

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIVACCO Technology Inc.,

Petitioner,

v.

LEONHARD KURZ Stiftung & Co., KG,

Patent Owner.

Case No. PGR2026-00011

Patent No. 12,220,935 B2

PATENT OWNER'S PRELIMINARY RESPONSE

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES.....	iii
LIST OF EXHIBITS	vii
I. INTRODUCTION.....	1
II. BACKGROUND.....	3
A. The ‘935 Patent	4
B. Univacco’s Assertion That Errors Were Committed During Prosecution Is Baseless.....	6
C. Arguments Made In Univacco’s Opposition To The European Counterpart Of The ‘935 Patent Conflict With The Petition	7
III. UNIVACCO’S UNPATENTABILITY ARGUMENTS ARE ENTITLED TO NO WEIGHT BECAUSE ITS POSITA DEFINITION IS UNSUPPORTED AND INCONSISTENT WITH ITS PETITION	7
A. UNIVACCO’s Proposed POSITA Definition Is Based On Unsupported Attorney Argument	7
B. UNIVACCO’s POSITA Definition Is Inconsistent With Its Characterizations Of The ‘935 Patent.....	10
C. UNIVACCO’s Unsupported And Inconsistent POSITA Definition Undermines Each Of Its Unpatentability Arguments	11
IV. CLAIM CONSTRUCTION	12
V. UNIVACCO’S PETITION FAILS TO DEMONSTRATE THAT IT IS MORE LIKELY THAN NOT THAT THE CHALLENGED CLAIMS ARE UNPATENTABLE UNDER 35 U.S.C. § 112	13

A.	UNIVACCO Fails To Demonstrate The Challenged Claims Are Not Enabled.....	14
1.	UNIVACCO’s Enablement Argument Is Based On Dr. Haas’ Unsubstantiated Testimony And Unsupported Attorney Argument Regarding Undue Experimentation	15
B.	UNIVACCO Does Not Demonstrate That The Challenged Claims Are Unpatentable For Lack Of Written Description.....	21
C.	UNIVACCO’s Scattershot Arguments Fail To Demonstrate The Challenged Claims Are Indefinite.....	28
1.	The Construction And Thickness Of The All-Over Varnish Layer Are Not Indefinite	29
2.	UNIVACCO’s Complaints About Test Conditions And Protocols Fail To Support Its Indefiniteness Argument	31
3.	UNIVACCO’s Data Analysis Argument Is Baseless.....	33
4.	A POSITA Would Have Readily Understood The Peel Angle Used Based On The ‘935 Patent’s Disclosure	34
5.	UNIVACCO’s Remaining Indefiniteness Arguments Are Unpersuasive.....	34
VI.	CONCLUSION	35
CERTIFICATE OF COMPLIANCE		
CERTIFICATE OF SERVICE		

TABLE OF AUTHORITIES

Cases

<i>AK Steel Corp. v. Sollac</i> , 344 F.3d 1234 (Fed. Cir. 2003)	19
<i>Alcon Research Ltd. v. Barr Labs., Inc.</i> , 745 F.3d 1180 (Fed. Cir. 2014)	18, 20, 21
<i>Alfred E. Mann Found. for Sci. Research v. Cochlear Corp.</i> , 841 F.3d 1334 (Fed. Cir. 2016)	12
<i>Amgen Inc. v. Sanofi</i> , 598 U.S. 594 (2023)	20
<i>Ariad Pharms., Inc. v. Eli Lilly & Co.</i> , 598 F.3d 1336 (Fed. Cir. 2010)	11, 22, 26
<i>Assa Abloy AB, et al. v. CPC Patent Technologies Pty, Ltd.</i> , IPR2022-01006, Paper 47 (PTAB Nov. 30, 2023)	9
<i>Ball Metal Beverage Container Corp. v. Crown Packaging Tech., Inc.</i> , 838 Fed. Appx. 538 (Fed. Cir. 2020)	32
<i>Bayer HealthCare LLC v. Baxalta Inc.</i> , 989 F.3d 964 (Fed. Cir. 2021)	19
<i>Brita LP v. ITC</i> , 156 F.4th 1326 (Fed. Cir. 2025)	27
<i>Cephalon, Inc. v. Watson Pharms., Inc.</i> , 707 F.3d 1330 (Fed. Cir. 2013)	16, 17
<i>Cordis Corp. v. Medtronic AVE, Inc.</i> , 339 F.3d 1352 (Fed. Cir. 2003)	25
<i>Dow Chem. Co. v. Nova Chems. Corp.</i> , 803 F.3d 620 (Fed. Cir. 2015)	32
<i>Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.</i> , 800 F.3d 1375 (Fed. Cir. 2015)	4

<i>Elbit Sys. of Am., LLC v. Thales Visionix</i> , 881 F.3d 1354 (Fed. Cir. 2018)	9
<i>Envtl. Designs, Ltd. v. Union Oil Co.</i> , 713 F.2d 693 (Fed. Cir. 1983)	8
<i>Falkner v. Inglis</i> , 448 F.3d 1357 (Fed. Cir. 2006)	11, 16
<i>Genetech, Inc. v. Nov Nordisk A/S</i> , 108 F.3d 1361 (Fed. Cir. 1997)	21, 27
<i>Guangdong Alison Hi-Tech Co. v. ITC</i> , 936 F.3d 1353 (Fed. Cir. 2019)	32
<i>Harmonic Inc. v. Avid Tech., Inc.</i> , 815 F.3d 1356 (Fed. Cir. 2016)	4
<i>Icon Health & Fitness, Inc. v. Strava, Inc.</i> , 849 F.3d 1034 (Fed. Cir. 2017)	26
<i>In re Am. Acad. of Sci. Tech Center</i> , 367 F.3d 1359 (Fed. Cir. 2004)	9
<i>In re Wands</i> , 858 F.2d 731 (Fed. Cir. 1988)	15
<i>Indenix Pharms, LLC v. Gilead Scis. Inc.</i> , 941 F.3d 1149 (Fed. Cir. 2019)	21
<i>Instrumentation Lab. Co. v. HemoSonics LLC</i> , PGR2019-00047, Paper 8 (PTAB Oct. 24, 2019)	23
<i>Intelligent Bio-Systems, Inc. v. Illumina Cambridge Ltd.</i> , 821 F.3d 1359 (Fed. Cir. 2016)	4
<i>Intuitive Surgical, Inc. v. Ethicon LLC</i> , 25 F.4th 1035 (Fed.Cir. 2022)	4
<i>Janssen Pharms., Inc. v. Teva Pharms. USA, Inc.</i> , 97 F.4th 915 (Fed. Cir. 2024)	32

