

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AJINOMOTO CO., INC.

Petitioner,

v.

ABTIS CO., LTD.

Patent Owner.

CASE: IPR2025-00283

U.S. PATENT NO. 11,896,675

**PATENT OWNER'S AUTHORIZED RESPONSE TO PETITIONER'S
REQUEST FOR DIRECTOR REVIEW OF FINAL WRITTEN DECISION**

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I. INTRODUCTION

Patent Owner AbTis Co., Ltd. (“AbTis”) submits this Response to Petitioner Ajinomoto Co., Inc.’s (“Ajinomoto’s”) Request for Director Review of Final Written Decision (“Request”), pursuant to the Office’s authorization of August 31, 2026. Petitioner asserts that the Board’s Final Written Decision (“FWD”) violated the Administrative Procedure Act (“APA”), but Petitioner’s Request should be denied because it is premised on a fundamental misinterpretation of the FWD.

Petitioner’s Request repackages its flawed lack of written description and non-enablement arguments for a fourth time in this IPR proceeding—after the Board thoroughly considered and soundly rejected them. It alleges that the Board must have “implicitly” construed the claim terms “antibody” and “modified lysine residue at 248 position” to reject Petitioner’s arguments. But the Board did not construe those claim terms, implicitly or otherwise. Indeed, Petitioner never identifies a claim construction adopted by the Board. Instead, it quotes the Board’s rejection of Petitioner’s written description and enablement arguments, and infers that the Board must have implicitly construed the claims as limited to IgG1 antibodies. But the Board never did so.

The Board simply pointed out that Petitioner’s arguments improperly focused on the term “antibody” while disregarding other parts of the claims. The part of the FWD Petitioner cites for “construing the claims as limited to antibodies compatible

with the IgG1-specific SSFI disclosed in the specification” is not a construction, but a rejection of Petitioner’s lack of written description argument. Paper 47, 4. This is clear when read in the full context of the FWD, including the case citation following that quote, which Petitioner misleadingly omits. In the full context, it is clear that the Board’s consideration of the claims as a whole is not a new claim construction.

Moreover, Petitioner received notice and a full opportunity to address the very issues it now claims were a surprise, including through the supplemental briefing following the oral hearing. Ex. 2014 (Board’s May 11, 2026 Email); *see* Paper 44 (Petitioner’s Supplemental Letter Brief); Paper 45 (Patent Owner’s Supplemental Letter Brief). For these reasons, and as further explained below, the Director should deny Petitioner’s Request.

II. THERE WAS NO CLAIM CONSTRUCTION IN THE FWD

A. The Record Shows There Was No Claim Construction

The Board did not construe claim terms, nor did it need to in rejecting Petitioner’s lack of written description and non-enablement arguments. Petitioner asserts that the Board “implicitly construed the claim terms ‘antibody’ and ‘modified lysine residue at 248 position’ as limited to IgG1 antibodies.” Paper 47, 1. That is incorrect. Each portion of the Board’s FWD that Petitioner cites as evidence of an “implicit claim construction” appears in the Board’s analysis of Petitioner’s written description and enablement challenges and says nothing about construing

“antibody” or “modified lysine residue at 248 position” to mean IgG1 antibodies. Rather, the cited portions of the FWD merely explain that Petitioner’s written description and enablement arguments failed because they did not account for all of the claim language. *See* Paper 47, 4, 5.

Petitioner cites a portion of the FWD to allege “implicit” claim construction. Paper 47, 4. But Petitioner omitted important context underlined here:

Petitioner’s argument is unpersuasive because the argument is based on the false premise that the scope of claims 14–16 is as broad as the claim term “antibody” without being limited by all other claim elements. That is, Petitioner argues that “the expansive scope of the claims” should include all “naturally occurring immunoglobulins” such as “isotypes IgA, IgD, IgE, IgG, and IgM” as well as “all ‘recombinant proteins, fusion proteins, chimeric proteins, human immunoglobulins, non-human animal immunoglobulins ... which have the same or similar structures.’” Sur-Reply 2, 3. Petitioner’s argument that claims 14–16 encompass proteins that lack a lysine resid[u]e at a 248 position improperly excludes all other claim elements such as the “lysine residue at 248 position ... [as] determined by the EU numbering system.” *See id.* at 4 (arguing that “the specification contains no guidance or teaching how to introduce a Lys at a 248 position in proteins that lack it”). Because Petitioner acknowledges

