UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALBAUGH, LLC,
Petitioner

v.

BASF SE,
Patent Owner

Case No. PGR2026-00026
Patent No. 12,305,206

PATENT OWNER'S BRIEF REQUESTING THAT INSTITUTION BE DENIED ON DISCRETIONARY GROUNDS

Table of Contents

I. INTRODUCTION 1

II. EFFECTIVE FILING DATE: March 2, 2016 1

III. DISCRETIONARY DENIAL IS WARRANTED. 2

A. The Petition Should Be Denied under Section 325(d) Because the Same Art and Arguments Were Considered During Prosecution. 2

1. The Petition Puts Forth the Same or Substantially the Same Art and Arguments Previously Presented to the Office. 2

2. The Office was Reasonable in Its Examination and Did Not Make a Material Error During Prosecution. 5

B. The Petition Lacks Particularity under Section 312(a)(3). 7

C. Settled Expectations Strongly Favor Denial. 8

D. Compelling Economic Interests Favor Denial. 11

1. Patent Owner has Made Significant, Long-Standing Investments in U.S. Industry and U.S. Economy. 11

2. Petitioner Is a Generic Manufacturer That Has Focused Its Investments Abroad. 13

E. Heavy Reliance on Expert Testimony Favors Denial. 15

F. Petitioner's Failure to Identify Nutrichem as an RPI Weighs in Favor of Denial. 18

IV. CONCLUSION 20

Table of Exhibits

No.	Description
2001	Prosecution history of U.S. Patent 12,305,206, U.S. Patent Application No. 18/435,340
2002	U.S. Patent No. 6,051,408 ("Bartsch")
2003	U.S. Patent No. U.S. 10,888,095 ("Bhoge")
2004	Memorandum from Coke Morgan Stewart to All PTAB Judges, Interim Process for PTAB Workload Management (Mar. 26, 2025)
2005	Declaration of Matt Malone
2006	U.S. Patent No. 9,834,802
2007	*BASF Acquires Glu-L Technology from AgriMetis*, News Release, BASF (Sept. 14, 2020)
2008	Liberty® ULTRA EPA Label
2009	*What type of Products Does Albaugh Offer?*, FAQs, Albaugh, https://www.albaugh.com/us/who-is-albaugh/about-us/faqs (last visited Apr. 10, 2026)
2010	Surmise 5, Albaugh, https://www.albaugh.com/us/agriculture/crop-protection/herbicides/listings/surmise--5 (last visited Apr. 10, 2026)
2011	Surmise Pro, Albaugh Specialty Products, https://www.albaugh.com/us/specialty-products/turf-ornamental/herbicides/listings/surmise-pro (last visited Apr. 10, 2026
2012	Liberty® Safety Data Sheet
2013	Finale® XL T&O EPA Label
2014	Adam Mossoff, *The Patent System: America's Innovation Engine*, The Heritage Foundation (Jan. 23, 2025)
2015	*CEO of Albaugh Group visits Nutrichem*, Nutrichem (Feb. 24, 2015)
2016	*Why Did Albaugh Acquire Rotam?*, FAQs, Albaugh, https://www.albaugh.com/us/who-is-albaugh/about-us/faqs (last

	visited Apr. 10, 2026)
2017	*Albaugh Closes on the Acquisition of Rotam*, Albaugh, https://www.albaugh.com/pl/en/news/news-detail/2024/10/30/albaugh-closes-on-the-acquisition-of-rotam (last visited Apr. 10, 2026)
2018	*Albaugh to Acquire Rotam AgroSciences*, AgriBusiness Global (Dec. 21, 2021)
2019	FAQs for Interim Processes for PTAB Workload Management ("FAQs")
2020	Memorandum from Coke Morgan Stewart to Members of the Patent Trial and Appeal Board, Enforcement and Non-Waiver Of 37 C.F.R. § 42.104(B)(4) and Permissible Uses of General Knowledge in Inter Partes Reviews (July 31, 2025)
2021	Trial Practice Guide, USPTO (Nov. 2019)
2022	Meet the Global Executive Committee, Albaugh, https://www.albaugh.com/who-is-albaugh/about/global-executive-committee (last visited Apr. 10, 2026)
2023	Excerpt from Ex. 2022
2024	*About Huapont Life Sciences Co Ltd*, Reuters, https://reuters.com/markets/companies/002004.SZ (last visited Apr. 10, 2026)
2025	Albaugh, LCC's Corporate Disclosure Statement, *FMC Corp. v. Albaugh, LCC*, No. 4:24-cv-00055-SHL-HCA (S.D. Iowa May 23, 2024)
2026	*China-Based Firm Acquires 20% State in Albaugh*, AgriMarketing (Aug. 11, 2014)
2027	About Us, Albaugh, https://www.albaugh.com/ar/en/who-is-albaugh/about-us (last visited Apr. 10, 2026)
2028	Nutrichem Company Limited, 2024 Annual Report

