

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TOPSOE INC.,
Petitioner

v.

CASALE SA,
Patent Owner

Case IPR2025-01454
U.S. Patent No. 11,286,168

**PATENT OWNER MOTION TO VACATE AND TERMINATE
PROCEEDINGS**

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LISTING OF EXHIBITS

Exhibit No.	Description
2013	<i>Topsoe Inc. v. Casale SA</i> , No. 3:24-cv-00033 (S.D. Tex.) docket as of June 1, 2026
2014	<i>Topsoe's Invalidity Contentions in Topsoe Inc. v. Casale SA</i> , No. 3:24-cv-00033 (S.D. Tex.) (redacted)
2015	<i>Topsoe Inc. v. Casale SA</i> , No. 3:24-cv-00033 (S.D. Tex.) Docket No. 189 (Joint Motion to Enter Agreed Scheduling Order and Docket Control Order, and Proposed Order) (Jan. 16, 2026)
2016	<i>Topsoe's Invalidity Contentions in Topsoe Inc. v. Casale SA</i> , No. 3:24-cv-00033 (S.D. Tex.) (unredacted, filed under seal)

Patent Owner Casale SA (“Patent Owner”) submits this Motion to Vacate and Terminate Proceedings with the Board’s authorization. Paper 38.

Topsoe Inc. (“Petitioner”) represented to the Board that “if this IPR is instituted, Topsoe *will not pursue* . . . any invalidity ground that was raised or reasonably could have been raised in this IPR,” but four months later, Petitioner reneged on its promise. In its invalidity contentions in the Parallel Litigation, Petitioner incorporated *all grounds from its two filed IPR petitions*. Petitioner also included invalidity grounds that it reasonably could have raised in its petitions, using the label of “prior art *systems*” to circumvent its stipulation and *assert the same patent/printed publication references in the District Court as used in its petitions*.

Without a strong deterrent, patent challengers like Petitioner will be incentivized to continue violating *Sotera* stipulations, unnecessarily expending resources of patent owners and the Board alike. Patent Owner respectfully requests that the Board disincentivize such conduct by vacating this IPR’s institution and terminating proceedings.¹

I. BACKGROUND

On January 31, 2024, Petitioner filed a declaratory judgment action against Patent Owner, asserting principally that the ’168 Patent is unenforceable. *Topsoe*

¹ The Board has the authority to grant this relief. *See, e.g.*, 37 C.F.R. §§ 42.72, 42.12.

Inc. v. Casale SA, No. 3:24-cv-00033 (S.D. Tex.) (“Parallel Litigation”); EX2013. On August 22, 2025, Petitioner filed two IPRs against the ’168 Patent: IPR2025-01454 and IPR2025-01455.² On December 1, 2025, Petitioner filed its Opposition to Patent Owner’s Discretionary Denial Brief in this IPR. Paper 9. To avoid discretionary denial, Petitioner stated:

To eliminate any theoretical concerns of overlap, Topsoe hereby stipulates that, if this IPR is instituted, Topsoe will not pursue in any district court litigation or ITC proceeding any invalidity ground that was raised or reasonably could have been raised in this IPR. This *Sotera* stipulation resolves the issue and weighs strongly against discretionary denial.

Id. at 13 (Petitioner’s “*Sotera* stipulation”). Petitioner even went so far as to say, “Patent Owner’s suggestion that Petitioner ‘sandbagged’ the Office (DDR at 1) lacks support and is legally irrelevant to discretion where, as here, ***there is no parallel validity case, Petitioner has stipulated, if instituted, not to pursue district-court invalidity grounds***, and the Petition presents new, non-cumulative art contradicting the stated reasons for allowance.” *Id.* at 13, n.3 (emphasis added). Following Petitioner’s stipulation and characterizations of the Parallel Litigation, Deputy Director Stewart instituted this IPR on February 10, 2026. Paper 15.

² IPR2025-01455 was discretionarily denied. Paper 11 (PTAB Dec. 18, 2025).

Over two months after institution, Petitioner served its invalidity contentions in the Parallel Litigation. EX2014. Petitioner’s contentions expressly acknowledge its *Sotera* stipulation, only to directly thereafter state, “if the IPR is de-instituted, Topsoe hereby incorporates by reference the invalidity combinations set forth in its two IPR petitions, PTAB-IPR2025-01454-3; PTAB-IPR2025-01455-3, alone or in combination with the prior art identified herein, as if set forth herein.” *Id.* at 4 (the “IPR Grounds”).