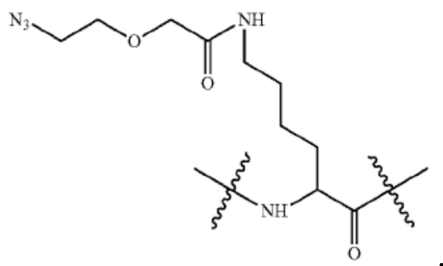
that “[t]he disclosure of elements such as the “lysine residue at 248 position . . . [as] determined by the EU numbering system.” *See id.* at 4 (arguing that “the specification contains no guidance or teaching how to introduce a Lys at a 248 position in proteins that lack it”). SSFI that only binds to IgG1 Fc domains (SEQ ID NO:1) is consistent with the limited scope of examples in the ‘675 patent” (Sur-Reply 5) and because the scope of the antibody that claims 14–16 recite is limited by all claim elements beyond the recited “modified antibody” such as the lysine residue position 248, we are not persuaded by Petitioner’s argument that the full scope of claims 14–16 lacks written description support. *See Teva Pharms. Int’l GmbH v. Eli Lilly & Co.*, 172 F.4th 1367, 1380 (Fed. Cir. 2026) (holding that there is not “a bright-line, always-applicable rule” for a proper written description inquiry and that “the representativeness inquiry accounts for the specific circumstances of the invention”).

Paper 46, 16–17 (emphasis added). This context makes clear that Petitioner’s Request is misleadingly incomplete. Petitioner had, and took, the opportunity to address the issues it complains of before the Board. It did so with written description and enablement challenges, which the Board considered and deemed unpersuasive.

Here, Petitioner again asserts that the claims “encompass all immunoglobulin isotypes, including IgA, IgD, IgE, IgG, and IgM.” Paper 47, 10. But that proposal

broadens the claims beyond recognition by disregarding nearly all of their limitations. Claim 14 is exemplary:

14. [14.pre] A modified antibody comprising a bio-orthogonal click chemistry functional group,
[14.a] wherein the modified antibody comprises one or more modified heavy chain,
[14.b] wherein each of the modified heavy chain comprises a modified lysine residue at 248 position of heavy chain amino acid sequence,
[14.c] wherein the 248 position is determined by an EU numbering system, and
[14.d] wherein the modified lysine residue has following structure:



Specifically, the Board explained that Petitioner’s written description and enablement arguments rested on the “false premise that the scope of claims 14-16 is as broad as the claim term ‘antibody’ without being limited by all other claim elements.” Paper 46, 16. The Board directly addressed and rejected Petitioner’s argument that claims 14-16 have such expansive scope to include all “‘naturally occurring immunoglobulins’ such as ‘isotypes IgA, IgD, IgE, IgG, and IgM’ as well as ‘all “recombinant proteins, fusion proteins, chimeric proteins, human immunoglobulins, non-human animal immunoglobulins ... which have the same or

similar structures.””” Paper 46, 16. In rejecting Petitioner’s argument, the Board did not rely on any claim construction of the claim terms, but rather explained that “Petitioner’s argument that claims 14–16 encompass proteins that lack a lysine residue at a 248 position *improperly excludes all other claim elements* such as the ‘lysine residue at 248 position . . . [as] determined by the EU numbering system.”” Paper 46, 16–17.

Indeed, the Board’s reasoning relies on the positions AbTis and its expert, Dr. Zhou, presented throughout its Motion to Amend papers and supplemental briefing. AbTis argued that the claims must be evaluated as a whole, including the Lys-248 and EU-numbering limitations, and that a POSA would understand the entirety of the claim to have written description and enablement support. Ex. 2004 ¶ 48; Ex. 2008 ¶ 47. Petitioner did not offer affirmative expert evidence on written description or enablement, even though its expert opined at length on other issues, including anticipation and obviousness.