I. INTRODUCTION

BASF SE ("BASF" or "Patent Owner") respectfully requests that the Director exercise discretion to deny institution of the petition for *post grant* review ("Petition") filed by Albaugh, LLC ("Albaugh" or "Petitioner"). The Petition retreads grounds already covered during prosecution. The cited art, including the Long reference that is central to all grounds, was considered and overcome during prosecution. Petitioner has not shown material error by the Office. Other factors also support denial, including settled expectations, Patent Owner's ongoing U.S. investments, the weakness of the invalidity challenge, Petitioner's heavy reliance on expert testimony, and Petitioner's failure to name all real parties-in-interest.

II. EFFECTIVE FILING DATE: March 2, 2016

Petitioner argues that the '206 Patent had a "break in continuity" and thus is "not entitled to the benefit of any of the 2016 filing dates for Patent Owner's three provisional applications." Pet. at 20, 59. Petitioner is incorrect.

The '206 Patent properly claims the benefit of the March 2, 2016 filing date of the earliest filed provisional pursuant to 35 U.S.C. § 119(e). Section 119(e) does not have a co-pendency requirement. Instead, it provides that an applicant may claim priority to a provisional application *regardless of whether the provisional application is abandoned*. *See* Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-564, -588-589 (S. 1948 sec. 4801) (eliminating copendency

requirement by striking language requiring that "the provisional application was pending on the filing date of the application for patent under section 111(a) or section 363 of this title."). All statutory requirements of section 119(e) are satisfied, and the effective filing date is March 2, 2016.

Petitioner's erroneous analysis relies on 35 U.S.C. § 120, which governs priority to earlier ***non-provisional*** applications, rather than 35 U.S.C. § 119(e), which governs priority to ***provisional*** applications. The copendency requirement of section 120 does not apply here. Petitioner's incorrect priority analysis relying on an inapplicable statutory provision reflects the weakness of the Petition, a consideration the Director should consider as it exercises its statutory discretion.

III. DISCRETIONARY DENIAL IS WARRANTED.

A. The Petition Should Be Denied under Section 325(d) Because the Same Art and Arguments Were Considered During Prosecution.

1. The Petition Puts Forth the Same or Substantially the Same Art and Arguments Previously Presented to the Office.

The Petition should be denied under 35 U.S.C. § 325(d) because it relies on prior art already considered and overcome during prosecution. The Petition's primary reference, U.S. Patent No. 8,445,406 ("Long") (Ex. 1005), not only is cited on the face of the '206 Patent but also is the primary reference the Examiner evaluated during prosecution. Ex. 1001, Cover; Ex. 2001 at 288.

The Examiner already considered the same argument raised in the Petition, i.e., that the '206 Patent is anticipated or obvious in view of Long. *Compare* Ex.

2001 at 288, *with* Pet. at iii–iv. During prosecution, Patent Owner overcame the Examiner's non-final rejection asserting anticipation and obviousness in view of Long by amending the claims to include relative percentages of L-glufosinate to D-glufosinate, which is not disclosed or suggested by Long. Ex. 2001 at 317. Petitioner's primary "evidence" of invalidity cites and relies on the ***very same passage from Long*** that the Examiner explicitly considered. When Patent Owner challenged the interpretation of that passage and amended the claims, the Examiner correctly determined the proposed claims were allowable. *Compare* Ex. 2001 at 317, *with* Pet. at 47. The Patent Office should decline Petitioner's invitation to reassess the very same argument already decided during prosecution.