Further, Petitioner included five patents / published patent applications and one printed publication in its contentions (the “Publication Reference(s)”). *Id.* at 6-8. These references include *2007 IFA* [EX1006],³ which is a primary reference in this IPR, and *Price* [EX1011], which is a secondary reference in this IPR. *Id.* Petitioner includes each Publication Reference in each of its “bases for invalidity”:

Table 4: Bases for Invalidity for the '168 Patent

Exhibit	'168 Claims	Bases for Invalidity
A-1	1, 5, 8, 9, 10, 18, and 19	§ 103 – IFFCO ammonia plant alone or in view of Jensen, Christensen, Gauthier, Price, Lindell, and/or Nielsen 2007.
A-2	1, 5, 8, 9, 10, 18, and 19	§ 103 – QAFCO ammonia plant alone or in view of Jensen, Christensen, Gauthier, Price, Lindell, and/or Nielsen 2007.
A-3	1, 5, 8, 9, 10, 18, and 19	§ 103 – Tata Babrala ammonia plant alone or in view of Jensen, Christensen, Gauthier, Price, Lindell, and/or Nielsen 2007.

³ Petitioner’s invalidity contentions call *2007 IFA* “Nielsen 2007.” EX2014 at 7.

Id. at 9. Petitioner’s invalidity contentions only argue obviousness. *Id.* at 4, 9-10. Each combination begins with printed publications describing ammonia plants (Petitioner’s self-described “primary reference prior art documents representing systems”) as primary references, but since all the primary references are deficient, Petitioner then combines them with the Publication References. *E.g., id.* at 6-7.

Petitioner expressly cites *2007 IFA* and *Price* in its contentions for claim 1 (element a), claim 8, claim 9, and claim 19 – over half (57%) of the asserted claims. *Id.* at 20, 22, 23, 31-34, 39, 40. Claim 1 is the only independent claim of the ’168 Patent, so Petitioner is relying on the Publication References in its contentions for each and every asserted claim (by asserting each of the Publication References for claim limitation 1(a)). *Id.* at 19-23.

II. ARGUMENT

A. Petitioner Violated Its *Sotera* Stipulation Twice

1. Petitioner Violated Its *Sotera* Stipulation by Impermissibly Incorporating Its IPR Grounds by Reference in Its Parallel Litigation’s Invalidity Contentions

Petitioner unconditionally stipulated that it would not raise its IPR Grounds in the Parallel Litigation “if this IPR is instituted.” Paper 9 at 13. Petitioner never hinted to the Board that its stipulation was conditional or that it would attempt to reserve the IPR Grounds if the Board later de-institutes, but that is exactly what Petitioner has done:

However, *if the IPR is de-instituted, Topsoe hereby incorporates by reference the invalidity combinations set forth in its two IPR petitions*, PTAB-IPR2025-01454-3; PTAB-IPR2025-01455-3, alone or in combination with the prior art identified herein, as if set forth herein.

EX2014 at 4 (emphasis added). Setting aside that Petitioner remained silent about its intent to assert invalidity in the Parallel Litigation⁴, Petitioner never identified to the Board that its stipulation was conditional on the IPR’s *continued* institution or reaching a final written decision. Instead, after achieving institution, Petitioner unilaterally attempted to make its *Sotera* stipulation conditional, expressly incorporating by reference *all* IPR Grounds “*if the IPR is de-instituted.*” *Id.*

Director Squires recently dealt with a “conditional” *Sotera* stipulation in *Advanced Micro Devices, Inc. v. XtreamEdge, Inc.*, IPR2025-00223 (PTAB) (“AMD”). There, the petitioner asserted invalidity grounds from its IPR petition in the parallel litigation following institution. *AMD*, Paper 29 at 2 (PTAB May 12,

⁴ Along with stating that it entered a *Sotera* stipulation “[t]o eliminate any theoretical concerns of overlap,” Paper 9 at 13, Petitioner also represented to the Board that “there is no parallel invalidity case.” *Id.* at 13 n.3. Yet, just over a month later, Petitioner’s counsel submitted a joint motion to enter a scheduling order *including* a deadline for service of invalidity contentions. EX2015 at 4. Despite those claims made to achieve institution, there is now an invalidity case with *significant* overlap.