<i>Lizard Tech., Inc. v. Earth Res. Mapping, Inc.</i> , 424 F.3d 1336 (Fed. Cir. 2005)	25
<i>McRO, Inc. Bandai Namco Games Am., Inc.</i> , 959 F.3d 1091 (Fed. Cir. 2020)	16, 18, 19
<i>Merck Sharp & Dohme Corp. v. Wyeth LLC</i> , PGR2017-00016, Paper 9 (PTAB Oct. 20, 2017)	15
<i>Moba v. Diamond Automation, Inc.</i> , 325 F.3d 1306 (Fed. Cir. 2003)	17
<i>Nautilus, Inc. v. Biosig Instruments, Inc.</i> , 572 U.S. 898 (2014)	28
<i>Niazi Licensing Corp. v. St Jude Medical S.C., Inc.</i> , 30 F.4th 1339 (Fed. Cir. 2022)	28
<i>Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.</i> , 868 F.3d 1013 (Fed. Cir. 2017)	13
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303 (Fed. Cir. 2005)	13
<i>PPG Indus. v. Guardian Indus. Corp.</i> , 75 F.3d 1558 (Fed. Cir. 1996)	16
<i>Regents of Univ. of Cal. v. Eli Lilly & Co.</i> , 119 F.3d 1559 (Fed. Cir. 1997)	27
<i>Sonix Tech. Co. v. Publications Int’l, Ltd.</i> , 844 F.3d 1370 (Fed. Cir. 2015)	28
<i>Takeda Pharm. Co. v. Zydus Pharms. USA, Inc.</i> , 743 F.3d 1359 (Fed. Cir. 2014)	31
<i>Wyeth & Cordis Corp. v. Abbot Labs.</i> , 720 F.3d 1380 (Fed. Cir. 2013)	21
<i>Xerox Corp v. Bytemark, Inc.</i> , IPR2022-00624, Paper 9 (PTAB Aug. 24, 2022)	8

Statutes

35 U.S.C. § 112 *passim*
35 U.S.C. § 312(a)(3).....4
35 U.S.C. § 322(a)(3).....4
35 U.S.C. § 324(a) 3
37 C.F.R. § 42.65 9
37 C.F.R. § 42.100(b).....13

LIST OF EXHIBITS

EXHIBIT	DESCRIPTION
EX2001	EP4069522 entitled “Decorative Foil, Method for Producing a Decorative Foil and Method for Decorating a Target Substrate” (European counterpart of U.S. Patent No. 12,220,935 (EX1001))
EX2002	UNIVACCO’s Opposition to EP4069522 filed September 9, 2025

I. INTRODUCTION

UNIVACCO Technology Inc. (“UNIVACCO”), headquartered in Taiwan, seeks post grant review of U.S. Patent No. 12,220,935, entitled “Decorative Foil, Method for Producing a Decorative Foil and Method for Decorating a Target Substrate” (“the ‘935 patent”). Unable to locate any material prior art, UNIVACCO only asserts that select claims of the ‘935 patent fail to satisfy the enablement, written description and definiteness requirements of 35 U.S.C. § 112.

Two major defects undermine all of UNIVACCO’s unpatentability arguments. First, UNIVACCO proposes that its enablement, written description and definiteness arguments be viewed through the eyes of a factually unsupported and incorrectly defined person of ordinary skill in the art (“POSITA”). Second, UNIVACCO’s Section 112 arguments are predicated on the unsubstantiated and conclusory testimony of its declarant, Dr. Haas, and naked attorney argument.

In framing its unpatentability arguments, UNIVACCO contends, *inter alia*, that the challenged claims “operate in a **complex**, multi-layer, viscoelastic environment,” are “**highly complex**,” encompass “**complex phenomena require[ing] sophisticated mathematical analysis . . .** including such tools as Lyapunov exponents and Grassberger-Procaccia dimensions,” and “raise **complex issues of viscoelastic mechanics and chaotic dynamics.**” *See, e.g.*, Paper 1 at 14-16; *see* EX1002, ¶¶ 61, 62, 63, 69. UNIVACCO further admits that the “**relative**

skill of practitioners is high, but so is the technical complexity” *Id.* at 14, 15 (“**skill of practitioners in the field is correspondingly high**”); see EX1002 ¶ 69 (“**skill of practitioners in the field is correspondingly high**”). Despite UNIVACCO’s admissions that the ‘935 patent’s subject matter is “complex” and the level of skill possessed by those in the art is “high,” its POSITA definition is both contrary to those admissions, but also untethered to any factual support or objective evidence. The deficiencies in UNIVACCO’s POSITA definition infect each of its Section 112 arguments, rendering them insufficient to demonstrate that it is more likely than not that the challenged claims are unpatentable.

UNIVACCO’s Section 112 arguments also rely on the unsubstantiated testimony of its declarant and conclusory attorney argument. For example, opining the ‘935 patent is not enabled because “undue experimentation” would be required to practice the full scope of the challenged claims, UNIVACCO and Dr. Haas present no evidence that any required experimentation would be anything but conventional or that the extent or duration of that experimentation would be undue or unreasonable. *Infra*, pp. 15-21. Additionally, UNIVACCO’s written description argument is not only predicated almost exclusively on unsupported attorney argument, but also conflates enablement and written description. *Infra*, pp. 22-26. Further, UNIVACCO’s indefiniteness argument is based on the unsubstantiated testimony of its declarant that ignores the ‘935 patent disclosure. *Infra*, pp. 30-34.

UNIVACCO's conclusory argument regarding independent claim 25 further highlights its defective Petition. Aside from copying claim 25 and an excerpt of the '935 patent specification, Dr. Haas does not address, refer to, or present any opinion or evidence about claim 25's "covering power" limitation. See EX1002, ¶¶ 25, 28. Because Dr. Haas presents no opinion, much less actual evidence, about this limitation, UNIVACCO's unpatentability arguments about claim 25 are nothing more than unsupported attorney argument that should be given no weight.

As "master of its own petition," UNIVACCO cannot correct or explain away these deficiencies by relying on a supplemental declaration or by submitting a reply to Patent Owner's Preliminary Response. Nor can these deficiencies be cured at trial. In sum, UNIVACCO fails to show that it is more likely than not that the challenged claims of the '935 patent do not satisfy the enablement, written description, or definiteness requirements of Section 112.

Patent Owner respectfully requests the Director deny institution of post grant review.

II. BACKGROUND

A post grant review can only be instituted if UNIVACCO demonstrates that it is more likely than not that it will prevail with respect to at least one challenged claim. 35 U.S.C. § 324(a). The expedited nature of PGRs "bring with it an obligation for petitioners to make their case in their petition." *Intelligent Bio-*

Systems, Inc. v. Illumina Cambridge Ltd., 821 F.3d 1359, 1369 (Fed. Cir. 2016).

As “master of its own petition,” *Intuitive Surgical, Inc. v. Ethicon LLC*, 25 F.4th 1035, 1041 (Fed. Cir. 2022), UNIVACCO “has the burden from the onset to show with particularity” why the challenged claims of the ‘935 patent are unpatentable.

Harmonic Inc. v. Avid Tech., Inc., 815 F.3d 1356, 1363 (Fed. Cir. 2016); see 35

U.S.C. §§ 312(a)(3), 322(a)(3). UNIVACCO’s burden never shifts to Patent

Owner. See generally *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d

1375 (Fed. Cir. 2015) (discussing the burden of proof in AIA trials).

A. The ‘935 Patent

The ‘935 patent is directed to multilayer decorative foils for decorating a target substrate. EX1001, Abstract. Such foils can be used to transfer a decorative layer from the foil onto security documents, such as passports, credit cards or banknotes. *Id.*, 1:17-21. The ‘935 patent’s decorative foils comprise a carrier film and an all-over varnish layer, where the varnish layer is releasable from the carrier film onto the target substrate during an application process. See, e.g., *id.* 1:45-49.

It is desirable that undefined tears are avoided in the all-over varnish layer to ensure a clean transfer of the varnish layer during the application process of the disclosed decorative foils. *Id.*, 1:33-37. The ‘935 patent has two independent claims, claims 1 and 25.