Petitioner's secondary references ("L-Glufosinate Synthesis References") are also the same or substantially the same as prior art already considered by the Office. In particular, the following references used in the Petition were already considered during prosecution: (1) "Schulz" (Ex. 1006); (2) "Zeiss" (Ex. 1007); and (3) "Knorr" (Ex. 1011). Ex. 2001 at 259; Ex. 1001, Cover.

The remaining secondary references—"Grabley" (Ex. 1008), "Nakanishi" (Ex. 1009), and "Minowa" (Ex. 1010)—are cumulative of those already considered and do not cure Long's deficiency. Indeed, the Petition lumps these three references together with Schulz, Zeiss, and Knorr and does not purport to rely on distinct teachings of Grabley, Nakanishi, or Minowa. Moreover, all three relate to methods

of preparing L-glufosinate and are substantially similar to U.S. Patent No. 6,051,408 ("Bartsch") (Ex. 2002), which was considered by the Examiner.

The so-called "L-Glufosinate Synthesis References" purport to disclose ways to prepare L-glufosinate. *See* Ex. 1006 (purification from *E. coli*); Ex. 1007 (enantioselective synthesis from L-methionine and L-glutamic acid via L-vinylglycine); Ex. 1011 (selective crystallization); Ex. 1008 (enzymatic cleavage using penicillin-G-acylase); Ex. 1009 (producing glufosinate P from glufosinate P hydrochloride salt); Ex. 1010 (catalytic asymmetric hydrogenation with rhodium catalyst). These references are redundant of Bartsch, which discloses preparation of L-glufosinate (i.e., L-phosphinothricin) by transamination with the help of a transaminase from *E. coli*. Ex. 2002.

Given this cumulative art, Petitioner's Ground 3 (obviousness over Long in view of the L-Glufosinate Synthesis References) is substantially the same as an obviousness ground Examiner considered but then withdrew. Ex. 2001 at 290–92; 352. The Examiner originally issued a non-final rejection finding that claims 1-6 were obvious over Long, in view of U.S. 10,888,095 ("Bhoge") (Ex. 2003 at 291) (asserting it would have been obvious to "combine and modify the teachings of Long DA, and employ the compositions comprising herbicide glufosinate and 1-methoxy-2-propanol of Bhoge et al."). Patent Owner overcame this non-final rejection by amending the claims to recite the presence of D-glufosinate and relative composition

of L-glufosinate and D-glufosinate. Patent Owner further explained that Long disclosed only the use of racemic glufosinate in aqueous herbicidal formations and by introducing evidence of unexpected results. Ex. 2001 at 218. The Examiner correctly withdrew the rejection and allowed the claims. Petitioner's challenge effectively repeats the Examiner's obviousness rejection. Pet. at iv. Separately, the Petitioner raises alleged challenges to the Examiner's unexpected results findings, which are nothing more than a naked request for a do-over. PGR would be a waste of the Board's resources, and institution should be denied. Ex. 2004.

2. The Office was Reasonable in Its Examination and Did Not Make a Material Error During Prosecution.

Petitioner incorrectly asserts that Examiner made two material errors: (1) misapprehending Long and (2) considering unexpected results in an anticipation context. Petitioner is incorrect.

First, the Examiner correctly determined that Long does not disclose L-glufosinate, because Long only discloses the racemic mixture, not the L-enantiomer as a standalone compound. As the Examiner recognized, Long discloses only racemic glufosinate. Ex. 1005, 3:10–22. The cited passage from Long does not disclose the L-enantiomer as a separate, standalone compound. But even if Long contained such a disclosure (it does not), the Petition fails to account for the fact that Patent Owner amended the claims to recite the presence of the D-enantiomer and the relative amounts of the L- and D-enantiomers. It cannot be disputed that Long fails

to disclose these limitations. Nor does Long disclose how one would synthesize or purify the L-enantiomer to achieve the stated concentration amounts or ratios recited in the claims. Finally, although the passage generally asserts that the L-enantiomer is biologically active, Long provides no supporting data or test results and thus does not meaningfully disclose the claimed ratios. *See Sanofi-Synthelabo v. Apotex, Inc.*, 550 F.3d 1075, 1084 (Fed. Cir. 2008) ("The knowledge that enantiomers may be separated is not 'anticipation' of a specific enantiomer that has not been separated, identified, and characterized."); *UCB, Inc. v. Accord Healthcare, Inc.*, 890 F.3d 1313, 1330 (Fed. Cir. 2018) (same) ("[The prior art] does not disclose its separation into individual enantiomers nor does it disclose any pharmaceutical data of the R enantiomer recited in [the asserted] claim . . . of the [Asserted] patent.").