Thus, the Board did not construe the claims as Petitioner suggests. Rather, the Board considered the claims as a whole and determined that Petitioner’s written description and enablement challenges failed because they did not account for all claim limitations.

B. The Applicable Law Shows There Was No Claim Construction

Petitioner cites *Google LLC v. EcoFactor, Inc.*, for the proposition that the

Board’s alleged claim construction “violates the APA.” 92 F.4th 1049, 1057 (Fed. Cir. 2024). But *Google* does not support Petitioner’s position for several reasons. First, *Google* holds that construing claims is *not* an APA violation. *Id.* Second, the prohibition is that the Board “cannot, without notice and opportunity for the parties to respond, change theories midstream by adopting a claim construction in its final written decision that neither party requested nor anticipated.” *Id.* In *Google*, like here, there was no APA violation because the parties “were afforded both notice and opportunity to address this issue.” *Id.* Here, Petitioner’s opportunities to address this issue included supplemental briefing *following* oral argument.

Moreover, *Google* demonstrates that there was no claim construction here. In *Google*, the claim was to a method for reducing the cycling time of a climate control system. The issue was whether the Board implicitly construed the claims by requiring five separate temperature inputs to meet the claims, rather than permitting one temperature input to satisfy two input limitations. *See Google*, 92 F.4th at 1056. The court determined that there was a claim construction because “there [was] nothing on the face of the claim to discern . . . whether one input” could meet two limitations, and in reaching that determination, the Board relied on cases “interpreting claims in the claim construction context.” *Id.* Here, there are no such issues because the claims are to modified antibodies defined by their structure, and not a method requiring inputs, so the claim limitations are clear on their face.

Moreover, here, the Board did not rely on claim construction cases in rejecting Petitioner's written description and enablement challenges.

III. PETITIONER HAD AMPLE NOTICE AND OPPORTUNITY TO BE HEARD ON THE ISSUES IT NOW CLAIMS WERE A SURPRISE

Assuming *arguendo* that the Board's analysis had claim-scope implications, Petitioner's APA argument still fails because Petitioner had notice and a full opportunity to address the interplay of the claim terms "antibody" and "modified lysine residue at 248 position." Petitioner actually did address those issues on at least three occasions: (i) in Petitioner's Sur-Reply to Patent Owner's Motion to Amend (Paper 33); (ii) during the oral hearing; and (iii) in Petitioner's Supplemental Letter Brief (Paper 44).

A. Petitioner Was Afforded the Opportunity to Address the Claim Scope Issue in its Sur-Reply to Patent Owner's Motion to Amend

Petitioner asserts that the parties were not provided the opportunity to address what it now calls the Board's "implicit construction" of the terms "antibody" and "modified lysine residue at 248 position." That is incorrect, as Petitioner had the opportunity to do so. In AbTis's Reply to Petitioner's Opposition to the Motion to Amend, AbTis stated:

The proposed substitute claims are directed to structurally defined antibodies modified at the lysine residue at EU position 248 with the recited chemical functionalities. The '675 Patent's specification discloses the structural modification site, the chemistry used to modify

that residue, and working examples demonstrating the modification.

Paper 28, 2. In so stating, AbTis relied on Dr. Zhou's opinion that "[a] POSA would understand the claim itself to limit the modified antibodies to those with lysine at position 248." Paper 28, 2 (citing Ex. 2008, ¶ 46). In response to AbTis's arguments concerning claim scope, Petitioner simply maintained its position that claims 14-16 have "expansive scope." Paper 33, 5.

