UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KINDERFARMS, LLC,
Petitioner,

v.

GENEXA, INC.
Patent Owner.

Case No. PGR2023-00051

U.S. Patent No. 11,617,795

PATENT OWNER'S PRELIMINARY RESPONSE
37 C.F.R. § 42.207

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Pursuant to 37 C.F.R. § 42.207(a), Patent Owner Genexa, Inc. ("Genexa") submits the following preliminary response to the Petition for Post-Grant Review of U.S. Patent No. 11,617,795 (PGR2023-00051, Paper 1) filed by KinderFarms, LLC ("KinderFarms" or "Petitioner").

I. INTRODUCTION

Over-the-counter ("OTC") medications have long been available at your local pharmacy and supermarket without the need for a prescription. Long aisles are filled with cough syrups, fever reducers, and allergy medications – but for many decades these products included not only active ingredients providing medicinal benefit, but also a number of artificial inactive ingredients, such as dyes, preservatives, sweeteners and artificial fillers. Genexa was the first company to successfully develop and commercialize OTC medicines that do not rely on the host of artificial ingredients commonly used by the industry.

Known as "the first clean medicine company" and for its "disrupt[ion] [of] the over-the-counter (OTC) industry with the launch of its first-to-market clean medicine line," Genexa shook the industry when it launched its agave-based acetaminophen formulation in 2020. (Ex. 2001 (*Genexa Launches First-to-Market Clean Over-the-Counter Medicine*, BUSINESSWIRE (Sept. 29, 2020),

https://www.businesswire.com/news/home/20200929005330/en/Genexa-Launches-First-to-Market-Clean-Over-the-Counter-Medicine).)

After seeing Genexa's success, Petitioner copied Genexa's ground-breaking clean agave-based acetaminophen formulation, clearly in violation of U.S. Patent No. 11,617,795 ("the '795 Patent"), which it now seeks to invalidate through this proceeding. Yet, because Petitioner has failed to demonstrate a reasonable likelihood of prevailing as to any claim, the Petition should be denied.

II. CLAIM CONSTRUCTION

The Board "need only construe terms 'that are in controversy, and only to the extent necessary to resolve the controversy.'" *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)). Petitioner has already recognized that all claim terms it alleges are indefinite had meanings to a skilled artisan at the time of invention. (Paper 1 at 2-3, 16-19, 68-69; Ex. 1003, ¶¶ 95-98.) Because of this Genexa does not believe the Board need construe any terms to resolve the present controversy and deny the Petition.[1]

[1] Genexa reserves the right to propose constructions for terms of the challenged claims should this case continue to trial.

III. LEVEL OF ORDINARY SKILL IN THE ART

Factors pertinent to a determination of the level of ordinary skill in the art include "(1) the educational level of the inventor; (2) type of problems encountered in the art; (3) prior art solutions to those problems; (4) rapidity with which innovations are made; (5) sophistication of the technology; and (6) educational level of active workers in the field." *Env't Designs, Ltd. v. Union Oil Co. of Cal.*, 713 F.2d 693, 696 (Fed. Cir. 1983). "Not all such factors may be present in every case, and one or more of these or other factors may predominate in a particular case." *Id.* at 696-97.

Here, a person of ordinary skill in the art ("skilled artisan") would encompass persons with:

> (a) a bachelor of science (B.S.) degree in a relevant life sciences field, such as, chemistry, biochemistry, or pharmacy, with at least 2 years of work or laboratory experience in pharmaceutical formulations, and access to one or more team members having experience in pharmaceutical formulation and pharmaceutical regulatory approvals, or
>
> (b) at least 3-4 years of work or laboratory experience in pharmaceutical formulations, and access to one or more team members having

experience in pharmaceutical formulation and pharmaceutical regulatory approvals.

The '795 Patent supports a definition that requires some amount of laboratory experience in pharmaceutical formulations. For example, the '795 Patent refers to "pharmaceutical chemists" suggesting it is someone investigating and developing the pharmaceutical formulation. (*See* Ex. 1001 at 1:23.)