Institution would not be an efficient use of Office resources, and Petitioner's arguments reflect, at most, disagreement with the Examiner's conclusions—precisely the circumstance in which the Board has declined to find material error. *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 (P.T.A.B. Feb. 13, 2020) (finding that when reasonable minds may differ regarding prior art and arguments, "it cannot be said that the Office erred in a manner material to patentability.").

Second, Petitioner makes the unsupported contention that the Examiner made an error of law by considering unexpected results in its anticipation analysis. As an

initial matter, Patent Owner does not agree that the Examiner relied on unexpected results to overcome the anticipation rejection. The prosecution history confirms that, in addressing the § 102 rejection, Patent Owner depended on claim amendments and arguments to overcome the rejection. Ex. 2001 at 317. Applicant only cited to the unexpected results in support of its argument that the '206 Patent was not obvious under § 103. Ex. 2001 at 318. The Examiner correctly based his allowance decision on Patent Owner's amendments and arguments. That is the only reasonable interpretation of the Notice of Allowance, in which the Examiner referenced back to the "claim amendments" and "persuasive arguments" that Patent Owner made in the office action response. Petitioner has not shown material error in this well-founded decision by the Examiner. *See Nutramax Lab'ys, Inc. v. Theodosakis*, No. CCB-08-879, 2009 WL 2778388, at *4 (D. Md. June 8, 2009) (finding that examiner based its allowance on patent owner's claim amendment and submitted expert affidavits, not on proof of unexpected results as defendant claimed). The Examiner committed no error during prosecution of the '206 Patent. This factor weighs in favor of denial.

B. The Petition Lacks Particularity under Section 312(a)(3).

A petitioner must identify "with particularity…the grounds on which the challenges to each claim are based, and the evidence that supports the grounds for challenge to each claim." 35 U.S.C. § 312(a)(3). "In a case where failure to meet the particularity requirement 'results in voluminous and excessive grounds,' the Board

can exercise its discretion to deny an entire petition 'in the interests of efficient administration of the Office and integrity of the patent system and as a matter of procedural fairness to Patent Owner." *IKEA Supply AG v. Everlight Elecs. Co., Ltd.*, IPR2024-00988, Paper 6 at 27-28 (P.T.A.B. Dec. 12, 2024) (quoting *Adaptics Ltd. v. Perfect Co.*, IPR2018-01596, Paper 20 at 24 (P.T.A.B. Mar. 6, 2019) (informative)). The Board has found use of "catch-all" grounds to be unduly burdensome and lacking in particularity. *Id*. at 28 (finding a petitioner's use of "and/or" results in "potentially at least 25 different combinations of Shin with the cited Thin Film Art"). Here, Petitioner's Ground 3 seeks to combine Long with "***one or more*** of the L-Glufosinate Synthesis References," which the Petition defines to include 6 unique references. Pet. at 36 n.4. Combining Long with "one or more" of those 6 references results in ***63 different combinations***. This lacks particularity and would be unreasonably burdensome for both the Board and Patent Owner to address.

C. Settled Expectations Strongly Favor Denial.

Patent Owner's reliance on settled expectations weighs in favor of denial. Patent Owner spent an "extraordinary amount of investment, time, and resources dedicated to research, development, trials, and regulatory approval" to obtain the '206 Patent. *See Amgen Inc. v. Bristol-Myers Squibb Co.*, IPR2025-00601, -602, -603, Paper 9 (P.T.A.B. July 24, 2025). Patent Owner relies on its patents to invest heavily in U.S. development, trials, and regulatory approval to bring its L-

glufosinate ammonium ("LGA") product to market. Its investment started eight years ago when it acquired the glufosinate ammonium business from Bayer. Ex. 2005, ¶ 6. Patent Owner then invested heavily in LGA by acquiring Glu-L™ technology for synthesizing and formulating LGA from AgriMetis, including this patent family. *Id.* ¶ 8. The first applications in this family were filed over ten years ago. *See* Ex. 2006; Ex. 2005; Ex. 2007. The '206 Patent, with priority dating back to 2016, covers useful and commercially successful L-glufosinate formulations.

