

From: [Trials](#)
To: Scott.McKeown@WolfGreenfield.com; [Trials](#)
Cc: SMcKeown-PTAB@WolfGreenfield.com; [PGR58032-0006PS1](#); [Dexter Whitley](#); [Oona Johnstone](#); [Charles Steenburg](#)
Subject: RE: PGR2024-00025
Date: Friday, August 30, 2024 2:12:45 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)

Counsel,

From the Board-

Petitioner is authorized to file a 10-page reply due on or before September 9, 2024. Patent Owner is authorized to file a 10-page sur-reply due on or before September 16, 2024.

Regards,

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

From: Scott.McKeown@WolfGreenfield.com <Scott.McKeown@WolfGreenfield.com>
Sent: Thursday, August 29, 2024 4:52 PM
To: Trials <Trials@USPTO.GOV>
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Subject: PGR2024-00025

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Trials,

Petitioner seeks authorization for a 10-page Reply consistent with that previously ordered in PGR2024-00019, 20, and 23 to respond to the recently filed POPR in the 00025 proceeding, which presents overlapping issues to those briefed previously. The Reply will address arguments of the POPR directed to the appropriate standard of obviousness for plant utility patent filings, and the unsettled legal question presented in the 00025 petition, specifically:

- Patent Owner's position that plant utility patent obviousness should be conflated to novelty; and Patent Owner's related argument that Petitioner was obligated to assess the claimed variety's performance as a hybrid parent (nowhere identified in its specification or required by the agency to grant the patent) even though such a requirement would effectively insulate all plant utility patents from PGR given the limited 9-month PGR window.
- Patent's Owner's contention that Petitioner's obviousness position would render all new commercial maize varieties obvious.
- Patent Owner's reliance on the deposit '033 patent and the relationship of that deposit to the scope of the challenged claims.
- Patent Owner's argument that the novel or unsettled legal question identified by Petitioner pursuant to section 324(b) is outside the scope of post-grant review, and its mischaracterization of Petitioner's 112

arguments as arguing in favor of means-plus-function interpretation.

The parties have conferred. PO does not oppose this request with the understanding that, as was done with the previous cases, it be authorized to file a responsive sur-reply of an equivalent page length.

Given the history in the other three proceedings, petitioner proposes:

-10-page Petitioner Reply due on or before September 9th

-10 page PO sur-Reply due on or before September 16th



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