Claim 1 recites:

A decorative foil comprising a carrier film and an all-over varnish layer, wherein the carrier film has a thickness in the range of from 3.0 μm to 10.0 μm , and **wherein a tear-off force between the carrier film and the all-over varnish layer has fluctuations in the force amplitude around its average in a range of from more than or equal to -0.5 cN to less than or equal to 0.5 cN.**

Id., 20:48-55 (disputed “fluctuation” limitation in bold); *infra*, pp. 12-13.

Claim 25 recites:

A decorative foil comprising a carrier film and an all-over varnish layer, wherein the carrier film has a thickness in the range of from 3.0 μm to 10.0 μm , and **wherein the all-over varnish layer has a covering power of more than or equal to 99.5%, in the case of a decoration of a continuous solid surface and a decoration or point perception of more than or equal to 99.5%, in the case of a decoration of a 10% halftone area.**

Id., 22:38-46 (disputed “covering power” limitation in bold); *infra*, pp. 12-13.

UNIVACCO challenges claims 1 and 25 and dependent claims 2-7, 9, 11, 13, 21-24, each of which depends on claim 1. Notably, UNIVACCO does not make any separate unpatentability arguments regarding the challenged dependent claims. Paper 1 at 25-26, 40-41, 65-66.

B. UNIVACCO's Assertion That Errors Were Committed During Prosecution Is Baseless

UNIVACCO contends errors were committed during the prosecution of the '935 patent, stating "[t]he Examiner erroneously did not list claim 6 as being rejected." Paper 1 at 10. However, on page 5 of the cited Office Action, under the heading "*Claim Rejections - 35 USC § 112*," the Examiner identified claim 6 as being rejected for reciting a limitation with insufficient antecedent basis and for being indefinite. EX1004, p. 290.

UNIVACCO next misleadingly asserts "the Examiner erroneously indicated then-pending claim 6 [has] two conflicting interpretations." Paper 1 at 10. While page 5 of the Office Action states claim 6 "is also rendered indefinite because it can have two conflicting interpretations," the Examiner provided three proposed interpretations. EX1004, p. 290. UNIVACCO without any evidence, erroneously urges that "applicant either did not notice or acquiesced in the above mentioned errors." Paper 1 at 11. Regardless of UNIVACCO's characterizations, the Amendment filed in response to the Office Action incorporated the subject matter of claim 6 into claim 1, and Patent Owner limited the claim to one of the interpretations proposed by the Examiner. EX1004, pp. 272-78. Thus, UNIVACCO's so-called "errors" in the Office Action were properly addressed by Patent Owner.

C. Arguments Made In UNIVACCO's Opposition To The European Counterpart Of The '935 Patent Conflict With The Petition

EP4069522 ("EP522") is the European counterpart to the challenged '935 patent. EX2001. On September 9, 2025, UNIVACCO filed an opposition to EP522. EX2002. As detailed below, several of UNIVACCO's Opposition arguments conflict with arguments made in its Petition. *Infra*, pp. 11, 17-18.

III. UNIVACCO'S UNPATENTABILITY ARGUMENTS ARE ENTITLED TO NO WEIGHT BECAUSE ITS POSITA DEFINITION IS UNSUPPORTED AND INCONSISTENT WITH ITS PETITION

UNIVACCO's POSITA definition suffers from two (2) significant defects, both rendering its Section 112 arguments and ultimate unpatentability conclusions insufficient to support institution. First, UNIVACCO's POSITA definition is nothing more than unsupported attorney argument. Second, UNIVACCO's proposed definition is contrary to its own admissions that the '935 patent's subject matter is "complex" and the level of skill possessed by those in the art is "high." Since the foundation of UNIVACCO's arguments is predicated on a POSITA definition that is conclusory and factually unsupported, all of its unpatentability arguments and conclusions are entitled to no weight.

A. UNIVACCO's Proposed POSITA Definition Is Based On Unsupported Attorney Argument

Factors pertinent in defining a POSITA include: (1) the educational level of the inventor; (2) the type of problems encountered in the art; (3) prior-art solutions

to those problems; (4) the rapidity with which innovations are made; (5) the sophistication of the technology; and (6) the educational level of workers active in the field. *Envtl. Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 696-97 (Fed. Cir. 1983). UNIVACCO neglects to address these factors and simply proposes:

A person of ordinary skill in the art (“POSITA”) at the time of purported invention of the ‘935 Patent would have at least three years’ experience working with polymers, plastics, and/or adhesives with a BS or engineering degree in chemistry, analytical chemistry, polymer engineering, materials science, chemical engineering, or an equivalent field. Alternatively, a POSITA would have had a master’s degree or [sic] in one of the above academic disciplines with one year of work experience as described above. Additional education can substitute work experience, and vice versa.

Paper 1 at 11-12 (citing EX1002, ¶ 8).

Notably, Paragraph 8 of the Haas Declaration is simply a verbatim copy of the POSITA definition proffered in the Petition and provides no independent reasoning, facts or evidence why this proposed definition is appropriate. EX1002, ¶ 8 (including “degree or [sic] in”). Because Dr Haas’ unsubstantiated declaration testimony “merely repeats, *verbatim*, the conclusory assertion for which it is offered to support,” his conclusory assertions regarding a POSITA are “entitled to little weight.” *Xerox Corp v. Bytemark, Inc.*, IPR2022-00624, Paper 9 at 15 (PTAB

Aug. 24, 2022) (precedential); *see, e.g., Assa Abloy AB, et al. v. CPC Patent Technologies Pty, Ltd.*, IPR2022-01006, Paper 47 at 52-53 (PTAB Nov. 30, 2023) (testimony of petitioner’s expert regarding a POSITA given “minimal probative weight” because it “merely repeats, verbatim” petitioner’s proposed definition and “does not provide any facts or data to support his conclusory opinion”); *see In re Am. Acad. of Sci. Tech Center*, 367 F.3d 1359, 1368 (Fed. Cir. 2004) (“the Board is entitled to weigh the declarations and conclude the lack of factual corroboration warrants discounting the opinions expressed in the declarations”); 37 C.F.R. § 42.65 (“Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight.”).

Because alleged Section 112 defects must be evaluated through the eyes of a POSITA, a factually grounded, properly defined POSITA is foundational for gauging each of UNIVACCO’s unpatentability arguments. *Infra*, pp. 11-12. However, UNIVACCO’s POSITA definition is grounded in nothing more than unsupported attorney argument. *See Elbit Sys. of Am., LLC v. Thales Visionix*, 881 F.3d 1354, 1359 (Fed. Cir. 2018) (rejecting Petitioner’s assertions regarding a POSITA’s knowledge because “attorney argument is not evidence”). Thus, UNIVACCO’s enablement, written description and definiteness arguments, as well as the conclusions of Dr. Haas that are based on UNIVACCO’s conclusory POSITA definition, are ineffective and should be given no weight.