Consistent with these long-standing investments, Patent Owner's settled expectations are grounded in a process that began before 2017. Patent Owner purchased the patent portfolio from AgriMetis, who invested in research and development necessary to isolate L-glufosinate for commercial use and pursued patent protection by filing provisional applications in 2016, while continuing research and development of L-glufosinate and salts. Patent Owner acquired this patent portfolio in 2020 and continued investing in research, greenhouse trials and small plot studies to evaluate product efficacy across relevant application environments, regions, and crops, while also continuing to prosecute this patent family. Patent Owner also initiated the regulatory approval process required to commercialize LGA in the U.S. and obtained an EPA registration in 2024, allowing it to sell its LGA product after an eight-year investment. Ex. 2008.

Patent Owner's investment in these products and methods relied on its

established and predictable patent rights. Patent Owner has hundreds of U.S.-based employees that support its Liberty® line of glufosinate/L-glufosinate products. Patent Owner formulates these products in the U.S. and has invested in real estate, personnel, marketing, and sales in support of these products. Due to weed resistance, Patent Owner also invests in stewardship of L-glufosinate to maximize longevity of L-glufosinate herbicides and minimize resistance of weeds as long as possible. Ex. 2005, ¶ 11. Patent Owner educates farmers, providing data-driven use recommendations to promote proper use rates to minimize resistance. *Id.* The covered product also competes with less effective glufosinate products sold by Petitioner (and others). Relying on its settled expectations of validity and enforceability of the ’206 Patent and its family members, Patent Owner has invested, and continues to invest, in manufacturing and other activities in the U.S.

Petitioner, by contrast, is a company whose business strategy is to be “your alternative” by making and distributing “post patent” products. Petitioner is a self-described “post patent supplier” of crop protection products. Ex. 2009. Petitioner does not invest in new innovations, as Patent Owner has done. Rather, Petitioner makes follow on products, typically after patent expiration. Here, Petitioner has decided to attack Patent Owner’s settled rights after Patent Owner’s decade-long investment to bring this product to market, presumably with intent to market L-glufosinate in the U.S. having avoided the costs of research and development.

Petitioner has long been aware of Patent Owner's LGA innovations. Despite this long history and Petitioner's knowledge of the patent family, Petitioner just now brings this first and only challenge. Notably, there is no co-pending litigation, thus no *Sotera*-type stipulation, and Patent Owner is unaware of any EPA registration efforts by Petitioner in the U.S.

The Office has found that a petitioner's actual knowledge of a patent family for a significant amount of time can create settled expectations that favor discretionary denial. *See, e.g.*, *NKT Photonics Inc. v. Omni Continuum LLC*, IPR2025-00839, Paper 10 (P.T.A.B. Sept. 4, 2025) (finding settled expectations favoring denial based on awareness of challenged patent's portfolio); *Datadome S.A. v. Arkose Labs Holdings, Inc.*, IPR2025-00693, -694, Paper 13 (P.T.A.B. Aug. 14, 2025) (similar). Allowing this challenge would threaten the reliance interests of Patent Owner and similarly situated innovators that rely upon patents to support the heavy investments required to bring new products like LGA to market. *See Amgen Inc.*, IPR2025-00601, -602, -603, Paper 9 (identifying reasons a patent owner may have settled expectations in a patent that has been in force for three years).

D. Compelling Economic Interests Favor Denial.

1. Patent Owner has Made Significant, Long-Standing Investments in U.S. Industry and U.S. Economy.

The parties are competitors. Indeed, Petitioner's own website expressly identifies Patent Owner's products as competitor products, confirming that

Petitioner competes directly with Patent Owner's agricultural products. Ex. 2010 at 2 ("Compare to: Liberty®"); Ex. 2011 at 2 ("Compare to: Finale® XL").[1]

For many years, and continuing to the present, Patent Owner has made significant investments in the U.S. economy and industry. Patent Owner's U.S. subsidiary and RPI in this matter, BASF Agricultural Solutions LLC employs approximately 500 employees in the U.S. dedicated to the glufosinate market. Ex. 2005 ¶ 13. Through this subsidiary and others, Patent Owner conducts LGA formulation research and development in multiple states. *Id.* ¶ 12, 14. Patent Owner and its subsidiaries also conduct greenhouse and small plot trials in the U.S. to evaluate how LGA products perform on and impact U.S. crops across different U.S. geographical regions. *Id.* ¶ 12.