2026). After the patent owner alerted the Director to the *Sotera* violation, the petitioner unilaterally attempted to alter its *Sotera* stipulation through a filing with the district court and, like here, make it conditional on continued institution:

Defendants confirm that the *Sotera* stipulation remains in effect for the instituted IPRs. ***So long as these respective IPRs remain instituted, Defendants’ previously-submitted Sotera stipulations remain in effect***, and consistent with those stipulations, Defendants will not pursue in this case any ground that was raised or could have been reasonably raised in those IPRs (i.e., any ground that could be raised under §§ 102 or 103 on the basis of prior art patents or printed publications)

AMD, EX1053 at 2 (emphasis added). In ordering termination of the petitioner’s IPRs, the Director noted that despite stipulating that it “will not *pursue*” its IPR grounds in parallel litigation, the petitioner did just that by serving invalidity contentions in the parallel litigation that expressly incorporated these same grounds. *AMD*, Paper 29 at 4. The Director was unpersuaded by the petitioner’s excuse “that it incorporated the IPR Petition grounds into the contentions as a ‘conditional disclosure of prior art grounds.’” *Id.* (quoting Paper 28 at 10). The Director aptly framed the problem that such a “conditional disclosure” creates:

Petitioner’s view of how a stipulation is triggered and operates would effectively allow petitioners to maintain duplicative grounds in district court until the eve of trial. Such a position is problematic, as it could

force patent owners to expend significant resources substantively responding to such grounds in the district court. This does not ensure that the IPRs are a “true alternative” to parallel litigation.

Id. at 4-5 (citing *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 at 19 (PTAB Dec. 1, 2020) (precedential as to § II.A)).

Petitioner’s unilateral “conditional disclosure” mirrors exactly the sort of violation that concerned the Director in *AMD*: Petitioner promised the Board that it “will not pursue” the IPR Grounds, but months later, it did just that. *See id.* at 4. And just as the Director warned, Petitioner’s conduct here creates precisely the same problem: it forces Patent Owner to fight Petitioner’s IPR Grounds on two fronts. Patent Owner must not only prepare to duplicate substantive arguments for the grounds in the present IPR, it also must prepare its defenses to *both* grounds of discretionarily denied IPR2025-01455 *and* unknown combinations of the IPR Grounds with the additional art in Petitioner’s Parallel Litigation invalidity contentions. *See* EX2014 at 4 (incorporating IPR Grounds by reference “***alone or in combination with the prior art identified herein***, as if set forth herein” (emphasis added)). Any time between now and trial, the IPR could become de-instituted due to

Petitioner's conduct.⁵ In view of Petitioner's threat to litigate these grounds in the Parallel Litigation in such an event, Patent Owner must prepare in the litigation as if those grounds will be available to Petitioner, even though it expressly violates Petitioner's *Sotera* stipulation.

2. Petitioner Asserts Invalidity Grounds in the Parallel Litigation That It Reasonably Could Have Raised in Its Petition

Petitioner purports that its invalidity grounds (its "bases of invalidity") in the Parallel Litigation are prior art systems that were "'on sale', and/or known or used by others before the earliest priority date for the '168 Patent." EX2014 at 5; *see also id.* at 14, 42, 70. In reality, Petitioner uses the "prior art system" label simply to skirt its stipulation. Petitioner relies on purported prior art ammonia plants for both single reference obviousness grounds and as primary references for obviousness combinations with references that Petitioner concedes are merely patents and printed publications. *Id.* at 7-8.

Petitioner's "prior art system" references are *not* directed to the use and operation of the plants themselves; rather, they are the publications that purportedly

⁵ De-institution is possible beyond Patent Owner's present Motion. For example, if the Board later learns of a Real Party-in-Interest that was undisclosed in the Petition, the Board must vacate and terminate this IPR. *Corning Optical Commc'ns RF, LLC v. PPC Broadband Inc.*, IPR2014-00440, Paper 68 at 24-25 (PTAB Aug. 18, 2015).

correspond to the ammonia plants. In other words, Petitioner merely relies on the publications for what they teach, not using the publications as proof that these plants were “‘on sale’, and/or known or used by others.” The substance is simply what is on the page. IPR estoppel—and by extension, a *Sotera* stipulation—will apply “if a patent challenger is simply swapping labels for what is otherwise a patent or printed publication invalidity ground in order to ‘cloak’ its prior art ground and ‘skirt’ estoppel.”” *XI Discovery, Inc. v. Microsoft Corp.*, No. SACV 23-2415-GW-JDEx, 2025 U.S. Dist. LEXIS 181732, at *9 (C.D. Cal. Sept. 25, 2025) (citation omitted).

This is especially apparent when considering Petitioner’s obviousness combinations. When that “prior art system” is based solely on publications combined with secondary patents or printed publications, then it is a ground that could have been brought in IPR. Petitioner merely takes the teachings of publications describing a system and combines them with teachings from other unrelated publications. *See MacNeil Auto. Prods. v. Yita, LLC*, C20-0278 TSZ, 2025 U.S. Dist. LEXIS 279324, at *11 (W.D. Wash. Aug. 20, 2025) (considering *Ingenico* and applying IPR estoppel where “defendants . . . do not proffer the Husky tray or trays as evidence that the claimed invention was ‘known or used by others, on sale, or in public use.’ Rather, defendants contend that a person of ordinary skill in the art could have modified the Husky product or products through ‘routine optimization’ to develop a vehicle floor tray with the requisite 0.125-inch tolerance”).

