

Petitioner's Opposition to Patent Owner's Request for Discretionary Denial
PGR2026-00026 || U.S. Patent No. 12,305,206

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALBAUGH, LLC,

Petitioner,

v.

BASF SE,

Patent Owner.

Case: PGR2026-00026

U.S. Patent No. 12,305,206

**PETITIONER'S OPPOSITION TO PATENT OWNER'S REQUEST FOR
DISCRETIONARY DENIAL**

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LIST OF EXHIBITS

Exhibit	Description
1033	Declaration of Stuart Feldstein
1034	Curriculum Vitae of Stuart Feldstein
1035	English Language Translation of Nutrichem 2024 Annual Report
1036	BASF Report 2025
1037	Albaugh 2024 Sustainability Report
1038	CoAXium™ Wheat Production System

I. Introduction

The key question in this Petition is whether the Examiner committed material error in misapprehending the express disclosure of “*the L enantiomer of glufosinate and its ammonium salt*” (L-glufosinate ammonium or LGA) in the prior art Long reference (Ex.1005), an explicit teaching of the LGA stereoisomer that no reasonable examiner would have agreed “discloses only racemic glufosinate.” Pet. (Paper 2) at 1-3, 75-78. Patent Owner's brief dodges Long's explicit disclosure of LGA and seeks discretionary denial because the Examiner already considered the same passage in Long (PO Brief (Paper 8) at 5-6), a point that is self-evident as this challenge is based on the Examiner's material error in evaluating the disclosure in Long. Patent Owner repeats its prosecution argument that Long “discloses only racemic glufosinate” and inserts a new ambiguous phrase stating that Long does not disclose LGA “as a separate, standalone compound.” *Id.* However, Patent Owner never addresses the specific naming of LGA in Long or explains how that explicit disclosure falls short of describing LGA as “a separate standalone compound.”

Patent Owner devotes the bulk of its brief to portraying Petitioner Albaugh, LLC, an Iowa farm supply company founded in 1979, as a foreign dealer, and attempting to shield its newly broadened claims in the challenged '206 patent with the cloak of settled expectations for the six narrower patents it obtained previously from this same U.S. application family.

This PGR does not involve parallel proceedings, prior petitions with overlapping issues, inconsistent claim constructions, or foreign governments, and is not a “second bite at the apple.” *Magnolia Medical Technologies, Inc., v. Kurin, Inc.* IPR2026-00097 Paper 17 (Director May 14, 2026)(identifying examiner error as a valid basis for review). The Director should decline to exercise his discretion to deny institution under 35 U.S.C. §325(d) because the Petition shows that the Office committed material error in allowing the claims of the '206 patent.

II. The Examiner's Material Errors Warrant Post-Grant Review

As detailed in the Petition and supported by the Declaration of Petitioner's Expert Dr. Iyer (Ex.1003), the Examiner materially erred in evaluating the teachings of Long (Ex.1005). Pet. at 1-4, 75-77 and throughout; Ex.1003, ¶¶74, 124-126. It is an appropriate use of Office resources to institute review based on material error by an examiner, including in cases where the same prior art is at issue and where other discretionary denial factors are alleged. *Becton, Dickinson & Co. v. B. Braun Melsungen AG*, IPR2017-01586, Paper 8 (P.T.A.B. Dec. 15, 2017)(material error can be shown by pointing “out sufficiently how the Examiner erred in its evaluation of the asserted prior art”); *Ecto World, LLC v. RAI Strategic Holdings, Inc.* IPR2024-01280, Paper 13 at 6 (P.T.A.B. May 19, 2025)(“the previously presented art teaches the limitations of the challenged claims, and that no reasonable examiner could have found otherwise”); *Ascentcare Dental Products, Inc. v. Solmetex, LLC*, IPR2025-

01104, -01175, Paper 11 (P.T.A.B. Oct. 17, 2025)(material error in overlooking claim limitation described in same prior art relied on in petition); *Freightcar America, Inc. v. National Steel Car Ltd.*, IPR2025-01046, -01047, -01048, Paper 20 (P.T.A.B. Oct. 10, 2025)(same).