Moreover, Petitioner squarely put this issue before the Board, arguing that "[e]ither Yamada, Matsuda, and the PepTalk References are more broadly applicable than Dr. Zhou opined, or the '675 patent fails to enable modification beyond IgG1." Paper 33, 8. Petitioner therefore cannot plausibly contend that the Board's discussion of whether the specification supported and enabled claim scope beyond the disclosed IgG1 embodiments was a new claim construction issue raised for the first time in the FWD. The Board's ultimate disagreement with Petitioner's written description and enablement arguments shows that Petitioner took the opportunity to address the issues it now claims not to have had adequate notice.

B. Petitioner Was Afforded the Opportunity to Address the Claim Scope Issue During the Oral Hearing

Petitioner, again, addressed this issue during the oral hearing. The Board questioned the parties regarding the relationship between the claim language, the antibodies encompassed by the proposed substitute claims, and the disclosures in the

specification. Paper 43, 57:5–16. Specifically, the Board framed the discussion around *Teva* and written description, questioning whether the claimed “antibody” should be evaluated as a “tool” operating within a defined antibody framework and whether Petitioner’s alleged breadth concerns undermined written description. Paper 43, 57:5–22. Petitioner fully engaged with that issue. Paper 43, 57:5–64:4. When Judge Fredman asked whether Petitioner’s concern related to the “surrounding sequences of lysine 248,” Petitioner’s counsel responded “[c]orrect” and proceeded to argue at length that the Lys-248 context, surrounding sequences, and different antibody isotypes allegedly had insufficient written description support. Hearing Tr. 57:23–61:13. Thus, long before the FWD—and supplemental briefing following the oral hearing—Petitioner understood that the Board was evaluating the significance of the Lys-248 and EU-numbering limitations in the context of Petitioner’s written description challenge. After arguing those issues before and during the oral hearing, Petitioner cannot credibly contend that the Board’s discussion of them in the FWD came as a surprise.

C. Petitioner Was Afforded the Opportunity to Address the Claim Scope Issue in its Supplemental Letter Brief

Petitioner was afforded a third opportunity to address the disputed claim scope issue in the parties’ supplemental briefing, a fact that is conspicuously absent from Petitioner’s Request. Petitioner cites *Dell Inc. v. Acceleron, LLC*, 818 F.3d 1293,

1300–01 (Fed. Cir. 2016), for the proposition that an issue raised at oral hearing does not constitute adequate notice (Paper 47, 9 n.1), but *Dell* held that “the Board denied Acceleron its procedural rights by relying in its decision on a factual assertion introduced into the proceeding only at oral argument, ***after Acceleron could meaningfully respond.***” *Dell*, 818 F.3d at 1301. Here, Petitioner was provided the opportunity to meaningfully respond after the oral hearing, and *Dell* is inapposite.

On May 11, 2026, the Board invited the parties to submit supplemental briefing “addressing the issue of whether the proposed substitute claims 14-16 of US Patent 11,896,6[75] meet the written description requirement under 35 U.S.C. § 112 in light of *Teva Pharm. v. Eli Lilly & Co.*, 172 F.4th 1367 (Fed. Cir. 2026).” Ex. 2014.

Petitioner submitted a supplemental brief. In it, Petitioner repeated the same arguments concerning antibody isotypes, the alleged breadth of the claims, and the asserted lack of written description support beyond the disclosed IgG1 embodiments. Paper 44, 7–15. Indeed, Petitioner’s supplemental brief repeatedly argued that the claims encompass all immunoglobulin isotypes and that the specification allegedly supports only human IgG1 antibodies. Paper 44, 7–15. Those arguments demonstrate that Petitioner understood the issues before the Board, and addressed them. Petitioner cannot establish lack of notice or opportunity to respond.

IV. PETITIONER CANNOT SHOW PREJUDICE

A. Petitioner Does Not Identify Any Argument or Evidence It was Allegedly Prejudiced From Presenting

Petitioner also fails to demonstrate prejudice. Although Petitioner now suggests that additional notice would have allowed it to present further arguments or evidence concerning non-IgG1 antibody isotypes, EU numbering, and Lys-248, those are precisely the issues Petitioner addressed throughout this proceeding. Paper 47, 9. As discussed above, Petitioner raised those issues in its Sur-Reply (Paper 33, 8–10), argued them extensively during the oral hearing, and again devoted substantial portions of its supplemental brief to them.

