and any predecessors in interest, or any licensees to the '473 patent failed to properly mark any of their relevant products or materials as required by 35 U.S.C. § 287, or otherwise give proper notice that Cargill's actions allegedly infringe the '473 patent, Cargill is not liable to BLC for the acts alleged to have been performed before Cargill received actual notice that it was allegedly infringing the '473 patent.

FIFTH DEFENSE
(Injunctive Relief is Inappropriate)

BLC is not entitled to injunctive relief as a matter of law or equity. BLC is not entitled to injunctive relief at least because Cargill does not infringe any valid or enforceable claim of the '473 patent, the '473 patent is unenforceable and invalid, BLC has suffered no harm, and the balance

of the equities weighs against granting BLC any relief. Further, BLC is not entitled to injunctive relief at least because it has not and will not suffer irreparable harm, it has made no allegations that it practices any of the '473 patent, it is not without an adequate remedy at law, and the balance of equities favors no injunction.

SIXTH DEFENSE
(Not an Exceptional Case)

Cargill's actions in defending this case do not give rise to an exceptional case under 35 U.S.C. § 285.

SEVENTH DEFENSE
(Willful Infringement is Inappropriate)

Cargill has not willfully infringed any claim of the '473 patent.

RESERVATION OF RIGHTS

Cargill expressly reserves the right to later assert and pursue further defenses and counterclaims in this action, the basis of which may be discovered during the course of discovery.

COUNTERCLAIMS

Without admitting any of the allegations of the Amended Complaint other than those expressly admitted herein, Cargill, Incorporated ("Cargill" or "Counterclaim-Plaintiff"), through its counsel, hereby asserts the following Counterclaims against Counterclaim-Defendant Bunge Loders Croklaan USA, LLC ("BLC" or "Counterclaim-Defendant") and, in support of thereof, alleges the following:

THE PARTIES

1. Counterclaim-Plaintiff Cargill is a corporation organized and existing under the laws of the State of Delaware and has a principal place of business at 15407 McGinty Road West, Wayzata, Minnesota 55391.

2. Counterclaim-Defendant BLC has represented that it is a limited liability company organized and existing under the laws of Illinois with a principal place of business at 24708 West Durkee Road, Channahon, Illinois, 60410.

JURISDICTION AND VENUE

3. This Court has jurisdiction over Cargill's claims pursuant to 28 U.S.C. §§ 2201–2202 and subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1367, and 1338. An actual, substantial, and continuing justiciable controversy to warrant a declaratory judgment exists between Cargill and BLC based on BLC having filed a Complaint and Amended Complaint against Cargill alleging infringement of the U.S. Patent No. 7,645,473 (the "'473 patent").

4. The Court has personal jurisdiction over BLC, *inter alia*, at least because BLC has submitted to the personal jurisdiction of this Court by filing the Complaint and Amended Complaint.

5. To the extent that the infringement action against Cargill proceeds in this District and that venue is proper in this Court for BLC's infringement claims against Cargill, venue is likewise proper in this District as to the Counterclaims, *inter alia*, at least because BLC has submitted to the venue of this Court by filing its Complaint and Amended Complaint here.

FIRST COUNTERCLAIM **(DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '473 PATENT)**

6. Cargill hereby repeats and re-alleges the allegations set forth in the preceding paragraphs of its Counterclaims.

7. In its Amended Complaint, BLC alleges that Cargill infringes or has infringed the '473 patent by making, offering to sell, or selling the PalmAgility® 516 product, the PalmAgility® 507 product, the Regal™ Icing Shortening NH product, and the Advantage® PNC-111 Icing

Shortening product (collectively, the “Accused Products”). The Accused Products do not infringe any valid and enforceable claim of the ’473 patent.

8. Each of the Accused Products lacks one or more claim elements recited in claims of the ’473 patent. For example, at least certain of the Accused Products do not contain interesterified oil and lack a vegetable fat composition containing the triglyceride content and percentages recited in one or all claims of the ’473 patent. Further, the Accused Products lack a blend of fats that contain interesterified palm olein. Based on information and belief, BLC has not tested the triglyceride content of each of the Accused Products, does not possess the Accused Products, has not analyzed the contents of the Accused Products, and, based on information and belief, has not conducted a reasonable investigation into whether each of the Accused Products infringe one or more claims of the ’473 patent.