IV. Petitioner Has Not Shown a Reasonable Likelihood that It Would Prevail in Proving the Obviousness of any Challenged Claim

The Petition presents three alternative grounds for invalidity. First, the Petition asserts two grounds alleging obviousness. Ground 1 alleges that claims 1-24 are invalid for obviousness over the combination of FR458 with the '4666 Patent and/or WO133. (Paper 1 at 2.) Ground 2 alleges that claims 1-17 are invalid for obviousness over the combination of WO742 with the '4666 Patent and/or WO133. (*Id.*) Ground 3 is presented as an "alternative" ground, which alleges indefiniteness but only "[t]o the extent that patentees assert" that FR458, the '4666 Patent, and WO133 under Ground 1 do not satisfy the "palatable," "stable," and "consisting essentially of" limitation of certain challenged claims. (*See id.* at 68-72.)

Petitioner has not provided sufficient rationale why one of ordinary skill in the art, absent hindsight, would have had reason to combine FR458 or WO742 with the '4666 Patent and/or WO133 to render any claims obvious under Grounds 1 and

2. *See In re Fritch,* 972 F.2d 1260, 1266 (Fed. Cir. 1992) (citing *In re Gorman*, 933 F.2d 982, 987 (Fed. Cir. 1991)) ("It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious."); *see also KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (establishing that an invention would have been obvious requires "a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does"). Accordingly, the Board should deny institution of the Petition.

A. Petitioner's Ambiguous Grounds Fail to Address Express Teaching Away Between the References

Petitioner's obviousness analysis is deficient as a matter of law. Petitioner never attempts to explain why any particular reference would have been relied upon for any given limitation, when all four references allegedly teach the same or similar formulations. Instead, Petitioner simply picks and chooses features from the cited references with hindsight, mixing and matching them without justification, in its arguments that the claims of the '795 Patent would have been obvious.

In many circumstances Petitioner is unclear as to how it wishes the prior art should be combined or modified in any specific way to actually achieve the limitations of the claimed inventions. For example in both Grounds 1 and 2, there is no dispute that neither FR458 nor WO742 expressly disclose the viscosity of any

of their formulations. Petitioner nevertheless relies on both the '4666 Patent and WO133 to support the viscosity limitations of the '795 Patent claims, but provides no justification for why a skilled artisan would have looked to these references for their allegedly disclosed viscosity when they are based on substantially different oral compositions. (Paper 1 at 31-32, 57-58.) This is also true for various dependent claims. (*Id.* at 34-38, 41-46, 52-54, 59-61, 64-68.)

Yet, because of Petitioner's ambiguous use of "and/or" in Ground 1 and 2, it is not clear how Petitioner is combining the '4666 Patent and/or WO133 to meet these various limitations in combination with either FR458 or WO742. To the extent Petitioner was proposing a combination of prior art references to render a limitation obvious, the Petition fails to provide clarity to such combinations. *See Adaptics Ltd. v. Perfect Co.*, IPR2018-01596, Paper 20 at 18 (P.T.A.B. Mar. 6, 2019) (holding that Petitioner's references "connected by the conjunction 'and/or' results in a multiplicity of grounds, none of which [were] presented with sufficient particularity"); 35 U.S.C. § 322(a)(3) (requiring "the petition identifies, in writing and with particularity, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim").

For instance, Petitioner fails to account for various inconsistencies between the '4666 Patent and WO133 that would preclude them from being combined as Petitioner proposed in Grounds 1 and 2. In this regard, the '4666 Patent expressly teaches that "***[i]t is essential*** to the optimum stability of the final product that the pH be maintained in the alkaline range at all times. ***An acceptable range is above 7.0 and below 7.7***, although best results are achieved at a pH of 7.3 to 7.5." (Ex. 1005 at 3:37-41 (emphasis added).) In contrast, WO133 provides exemplary formulations that have inconsistent pH values between 4.2-4.4, which are all well below those of the "essential" range of the '4666 Patent. (*See* Ex. 1006 at 9:16-17 (Example 1: "pH =4.3"); 10:17 (Example 3: "pH =4.2"); 10:4-5 (Example 2: "pH =4.4"); 13:5-6 (Example 10: "pH adjusted to 4.2 with HCl").) Petitioner never addresses this plain teaching away between the '4666 Patent and WO133.

