

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VIANCE, LLC,
Petitioner,
v.

KOPPERS PERFORMANCE CHEMICALS, INC.,
Patent Owner.

PGR2026-00023
Patent 12,370,716

**PETITIONER'S SUR-REPLY BRIEF IN SUPPORT OF OPPOSITION TO
PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL**

Customers are Not RPI's. Patent Owner's ("PO") reply fails to rebut Petitioner's ("Viance") showing that its two customers are not RPIs to this proceeding and otherwise continues to improperly apply *Ventex*. First, PO admits that it has not accused, much less sued, either customer for infringement—and consequently neither customer was time-barred from filing its own petition. (*See* Opp., 6-9; Ex1092, p.1.) PO is left with its legally erroneous argument that the customers are "clear beneficiaries of this PGR proceeding." (Reply, 1.) As explained in Viance's Opposition, and unrebutted by PO, the Board has explained that "the RPI analysis set out in *AIT* and the common law require more than simply confining the analysis to determining whether a party benefits generally from the filing of this Petition and also has a relationship with the Petitioner." (Opp., 8.)

PO's Reply also ignores the undisputed fact that neither customer was time-barred *at the time of the filing of the Petition*. This fact has been held to be "crucial" to show that a petition can be deemed to have been filed "at the behest" of a non-party. (Opp., 7-9.) PO distorts the issue, citing *Corning* for the irrelevant proposition that one cannot amend/convert a PGR to an IPR after the 9-month window.

Venator not an RPI. PO's reliance on *Sun Pharm. Indus., Inc. v. Biofrontera Inc.* PGR2026-00021, Paper 12 (Director May 26, 2026) is misplaced. Petitioner has shown that its Members do not have the *ability* to control the instant proceeding under the controlling LLC agreement. (*See* Opp., 2-5; Ex1094, ¶5 (Neither Member

directed or has the “ability to” direct the filing of the PGR), ¶6 (“Viance alone controlled and directed preparation of the Petition, and Viance alone made the decision to file. . . .”); Ex1091, ¶7 (“[N]either [Member] is able to exert unilateral control over Viance [or has] the ability to control Viance’s operations.”) (citing LLC Agreement, Ex1088).) PO is left to raise an improper new argument that, although the Board is made up of representatives from two separate, legally distinct Member corporations, Venator alone somehow has the “ability to control” Viance. (Reply, p.2.) This argument is an unsupported *non sequitur*, as the vote of the other Member, Lanxess, is also *required* to effectuate an outcome. (Opp., 2-3.)

Lanxess is not an RPI; PO’s argument is untimely and incorrect. The Board should reject PO’s untimely new argument that "Lanxess Also is an RPI." (Reply, 2.). *See* Trial Practice Guide §II.I. PO’s new argument also lacks support in law and fact. *Puzhen Life USA, LLC v. ESIP Series 2, LLC*, IPR2017-02197, Paper 13 at 4 (PTAB Apr. 11, 2018) (“[T]here is a difference between generic corporate control over a petitioner and an ability to control a particular proceeding.”). PO’s assertion that Lanxess could cut-off DCOI *also* fails because it presumes an unlawful breach of fiduciary duty. Finally, PO’s argument is factually unsupported, as the tolling party/manufacturer does not “procure” the DCOI. (Reply, 2.) Rather, Viance procures the DCOI (e.g., “Viance’s Raw Material,” Ex1090, p.2, §2.1), and PO does not assert that there are no other sources of DCOI (e.g., Dalian Biochem Co, Ltd.).

Dated: July 9, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d), the undersigned certifies that the foregoing Petitioner's Sur-Reply Brief in Support of Opposition to Patent Owner's Request for Discretionary Denial complies with the 2-page limit set forth by the Board in its email correspondence authorizing Petitioner to file this Petitioner's Sur-Reply Brief in Support of Opposition to Patent Owner's Request for Discretionary Denial. (*See* Ex3101.) This page count does not include the items excluded by 37 C.F.R. § 42.24 as not counting towards the page limit.

Date: July 9, 2026

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that the foregoing Petitioner's Sur-Reply Brief in Support of Opposition to Patent Owner's Request for Discretionary Denial was served on July 9, 2026, via Electronic Mail on the Patent Owner's lead and backup counsel at the following addresses of record:

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