9. Cargill has not infringed and currently does not infringe (literally, under the doctrine of equivalents, directly, indirectly, willfully or otherwise) any valid and enforceable claim of the ’473 patent.

10. Cargill has not and is not actively inducing or contributing to the infringement of any valid and enforceable claim of the ’473 patent.

11. There exists an actual and justiciable controversy between BLC and Cargill with respect to alleged infringement of the ’473 patent.

12. Cargill hereby seeks, pursuant to 28 U.S.C. § 2201, entry of a declaratory judgment that Cargill has not and does not infringe any claim of the ’473 patent.

SECOND COUNTERCLAIM
(DECLARATORY JUDGMENT OF INVALIDITY OF THE ’473 PATENT)

13. Cargill hereby repeats and re-alleges the allegations set forth in the preceding paragraphs of its Counterclaims.

14. Each claim of the '473 patent is invalid for failure to meet one or more of the conditions of patentability, including without limitation, those specified in 35 U.S.C. §§ 102, 103, and/or 112.

15. Cargill incorporates by reference IPR2024-01360, Paper 2, and the arguments set forth therein.

16. Cargill incorporates by reference IPR2024-01360, Exhibits 1003 and 1004, and the information contained therein. Dr. Alejandro G. Marangoni is a person of ordinary skill in the art with respect to the subject matter disclosed or claimed in '473 patent.

17. Petrauskaite et al., *Physical and Chemical Properties of trans-free Fates Produced by Chemical Interesterification of Vegetable Oil Blends*, Journal of the American Oil Chemists' Society, Volume 75(4) at 489 (1998) ("Petrauskaite") is prior art to the '473 patent. Petrauskaite is Exhibit 1007 in IPR2024-01360.

18. Idris et al., *Evaluation of Shortenings Based on Various Palm Oil Products*, Journal of the Science of Food and Agriculture, Vol 46 No. 4 at 481 (1989) ("Idris") is prior art to the '473 patent. Idris is Exhibit 1009 in IPR2024-01360.

19. H.H. Hustedt, et al., *Interesterification of Edible Oils*, Journal of the American Oil Chemists' Society Vol. 53 No. 6 (1976) at 390 ("Hustedt") is prior art to the '473 patent. Hustedt is Exhibit 1008 in IPR2024-01360.

20. W.E. Neff et al., *Oxidative Stability of Blends and Interesterified Blends of Soybean Oil and Palm Olein*, Journal of the American Oil Chemists' Society Vol. 71(10) at 1111 (1994) ("Neff") is prior art to the '473 patent. Neff is Exhibit 1011 in IPR2024-01360.

21. E. Deffense, *Fractionation of Palm Oil*, Journal of the American Oil Chemists' Society Vol. 62(2) at 376 (1985) ("Deffense") is prior art to the '473 patent. Deffense is Exhibit 1014 in IPR2024-01360.

22. For the reasons set forth in IPR2024-01360, at least claims 1, 6-9, 11-24 of the '473 patent were obvious at the time of filing the application that issued as the '473 patent.

23. By no later than June 2006:

- i. palm oil, soybean oils, and fractions thereof were known to be vegetable fats that include triglycerides.
- ii. techniques to modify triglycerides or the triglyceride content in vegetable fat compositions was known, including hydrogenation, interesterification, and fractionation.
- iii. interesterification had been used to modify vegetable fats, including triglyceride content.
- iv. interesterification had been used to provide fats and oils with modified functionality.
- v. interesterification of blends of fully hydrogenated vegetable oil with a liquid oil had been used to produce a *zero-trans* solid fat.
- vi. interesterified vegetable fat blends were used in soft tub-type margarines and as confectionary fat basestocks.
- vii. zero- or low-*trans* content vegetable compositions suitable for baking and confections had been developed.
- viii. the wt% of fat blends in Petrauskaite could be calculated based on knowledge of fatty acid compositions of palm stearin and soybean oil.

ix. the molecular weights and relative proportions of the various fatty acids in palm stearin and soybean oil were known.

