

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 LIST OF OBJECTIONS TO PETITIONER'S
DEMONSTRATIVE EXHIBITS**

Patent Owner, Genexa, Inc., hereby submits its objections to Petitioner's demonstrative exhibits.

Patent Owners Notice Identifying Petitioner's Improper Reply Arguments (Paper 27) pursuant to the Board's Order (Paper 26) in response to Patent Owner's request to file a motion to strike and as detailed further in Patent Owner's Surreply (Paper 29,), Petitioner's Reply (unsupported by any expert reply declaration) sought to improperly introduce a variety of new attorney arguments that were never presented in the Petition. Petitioner's demonstratives seek to introduce these improper new arguments and Patent Owner therefore objects to them, as follows.

1. Patent Owner's Objections to Petitioner's Demonstrative Slides 50, 76

Slide 50 states that "A POSITA Would Know How to Modify an Agave Syrup to Achieve a Desired Viscosity" and Slide 76 states that "The Petition Explains that Agave Syrup Can Have Thicker or Thinner Consistency (i.e., Viscosity)." These are new and improper arguments that are not supported by the Petition.

Petitioner's new and improper argument relying on footnote 1 in these slides is unsupported by any evidence since the citation to paragraph 52 of the Crowley Declaration (Ex.1003) (and the truncated excerpt thereof in Slide 50) does not state and does not support the assertion that "one can select the desired viscosity [of agave syrup] depending on the proposed use" since paragraph 52 of the Crowley

declaration states that agave syrup has a viscosity value of around 212 cP. (*See* Ex.1003, ¶52 (“The viscosity of agave syrup is reported to be around 212 mPa-S, or 212 cP”), ¶119 (“As I previously noted at ¶ 52, a person of ordinary skill would have known that agave syrup has a viscosity of around 212 centipoise”).)

Petitioner never relied on footnote 1 of the Petition anywhere with particularity within the Petition or the Grounds and it is, in fact, contradicted by Dr. Crowley’s assertion at paragraph 52. (*See* Ex.1003, ¶52 (as above), ¶119 (as above).)

2. Patent Owner’s Objections to Petitioner’s Demonstrative Slides 31, 75, 77

Slide 31 states that “Agave Syrup’s Properties Are Described in the Prior Art,” slide 75 states “The Submitted Evidence Shows that Agave Syrup Can Have a Viscosity of 212 cP,” and slide 77 states that “The Petition Explains Agave Syrup Can Have Thicker or Thinner Consistency (Viscosity),” and extracts information from various exhibits. But neither the Petition nor Dr. Crowley’s paragraph 52 ever mentions any viscosity value for agave syrup other than 212 cP, the Petition and Dr. Crowley never cited to Table 4 of Ex.1030 (Soto) as evidentiary support anywhere in the Petition, and the Petition never acknowledged the 2,560 cP value for agave syrup in Ex.1031.

3. Patent Owner's Objections to Petitioner's Demonstrative Slides 48-49

Slides 48 and 49 state that "Patent Owner also Ignores That Agave Syrup-Based Oral Liquid Health Products Were Available Commercially" and cite to new evidence that was not included with the Petition, are not appropriately responsive to any arguments by the POR, and includes selected excerpts that were never cited with any particularity even in Petitioner's Reply footnote 1 (the only place the exhibits were ever mentioned), and lack evidentiary support because they are based solely on attorney argument that is not evidence.

4. Patent Owner's Objections to Petitioner's Demonstrative Slides 84

Slide 84 states that "Patent Owner's Expert Asserts that The Formulation Cited in Example 1 of FR458 Would Have a Viscosity <200 cP and appears to make a new improper and incorrect argument that FR458-Example 1 somehow supports a new anticipation assertion that was never made anywhere in the Petition, is not supported by any evidence of record, is not supported even by Petitioner's citation to page 1 of the Reply, and, nevertheless, is incorrect because there is no identified viscosity for the agave syrup or the final formulation of FR458-Example 1, agave syrup does not have an inherent viscosity, and there is no evidence supplied by Petitioner that the formulation of FR458-Example 1 would necessarily have a viscosity "<200 cP."

5. Patent Owner's Objections to Petitioner's Demonstrative Slide 88

Slide 88 states "Claim 11 Does Not Include an 'Apparent Error' that a POSITA 'Would be Apparent' a POSA and 'Mentally Disregarded'" and includes bullet points that state "Includes independent claims without viscosity requirements" and "Recites a very simple stabilized formulation in claim 7 that allows ingredients with viscosities below 1000 cP, upon which claim 11 depends," but these assertions lack any evidentiary basis because Petitioner's sole citation in support of them, Reply footnote 9, has no supporting expert declaration and Petitioner's new reply attorney arguments are not evidence.

Dated: December 11, 2024

/Daniel J. Knauss/
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CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e)(4), the undersigned certifies that on December 11, 2024, a complete and entire copy of **PATENT OWNER'S LIST OF OBJECTIONS TO PETITIONER'S DEMONSTRATIVE EXHIBITS** and related documents were served via electronic mail on the Petitioner by serving Petitioner's counsel of record as follows:

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Dated: December 11, 2024

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