

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 OBJECTIONS TO
EVIDENCE UNDER 37 C.F.R. § 42.64(b)(1)**

In accordance with 37 C.F.R. § 42.64(b)(1) and the Federal Rules of Evidence (“FRE”), Petitioner Albaugh, LLC (“Petitioner” or “Albaugh”) objects to the admissibility of evidence submitted by Patent Owner during the preliminary proceeding prior to institution. These objections are submitted within 10 business days of institution of this proceeding on July 28, 2026. Petitioner lists the evidence objected to and provides the grounds for its objections below. Petitioner also objects to Patent Owner’s reliance on, or citation to, any objected evidence in its papers.

I. Identification of Challenged Evidence and Grounds

Petitioner objects to Exhibits 2004, 2005, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, and 2018 as irrelevant and inadmissible under FRE 401 and 402 because these exhibits do not make any fact more or less probable than it would be without the evidence, and as confusing and a waste of time under FRE 403 because these exhibits are not relevant to any issue remaining in this proceeding. Patent Owner relied on these exhibits during the preliminary proceeding in support of its arguments that settled expectations and compelling economic interests favored discretionary denial. These exhibits are irrelevant under FRE 401 and 402, however, because none demonstrate that any settled expectations or compelling economic interest favored discretionary denial. The Director rejected Patent Owner’s argument in the Institution Decision.

Petitioner's Opposition to Patent Owner's Request for Discretionary Denial
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Petitioner objects to Exhibits 2021, 2022, 2023, 2024, 2025, 2026, 2027, and 2028 as irrelevant and inadmissible under FRE 401 and 402 because these exhibits do not make any fact more or less probable than it would be without the evidence, and as confusing and a waste of time under FRE 403 because these exhibits are not relevant to any issue remaining in this proceeding. Patent Owner relied on these exhibits during the preliminary proceeding in support of its arguments that Petitioner's failure to name Nutrichem Co. Ltd. ("Nutrichem") as a real party-in-interest ("RPI") favored discretionary denial. These exhibits are irrelevant under FRE 401 and 402, however, because none demonstrate that Nutrichem is an unnamed RPI. The Director rejected Patent Owner's argument in the Institution Decision.

Petitioner objects to Exhibits 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, and 2028 as irrelevant and inadmissible under FRE 401 and 402 because these exhibits do not make any fact more or less probable than it would be without the evidence. Patent Owner does not rely on these exhibits in its Preliminary Response.

Petitioner objects to any portion of the Declaration of David A. Hunt, Ph.D. (Ex. 2131) concerning allegations of unexpected results, including §VI.C. at ¶¶59-68, purporting to rely on Patent Owner's field test data in the prosecution history of

the Challenged Patent (Exhibit 2001 at p. 313),¹ as lacking relevance since the experimental setup does not actually measure the specific claim limitations or compare the claimed subject matter to the closest prior art being analyzed under FRE 401; as based on unreliable methods under FRE 702; as hearsay since the testing data and conclusions rely on unsworn third-party lab reports or out-of-court statements without an applicable exception under FRE 802; and as lacking authentication since the raw data, equipment printouts, or lab records lack proof that they are genuine and unaltered under FRE 901. Petitioner likewise objects to any portion of Patent Owners Preliminary Response purporting to rely on those portions of Exhibit 2131, including ¶¶59-68.

Petitioner objects to Exhibit 2133 (the Declaration of Ingo Meiners) as improperly proffering expert testimony and as based on unreliable methods under FRE 701-702 without designating Mr. Meiners as an expert; as confusing, prejudicial, and a waste of time under FRE 403 because Mr. Meiners is employed by Patent Owner as R&D Group leader - Biology R&D/Weed Control at BASF Agricultural Solutions US LLC and has a financial interest in the proceeding's outcome (Ex. 2133, ¶ 2); as lacking relevance since the experimental setup does not actually measure the specific claim limitations or compare the claimed subject

¹ Paragraphs 64-68 of Exhibit 2131 mistakenly reference page 213 of Exhibit 2001.

matter to the closest prior art being analyzed under FRE 401; as hearsay since the testing data and conclusions rely on unsworn third-party lab reports or out-of-court statements without an applicable exception under FRE 802; and as lacking authentication since the raw data, equipment printouts, or lab records lack proof that they are genuine and unaltered under FRE 901. Petitioner likewise objects to any portion of Patent Owners Preliminary Response purporting to rely on Exhibit 2133.

Petitioner reserves the right to further object to the exhibits and evidence submitted by Patent Owner during the preliminary proceeding to the extent Patent Owner relies on these exhibits and evidence during the trial phase of this proceeding. For example, during the preliminary proceeding, Patent Owner relied on the contents of numerous exhibits for the truth of the matter asserted and therefore these exhibits and Patent Owner's use thereof are objectionable as inadmissible hearsay. See FRE 801 and 802. Regardless, the Director rejected Patent Owner's settled expectations, compelling economic interest, and RPI arguments related to these exhibits and evidence in the Institution Decision. To the extent Patent Owner raises its settled expectations, compelling economic interest, or RPI arguments once again during the trial portion of this proceeding and relies on the exhibits and evidence submitted during the preliminary proceeding, Petitioner reserves the right to further object to the exhibits and evidence and any use thereof by Patent Owner.

II. Conclusion

To the extent Patent Owner fails to correct the defects identified above, Petitioner may file a motion to exclude under 37 C.F.R. § 42.64(c) at the appropriate time in accordance with the Scheduling Order in this proceeding.

Date: August 11, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of August, 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:

Mattias Ferrario - mferrario@ktslaw.com

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Date: August 11, 2026

Respectfully Submitted,
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