A. No Reasonable Examiner Would Conclude that Long is Limited to “Racemic” Glufosinate

The Examiner's first material error concerns the following express disclosure in column 3 of Long of “*the L enantiomer of glufosinate and its ammonium salt*” (LGA) as an example of a water soluble herbicide for use in its formulations:

Note that the compounds of formula (I) contain an asymmetric carbon atom. *The L enantiomer has been observed to be the biologically active isomer.* The formula (I) therefore is intended to encompass *all stereoisomers* and mixtures thereof, particularly the racemate, and the biologically active enantiomer in each case. *Examples of active ingredients of the formula (I) include* glufosinate and/or its ammonium salt such as in a racemic mixture; i.e., 2-amino-4-hydroxy(methyl)-phosphinoyl-butanoic acid and its ammonium salt, *the L enantiomer of glufosinate and its ammonium salt* or other salts

Ex.1005, 3 at 3:10-23 (emphasis added).

This is an explicit teaching in Long that “*the L-enantiomer of glufosinate and its ammonium salt*” (LGA) may be used as an active herbicidal compound in Long's formulations as a stereoisomer or in a mixture, “such as in a racemic

mixture,” but no reasonable examiner would conclude from this passage that Long “discloses only racemic glufosinate.”

The prosecution record shows that the Examiner flipped his position on the key disclosure in Long. The Examiner first applied Long in an anticipation rejection, stating that Long discloses compositions comprising the “**L-enantiomer glufosinate** and its salt.” Ex.1002, 18 (emphasis in original). After Patent Owner argued that the glufosinate in Long's formulations is “only **racemic** glufosinate” (*Id.*, 9-10 (emphasis in original)), the Examiner reversed his position on Long and issued a Notice of Allowance citing Patent Owner's “claim amendments, persuasive arguments and an Appendix A showing of unexpected results.” *Id.*, 3-4. The Examiner provided no explanation for changing his mind and accepting Patent Owner's argument that Long was limited to “only **racemic** glufosinate.”

As the express disclosure of LGA in Long makes clear, and as Dr. Iyer explains, a POSITA would understand that the active herbicidal compound in Long's formulations can be a purified ***stereoisomer***, specifically LGA, and no reasonable examiner or POSITA would conclude that Long's formulations are limited to **racemic** mixtures. Ex.1003, ¶¶124-126. *Advanced Bionics* at 9 (material error can be shown when reasonable minds cannot agree with the Examiner's treatment of the prior art or arguments).

The Petition provides a substantial showing of the Examiner's error and its materiality, and the Director should institute PGR for this reason alone.

B. Patent Owner's Data Does Not Demonstrate Unexpected Results and No Reasonable Examiner Would Have Considered It in Withdrawing an Anticipation Rejection

The Examiner also made a material error of law by withdrawing an anticipation rejection under 35 U.S.C. §102 (over Long) in view of certain field test data allegedly showing unexpected results.

As the Petition explains, in response to an obviousness rejection, Patent Owner submitted data from field tests comparing the phytotoxicity of L-glufosinate ammonium (LGA) with racemic glufosinate ammonium (GA) in glufosinate-tolerant soybeans. Pet. at 84-90. The field test data is not relevant evidence of nonobviousness of the challenged formulation claims because (1) the tests compared LGA and GA phytotoxicity in *the same formulation* and any observed differences must be due to the inherent phytotoxicities of LGA and GA on glufosinate-tolerant soybeans and not due to the particulars of the formulation, and (2) the data is for a single (unspecified) formulation applied on glufosinate-tolerant soybeans and not commensurate in scope with the challenged claims, which recite a broad genus of formulations comprising "additional components" at a range of concentrations, for use on any crops. *Id.*

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It is undisputed that the Examiner issued a Notice of Allowance reversing his anticipation rejection under 35 U.S.C. §102 in view of Long and stating that allowance was based, at least in part, on Patent Owner's "Appendix A showing unexpected results."