Patent Owner is committed to innovation, including the development of agricultural solutions for American farmers. In furtherance of this commitment, Patent Owner regularly seeks and obtains U.S. patent rights, on which Patent Owner depends to protect its exclusive rights to its innovations. The '206 Patent exemplifies this reliance on the U.S. patent system and is the type of reliance that increases economic activity, economic growth, and flourishing societies. Ex. 2014 ("There is

[1] Liberty® and Finale® XL are BASF's glufosinate-ammonium products. Ex. 2012 at 1; Ex. 2013 at 3.

a consistent, strong correlation, if not a causal relationship, between property rights in inventions (patents) and growing innovation economies and flourishing societies."). Notably, Patent Owner is the only agricultural company in the U.S. to apply for and obtain EPA registration for LGA. Ex. 2008.

2. Petitioner Is a Generic Manufacturer That Has Focused Its Investments Abroad.

Petitioner, by contrast, is a generic manufacturer whose business model and recent investments are focused outside the U.S. As a generic manufacturer, Petitioner does not invest in innovating novel agricultural technologies in the U.S. Petitioner instead capitalizes on the investment in R&D by other parties. Ex. 2009 ("Albaugh offers a wide range of post-patent products globally").

By prioritizing generic products, Petitioner does not participate in the patent-backed incentives that Congress designed to encourage innovation, investment, and economic growth in the U.S. Here, the '206 Patent does not expire until February 28, 2037, and this Petition represents an attempt to undermine those protections. Petitioner presumably seeks to enter the LGA market before Patent Owner's patent rights expire, despite having made no comparable investment in LGA innovation.

a. A Chinese Agricultural Conglomerate Partially Owns Petitioner Reflecting Foreign Investment.

Petitioner is partially owned by the Chinese agricultural conglomerate Nutrichem Co. Ltd. ("Nutrichem"). Nutrichem describes its investment in Petitioner

as an "overseas acquisition [that] marks [] Beijing Nutrichem's internationalization process." Nutrichem's professed plan is to "use [Petitioner Albaugh's] existing business platform to strengthen global terminal market research and analysis and global product development and registration, enhance the influence of the company's products in the international agrochemical market, and rank among the ranks of the international first-line non-patent agrochemical companies, to become a leader in China's agrochemical industry." Ex. 2015.

b. Petitioner's Acquisition of Rotam Further Demonstrates Its Focus on Foreign Markets.

In likely fulfillment of Nutrichem's goal, Petitioner acquired Rotam AgroSciences Limited ("Rotam") to expand its portfolio in China and India. Ex. 2016 at 2 ("The addition of manufacturing facilities in China and India, and strong competencies and resources in research and development were strategically important to Albaugh's future business growth."); Ex. 2017. Rotam is a Hong Kong corporation. Ex. 2018. Petitioner acquired Rotam to extend into foreign markets, and increase market share in major global agricultural markets. *Id.*

These acquisitions and combinations reflect Petitioner's ex-U.S. focus on post-patent activities and do not reflect investments or interest in U.S. labor, farmers, or consumers. Petitioner's attempt to invalidate the '206 Patent runs counter to the goal of encouraging American investment. Petitioner's off-shoring stands in contrast to Patent Owner's focused investment in the U.S. economy. Such conduct

undermines, rather than advances, the policy goals of the patent system.

E. Heavy Reliance on Expert Testimony Favors Denial.

The Petition relies heavily on unfocused and conclusory testimony by Petitioner's purported technical expert, Dr. Suri S. Iyer. Dr. Iyer's declaration consists of 189 paragraphs of testimony spanning 82 pages, and the Petition repeatedly cites it to supply missing elements and reasoning not found in the asserted prior art. *See generally* Ex. 1003. Indeed, the Petition invokes a "POSITA" no fewer than 48 times, frequently using conclusory statements attributed to Dr. Iyer to assert that undisclosed features would have been "understood" or "known" by a POSITA. *See, e.g.*, Pet. at 2, 42, 43, 63 ("POSITA would understand . . . ."); *id.* at 6, 64 ("a POSITA would have been aware").

