

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SYNGENTA CROP PROTECTION AG,
Petitioner,

v.

UPL LTD,
Patent Owner.

PGR2023-00017
U.S. Patent No. 11,445,727

PETITIONER'S NOTICE OF APPEAL

Via PTAB PTACTS
Patent Trial and Appeal Board

Via CM/ECF
United States Court of Appeals for the Federal Circuit

Via Hand Delivery
Katherine K. Vidal, Director
United States Patent and Trademark Office
c/o Office of the General Counsel, 10B20
Madison Building East
600 Dulany Street
Alexandria, VA 22313

Pursuant to 35 U.S.C. §§ 141 and 142, and 37 C.F.R. §§ 90.2 and 90.3, Petitioner, Syngenta Crop Protection AG (“Petitioner”), hereby provides notice that it appeals to the United States Court of Appeals for the Federal Circuit from the Decision of the Patent Trial and Appeal Board (“Board”) to deny Petitioner’s request to file a motion for sanctions in Post Grant Review No. PGR2023-00017 (Exhibit 3009, Board email of July 30, 2024). This notice of appeal is timely filed.

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), the issues on appeal include, but may not be limited to:

1. The Board’s decision of July 30, 2024, denying Petitioner’s Request to file the Motion for Sanctions (*see*, Exhibit 3009).
2. Any other findings or determinations supporting or related to the aforementioned issue, as well as all other issues decided adversely to Petitioner in any order, decision, ruling, or opinion.

The remedy sought on appeal is reversal of the Board’s decision of July 30, 2024, and remand to the Board for filing and consideration of Petitioner’s Motion for Sanctions.

Pursuant to 35 U.S.C. § 142 and 37 C.F.R. § 90.2(a), this Notice is being filed with the Director of the United States Patent and Trademark Office, and a copy of this Notice is being concurrently filed with the Patent Trial and Appeal Board. In addition, a copy of this Notice and the required docketing fees are being

filed with the Clerk's Office for the United States Court of Appeals for the Federal
Circuit via CM/ECF.

September 27, 2024

Respectfully submitted,

/Toni-Junell Herbert/

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CERTIFICATE OF SERVICE

I hereby certify that, on September 27, 2024, a true and correct copy of the foregoing Petitioner's Notice of Appeal was Hand Delivered to:

Katherine K. Vidal, Director
United States Patent and Trademark Office
c/o Office of the General Counsel
10B20 Madison Building East
600 Dulany Street
Alexandria, VA 22313

I also hereby certify that, on September 27, 2024, a true and correct copy of the foregoing Petitioner's Notice of Appeal, and the filing fee, were filed with the Clerk's Office of the United States Court of Appeals for the Federal Circuit, via CM/ECF.

I also hereby certify that, on September 27, 2024, a true and correct copy of the foregoing Petitioner's Notice of Appeal was filed in PTAB's PTACTS filing system and served by electronic mail on counsel of record for Patent Owner's as follows:

Mark Feldstein
Mark.feldstein@finnegan.com

Rajeev Gupta
raj.gupta@finnegan.com

Kenneth S. Guerra
Kenneth.Guerra@finnegan.com

UPL-PGR-FINNEGAN@finnegan.com

/Toni-Junell Herbert/
Toni-Junell Herbert

From: [Trials](#)
To: [Guerra, Kenneth](#); [Trials](#)
Cc: [Feldstein, Mark](#); raj.gupta@finnegan.com; [UPL-PGR-FINNEGAN](#); [Herbert, Toni-Junell](#); [Bucca, Daniel](#); [Carson, Charles C.](#); [Klecynsier, David M.](#); EXT-Mrick@bakerlaw.com
Subject: RE: PGR2023-00017
Date: Tuesday, July 30, 2024 8:21:16 AM

Counsel,

From the Board –

Patent Owner affirmatively withdrew “any substantive reliance on the ’727 patent examples in this proceeding.” Paper 39, 3. Because Patent Owner did not rely on the field trial data, there does not appear to be any basis for Petitioner’s proposed motion for sanctions.

Petitioner’s request is denied.