Claim Rejections: 35 USC § 102 (AIA)

Claims 1-6 rejected under 35 U.S.C. 102(a)(1) and 35 U.S.C. 102(a)(2) as being anticipated by Long DA., (US 8,445,406 B2, in IDS), is being withdrawn due to claim amendments, persuasive arguments and an Appendix A showing unexpected results (for details, see applicants' arguments/remarks dated 03/10/2025; pages 4-5).

Ex.1002, 3-4. Despite this clear statement by the Examiner, Patent Owner's brief omits "unexpected results" from the Examiner's stated reasons for allowance, contending that "the Examiner referenced back to the 'claim amendments' and 'persuasive arguments,'" and citing *Nutramax v. Theodosakis*, a twenty-year old district court decision where, unlike here, the examiner was not on the record stating "that the ultimate decision regarding anticipation relied solely, or even at all, on proof of unexpected results." PO Brief at 6-7; citing *Nutramax Lab's, Inc. v. Theodosakis*, No. CCB-08-879, Memorandum Opinion (Dkt 59) at p. 7, 2009 WL 2778388, at *4 (D. Md. June 8, 2009).

This is material error because no reasonable Examiner would withdraw an anticipation rejection under 35 U.S.C. §102(a) based on an alleged showing of

unexpected results, as it would be contrary to established law and practice before the Office. *See* MPEP §2131.04 and cases cited therein.

III. Application of “the L-Glufosinate Synthesis References” in Accordance with *In re Donohue* was Not Considered During Prosecution

As Dr. Iyer explained in his Declaration, the “L-Glufosinate Synthesis References” are a collection of six prior art patents and publications¹ describing various methods for preparing purified L-glufosinate and its salts, including LGA. Pet. at 51-59, 64-68; Ex.1003, ¶¶84-103, 127-130. Petitioner here applies the L-Glufosinate Synthesis References under the controlling precedent of *In re Donohue*, 766 F.2d 531 (Fed. Cir. 1985), where the L-Glufosinate Synthesis References are used to show that the primary reference (Long) includes an enabling disclosure of the preparation of a claimed compound (LGA). Pet. at 64-68. It is undisputed that the Examiner did not employ the L-Glufosinate Synthesis References in an anticipation rejection as they are used here, guided by *In re Donohue*.

Patent Owner's brief does not mention *In re Donohue* and does not dispute that the L-Glufosinate Synthesis References may be employed in an anticipation rejection to show that Long is enabling. Further, Patent Owner does not dispute that the L-Glufosinate Synthesis References describe methods of preparing purified

¹ “Schulz” (Ex. 1006); “Zeiss” (Ex. 1007); “Grabley” (Ex. 1008); “Nakanishi” (Ex. 1009); “Minowa” (Ex. 1010); and “Knorr” (Ex. 1011).

LGA. Patent Owner only asserts that certain L-Glufosinate Synthesis References were before the Examiner and others are allegedly cumulative of those considered by the Examiner for obviousness (PO Brief at 3-4), but the Examiner never employed the L-Glufosinate Synthesis References according to *In re Donohue* as part of an anticipation rejection based on Long.

Patent Owner's principal complaint about the L-Glufosinate Synthesis References is that there are too many of them, so they are redundant, and therefore the obviousness challenge of Ground III (Long in view of "one or more of" the L-Glufosinate Synthesis References) lacks particularity. PO Brief at 7-8. The fact that there is an abundance of prior art teaching the synthesis of LGA does not lack particularity; it provides the foundation under *In re Donohue* and under obviousness law for establishing what the prior art teaches to a POSITA in view of the description in Long to formulate LGA.

IV. Dr. Iyer's Declaration is Focused on a Few Key Points

Dr. Iyer's Declaration (Ex.1003) addresses a few discrete issues:

- Long: the Examiner's treatment of the explicit disclosure of LGA in Long (*id.*, ¶125) and the routine concentration calculations for preparing LGA formulations from the racemic Examples in Long (*id.*, ¶¶132, 184-188);

- L-Glufosinate Synthesis References: the undisputed prior art teachings for the synthesis and purification of LGA in the L-Glufosinate Synthesis References (*id.*, ¶¶127-128); and
- Field Test Data: the scope and interpretation of Patent Owner's field test data comparing phytotoxicity of LGA and GA offered to show unexpected results (*id.*, ¶¶167-178).