**B. UNIVACCO's POSITA Definition Is Inconsistent
With Its Characterizations Of The '935 Patent**

UNIVACCO's POSITA definition is belied by its repeated assertions that the '935 patent subject matter is highly "complex:"

- "a **complex**, multi-layer, viscoelastic environment" Paper 1 at 14;
- "the peel mechanism in these foils [is] **highly complex**" *Id.*;
- "**complex phenomena** require[s] **sophisticated mathematical analysis . . . including tools such as Lyapunov exponents and Grassberger-Procaccia dimensions**" *Id.*;
- "the **technical complexity** involved in understanding and controlling **force fluctuation phenomena** in multi-layer adhesive systems" *Id.* at 15;
- "**complex issues** of viscoelastic mechanics and **chaotic dynamics**" *Id.* at 16; and
- "multi-layer **viscoelastic complexity**" *Id.*

UNIVACCO further concedes that the '935 patent's "complex" subject matter is directed to a POSITA with a "high" level of skill:

- "The **relative skill level is high** but so is the technical complexity." *Id.* at 14; and
- "The relative **skill of practitioners in the field is** correspondingly **high**, given the technical complexity. . . ." *Id.* at 15.

Dr. Haas also agrees that a POSITA's level of skill is "high." EX1002, ¶ 69 ("skill of practitioners in this field is **high**, given the technical complexity. . . .").

Notably, in its Opposition to the European counterpart of the ‘935 patent, UNIVACCO rejected the POSITA definition it proposes for this PGR, and instead offered a different, heightened definition. EX2002, p. 7 (“The skilled person is a graduate engineer (Master of Sciences) in plastics technology with several years of experience in the manufacture of plastic films”).¹

UNIVACCO’s admissions that the subject matter recited in the ‘935 patent is “complex,” and that a “high” skill level is possessed by those in the art, contradicts its proposed POSITA definition. This contradiction further underscores UNIVACCO’s flawed unpatentability arguments.

C. UNIVACCO’s Unsupported And Inconsistent POSITA Definition Undermines Each Of Its Unpatentability Arguments

Because written description, enablement, and definiteness challenges must be evaluated through the eyes of a POSITA, the importance of verifying and correctly defining and a POSITA is vital. *See, e.g., Falkner v. Inglis*, 448 F.3d 1357, 1365 (Fed. Cir. 2006) (enablement “is judged from the prospective of [a POSITA]”); *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (written description involves “an objective inquiry into the four corners of

¹ Dr. Haas even offers testimony as “an expert in peel testing” to support some of UNIVACCO’s arguments. *See, e.g., EX1002*, ¶ 66.

the specification from the perspective of a [POSITA]”); *Alfred E. Mann Found. for Sci. Research v. Cochlear Corp.*, 841 F.3d 1334, 1342 (Fed. Cir. 2016) (“‘Claim definiteness . . . depends on the skill level of a [POSITA].’”) (citation omitted).

UNIVACCO’s proposed POSITA definition, contradicted by its own admissions that the ‘935 patent subject matter is “complex” and the level of skill possessed by those skilled in the art is “high,” undermines all of its Section 112 arguments. UNIVACCO’s unpatentability arguments and opinions rest on a factually unsupported and defective POSITA definition that cannot support a finding that it is more likely than not that the challenged claims are unpatentable.

Patent Owner does not waive any argument regarding the proper POSITA definition, and reserves its right to advance further arguments about the appropriate POSITA definition should the Director institute post grant review.

IV. CLAIM CONSTRUCTION

UNIVACCO does not offer constructions for any element of the challenged claims. Instead, it asserts that the “fluctuation” and “covering power” limitations in claims 1 and 25, respectively, are not enabled, lack written description and are indefinite. Paper 1 at 12-13.² UNIVACCO does not allege any other claim

² Any UNIVACCO argument about the “covering power” limitation of claim 25 is attorney argument and entitled to no weight. *Supra*, p. 3.

element is not enabled, lacks adequate written description, or is indefinite.

Patent Owner disputes UNIVACCO's contention that the "fluctuation" "covering power" limitations cannot be construed. For the purposes of this preliminary proceeding and the Director's decision whether to institute, Patent Owner proposes that these two disputed limitations be given their plain and ordinary meaning in view of the specification and prosecution history, as understood by a properly defined POSITA. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313-14 (Fed. Cir. 2005) (en banc); 37 C.F.R. § 42.100(b). As detailed below, however, UNIVACCO's Petition can be denied without having to resolve the proper construction of these disputed limitations. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (claims only need to be construed "to the extent necessary to resolve the controversy.")

Patent Owner reserves the right to propose constructions, other than plain and ordinary meanings, for the "fluctuation" and "covering power" limitations or any other claim element, if necessary, if the Director institutes post grant review.

V. UNIVACCO'S PETITION FAILS TO DEMONSTRATE THAT IT IS MORE LIKELY THAN NOT THAT THE CHALLENGED CLAIMS ARE UNPATENTABLE UNDER 35 U.S.C. § 112

UNIVACCO's arguments that claims 1-7, 9, 11, 13-18, and 21-25 are unpatentable because the "fluctuation" and "covering power" limitations lack enablement (Ground 1), lack written description (Ground 2), and are indefinite

(Ground 3) lack merit because each is predicated on a factually unsubstantiated and incorrectly defined POSITA, and is also grounded in the conclusory testimony of Dr. Hass and unsupported attorney argument. *Supra*, pp. 7-9. Also, UNIVACCO's arguments regarding the "covering power" limitation of claim 25 are simply based on nothing more than unsupported attorney argument and are entitled to no weight. *Supra*, p. 3. At bottom, UNIVACCO fails to demonstrate that it is more likely than not that any challenged claim of the '935 patent is unpatentable.

**A. UNIVACCO Fails To Demonstrate The
Challenged Claims Are Not Enabled**

UNIVACCO presents several unpersuasive arguments that the "fluctuation" and "covering power" limitations of claims 1 and 25, respectively, are not enabled because "undue experimentation" would be required to practice the challenged claims. Regarding claim 1, UNIVACCO erroneously posits that a POSITA would be forced to engage in "undue experimentation" because the challenged claims purportedly encompass a "vast genus," the "fluctuation" limitation is dependent on many variables and the '935 patent does not include "essential measurement parameters," and the '935 patent discloses only one example, Paper 1 at 16-23. Turning to claim 25, UNIVACCO's "covering power" limitation argument is based on unsupported attorney argument and entitled to no weight. *Supra*, p. 3.

1. UNIVACCO’s Enablement Argument Is Based On Dr. Haas’ Unsubstantiated Testimony And Unsupported Attorney Argument Regarding Undue Experimentation

Arguing that the ‘935 patent does not satisfy Section 112’s enablement requirement, UNIVACCO and its declarant, Dr. Haas, repeatedly aver “undue experimentation” would be needed to practice the full scope of challenged claims. *See, e.g.*, Paper 1 at 16, 18, 22, 23, 25, 29, 30, 31, 32 (“undue experimentation”); *Id.*, at 18, 22, 30 (“extensive . . . experimentation”); EX1002, ¶¶ 32, 59, 64, 72 (“undue experimentation”); ¶¶ 54, 55, 56 (“significant experimentation”); ¶ 68 (“considerable experimentation”); ¶ 73 (“extensive . . . experimentation”). However, UNIVACCO’s simplistic “undue experimentation” refrain falls far short of demonstrating that the challenged claims are not enabled.