By ambiguously asserting its combination using "and/or" combinations, Petitioner seeks to put the burden onto the Board and Genexa to attempt to discern the Petition's obviousness arguments without any clear roadmap of what particular combinations are being used in Ground 1 and 2 or what precise disclosures are being relied on in each reference for each limitation and/or claim (and never accounts for the teaching away amongst the references within the proposed combinations). The

Petition should therefore be denied since Petitioner has failed to address expressly incompatible teachings between the prior art references that shows they would not be suitable for combination under the Petition's Grounds 1 and 2.

B. Petitioner's Proposed Combinations Rely on Impermissible Hindsight

Petitioner's burden to prove that the challenged claims would have been obvious to a person of ordinary skill in the art at the time of invention cannot be met based on an ambiguous hindsight approach for a motivation to combine and achieve the limitations of the challenged claims. *KSR*, 550 U.S. at 418 (stating that a claim "composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art"); *see also Ruiz v. A.B. Chance Co.*, 357 F.3d 1270, 1275 (Fed. Cir. 2004) ("Without this important requirement, an obviousness assessment might break an invention into its component parts (A + B + C), then find a prior art reference containing A, another containing B, and another containing C, and on that basis alone declare the invention obvious. This form of hindsight reasoning, using the invention as a roadmap to find its prior art components, would discount the value of combining various existing features or principles in a new way to achieve a new result—often the very definition of invention."). This deficiency leaves Petitioner without any reasonable likelihood

of prevailing in proving unpatentability of any of the challenged claims as discussed below.

Petitioner does not provide any adequate reason to support its argument that a combination of FR458 or WO742 with the '4666 Patent and/or WO133 would have been obvious to a skilled artisan at the time of invention. For Ground 1, Petitioner argues that FR458, the '4666 Patent and/or WO133 would be obvious to combine because "each prior art reference is in the same field of art, seeks to address similar issues and discusses the creation of oral analgesic formulations[.]" (Paper 1 at 29.) Petitioner provides a similar argument with regard to combining WO742 with the '4666 Patent and/or WO133 stating "[t]hese references are in the same field and each discuss the creation of oral formulations with an analgesic." (*Id.* at 55.)

However, in assessing motivation to combine in the context of an obviousness challenge, "[d]efining the problem in terms of its solution reveals improper hindsight in the selection of the prior art relevant to obviousness." *Insite Vision, Inc. v. Sandoz, Inc.*, 783 F.3d 853, 859 (Fed. Cir. 2015) (quoting *Monarch Knitting Mach. Corp. v. Sulzer Morat GmbH*, 139 F.3d 877, 881 (Fed. Cir. 1998)). As such, the Federal Circuit stated that when considering the reason to combine, "the problem examined is not the specific problem solved by the invention." *Id.* (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). Yet, here, Petitioner has impermissibly relied on

the same problem being addressed by the challenged '795 Patent to set up its alleged rationale for a motivation to combine: "Here the '795 Patent states that it was seeking to develop an oral formulation for children and the elderly that masks the taste of the APIs. The prior art relied upon here had the same goals." (Paper 1 at 28 (internal citation omitted).)

Although contending that the prior art had "the same goals" there is nothing in the Petition that would have suggested combining any of the identified prior art references—i.e., FR458, the '4666 Patent, and/or WO133 (Ground 1) or WO742, the '4666 Patent, and/or WO133 (Ground 2)—to achieve the inventions claimed in the '795 Patent. (*Id.* at 28-29, 54-55.) Rather, Petitioner merely relies on the generic interrelatedness that all the cited prior art references happen to be in the same field or relate to oral formulations to justify a hindsight reconstruction of the claims. (*Id.* at 28, 55.)

Petitioner's generic assertions of the interrelatedness of the prior art references, which would apply to any and all prior art directed to oral pharmaceutical formulations, are insufficient to support Petitioner's obviousness contentions. First, the argument that the prior art references are in the same field of art is insufficient to show a prima facie case of obviousness, as is the argument that the references are analogous by discussing the creation of oral formulations with an analgesic.