Dr. Iyer focuses on these discrete issues in his Declaration and provides a thorough summary of the information he has reviewed, including the challenged patent and its prosecution history and the prior art references asserted in the Petition, often quoting directly from those source documents.

On the key point of the disclosure of LGA in Long, Dr. Iyer provides a breakdown of the language in Long, highlighting the words and phrases that “expressly call out” LGA as a stereoisomer for use in Long's formulations. Ex.1003, ¶¶73-74, 124-126. Despite Dr. Iyer's word-for-word analysis of the key passage in Long, Patent Owner's brief complains that the Declaration is conclusory on this point. PO Brief at 16. Dr. Iyer highlighted the words and phrases in Long that informed the “how and why” of his conclusion that Long was not limited to racemic glufosinate, and nothing more should be required.

V. Patent Owner's Broadened Claim Strategy in the '206 Patent is Contrary to Settled Expectations

Patent Owner defied any settled expectations when the '206 patent issued in May 2025 with broad claims to formulations of purified LGA, untethered to the two-step enzymatic process described as the invention in its specification, and broader than the claims it had pursued in this application family since 2017 and as granted in the previous six patents in this family. Exs.1017, -19, -21, -23, -25, -28; see Prosecution History summary, Pet. at 19-35. Patent Owner has taken a more aggressive course after obtaining six patents in this family and for the first time obtained broader claims in the '206 patent, contrary to the settled expectations for this family of applications. *See Magnolia Medical*, IPR2026-00097, Paper 17 at 8-9, describing the "Settled Expectations" of the petitioner as a factor in determining whether to institute an AIA review. Petitioner filed this PGR challenge to those broader claims in the '206 patent within just nine months.

Patent Owner's brief fails to mention that the claims in the '206 patent are unrelated to its Title ("Methods for Making L-Glufosinate") and substantially distinct from the claims granted in the six earlier patents in this family, that recite the two-step enzymatic process for making L-glufosinate, e.g.,

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1. A method for making L-glufosinate, comprising:
reacting D-glufosinate with a D-amino acid oxidase (DAAO) enzyme to form PPO (2-oxo-4-(hydroxy(methyl)phosphinoyl)butyric acid) while aerating; and
aminating the PPO to L-glufosinate by a transaminase (TA) enzyme, using an amine group from one or more amine donors,
wherein at least 70% of the D-glufosinate is converted to L-glufosinate; and
wherein the method is performed ex vivo.

Ex.1017 at 23, or compositions comprising PPO, the intermediate of that process,

1. A composition comprising D-glufosinate, 2-oxo-4-(hydroxy(methyl)phosphinoyl)butyric acid (PPO), and L-glufosinate or a salt thereof, wherein L-glufosinate or the salt thereof is present in the composition at an amount of 80% by weight or greater based on the total amount of D-glufosinate, PPO, and L-glufosinate.

Ex.1019 at 23.

Until the '206 patent issued in May 2025, Patent Owner had not obtained broad claims in this family to formulations comprising purified L-glufosinate ammonium prepared by any process and limited only by the presence of some amount of D-glufosinate. The settled expectations were that Patent Owner would continue to pursue claims as it had in its earlier applications, directed to the two-step enzymatic "Method of Making L-Glufosinate" it described as its invention, and not that it would begin pursuing broadened claims untethered to its process. There were no settled expectations that Patent Owner would obtain patents in this family having

broadened claims unrelated to Patent Owner's two-step process and that those claims would never be challenged.

Patent Owner's argument for having settled expectations that the '206 patent would not be challenged mentions that the "first applications in this family were filed over ten years ago" and "with priority dating back to 2016," but says nothing about how the challenged claims in the '206 patent are broader in scope than those of the six earlier patents granted in this application family. PO Brief at 9.