Petitioner may now argue that the publications are confidential and thus not “on sale,” “publicly known,” or otherwise qualify as prior art. But Petitioner already used them in the contentions *as prior art* calling them “prior art documents representing systems.” See EX2014 at 6. Even if they were characterized as *evidence* of the use and operation of the plants themselves, Petitioner’s “bases of invalidity” in its contentions are no longer systems “on sale” or “known or used by others” when Petitioner combines that evidence with patents and printed publications that undisputedly can be—and have been—asserted in this or any other IPR.

B. Petitioner’s Violations Are Impermissible Under *Ingenico*

Petitioner asserts that the Federal Circuit’s decision in *Ingenico* authorizes the “bases of invalidity” included in its contentions. See *Ingenico Inc. v. Ioengine, LLC*, 136 F.4th 1354 (Fed. Cir. 2025). Petitioner is wrong. *Ingenico*’s holding was necessarily narrow. The Federal Circuit considered whether publications corresponding to prior art systems could be used as *evidence* to support invalidity grounds that the systems were used by others, on sale, or in public use. *Id.* at 1365 (“By design, a petitioner has no opportunity to challenge that the claimed invention was known or used by others, on sale, or in public use at IPR.”), 1367 (“These are grounds that could not have been raised during the IPR. The Readme file and other printed publications that Ingenico relied upon were evidence to support these grounds.”). The Federal Circuit answered in the affirmative. *Id.*

The Federal Circuit, however, did *not* hold that publications allegedly corresponding to prior art systems could be used in obviousness combinations in connection with other unrelated patents/publications—and it could not because the issue was not before it. Petitioner is doing just that in its contentions: it uses only the teachings from publications, including in combination with teachings from other patents/publications, as its grounds of invalidity before the District Court.⁶ These are not grounds that the Federal Circuit allowed in *Ingenico*: these are merely publication-based obviousness grounds that Petitioner could have brought in its IPR petitions. Petitioner’s attempt to shroud these grounds as “prior art systems” does not change that reality. “Moreover, it is not clear that *Ingenico* eliminates the longstanding principle that estoppel applies ‘if a patent challenger is simply swapping labels for what is otherwise a patent or printed publication invalidity ground in order to ‘cloak’ its prior art ground and ‘skirt’ estoppel.’” *XI*, 2025 U.S. Dist. LEXIS 181732 at *9 (citation omitted).

⁶ The Publication References do not describe and are not otherwise related in any way to the “prior art systems.” That is, the Publication References are not “evidence to support” the grounds that the “prior art systems” were “known or used by others, on sale, or in public use.” *See Ingenico*, 136 F.4th at 1367.

Moreover, *Ingenico* does not address and cannot excuse Petitioner’s “conditional disclosure” of its IPR Grounds in its invalidity contentions. Petitioner incorporated by reference the IPR Grounds—from *both* the present IPR *and* the petition that was discretionarily denied. Petitioner incorporated them *as is* in the petitions *and* in combination with the art in its Parallel Litigation invalidity contentions, including patents and printed publications therein. *See* EX2014 at 4 (incorporating IPR Grounds by reference “*alone or in combination with the prior art identified herein*, as if set forth herein” (emphasis added)). The express terms of Petitioner’s *Sotera* stipulation do not allow this conduct, and *Ingenico* has no bearing on that conclusion.

C. Petitioner’s Conduct Is Contrary to the Purpose of Its *Sotera* Stipulation and Renders Its Stipulation Effectively Meaningless

The downstream effect of allowing Petitioner to maintain its IPR would be detrimental. It would encourage patent challengers to represent one thing to the Board and then do another later in parallel litigation. Such conduct would vitiate the purpose behind *Sotera* stipulations, and it is contrary to the IPR system itself.