The "extent of the petition's reliance on expert testimony" is an express factor that may be considered when determining whether to institute a review. Ex. 2004 at 2–3; *see also* Ex. 2019 at Q.22 (advising that expert testimony should provide "focused testimony" and that "extensive reliance on expert testimony . . . suggest[s] that the questions are better resolved in an Article III court.").

Length aside, the declaration is substantively deficient. Large swaths of the Petition are identical copy-and-paste from Dr. Iyer's purported testimony found in his declaration, often with identical wording, identical charts and colors. *Compare, e.g.*, Pet. 61–75 (analysis of Ground 1), *with* Ex. 1003 ¶¶ 124–54 (analysis of Ground

1); Pet. 79–80 (Ground 2 analysis), *with* Ex. 1003 ¶¶ 155–56 (Ground 2 analysis); Pet. 81–94 (Ground 3 analysis), *with* Ex. 1003 ¶¶ 157–89 (Ground 3 analysis).

As the Board has consistently recognized, a declaration that repeats the petition verbatim "is conclusory and unsupported, adds little to the conclusory assertion for which it is offered to support, and is entitled to little weight." *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9, at 15 (P.T.A.B. Aug. 24, 2022) (precedential) (listing cases); *see also Kinetic Techs., Inc. v. Skyworks Sols., Inc.*, IPR2014-00529, Paper 8 at 14–15 (P.T.A.B. 2014). To the extent such testimony is even accepted, it is entitled to little weight. *See MarkForged Inc. v. Continuous Composites, Inc.*, IPR2022-01431, Paper 7 at 14 (P.T.A.B. Jan. 18, 2023).

The Petition further purports to rely on conclusory arguments (presented in the guise of expert opinion) to establish the mindset of a POSITA. As one example, Petitioner argues that "Dr. Iyer explains" how a "POSITA would understand" Long. Ex.1003, ¶125. And Petitioner also posits that "[a] POSITA would not understand that Long's formulations are limited to those comprising **racemic** glufosinate as Patent Owner argued during prosecution." Pet. at 63. Despite making these assertions in reliance on the Iyer Declaration, the Declaration does not explain how or why one of skill in the art would reach these conclusions. Using conclusory expert testimony to fill gaps in the teachings of the prior art is not permitted.

Moreover, general knowledge, such as expert testimony and common sense,

may not be used to supply a missing claim limitation. Ex. 2020. Yet the Petition does just that. Petitioner cites the Declaration for conclusory statements about the alleged motivation to make or use purified LGA, relying only on a POSITA's alleged common sense. Pet. at 80 ("As Dr. Iyer explains, based on Long alone, a POSITA would be motivated to make and use L-glufosinate ammonium formulations . . . at the weight percentages described in Long…and would have had a reasonable expectation of success. Ex.1003, ¶¶ 155–156."). Neither the Petition nor the Declaration describes how or why the POSITA would be motivated to make and use L-glufosinate formulations, much less at the percentages recited in the claims. Elsewhere, the Petition repeatedly invokes "common sense" and "routine optimization" to supply missing limitations. Pet. at 92 ("it would have been only a matter of routine optimization for a POSITA"); *Id.* at 93 ("POSITA's routine calculation"). Common sense cannot substitute for reasoned analysis and evidentiary support, particularly where the prior art lacks the claimed limitations. *Arendi S.A.R.L. v. Apple Inc.*, 832 F.3d 1355, 1362 (Fed. Cir. 2016); *iRobot Corp. v. SharkNinja Operating LLC*, Nos. 2023-1398, 2023-1416, 2024 WL 3687981, at *10 (Fed. Cir. Aug. 7, 2024) (requiring arguments to be "supported by evidence and a reasoned explanation" (quoting *Arendi*, 832 F.3d at 1363)).

Petitioner supplies no reasoning beyond the circular allegation that Long "describes and enables aqueous formulations of [LGA] having greater than 90% L-

isomer purity and 'one or more' of the 'additional components' at the amounts recited in claim 1." Pet. at 80. This is insufficient to show obviousness. *See Arendi*, 832 F.3d at 1362, 1366 ("[C]onclusory statements and unspecific expert testimony regarding searches in general are precisely what the Board relied upon in drawing its conclusion that it would have been 'common sense' to search a database for a telephone number to be added."). Instituting review would be a waste of the Board's resources in view of these deficiencies.