Patent Owner relies on two Board decisions involving circumstances that bear no relation to those here and concern findings of settled expectations for patents in force for 17 years. *NKT Photonics Inc. v. Omni Continuum LLC*, IPR2025-00839, Paper 10 (P.T.A.B. Sept. 4, 2025)(petitioner had knowledge of the 17-year old challenged patent for over ten years); *Datadome S.A. v. Arkose Labs Holdings, Inc.*, IPR2025-00693, -694, Paper 13 (P.T.A.B. Aug. 14, 2025)(17-year old and 10-year old challenged patents also involved in parallel proceedings).

VI. Petitioner Has Named All Applicable Real Parties in Interest

In contrast to Patent Owner's assertions, Petitioner has named all real parties in interest (RPI) in its petition for PGR, in compliance with 35 U.S.C. §322(a)(2).

A patent owner challenging a petitioner's RPI disclosure must provide sufficient evidence to show the disclosure is inadequate. *Intellectual Ventures Mgmt., LLC v. Xilinx, Inc.*, IPR2012-00018, Paper 12 at 3 (P.T.A.B. Jan. 24, 2013).

As explained below, Patent Owner has not met this burden, and Petitioner has established that it has complied with the statutory requirement to identify all RPI over Patent Owner's allegations that it has not. *Zerto, Inc. v. EMC Corp.*, IPR2014-01254, Paper 35 at 6-7 (P.T.A.B. Feb. 12, 2015).

A. Nutrichem/Huapont Have No Control Over Albaugh's Participation in This PGR Proceeding

As noted in the Trial Practice Guide and discussed at length in *Corning Optical*, an alleged non-named RPI must be shown to have "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).

Patent Owner argues that Nutrichem Co. Ltd. and Nutrichem USA, Inc. (collectively "Nutrichem") or Nutrichem's parent company Huapont Life Sciences Co. Ltd. ("Huapont")(collectively "Nutrichem/Huapont") should have been identified as an RPI due to the presence of Mr. Rong Wang on Albaugh's Board of Managers, following Nutrichem's 2014 investment in Albaugh. PO Brief at 18-20. Patent Owner insinuates that Nutrichem/Huapont "has control or at least a significant relationship and opportunity to exercise control over this PGR" as a result of Mr. Wang's presence on this Board of Managers. *Id.* at 20.

Albaugh's Board of Managers consists of five members, four of which represent, and are appointed by, Albaugh Family Holdings, and the fifth is appointed by Nutrichem. Declaration of Stuart Feldstein (Ex. 1033) at ¶4. Mr. Wang was the fifth member from April 2018 to May 2025. *Id.* The current Nutrichem-appointed member is Mr. Xiaoliang Liu, who was appointed in May 2025. *Id.* The purpose of the Board of Managers is to review the performance of the business and approve material items and matters of strategic importance, including such things as the audit report on the company's global business, material acquisitions and transactions, and the incurrence of material indebtedness. *Id.* at ¶5. The Board of Managers is not involved in Albaugh's day-to-day business operations, such as marketing and product development operations, the management of which is delegated to the company's officers, including Albaugh's Chief Marketing Officer, Jens Thorsen. *Id.* at ¶¶6, 8.

The decision regarding whether to pursue this PGR is the responsibility of the company officers and was made solely by Albaugh's Chief Marketing Officer, Jens Thorsen. *Id.* at ¶¶7-8. Decisions regarding the strategy for this PGR have been and are being made by Mr. Feldstein and his in-house support team. *Id.* at ¶¶8-10.

Albaugh's Board of Managers has not been consulted on whether or not to pursue this PGR, or any of the strategic decisions regarding the PGR. *Id.* ¶¶7, 9. The Board of Managers does not "exercise control" and "could [not] have exercised

control” over Albaugh’s participation in this PGR. Thus, Mr. Wang and/or Mr. Liu and/or Nutrichem/Huapont do not “exercise control” and “could [not] have exercised control” over Albaugh’s participation in this PGR. *Id.* at ¶¶6, 8-11, ¶13. Mr. Wang and Mr. Liu and/or Nutrichem/Huapont have not been involved at any level in the decision-making process related to this PGR. *Id.* at ¶¶9-13.