First, unless held accountable for violations such as the belated “conditional disclosure” of its IPR Grounds, patent challengers like Petitioner will keep their true intentions hidden from the Board. Petitioner here could have made its representation to the Board expressly revokable upon de-institution. If Petitioner had done so, the Board could have assessed whether a revokable *Sotera* stipulation like it now asserts

would have sufficed to support institution. Petitioner deprived the Board of that opportunity. Instead of being forthright about genuinely foregoing grounds that it raised or reasonably could have raised in parallel proceedings to achieve institution, if the stipulation is allowed to be (secretly) conditional, then if Petitioner's ***own conduct*** results in de-institution, a patent challenger will keep all its invalidity arguments intact. Even if held to the (secret) conditional stipulation, the patent owner will be harmed by additional litigation expense that should have been unnecessary, but for petitioner's violation. *See AMD*, Paper 29 at 5 ("Such conduct undermines the purpose of the Stipulation, which is to mitigate the concern of duplicative efforts between the district court and the Board . . ." (internal quotation marks and citation omitted)); *see generally ASUSTeK Comput. Inc., v. Nokia Techs. Oy*, IPR2025-01153, Paper 27 (PTAB May 27, 2026) (*sua sponte* Director Review to consider whether Petitioners violated their *Sotera* stipulation).

Second, *Sotera* violations like this undermine the intent behind the IPR system as an alternative to district court litigation for issues of invalidity. *See AMD*, Paper 29 at 5 (noting *Sotera* violation "jeopardizes the purpose of IPRs serving as an *alternative* to district court" (emphasis in original)). By both the (secret) conditional stipulation and using the "prior art system" label to skirt its representation, a patent challenger like Petitioner creates an inefficient, dual-tracked invalidity case. *See Magnolia Med. Tech., Inc. v. Kurin, Inc.*, IPR2026-00097, Paper 17 at 3-4 (PTAB

May 17, 2026) (precedential) (“*Magnolia*”) (presence of “same arguments as the AIA review” is “a tell-tale sign that the AIA review is not functioning as a litigation alternative,” and noting that use of IPR to expand the issues relative to litigation is contrary to Congressional intent for “AIA reviews to narrow disputes”). A petitioner’s failure to select a single venue for its invalidity assertions “does not ensure that the IPRs are a ‘true alternative’ to parallel litigation.” *AMD*, Paper 29 at 5 (citation omitted); *see Magnolia* at 3. The patent owner now must expend additional resources in protecting its issued property right; more importantly, the Board will inefficiently deploy its limited resources on a case that will not resolve the issue of validity.

Finally, Petitioner’s approach would effectively obviate a *Sotera* stipulation’s effect. Under Petitioner’s interpretation of *Ingenico* and its *Sotera* stipulation, all a patent challenger needs to do is find a publication corresponding to a single **deficient** system reference. After institution, it can then, as Petitioner does here, create “new” obviousness combinations with deficient system art, and all the same art and positions from its IPR would be available to be asserted in the district court, despite the overlap. *See Magnolia* at 3-4; *cf. AMD*, Paper 29 at 5 (“Petitioner expressly incorporated the *same* art and *same* arguments from its Petitions into its invalidity contentions *after* these IPRs were instituted.” (emphases in original)). No matter how deficient, a single alleged system reference would thus magically transform any

ground that was presented in an IPR and subject to a *Sotera* stipulation into something “new”—even where, as here, the “system reference” consists of publications not used to support that the system was on sale or known/used by others, and teachings from those publications are combined with teachings from an instituted IPR ground. Such a holding would promote the duplicative litigation that Director Squires was concerned about in *AMD* and *Magnolia*: no longer would there be a need for a patent challenger to choose a venue for its invalidity case.

III. CONCLUSION AND REQUESTED RELIEF

Petitioner’s conduct not only negates its *Sotera* stipulation and pre-institution statements to the Board, but it undermines why the Board should expend its resources here. Indeed, allowing this IPR to proceed would reinforce the exact behavior *Sotera* stipulations were meant to prevent. Without telling the Board otherwise, patent challengers could preserve their IPR grounds for parallel proceedings, causing patent owners to fight the same grounds on two fronts, even when the petitioner’s own conduct causes the Board to de-institute an IPR. Further, all a patent challenger needs to do is label a single deficient reference as a “prior art system,” and it can proceed with any obviousness combination in a parallel proceeding.

For the foregoing reasons, Patent Owner respectfully requests that the Board issue an order that vacates the Institution Decision and terminates this IPR.

Dated: June 1, 2026

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CERTIFICATION OF COMPLIANCE WITH PAGE LIMITS

Pursuant to 37 C.F.R. § 42.24(d), I certify that this Motion to Vacate and Terminate Proceedings complies with the page limit requirements of the Order Authorizing Motion to Vacate and Terminate Proceedings because it contains 15 pages, excluding the parts that are exempted. *See* Paper 38 at 2.

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e)(4), the undersigned certifies that on June 1, 2026, a complete and entire copy of this Motion to Vacate and Terminate Proceedings was served on the Petitioner via electronic mail at the following addresses:

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