As an initial matter, both UNIVACCO and Dr. Haas pay mere lip-service to the “undue experimentation” factors of *In re Wands*, 858 F.2d 731 (Fed. Cir. 1988). *See Merck Sharp & Dohme Corp. v. Wyeth LLC*, PGR2017-00016, -00017, Paper 9 at 8 (PTAB Oct. 20, 2017) (“Petitioner’s failure to adequately address the *Wands* factors supports denial of the Petitions. . . .”). As the Federal Circuit explained, a *Wands* analysis requires:

concrete identification of at least some embodiment or embodiments asserted not to be enabled - including what particular products or processes are or may be within the claim, so that breadth is shown concretely and not just as

an abstract possibility, and how much experimentation a skilled artisan would have to undertake to make and use those products or process.

McRO, Inc. Bandai Namco Games Am., Inc., 959 F.3d 1091, 1100 (Fed. Cir. 2020).

At most, UNIVACCO points to only “abstract possibilities” of embodiments that may or may not be enabled by the ‘935 patent.

UNIVACCO also offers no objective evidence regarding the length of time needed to conduct any “undue” experimentation, or whether such testing required the use of techniques that were not standard or commonly used. *Cephalon, Inc. v. Watson Pharms., Inc.*, 707 F.3d 1330, 1338 (Fed. Cir. 2013) (“extensive experimentation does not necessarily render the experiments unduly extensive where the experiments involve repetition of known or commonly used techniques”); *see, e.g., Falkner*, 448 F.3d at 1365 (the Board did not err because “the mere fact that the experimentation may have been difficult and time consuming does not mandate a conclusion that such experimentation would have been considered to be ‘undue’”); *PPG Indus. v. Guardian Indus. Corp.*, 75 F.3d 1558, 1564 (Fed. Cir. 1996) (“a considerable amount of experimentation is permissible, if it is merely routine”) (citation omitted).

Other than repeatedly relying on adjectives such as “undue” and “significant,” neither UNIVACCO nor Dr. Haas present any facts or evidence

showing that the experimentation purportedly needed to practice the ‘935 patent “would be excessive, *e.g.*, that it would involve testing for an unreasonable length of time.” *Cephalon*, 707 F.3d at 1338. Based on this lack of evidence, UNIVACCO’s conclusory enablement argument falls under its own weight. *See, e.g., Moba v. Diamond Automation, Inc.*, 325 F.3d 1306, 1321 (Fed. Cir. 2003) (patent not invalid for lack of enablement because challenger “presented no record evidence recounting the amount of experimentation one skilled in the art would require”).

In sum, UNIVACCO’s and Dr. Haas’ repeated invocation of the phrase “undue experimentation” is not a substitute for actual objective evidence regarding the extent and nature of testing that purportedly would be needed to practice the ‘935 patent. *See Cephalon*, 707 F.3d at 1339 (“Unsubstantiated statements indicating the experimentation would be ‘difficult’ and ‘complicated’ are not sufficient” to show that the “experimentation would be undue.”).

UNIVACCO’s assertion that the “fluctuation” limitation of claim 1 is not enabled is further refuted by arguments advanced in its Opposition to EP522, the European counterpart to the ‘935 patent. Claim 1 of the ‘935 patent and claim 4 of EP522 have essentially identical “fluctuation” limitations. *Compare* EX1001, 20:53-55 *with* EX2001, p. 18, lines 57-58. Specifically, claim 4 of the European counterpart recites:

tearing force fluctuations in the force amplitude around its mean value is in a range from greater than or equal to -0.5 cN to less than or equal to 0.5 cN.

Id.

In its Opposition, UNIVACCO admitted the “fluctuation” limitation was **“common knowledge.”** EX2002 at 10 (emphasis added). In fact, UNIVACCO even performed tests “using the same parameters as the Patent recited in the specification to examine the average tearing force and fluctuation of the commercial products. . . .” *Id.* Directly refuting arguments presented in this Petition, UNIVACCO concluded the “fluctuation” limitation is **“easy to be obtained [sic] for the person skilled in the art”**. *Id.* at 12 (emphasis added).

UNIVACCO’s assertion that undue experimentation is required because challenged claim 1 encompasses a “vast” and “broad” genus also lacks merit. Paper 1 at 16, 17, 22; see EX1002, ¶ 64. While asserting “the claims are too broad and the [‘935 patent] specification’s discussion is too narrow,” UNIVACCO fails to “identify specifics that are or may be within the claim but are not enabled [because] [s]pecifics have always mattered.” *McRO*, 959 F.3d at 1103-04. In fact, UNIVACCO and Dr. Haas offer no evidence detailing the contours of the claimed genus, much less identify the constituents making up the genus that would necessitate “undue experimentation.” See *Alcon Research Ltd. v. Barr Labs., Inc.*,

745 F.3d 1180, 1188-89 (Fed. Cir. 2014) (error concluding claim’s breadth exceeded its scope of enablement because of expert’s “unsubstantiated and conclusory” testimony regarding undue experimentation).

Additionally, UNIVACCO’s criticism that the ‘935 patent has one example is a strawman. Paper 1 at 17. Importantly, the ‘935 patent does not “need not include a working example of every possible embodiment to enable the full scope of the claims.” *Bayer HealthCare LLC v. Baxalta Inc.*, 989 F.3d 964, 982 (Fed. Cir. 2021); *see, e.g., McRO*, 959 F.3d at 1102 (patent specification “preferably omits, what is well known in the art”) (citation omitted); *AK Steel Corp. v. Sollac*, 344 F.3d 1234, 1244 (Fed. Cir. 2003) (patent specification need not “describe how to make and use every possible variant of the claimed inventions”).

UNIVACCO also erroneously contends that undue experimentation would be required to practice the challenged claims because the ‘935 patent omitted “essential measurement parameters for the fluctuation limitation.” Paper 1 at 21. However, UNIVACCO and its declarant, Dr. Haas, present no objective evidence if, and to what extent, any of these “omitted” measurement parameters would even impact measurement of the “fluctuation” limitation. Instead, UNIVACCO blindly avers that a “substantial research program” would be needed because:

[a] POSITA seeking to test candidate foils must not only design and tune foil structures themselves, but also develop and select

among competing fluctuation-measurement methodologies,
each of which, **may yield** different numerical results.

Id. at 21 (emphasis added).

This speculative assertion, without more, is insufficient to support non-enablement. Instructive is *Alcon*, 745 F.3d at 1189, where the Federal Circuit rejected a finding of nonenablement because of the expert’s “unsubstantiated conclusory” testimony that “various parameters” that “**may affect**” the claimed subject matter. *Id.* (emphasis added). Highlighting the challenger’s evidentiary deficiency, the Court observed:

proffered no evidence that any experimentation, let alone undue experimentation, with those variables would be necessary in order to practice the claimed invention. Without that evidence, there is no foundation for the . . . nonenablement ruling.

Id.