**B. There is No Blurring of the Lines of Corporate Separation
Between Nutrichem/Huapont and Albaugh**

Patent Owner attempts to show that the actions of Albaugh and Nutrichem/Huapont are such that there is a “significant relationship” between the parties that would require identifying Nutrichem/Huapont as an RPI. PO Brief at 18-20. As discussed below, there is no evidence of such a relationship, and the 20% equity stake that Nutrichem/Huapont holds in Albaugh does not “blur the lines of corporation separation” between Albaugh and Nutrichem/Huapont. In addition, Albaugh is a U.S.-headquartered company that is *not* controlled by any foreign company and is not a “company[y] associated with foreign governments.” *See Magnolia Medical*, IPR2026-00097, Paper 17 at 4.

Nutrichem/Huapont became a 20% minority investor in Albaugh in May 2014. The remaining 80% is held by Albaugh Family Holdings. Ex.1033 at ¶4. Patent Owner has submitted a machine translation of the Nutrichem Company Limited, 2024 Annual Report in which Albaugh is allegedly referred to as a “joint

venture.” PO Brief at 20. Petitioner provides herewith a certified, English Translation of relevant pages of the same 2024 Annual Report clarifying that Albaugh is not “a controlled subsidiary” of Nutrichem/Huapont. Ex.1035. The 2024 Annual Report lists Albaugh as “an equity-participating subsidiary of the Company” (*id.* at 3); “the Company’s associate,” (*id.* at 4); and one of its “Clients” (*id.* at 6), distinguishing it from four other companies that Nutrichem considers “controlled subsidiaries.” *Id.* at 7. Finally, on page 261 of the Annual Report, the relationship between Nutrichem and Albaugh is referred to as an “Associate.” *Id.* at 8. These pages from the certified translation of the 2024 Annual Report demonstrate that Nutrichem/Huapont does not consider Albaugh to be an entity over which it has any control (i.e., not a “controlled subsidiary”), and instead considers Albaugh to be an “Associate,” “Client,” or “Equity-participating Subsidiary.” Nutrichem/Huapont and Albaugh have “well-defined corporate boundaries” and there is no evidence that it is unclear to insiders or outsiders “where one [entity] ends and another begins.” *Atlanta Gas Light Co. v. Bennett Regulator Gaurds, Inc.*, IPR2013-00453, Paper 88 at 11 (PTAB Jan. 6, 2015).

Nutrichem/Huapont are not funding these PGR proceedings; all legal fees are being paid for by Albaugh. Ex.1033 at ¶¶9, 12. All invoices from counsel for Petitioner are sent to Albaugh and Albaugh pays those invoices. *Id.* at ¶9. Unlike the facts in *Corning*, there is no evidence that Nutrichem/Huapont “funded [or are

funding] these [PGR] proceedings” and thus should have been named as an RPI. *Corning Optical*, IPR2014-00440, Paper 68 at 16.

Nutrichem/Huapont are not parties to the engagement agreement between Albaugh and its lead or back-up counsel in this PGR. Ex.1033 at ¶¶9. Contrast with *Corning*, where the two entities were referred to in the same engagement agreement with Petitioner's outside counsel. *Corning Optical*, IPR2014-00440, Paper 68 at 17. Albaugh hired its desired outside counsel to handle this PGR proceeding without any influence from Nutrichem/Huapont. Ex.1033 at ¶¶9, 11.

There is no evidence of any activities by Nutrichem/Huapont and Albaugh that in any way “blur[] the lines of corporate separation such that the [non-named entity] could control conduct of the *inter partes* review.” *Arutz Gaming Macau, Ltd. v. MGT Gaming, Inc.*, Case IPR2014-01288, Paper 13 at 11-12 (P.T.A.B. Feb. 20, 2015). Furthermore, there is no evidence that Nutrichem/Huapont, or any foreign sovereign, had any control over this PGR filing. Ex.1033 at ¶¶9-13. Thus, Nutrichem/Huapont is not an RPI and Petitioner is fully compliant with Director Squires's guidance in *Magnolia Medical*. See *Magnolia Medical*, IPR2026-00097, Paper 17 at 8-9.