F. Petitioner's Failure to Identify Nutrichem as an RPI Weighs in Favor of Denial.

Under 35 U.S.C. § 322(a)(2), a petition for PGR may be considered "only if…the petition identifies all real parties in interest." The Trial Practice Guide and controlling precedent hold a non-named party is an RPI where it "exercised or could have exercised control over a party's participation in a proceeding," or otherwise had a significant relationship to the petition or the petitioner. *See Corning Optical Commc'ns RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 68 at 14–15 (P.T.A.B. Aug. 18, 2015) (precedential); Ex. 2021 at 12–15.

The *Corning* decision is instructive. There, the Board terminated the IPRs because the petitioner failed to name its parent and closely-related affiliates as RPIs, finding that both entities had the opportunity to control the IPR proceedings. The Board emphasized that the lines of corporate separation were "sufficiently blurred" such that insiders and outsiders could not easily distinguish where one entity ended

and another began and relied on the fact, among others, that certain individuals employed by one entity served in roles in the other entity. *See Corning*, IPR2014-00440, Paper 68 at 5, 16–17.

Applying *Corning* to Petitioner and its member, Nutrichem Co. Ltd. and Nutrichem USA, Inc. (collectively, "Nutrichem"), the following facts support the conclusion that one of, if not both, of the Nutrichem entities should have been identified as an RPI:

- Mr. Wang Rong, Chairman and CEO of Nutrichem and Vice Chairman of Huapont Life Sciences Co. Ltd. (Nutrichem's parent company) joined Petitioner's Board of Managers after Nutrichem's 2014 investment and currently remains in this position. Ex. 2022; Ex. 2023 Ex. 2024 at 2.
- Nutrichem's plan is to "use Albaugh's existing business platform to strengthen global terminal market research and analysis and global product development and registration, enhance the influence of the company's products in the international agrochemical market, and rank among the ranks of the international first-line non-patent agrochemical companies, to become a leader in China's agrochemical industry." Ex. 2015.
- Nutrichem stated that [Albaugh's CEO] will "pave the way for Nutrichem to further increase its holdings of Albaugh in the future, and lay a solid foundation for the integration of the two companies." *Id.*

- Petitioner listed "Nutrichem USA, Inc." as a member of Albaugh in its Rule 7.1 corporate disclosure statement in another case. Ex 2025.
- Nutrichem USA, Inc. is a subsidiary of Chinese entity Nutrichem Co. Ltd. Ex. 2026.
- As of 2014, Nutrichem had a 20% stake in Albaugh. Ex. 2026; Ex. 2027.
- Nutrichem's 2024 Annual Report lists Albaugh as a joint venture. Ex. 2028 at 261.

These facts show that Nutrichem has control or at least a significant relationship and opportunity to exercise control over this PGR and should have been identified as an RPI. Mr. Rong's position on Petitioner's Board of Managers suggests Nutrichem's control over Petitioner and its decisions. *See* Ex. 2022; Ex. 2024 at 2. Other factors listed above also strongly corroborate a significant relationship. Petitions that omit RPIs are "incomplete and . . . cannot be considered." *Corning*, IPR2014-00440, Paper 68 at 14–15, 24. Here, the omission of Nutrichem—the Beijing-headquartered multinational and its U.S. subsidiary—undermines the integrity of the proceeding, frustrates the statutory purpose of transparency, and prejudices Patent Owner's ability to assess estoppel, conflicts, and time bars.

IV. CONCLUSION

For the reasons above, Patent Owner respectfully requests that the Director exercise discretion to deny institution of the Petition.

Dated: April 27, 2026

By: */Matias Ferrario/*
Matias Ferrario
Reg. No. 51,082
Lead Counsel for Patent Owner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing PATENT OWNER'S BRIEF REQUESTING THAT INSTITUTION BE DENIED ON DISCRETIONARY GROUNDS has been served electronically via email upon the following:

Vincent L. Capuano – VLC@capuanoip.com
Jeffrey K. Mills – jmills@medlerferro.com
Neil P. Shull – nshull@medlerferro.com

Dated: April 27, 2026

By: */Matias Ferrario/*
Matias Ferrario
Reg. No. 51,082
Lead Counsel for Patent Owner