UNIVACCO’s reliance on *Amgen*, *Wyeth*, *Indenix* and *Genentech* is unpersuasive. See Paper 1 at 18, 23-24. In *Amgen*, *Wyeth* and *Indenix*, there was undisputed testimony that the disputed claims encompassed a vast number of different compounds. For example, in *Amgen Inc. v. Sanofi*, 598 U.S. 594, 613 (2023), it was undisputed that the claims at issue covered “**at least millions**” of antibodies with the claimed functionality. *Id.* at 613 (emphasis added). Likewise

in *Wyeth & Cordis Corp. v. Abbot Labs.*, 720 F.3d 1380,1385 (Fed. Cir. 2013), there was “no genuine dispute that practicing the full scope of the claims would require synthesizing and screening *each* of at **least tens of thousands** of compounds.” (italics in original, emphasis added). Similarly in *Indenix Pharms, LLC v. Gilead Scis. Inc.*, 941 F.3d 1149,1163 (Fed. Cir. 2019), the Court concluded “there were **at least many, many thousands** of candidate compounds many of which require synthesis and each of which would require screening.” (emphasis added). In contrast to the undisputed facts in those cases, UNIVACCO and Dr. Haas do not present any opinion, much less evidence, detailing the number of decorative foils that would have to be tested to support UNIVACCO’s lack of enablement theory. Lastly, UNIVACCO’s citation to *Genentech, Inc. v. Novo Nordisk A/S*, 108 F.3d 1361 (Fed. Cir. 1997) is unavailing. Contrary to the evidence presented in *Genentech*, UNIVACCO presented no evidence that the ‘935 patent failed to “supply the novel aspects” of the claimed invention or that the ‘935 patent technology was “in the early stages of development.” *Id.* at 1366-67.

UNIVACCO’s enablement arguments do not support post grant review.

B. UNIVACCO Does Not Demonstrate That The Challenged Claims Are Unpatentable For Lack Of Written Description

Written description “is not about whether the patentee has proven to the skilled reader that the invention works, or how to make it work.” *Alcon*, 745 F.3d

at 1192. Rather, the analysis requires an “objective inquiry into the four corners of the specification from the perspective of [POSITA].” *Ariad*, 598 F.3d at 1351.

As an initial matter, UNIVACCO’s written description argument is entitled to no weight because the POSITA definition is factually unsupported and predicated on attorney argument. *Supra*, pp. 7-9.

UNIVACCO’s written description argument also repackages its conclusory enablement position and improperly conflates its enablement and written description arguments. *See Ariad*, 598 F.3d at 1351 (Section 112 “contains a written description requirement separate from enablement”). For example, the entirety of UNIVACCO’s written description argument cites Paragraphs 59-64 of the Haas Declaration. *See Paper 1* at 32-35, 37-40. These paragraphs, found under the section of the Haas Declaration entitled “**The Asserted Claims of its ‘935 Patent Are Invalid Based on Enablement**,” EX1002 at 27, address enablement. *See, e.g., id.*, ¶ 59 (does “not teach a POSITA . . . **without undue experimentation**”), ¶ 59 (“[t]he ‘935 Patent **fails to enable** a POSITA. . . .”); ¶ 60 (“**the enablement failure**”), ¶ 60 (“This would make the claimed ± 0.5 cN range unlikely to be achievable . . . **without extensive optimization**”); ¶ 64 (“no way to determine . . . **without significant testing and undue experimentation**”). Use of Dr. Haas’ enablement testimony to support UNIVACCO’s written

description argument further highlights the absence of objective evidence needed to demonstrate that the challenged claims lack written description.

Arguing the ‘935 patent does not satisfy Section 112’s written description requirement, UNIVACCO also erroneously asserts “[t]he ‘935 Patent attempts to explain performance primarily through a neutral-fiber bending theory. . . .” Paper 1 at 34; *see, e.g., id.* at 27 (“thickness-driven neutral-fiber narrative”); 37 (“neutral-fiber narrative”); 45 (“neutral-fiber narrative”). In making this argument, UNIVACCO again relies on Paragraphs 59-64 of the Haas Declaration. *Id.* at 19, 27-28, 34, 37-38, 45-46. Tellingly, these paragraphs do not discuss the “neutral-fiber theory.” In fact, the “neutral-fiber theory” is not even mentioned in the Haas Declaration. Thus, UNIVACCO’s assertion regarding the “neutral-fiber theory” is nothing more than attorney argument that should be given no weight. *See Instrumentation Lab. Co. v. HemoSonics LLC*, PGR2019-00047, Paper 8 at 21-22 (PTAB Oct. 24, 2019) (“[u]nsupported attorney arguments and conclusions are not sufficient to meet Petitioner’s burden” regarding lack of written description).

Nevertheless, UNIVACCO avers the ‘935 patent relies on a “neutral-fiber theory” to explain the “fluctuation” and “covering power” limitations, and that this “neutral-fiber narrative” does not supply “common structural features or representative coverage” to support these limitations for carrier film thicknesses

recited in claim 1. Paper 1 at 37-38, 45-46. UNIVACCO's unsupported and conclusory "neutral-fiber" argument misunderstands the '935 patent's disclosure.

The '935 patent uses the "neutral-fiber" to explain how decorative foils, with a reduced carrier film thickness, exhibit lower cracking and overall tear-off forces between the carrier film and the all-over varnish layer as compared with conventional decorative foils. *See, e.g.*, EX1001, 2:10-15; 7:43-45:19:59-20:12. The "neutral fiber" is defined as "the fiber the length of which does not change when twisted and/or bent, i.e. no tensile stresses or pressure stresses act on the neutral fiber 50." *Id.*, 19:65-67. By way of example, Figures 11a and 11b illustrate neutral fiber 50 drawn along the geometric center plane of two decorative foils (40), taking into account the thickness of the all-over varnish layer (41) and the carrier layer (42). *Id.*, 19:59-65. Figures 11a and 11b depict decorative foils with carrier film thicknesses of 5.7 and 12 μm , respectively. *Id.*, 19:60-62. These Figures also show that the distance x, from the neutral fiber to the all-over varnish layer (41) (separation plane), is less when the carrier film (42) has a reduced film thickness compared to a carrier film having a greater film thickness. The '935 patent explains that, by reducing distance x, the normal stress of the all-over varnish layer is also reduced. *Id.*, 20:4-6. The lower normal stress to the all-over varnish layer with a carrier film having a reduced thickness "ensures that undefined and/or random local breaks in the all-over varnish layer 41 do not

already occur before the detachment of the carrier film.” *Id.*, 20:6-11. Thus, the ‘935 patent’s “neutral fiber theory” demonstrates that decorative foils with a reduced thickness carrier film exhibit lower cracking and overall tear-off forces compared to conventional decorative foils.

As with its futile enablement argument, UNIVACCO complains that the ‘935 patent encompasses a “vast” or “broad” genus and has only one example to support its written description argument. Paper 1 at 34-36. In making this argument, UNIVACCO and Dr. Haas again offer no opinion, let alone evidence, of the constituents that make up this “vast” genus. This absence of evidence is fatal to UNIVACCO’s “genus” argument. Additionally, UNIVACCO’s complaint about the number of examples can be given short shrift. The ‘935 patent specification “is written for a [POSITA], and such a person comes to the patent with the knowledge of what has come before” so that “it is unnecessary to spell out every detail of the invention in the specification.” *Lizard Tech., Inc. v. Earth Res. Mapping, Inc.*, 424 F.3d 1336, 1345 (Fed. Cir. 2005) (“A claim will not be invalidated on section 112 grounds simply because the embodiments of the specification do not contain examples explicitly covering the full scope of the claim language.”). Accordingly, “an applicant is not required to describe in the specification every conceivable and possible future embodiment of his invention.” *Cordis Corp. v. Medtronic AVE, Inc.*, 339 F.3d 1352, 1365 (Fed. Cir. 2003) (citation omitted).