Microsoft Corp. v. Enfish, LLC, 662 F. App'x 981, 990 (Fed. Cir. 2016) (stating that two "references [that are] directed to the same art or same techniques" alone was not enough to show a prima facie case of obviousness). Second, with regard to Ground 1, the fact that the art "seeks to address similar issues" is also not adequate under the circumstances where each reference has allegedly solved the issue at hand, a low-sugar taste-masked formulation. At bottom, Petitioner provides no acceptable reasoning as to why a skilled artisan would have modified the prior art to arrive at the claimed agave-syrup-based oral formulations. Without this, the Petitioner has not shown a reasonable likelihood of prevailing on any challenged claim.

1. Being in the Same Field of Art Does Not Establish Obviousness

Petitioner's arguments that the cited references are in the same field of art are insufficient to find the challenged claims as obvious. (Paper 1 at 29, 55.) Although being in the same field of art may be relevant, it is not enough to find obviousness by itself. *See, e.g.*, S*ecurus Techs., Inc. v. Global Tel*Link Corp.*, 701 F. App'x 971, 977 (Fed. Cir. 2017) ("[A] broad characterization of [two prior art references] as both falling within the same alleged field of 'telecommunications monitoring and control,' without more, is not . . . a sufficient rationale to support an obviousness conclusion."); *Microsoft*, 662 F. App'x at 990; *William Wesley Carnes, Sr., Inc. v. Seaboard Int'l, Inc.*, IPR2019-00133, Paper 10 at 18 (P.T.A.B. May 8, 2019) ("That

statement of similarity, however, does not constitute an articulated reasoning with rational underpinning as to why a POSITA would combine elements of one reference with another, and why a POSITA would modify the teachings of the references to arrive at the claimed invention.").

Relying solely on Petitioner's "short-cut logic" would improperly "lead to the conclusion that any and all combinations of elements known in this broad field would automatically be obvious." *Securus Techs.*, 701 F. App'x at 977. Thus, without a further reason to combine the prior art, such as design incentives or market forces, being in the same field of art is insufficient. *See KSR*, 550 U.S. at 417. As such, this alone is not a reason to find the challenged claims obvious.

2. A Need for a Low-Sugar Formulation that Masks the Taste of the Active Is Not a Reason to Modify FR458

Petitioner's arguments about the benefits of a low-sugar formulation that masks the taste of the active ingredient should not be considered without comparison to FR458. Petitioner argues that all references in Ground 1 discuss a need to disguise the taste of certain drugs, such as acetaminophen. (Ex. 1003, ¶ 101.) FR458 directly addresses the need for a low-sugar taste masking agent for acetaminophen formulations. (Ex. 1004, 1:14-16, 2:39-45, 3:70-74). The '4666 Patent also expressly addresses that formulations of bad-tasting active ingredients require a sweetening agent which is preferably sugar free. (Ex. 1005, 1:24-29, 2:15-21, claim

1.) And WO133 too describes the need to suspend the active ingredient and include a sweetening agent. (Ex. 1006 at 5:11-18, 5:21-24.) Petitioner's argument that the '4666 Patent and WO133 teach the use of sweeteners as taste-masking agents cannot explain why a person of skill in the art would have modified FR458, which already teaches the use of agave, a lower-sugar alternative, for this purpose. For this additional reason, Petitioner has failed to demonstrate the obviousness of any of the challenged claims based on Ground 1.

C. "Could Be Combined" Does Not Mean Obvious to Combine

Instead of providing a reason for why a skilled artisan would have been motivated to modify FR458 or WO742 using the '4666 Patent and/or WO133 to arrive at the claimed invention, Petitioner and its expert focus on why various parts of the references "could be combined" or substituted. (Ex. 1003, ¶¶ 102, 197.) Yet, the Federal Circuit has drawn a clear distinction between a possible combination of prior art and an obvious combination of prior art. *See Polaris Indus., Inc. v. Arctic Cat, Inc.*, 882 F.3d 1056, 1068 (Fed. Cir. 2018) (rejecting the Board's obviousness analysis where "the Board focused on what a skilled artisan would have been able to do, rather than what a skilled artisan would have been motivated to do at the time of the invention"); *Belden Inc. v. Berk-Tek LLC,* 805 F.3d 1064, 1073 (Fed. Cir. 2015) ("[O]bviousness concerns whether a skilled artisan not only could have made