VII. No Compelling Economic Interests Favor Discretionary Denial

Patent Owner depicts Petitioner as a “generic manufacturer whose business model and recent investments are focused outside the U.S.,” while portraying itself

as “committed to innovation, including the development of agricultural solutions for American farmers.” PO Brief at 12-13. These characterizations are skewed and inaccurate.

Patent Owner, Badische Anilin- & Soda-Fabrik (“BASF”) is a multinational diversified chemicals corporation headquartered in Ludwigshafen, Germany, that employs 65,073 people in Europe and 21,582 people in Asia Pacific, compared with 15,652 people in North America (including Canada and the United States).

Ex.1036 at 6. BASF describes its strategic “Focus” as follows:

In addition to China, we want to expand our presence primarily in India and five ASEAN countries (Indonesia, Malaysia, Singapore, Thailand and Vietnam) by strengthening local organizational structures, our production sites and our research and development (R&D) activities.

Id. at 17.

In contrast, Petitioner Albaugh is a U.S. company founded by Dennis Albaugh in Ankeny, Iowa in 1979, which remains its headquarters today. Ex.1033 at ¶3; Ex.1037 at 4. Albaugh’s vision and mission as an agricultural company is to provide competitively priced solutions and increased choices to the U.S. farmer. Ex.1033 at ¶13.

North America (including the United States) accounted for 34% of Albaugh’s sales in 2024, which was the largest by region. Ex.1037 at 6. Albaugh’s recent

investments in the U.S. and the American Farmer include a joint release of CoAxiu™ in 2018 with Colorado Wheat Research Foundation, Inc. and Limagrain Cereal Seeds, the first farmer-requested, farmer-developed production system available in the U.S. (Ex. 1038 at 5); an expansion of a manufacturing facility in St. Joseph, Missouri in 2022;; and joining the North Carolina Plant Sciences Initiative Innovation Hub in 2025 to collaborate with researchers and students at North Carolina State University to address the challenges confronting U.S. agriculture (Ex.1033 at ¶14). Albaugh's recent acquisitions of Rotam AgroSciences Limited ("Rotam") was made to increase its product offerings available to its entire customer base, including U.S. farmers. *Id.* Albaugh does not make any decisions to serve the goals or objectives of any foreign entity or sovereign, including any foreign companies such as Nutrichem. *Id.* at ¶15. *See Magnolia Medical*, IPR2026-00097 Paper 17 at 8.

VIII. Priority is Not an Issue in this Petition

There is no issue of priority in this PGR. Each of the prior art references relied on by Petitioner qualifies as prior art to the challenged claims under 35 U.S.C. §102(a)(1), regardless of whether the claims are entitled to the benefit of the abandoned 2016 provisional applications.

It is undisputed that each of the prior art references (Long and each of the L-Glufosinate Synthesis References) was patented or published before March 2, 2015

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– more than one year before the March 2, 2016 earliest provisional application date for the '206 patent. Pet. at 45-59. The non-issue of priority is acknowledged by Dr. Iyer, who noted that “[m]y opinions would be the same regardless of whether the claims of the '206 patent are entitled to their earlier filing date of March 2, 2016, or the later date of February 28, 2017.” Ex. 1003, ¶16.

Patent Owner does not dispute that Long and the L-Glufosinate Synthesis References qualify as prior art to the challenged claims. However, according to Patent Owner, the Director should deny the Petition because Petitioner's incorrect statement concerning the impact of the express abandonment of the 2016 provisional applications “reflects the weakness of the Petition.” PO Brief at 3. While Petitioner's statement, that the challenged claims are not entitled to claim priority to the expressly abandoned provisional applications, was incorrect, it is irrelevant to any issue in this PGR. The Director should decline Patent Owner's invitation to deny the Petition based on an irrelevant misstatement concerning priority, especially given the strong showing of material error by the Examiner in granting the challenged claims.

Date: May 26, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of May, 2026, a copy of this Petitioner's Opposition to Patent Owner's Request for Discretionary Denial, along with the Exhibits thereto, has been served on Patent Owner electronically by email upon the following:

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