Regards,

Esther Goldschlager
Supervisory Paralegal Specialist
Patent Trial & Appeal Board
U.S. Patent & Trademark Office

From: Guerra, Kenneth <Kenneth.Guerra@finnegan.com>
Sent: Wednesday, July 24, 2024 2:54 PM
To: Trials <Trials@USPTO.GOV>
Cc: Feldstein, Mark <mark.feldstein@finnegan.com>; raj.gupta@finnegan.com; [UPL-PGR-FINNEGAN](#) <UPL-PGR-FINNEGAN@finnegan.com>; [Herbert, Toni-Junell](#) <therbert@bakerlaw.com>; [Bucca, Daniel](#) <dbucca@bakerlaw.com>; [Carson, Charles C.](#) <ccarson@bakerlaw.com>; [Klecynsier, David M.](#) <dklecynsier@bakerlaw.com>; EXT-Mrick@bakerlaw.com <Mrick@bakerlaw.com>
Subject: RE: PGR2023-00017

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Dear Honorable Board,

We write to correct Petitioner’s mischaracterization of Patent Owner’s position. As Patent Owner has already communicated to Petitioner, “Syngenta’s proposed motion is untimely and without merit.” Specifically, Patent Owner has communicated to Petitioner that “Syngenta’s motion is improperly based on trials on which UPL had previously disclaimed reliance in this PGR.” See Paper 39, 3 (withdrawing reliance); Paper 40, 6 (PTAB acknowledging no reliance on trial data to deny Syngenta discovery). Patent Owner further communicated to Petitioner’s counsel that its motion “additionally ignores that the Syngenta field trials conducted at your direction—but which you misrepresented and sought to withhold—independently established enablement and unexpected results.”

We also note that Petitioner again improperly deviates from the procedure set forth in the Scheduling Order (Paper 9). *See* January 1, 2024, Board Email (instructing Petitioner to follow procedure outlined in Scheduling Order and not include substantive argument). Petitioner has bypassed the request for an “additional conference call,” failing to provide “multiple times when all parties are available,” and whether “the parties have met and conferred telephonically or in person.” Paper 9, 2. Petitioner has not asked Patent Owner for availability for a call with the Board and the parties have not met and conferred telephonically or in person to attempt to reach agreement. Further, Petitioner’s email below improperly “contain[s] substantive argument.” Paper 9, 2.

In the event the Honorable Board nevertheless is considering granting Petitioner’s request, Patent Owner requests that a call be held to discuss the matter first, pursuant to the Scheduling Order. Patent Owner is available Friday (7/26) between 10:00am-1:00pm (ET), Monday (7/29) between 10:00am-1:00pm (ET), and Wednesday (7/31) between 10:00am-1:00pm (ET).

Respectfully,

Kenneth S. Guerra
Associate

Pronouns: He, Him, His

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FINNEGAN

From: Herbert, Toni-Junell <therbert@bakerlaw.com>

Sent: Wednesday, July 24, 2024 11:39 AM

To: Trials <Trials@USPTO.GOV>

Cc: Feldstein, Mark <mark.feldstein@finnegan.com>; Guerra, Kenneth <Kenneth.Guerra@finnegan.com>; Gupta, Raj <Raj.Gupta@finnegan.com>; UPL-PGR-FINNEGAN <UPL-PGR-FINNEGAN@finnegan.com>; Bucca, Daniel <dbucca@bakerlaw.com>; Carson, Charles C. <ccarson@bakerlaw.com>; Klecyngier, David M. <dklecyngier@bakerlaw.com>; EXT-Mrick@bakerlaw.com <Mrick@bakerlaw.com>

Subject: PGR2023-00017

Importance: High

To the Honorable Board,

Petitioner (Syngenta) seeks authorization to file a motion for sanctions against Patent Owner (UPL) in the above-referenced matter. Petitioner served Patent Owner with a motion for sanctions, supporting Declaration, and Exhibit in the above-referenced matter on July 2, 2024, which is 21 days prior to seeking authorization to file the motion per Rule 42.11 (d).

Briefly, the issue surrounding the motion is that recent investigations by Syngenta have revealed that the purported field trials described in the '727 Patent and relied upon by UPL in first obtaining issuance of the patent and later in opposing Syngenta’s Petition for post-grant review never took place. UPL’s failure to disclose that fact to the Office and the Board, and thus, its failure to uphold its ongoing duty of candor and good faith is sanctionable misconduct.

Patent Owner's response of July 22, 2024, evening did not dispute or remedy. We are requesting authorization to file our motion for sanctions now that the 21 days have passed.

Respectfully,

Toni-Junell Herbert
Lead Counsel for Petitioner

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