24. Petrauskaite discloses “[f]at blends, formulated by mixing a highly saturated fat (palm stearin or fully hydrogenated soybean oil) with a native vegetable oil (soybean oil).”

25. The wt% of fat blends of Petrauskaite could be calculated based on knowledge of fatty acid compositions of palm stearin and soybean oil as of at least June 2006.

26. The fat blends of Petrauskaite satisfy all elements of and therefore anticipate at least claims 1, 6-9, and 11-24 of the ’473 patent or render them obvious. Further, at least Petrauskaite in light of Idris, Hustedt, Neff, and/or Deffense render all the claims obvious.

27. The claims of the ’473 patent are invalid under 35 U.S.C. § 112. The specification discloses only one example called Example 1. Example 1 contained a triglyceride content of 10% SSS, 14% SUS, 12% SSU, 18% SU₂, and 42% U₃.

28. Each claim of the ’473 patent covers compositions having a different triglyceride content than Example 1.

29. The specification of the ’473 patent does not disclose any examples that contain a triglyceride content of 6 to 9 or 11-20% SSS.

30. The specification of the ’473 patent does not disclose any examples that contain a triglyceride content of 5 to 13 or 15-19% SUS.

31. The specification of the ’473 patent does not disclose any examples that contain a triglyceride content of 5 to 11 or 13 to 24% SSU.

32. The specification of the ’473 patent does not disclose any examples that contain a triglyceride content of 10 to 17 or 19 to 39% SU₂.

33. The specification of the '473 patent does not teach any examples that contain a triglyceride content of over 21% except 42% U₃.

34. BLC has not quantified the number of potential compositions that claim 1 of the '473 patent may encompass.

35. BLC cannot quantify the number of potential compositions that claim 1 of the '473 patent may encompass.

36. BLC has not taught how to make all of the potential compositions that claim 1 of the '473 patent may encompass.

37. BLC has not quantified the number of potential compositions that claim 10 of the '473 patent may encompass.

38. BLC cannot quantify the number of potential compositions that claim 10 of the '473 patent may encompass.

39. BLC has not taught how to make all of the potential compositions that claim 10 of the '473 patent may encompass.

40. The '473 patent does not disclose or enable the full scope of claims 1-26 of the '473 patent and each is therefore invalid for lack of written description and enablement.

41. Based on the Complaint filed against Cargill, an actual and justiciable controversy exists between BLC and Cargill concerning the validity of the '473 patent.

42. Cargill hereby seeks, pursuant to 28 U.S.C. § 2201, entry of a declaratory judgment that the claims of the '473 patent are invalid.

JURY DEMAND

Cargill demands a trial by jury for all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Cargill prays that this Court enters judgment:

- A. Dismissing BLC's Amended Complaint with prejudice and adjudging that BLC takes nothing by its Amended Complaint;
- B. Adjudging that the '473 patent is not, and has not been infringed by Cargill;
- C. Adjudging that the '473 patent is invalid;
- D. Permanently enjoining BLC, its officers, employees, agents, and those in privity with any of them from directly or indirectly alleging or instituting any action for infringement of the '473 patent against Cargill or any other person or entity in privity with Cargill, including without limitation Cargill's successors, assigns, agents, suppliers, and customers;
- E. Declaring that this case is exceptional and awarding Cargill its attorneys' fees and costs under 35 U.S.C. § 285 and any other damages as may be proved;
- F. Awarding Cargill its costs and disbursements, including pre-judgment and post-judgment interest, incurred in this action; and
- G. Awarding Cargill such other and further relief as the Court may deem just.

RESERVATION OF RIGHTS

Cargill reserves the right to amend the Answer and Counterclaims and assert any and all additional defenses and counterclaims, the basis of which may be discovered during the course of discovery.

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Dated: December 4, 2024

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