

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARLA FOODS AMBA,

Petitioner

v.

LEPRINO FOODS COMPANY,

Patent Owner

IPR2025-01199

Patent 11,825,860

**PATENT OWNER SUR-REPLY TO
PETITIONER'S PRELIMINARY REPLY**

1. Petitioner presents two inconsistent constructions of “cheese whey retentate composition” (Cls. 8.2-8.3).

First, Petitioner’s position is irreconcilably unclear since it advances two completely different claim constructions. Reply, 1-2. The reply first states the plain and ordinary meaning of the term means “a composition formed *to include* cheese whey retentate.” *Id.*, 1. It then presents a completely different construction: “a composition *formed using* cheese whey retentate.” *Id.*, 2. By failing to coherently articulate its claim construction position, Petitioner’s position is unclear and is insufficient to counter PO’s construction, which is based on the intrinsic evidence.

In any event, PO *agrees* with Petitioner’s first construction, which is substantively similar to PO’s construction. Petitioner’s second construction, however, disregards the terms “cheese whey retentate” in “cheese whey retentate composition” and is thus improper. Under the second construction, if a cheese whey retentate is subsequently processed in dozens of processing steps, each and every derivative composition, whether a mixture of components, isolated component, retentate, permeate (opposite of a retentate), or powder, would still constitute a “cheese whey retentate composition.” Such an interpretation flies in the face of the actual claim language which requires that the composition includes a “cheese whey retentate.” Because Petitioner’s second construction effectively reads “cheese whey retentate” out of the limitation, it is improper.

Additionally, Petitioner incorrectly asserts that PO's constructions for "cheese whey retentate" and "cheese whey retentate composition" are the same. Reply, 1. As stated in the POPR, the terms have different meanings—a "cheese whey retentate composition" is broader and can include additional components beyond a "cheese whey retentate." POPR, 12. Further, contrary to Petitioner's contention, PO's construction encompasses the preferred embodiments—including both enzymatic hydrolysis and microfiltration processes—so long as the cheese whey retentate composition *actually includes a cheese whey retentate* (optionally with additional components such as enzymes).

Under the correct construction, Grounds 1-3 fail. Nielsen785 and Nielsen450 do not disclose forming or heating a "reduced-GMP cheese whey retentate composition" because the BLG isolate powder of both references is not a retentate and is instead formed from a *permeate*—the opposite of a retentate. POPR, 29-31.

2. Nielsen785 does not disclose an ALA:BLG ratio greater than 5.00.

In an effort to rewrite Nielsen785 and dismiss its disclosure that the denatured nanogel has "0%" ALA, Petitioner argues "the claimed ratio does not exclude a non-zero denominator that is reported as zero due to detection limits or rounding." Reply, 2. The express teachings of Nielsen785 cannot be ignored.

First, Petitioner improperly tries to disregard Table 13 of Nielsen785 (from Example 7) as unrelated to Example 1 of Nielsen785, which is relied on for

Grounds 1-3. *Id.*, 2-3. But Nielsen785 plainly states that the nanogel in Table 13 was prepared using BLG isolate powder formed in Example 1. Ex. 1005, 105:11-12. Thus, Table 13 relates to Example 1 and teaches that the denatured nanogel contains “0%” ALA. *Id.*, 105:11-12, Table 13.

Second, Petitioner argues, *without citing expert testimony*, that a POSITA would have recognized “0%” as a below-detection or rounding convention. Reply, 3. Petitioner did not raise this argument in its Petition, and it cannot supplement its invalidity grounds now. This position is also incorrect. Nielsen785 uses “below detectable limits” (BDL) elsewhere. Ex. 1005, Table 15. If “0%” ALA was a below-detection convention, it would say as much. Nielsen785 also expressed many data values as fractions to the tenth place (e.g., 0.1), but it did not do so for ALA. *Id.*, Tables 9-15. Thus, if the composition in Table 13 contained 0.2% ALA, it would have so indicated. But it did not. A POSITA would have thus understood Table 13 for what it states: that “0%” ALA was present in the nanogels.

Third, whether the methylene bridges at issue in *Ashland Oil* could be expressed as fractions does not matter because ***Table 13 shows “0%” ALA—not a fraction.*** Ex. 1005, Table 13. The BLG:ALA ratio of the denatured nanogel in Nielsen785 is thus undefined and cannot satisfy claim limitation 8.6.

In view of the foregoing, Petitioner is unlikely to succeed on any Ground and institution should be denied.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on November 21, 2025, this Patent Owner Sur-Reply to Petitioner's Preliminary Reply (Paper 12) has been served via email on Counsel for Petitioner at the email address as indicated in their Mandatory Notices Under 37 C.F.R. § 42.8:

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