In a desperate attempt to show that the ‘935 patent lacks sufficient written description, UNIVACCO compares the performance results for carrier films having thicknesses of 5.7 and 12 μm . Specifically, citing Paragraph 59 of the Haas Declaration, UNIVACCO argues that 5.7 and 12 μm films show “non-linear changes in performance”:

Non-linear behavior of this sort defeats any inference that one success at 5.7 μm evidences possession of the remainder of the range. In such a regime, each thickness regime **may require** different construction choices or optimization, which the ‘935 patent does not identify.

Paper 1 at 35 (emphasis added).

The absence of any reference to “non-linear behavior” in paragraph 59 of the Haas Declaration relegates UNIVACCO’s assertion to nothing more than conclusory attorney argument. *See Icon Health & Fitness, Inc. v. Strava, Inc.*, 849 F.3d 1034, 1043 (Fed. Cir. 2017) (“[a]ttorney argument is not evidence”). The speculative nature of this assertion (*i.e.*, “may require”) also highlights UNIVACCO’s deficient written description position.

Finally, *Ariad*, *Lilly*, *Brita* and *Genentech* are distinguishable and do not support UNIVACCO’s written description argument. *See* Paper 1 at 31-37, 35-39.

In *Ariad*, the Court’s written description decision related to a patent “where the existing knowledge and prior art was scant.” 598 F.3d at 1354. However, the

prior art considered by the Examiner during prosecution and various exhibits that accompanied UNIVACCO's Petition show the contrary. *See generally* EX1001. More importantly, the Court found "much of Ariad's written description evidence" "legally irrelevant" because the evidence was dated after the patent's filing date and therefore could not provide evidence that the asserted claims were supported by adequate written description. *Id.* at 1355.

The Court in *Lilly* addressed issues specific to patents reciting recombinant DNA technology, and held that a specification disclosing a rat cDNA sequence that produced insulin did not provide written description support for claims directed to a human cDNA sequence that produced insulin because the patent disclosed no information "pertaining to [the human] cDNA's relevant structural or physical characteristics" or "which nucleotides constitute human cDNA." *Regents of Univ. of Cal. v. Eli Lilly & Co.*, 119 F.3d 1559, 1562, 1566-67 (Fed. Cir. 1997).

In *Brita*, the inventors admitted "that they did not create non-carbon-block filters achieving the claimed FRAP factor, and that doing so would involve 'new technology'" *Brita LP v. ITC*, 156 F.4th 1326, 1334 (Fed. Cir. 2025). Here, UNIVACCO cannot point to any such admission by the inventor of the '935 patent.

Finally, UNIVACCO's citation to *Genentech* to support its written description argument (Paper 1 at 39) can be easily dismissed because the Court held that it "need not reach" the issue of written description. 108 F.3d at 1368.

UNIVACCO fails to demonstrate that it is more likely than not that the ‘935 patent does not satisfy the written description requirement of Section 112.

C. UNIVACCO’s Scattershot Arguments Fail To Demonstrate The Challenged Claims Are Indefinite

“[A] patent is indefinite if its claims, read in light of the specification delineating the patent, and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention.” *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 901 (2014). *Nautilus* recognizes, however, that “absolute precision is unattainable,” and acknowledges that “[s]ome modicum of uncertainty” is acceptable. *Id.* at 909; *Sonix Tech. Co. v. Publications Int’l, Ltd.*, 844 F.3d 1370, 1377 (Fed. Cir. 2015) (“patentee need not define his invention with mathematical precision in order to comply with the definiteness requirement”) (citation omitted). Thus, “a claim is not indefinite just because it is broad.” *Niazi Licensing Corp. v. St. Jude Medical S.C., Inc.*, 30 F.4th 1339,1347 (Fed. Cir. 2022).

UNIVACCO presents several indefiniteness arguments, none of which demonstrate it is more likely than not that the challenged claims are unpatentable.³

³ UNIVACCO’s indefiniteness argument should be given no weight because its underlying POSITA definition is factually unsupported and conclusory attorney argument. *Supra*, p. 7-9.

**1. The Construction And Thickness Of The
All-Over Varnish Layer Are Not Indefinite**

UNIVACCO's complaint about the construction and thickness of the all-over varnish layer is factually baseless. Paper 1 at 49-53. Notably, claim 1 does not recite limitations regarding the construction or thickness of the all-over varnish layer. Rather, claim 1 only recites a decorative foil comprising a carrier film and an all-over varnish layer, where the thickness of the carrier film is defined.

EX1001, 20:48-55. Nevertheless, in contrast to UNIVACCO's argument, the '935 patent specification expressly describes possible layers of the all-over varnish layer and discloses preferred thicknesses of those layers. *See, e.g., id.*, 15:33-35, 46-50.

UNIVACCO's assertion that "the figures and reference numerals [of the '935 patent] consistently depict the adhesive layer 47 as separate from the all-over varnish layer 41" is inapt. Paper 1 at 49-50. In fact, the '935 patent details how the all-over varnish layer may include "at least one detachment layer 43 and/or at least one protective varnish layer 44 and/or at least one decorative layer 45 and/or at least one primer layer 46 **and/or** at least one adhesive layer 47 and/or at least one color layer." EX1001, 15:46-50 (emphasis added). The patent also states it is "possible for the adhesive layer 47 to be applied to a surface of the all-over varnish layer 41 at least partially." *Id.*, 16:2-4. In sum, the '935 patent specification unambiguously discloses the adhesive layer **may be part of, or separate from**, the

all-over varnish layer. Therefore, the '935 patent's specification easily disposes of UNIVACCO's feigned uncertainty as to "whether the adhesive layer is inside or outside the claimed all-over varnish layer."

Further, UNIVACCO's contention that the disclosed thicknesses of individual component layers of the all-over varnish layer "cannot be reconciled" is mathematically wrong. See Paper 1 at 51. UNIVACCO incorrectly adds the thicknesses of several of the possible component layers that may comprise the all-over varnish layer described in the '935 patent to assert that the total thickness falls outside the range recited in claim 1. *Id.* It is again noted that the thickness of the all-over varnish layer is not recited in claim 1. UNIVACCO also misunderstands the '935 patent's use of the conjunction "and/or" when describing possible layers of the all-over varnish layer. EX1001, 15:46-50. The conjunction "and/or" means that the all-over varnish layer needs to include only at least one of the identified component layers. Thus, a POSITA would understand the use of the conjunction "and/or" and easily "reconcile" the thicknesses of individual component layers of the all-over varnish layer. See, e.g., EX1001, 3:54-56; 4:59-62; 6:39-41.

UNIVACCO compounds its mistakes by pointing to "typical adhesive coating thicknesses" that are at or above the claimed range. Paper 1 at 52. However, UNIVACCO assumes the adhesive layer is part of the all-over varnish layer and then erroneously concludes "the adhesive thickness alone would exhaust

or exceed the claimed 1.0-1.7 μm in particular range.” *Id.* Putting aside the fact that UNIVACCO improperly reads the thickness of the over-all varnish recited in dependent claim 2 (1.0-2.5 μm) into claim 1, UNIVACCO again ignores that the ‘935 patent expressly discloses the adhesive layer need not be part of the all-over varnish layer. *See, e.g.,* EX1001, 16:2-4. Contrary to UNIVACCO’s arguments, there is no inconsistency regarding the thickness of the all-over varnish layer that supports its indefiniteness argument.