but would have been motivated to make the combinations or modifications of prior art to arrive at the claimed invention."). By failing to analyze FR458 and WO742 for why it would be desirable to combine the references with the '4666 Patent and/or WO133, Petitioner considers only whether a person of ordinary skill in the art could have—not would have—combined the prior art. For this reason, Petitioner has failed to demonstrate the obviousness of any of the challenged claims based on Ground 1 or Ground 2.

D. Petitioner Fails to Address the Differences Between the Prior Art and the Challenged Claims

Additionally, Petitioner fails to specifically explain how the cited references differ from the challenged claims. It was Petitioner's choice to not address this required *Graham* factor, and it renders each of its obviousness grounds unclear and leaves Petitioner without a reasonable likelihood of prevailing on any claim.

It is settled law that in the obviousness analysis under 35 U.S.C. § 103, "the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved." *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966); s*ee also KSR*, 550 U.S. at 399. The Board may decline institution when a petition neglects to identify the differences between the prior art and the claims at issue. *See Johns Manville Corp. v. Knauf Insulation, Inc.*, IPR2015-01402, Paper 18 at 13 (P.T.A.B.

Oct. 21, 2015) ("[A] petitioner cannot play ostrich with respect to identifying differences, or count on the Board to search a record to determine if there is any difference. A petition must make all arguments accessible to the Board, rather than ask its judges to play archaeologist with the record."), *aff'd Knauf Insulation, Inc. v. Johns Manville Corp.*, 708 F. App'x 1017 (Fed. Cir. 2018).

Here, Petitioner and its expert failed to address this requirement of § 103 even though they had knowledge that the differences between the prior art and the claims needed be considered. For example, Dr. Crowley expressly acknowledged that "the differences between the prior art and the claims" are "factors to be considered in an obviousness inquiry." (Ex. 1003, ¶ 83.) Yet, Petitioner never identifies the material differences between FR458 or WO742 and the '795 Patent's claims, such as the fact that neither reference discloses the viscosity of the example formulations relied on by Petitioner under Ground 1 ("the formulation disclosed in Example 1 of FR458") and Ground 2 ("the formulation disclosed in Example IX of WO742"). (*See* Paper 1 at 31, 57.) Yet, Petitioner fails to discuss any differences between the cited references and the claims at issue and makes no attempt to explain why a skilled artisan would have been motivated to modify the specifically identified example formulations of FR458 and/or WO742 with the additional references Petitioner requires in Grounds 1 and 2.

Petitioner has failed to clearly explain how FR458 and WO742 or the remaining combination references differ from the challenged claims, exactly what modifications to these prior art references are being proposed, or why such modifications would have been obvious to a person of ordinary skill in the art at the time of invention. As such, the obviousness grounds in the Petition are clearly deficient as Petitioner failed to identify any "precise difference" between the prior art references and the claims, as required by *Graham*, and failed to provide "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness," as required by *KSR*. *See KSR*, 550 U.S. at 418 (quoting *In re Kahn,* 441 F.3d at 988). Further, the Petition itself is unclear that when a combination would be necessary with the primary references, which reference, the '4666 Patent and/or WO133, the Petitioner relies on to fill any such gaps in FR458 and WO742. As such, the Board should find that Petitioner has not carried its burden of showing a reasonable likelihood of success.

E. Conclusion as to Lack of Reasonable Likelihood

For at least the reasons discussed above, Petitioner has failed to demonstrate a reasonable likelihood of prevailing in its challenge to claims 1-24 as obvious over FR458 combined with the '4666 Patent and/or WO133 or in its challenge to claims 1-17 as obvious over WO742 combined with the '4666 Patent and/or

WO133.[2] Genexa reserves the right to present additional evidence and arguments as to why Petitioner has not met its burden, including evidence and arguments specific to the dependent claims, if this case proceeds to a trial.