Notably, Petitioner does not identify any specific argument, evidence, or expert testimony that it did not make, let alone was prevented from making. Instead, Petitioner speculates that further briefing or evidence might have been offered if the Board had expressly stated the reasoning Petitioner now attributes to it. Such speculation is insufficient to establish prejudice. Petitioner cannot demonstrate prejudice here because Petitioner already addressed the same issues concerning non-IgG1 isotypes, EU numbering, and Lys-248 in its Sur-Reply, at oral argument, and in its supplemental briefing. Because Petitioner fails to identify any material argument or evidence that it was actually prevented from presenting, its APA challenge fails.

B. The Alleged Construction Was Not Outcome Determinative

Petitioner likewise cannot establish prejudice by asserting that the Board’s alleged construction was “outcome determinative.” First, the FWD demonstrates that the Board’s enablement determination did not rest solely on the reasoning that Petitioner now characterizes as an implicit claim construction. Before discussing Petitioner’s claim-scope arguments, the Board separately concluded that Petitioner’s “arguments in the Sur-Reply are unpersuasive to show a lack of enablement *first and foremost* because the arguments do not specifically provide evidence showing that any purported experimentation is undue.” Paper 46, 26–27 (emphasis added). Then the Board addressed, and rejected, Petitioner’s claim scope argument. *See* Paper 46, 27–28.

The Board also did not reject Petitioner’s written-description challenge solely on the basis of the alleged implicit claim construction. The Board separately considered and rejected Petitioner’s arguments concerning undisclosed formulas, the number of modified heavy chains, the disclosed reaction products, and typical DAR distributions. Paper 46, 13–20. The Board also relied on Petitioner’s acknowledgment that the inventors possessed the recited modified-lysine structures in human IgG1, Petitioner’s failure to explain why a POSA would not understand the disclosed embodiments to demonstrate possession of antibodies satisfying the full claim language, and unrebutted testimony concerning what the disclosed

modification reactions would produce. Paper 46, 13–20. Thus, the FWD reflects a record-based written-description determination addressing Petitioner’s multiple theories, not an outcome reached solely through the purported construction alleged in the Request.

Second, even if Petitioner were correct that the issue was outcome determinative, Petitioner still cannot establish prejudice because the Board expressly identified the written description issue and invited the parties to address it with supplemental briefing “addressing the issue of whether the proposed substitute claims 14-16 of U.S. Patent No. 11,896,657 meet the written description requirement under 35 U.S.C. § 112 in light of [*Teva*].” Ex. 2014. Petitioner submitted fifteen pages of supplemental briefing, yet failed to present the very arguments it now claims it was deprived of the opportunity to make. Instead, Petitioner largely repeated its existing arguments concerning antibody isotypes, claim breadth, and the alleged lack of written-description support beyond the disclosed IgG1 embodiments. Paper 44, 7–15.

Petitioner therefore cannot plausibly contend that it lacked notice or an opportunity to be heard. The Board expressly identified the written description issue it wished the parties to address under *Teva*. Petitioner addressed it. To the extent Petitioner now believes additional arguments should have been presented regarding the significance of the Lys-248 and EU-numbering limitations, that reflects

Petitioner's own strategic decision, not a lack of notice. The APA guarantees notice and an opportunity to respond; it does not entitle a party to a fourth opportunity to address an issue because it failed to persuade the Board the first three times.

V. CONCLUSION

For the reasons discussed above, Petitioner has failed to demonstrate that the Board adopted an implicit claim construction, that Petitioner lacked notice or an opportunity to respond to the issues addressed in the Final Written Decision, that Petitioner suffered prejudice, or that any violation of the APA occurred. Accordingly, Petitioner has failed to establish any basis for Director Review, and its Request should be denied in its entirety.

Dated: September 8, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2026, a true and correct copy of the foregoing was caused to be served on the following counsel of record for Petitioner by electronic mail at the following address:

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