2. UNIVACCO’s Complaints About Test Conditions And Protocols Fail to Support Its Indefiniteness Argument

UNIVACCO makes unsupported assertions that different protocols and environmental conditions could be used to measure the “fluctuation” limitation. Paper 1 at 53, 56, 62-63. These speculative arguments are factually baseless as UNIVACCO and Dr. Haas do not present any evidence that different protocols or varying test parameters or conditions would yield different fluctuation values. Notably, the Federal Circuit has routinely rejected indefiniteness arguments based on similar evidentiary deficiencies. For example, in *Takeda Pharm. Co. v. Zydus Pharms. USA, Inc.*, 743 F.3d 1359, 1366-67 (Fed. Cir. 2014), the Court ruled the “mere possibility of different results” is insufficient for indefiniteness because “there was no evidence in this case that different measurement techniques in fact produced significantly different results.” *See, e.g., Janssen Pharms., Inc. v. Teva*

Pharms. USA, Inc., 97 F.4th 915, 937 (Fed. Cir. 2024) (patent not indefinite because challenger “did not present evidence that different measurement techniques would typically yield different” results); *Ball Metal Beverage Container Corp. v. Crown Packaging Tech., Inc.*, 838 Fed. Appx. 538, 542 (Fed. Cir. 2020) (vacating an indefiniteness finding because “the relevant inquiry then becomes whether differing methodologies lead to materially different results”); *Guangdong Alison Hi-Tech Co. v. ITC*, 936 F.3d 1353, 1363 (Fed. Cir. 2019) (patent not indefinite because challenger “has not provided any evidence . . . that the different methods of measurement . . . lead to different results”).

UNIVACCO’s citation to *Dow Chem. Co. v. Nova Chems. Corp.*, 803 F.3d 620 (Fed. Cir. 2015) to argue that the ‘935 patent is indefinite because the patent lacks “measurement protocols” and that “different operators testing identical samples **could reach** opposite conclusions” about the “fluctuation” limitation by using reasonable but “different methodological choices” is unpersuasive. Paper 1 at 64 (emphasis added). In *Dow*, the Court observed there was evidence of four (4) different methods to measure the recited “slope hardening curve.” 803 F.3d at 633. Because there was “no question that each of these four methods may produce different results,” the Federal Circuit found the challenged claims indefinite. The asserted claims were found to be definite because “each [method] produced different results.” *Id.* at 633-64. In contrast to the facts in *Dow*, no evidence was

adduced by UNIVACCO that different measurement protocols, parameters or operators would yield different results. At most, UNIVACCO simply speculates that different results “**could**” possibly be obtained. Paper 1 at 64. Without evidence that varying protocols, parameters or operators would provide different results, UNIVACCO’s conclusory argument can be easily dismissed.

3. UNIVACCO’s Data Analysis Argument Is Baseless

UNIVACCO complains that the presence of the term “average” in the “fluctuation” limitation is indefinite, and would not have been understood by POSITA. Paper 1 at 53-54. Contrary to UNIVACCO’s argument, a POSITA would clearly understand this elementary term. Figure 9a describes an average tear off force of approximately 2.75 cN. EX1001, 18:45-50. The “fluctuation” limitation simply requires that the “fluctuations in force” of the Figure 9A film be more than or equal to 0.5 cN to less than or equal to 0.5 cN around the average tear-off force of approximately 2.75 cN. *See, e.g., id.* Underscoring this meritless indefiniteness argument, UNIVACCO was in fact able to perform testing to argue this limitation is exhibited by commercial carrier films in its EPO Opposition. *Supra*, pp. 17-18. UNIVACCO’s ability to proffer such evidence in the EPO opposition casts serious doubt on its indefiniteness argument.

4. A POSITA Would Have Readily Understood The Peel Angle Used Based On The ‘935 Patent’s Disclosure

UNIVACCO’s assertions that the ‘935 patent fails to disclose the appropriate peel angle is also contrary to the ‘935 patent’s disclosure. *See* Paper 1 at 56-59. The ‘935 patent expressly describes the use of ZwickRoell tensile testing apparatus. EX1001, 18:39-44. Based on the associated ZwickRoell product information, a POSITA would have clearly recognized that the apparatus performs the stroke in the vertical direction, so that the tear-off force measurement occurs at a peel angle of 90°. EX1006.

5. UNIVACCO’s Remaining Indefiniteness Arguments Are Unpersuasive

UNIVACCO’s attempts to bolster its indefiniteness argument by pointing to the data presented in Figure 9b in connection with a 12 µm carrier film. Paper 1 at 55-56, 63-64. This argument is curious since the challenged claims only recite 3-10 µm thick carrier films, not a 12 µm thick film as depicted in Figure 9b.

Similarly, UNIVACCO’s argument that the ‘935 patent is indefinite because it purportedly “does not specify” the adhesive pattern used to apply the foil to a substrate for fluctuation testing is inapposite. Paper 1 at 59-61. UNIVACCO concedes, as it must, that this ‘935 patent describes various constructions. *See, e.g.*, Paper 1 at 60-61. However, no evidence is proffered by UNIVACCO that any of these disclosed constructions would affect the fluctuation results.

Likewise, UNIVACCO's argument about application techniques is of no moment. Paper 1 at 61-62. In making this argument, UNIVACCO improperly blurs the lines between enablement and definiteness when it asserts the purported absence of any disclosure of the application techniques would require "substantial trial and error" to determine the application technique. Again, UNIVACCO and Dr. Haas present no evidence regarding to what extent, if any, the application technique would affect the fluctuation results.

VI. CONCLUSION

UNIVACCO fails to demonstrate that it is more likely than not that at least one of the challenged claims is unpatentable under Section 112, and the Director is respectfully requested to deny UNIVACCO's post grant review petition challenging claims 1-8, 9-11, 13-18 and 21-25 of the '935 patent.

DATED: February 17, 2026

Respectfully,

/John T. Gallagher/

John T. Gallagher, Reg. No. 35,516

HOFFMANN & BARON, LLP

6900 Jericho Turnpike

Syosset, New York 11791

Phone: (516)822-3550

Email: jgallagher@hbiplaw.com

Counsel for Patent Owner

LEONHARD KURZ Stiftung & Co., KG

CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d), the undersigned certifies that this Patent Owner's Preliminary Response complies with the type-volume limitation of 37 C.F.R. § 42.24(a). The word count application of the word processing program used to prepare Patent Owner's Preliminary Response indicates that it contains 7,685 words, excluding the parts of the brief exempted by 37 C.F.R. § 42.24(a), (that is, the word count does not include the table of contents, table of authorities, the exhibit list, mandatory notices under § 42.8, the certificate of service, or the certificate of compliance).

DATED: February 17, 2026

Respectfully,

/John T. Gallagher/

John T. Gallagher, Reg. No. 35,516

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), copies of Patent Owner's Preliminary Response and exhibits were served via electronic mail on Petitioner's counsel of record by filing this document through P-TACTS and by sending a copy of the documents to the following e-mail addresses identified in Petitioner's Mandatory Notices:

miku.mehta@procopio.com

ali.uyanik@procopio.com

DATED: February 17, 2026

/John T. Gallagher/

John T. Gallagher, Reg. No. 35,516
HOFFMANN & BARON, LLP
6900 Jericho Turnpike
Syosset, New York 11791
Phone: (516)822-3550
Email: jgallagher@hbiplaw.com

Counsel for Patent Owner
LEONHARD KURZ Stiftung & Co., KG