V. THE BOARD SHOULD DISREGARD THE CLAIM CHARTS IN EXHIBIT 1003, APPENDIX D AS IT VIOLATES THE PROHIBITION OF INCORPORATION BY REFERENCE

The Board should disregard Petitioner's reliance on the claim charts attached to its expert's declaration at Appendix D as it is an attempt for Petitioner to circumvent the word limit for its petition through incorporation by reference. (*See* Paper 1 at 3 ("More detailed explanation and support for these grounds are in the Declaration of Michael Crowley, Ph.D. Ex. 1003."); Ex. 1003 at 162-242.) The USPTO regulations explicitly state "[a]rguments must not be incorporated by

[2] To the extent that Petitioner's obviousness challenges, Grounds 1 and 2, fail, it relies on an argument of indefiniteness (Ground 3) as an alternative reason to find the challenged claims unpatentable. (Paper 1 at 68-72.) As discussed above, Petitioner has recognized that each of the raised claim terms have well-known meanings to a skilled artisan at the time of invention. (*Id.* at 2-3, 16-19, 68-69; Ex. 1003, ¶¶ 95-98.) Thus, even if the Board need consider Ground 3, it should deny the Petition on these admissions alone.

reference from one document into another document." 37 C.F.R. § 42.6(a)(3). And as the Federal Circuit recently explained, "there are compelling reasons why these USPTO regulations exist[,]" including preventing unfairness and abuse. *Parus Holdings, Inc. v. Google LLC*, 70 F.4th 1365, 1372 (Fed. Cir. 2023).

Yet Petitioner has attached claim charts that span ***80 pages*** to which neither the Petition nor Dr. Crowley's declaration cite directly to. (*See generally* Paper 1; Ex. 1003.) Indeed the Petition itself makes little if any attempt to provide a meaningful explanation for the inclusion of the claim charts, instead relying on improper incorporation by reference. (Paper 1 at 3.) And, Dr. Crowley's only mention of the claim charts is in passing in the "Conclusion" section of his declaration. (Ex 1003, ¶ 275.)

The Patent Trial and Appeal Board Consolidated Trial Practice Guide further supports that Petitioner's use of its claim charts is improper. It clearly states that, "[c]laim charts submitted as part of a petition, motion, patent owner preliminary response, patent owner response, opposition, or reply count towards applicable word count limits, but are not required to be double-spaced." Ex. 2002 (Patent Trial and Appeal Board Consolidated Trial Practice Guide at 44 (November 2019) (Section II.B.5. entitled "Claim Charts")). By including the claim charts in Dr. Crowley's declaration as an appendix, Petitioner has clearly attempted to bypass the PTAB's

word count limits. *See Parus*, 70 F.4th at 1372 (stating that the suggestion a party "need only submit evidence—regardless how voluminous or argumentative—would eviscerate all page limits for [for that party] while maintaining restrictions on [the other]"). In the spirit of fairness, the Board should disregard Exhibit 1003, Appendix D.

VI. CONCLUSION

For the reasons above, the Board should deny the Petition.

Respectfully submitted,

Dated: January 3, 2024

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CERTIFICATE OF COMPLIANCE WITH WORD COUNT

Pursuant to 37 C.F.R. § 42.24(d), I certify that Patent Owner's Preliminary Response complies with the type-volume limits of 37 C.F.R. §§ 42.24(a)(1)(ii) and 42.24(b)(1) because it contains 4,170 words, according to the word-processing system used to prepare Patent Owner's Preliminary Response, excluding the parts of Patent Owner's Preliminary Response that are exempted by 37 C.F.R. § 42.24(a) (including the table of contents, a table of authorities, mandatory notices, a certificate of service or this certificate word count, appendix of exhibits, and claim listings).

Respectfully submitted,

Dated: January 3, 2024

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e)(4), the undersigned certifies that on January 3, 2024, a complete and entire copy of **PATENT OWNER'S PRELIMINARY RESPONSE** was served via electronic mail on the Petitioner by serving Petitioner's counsel of record as follows:

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