

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 OBJECTIONS TO EVIDENCE SUBMITTED WITH
PETITIONER'S PETITION**

Pursuant to 37 C.F.R. § 42.64(b), Patent Owner, BASF SE (“Patent Owner”) objects as follows to the admissibility of the evidence served with Petitioner’s Petition filed on February 20, 2026.

Ex. No.	Description	Objections
1002	Excerpts from FH of US Appln. No. 18/435,340	FRE 106: This exhibit includes incomplete information as it introduces only part of the file history.
1003	Declaration of Suri S. Iyer, Ph.D.	<p>37 C.F.R. § 42.65: The exhibit contains expert testimony that does not disclose the underlying facts or data on which the opinion is based.</p> <p>FRE 402: The exhibit includes information that is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: The exhibit includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.</p> <p>FRE 702/703 (Unreliable expert testimony): The exhibit contains statements and opinions that are not admissible under FRE 702 or 703. For example, the witness lacks specialized knowledge and skill in the relevant field of art (formulation and testing of herbicidal compositions) that will help the trier of fact to understand the evidence or to determine a fact in issue. Further, the exhibit fails to identify facts or data supporting the witness’s conclusory testimony, and that testimony thus is not based on sufficient facts or data. Further, the testimony is not the product of reliable principles and methods, and the witness fails to</p>

		<p>reliably apply the principles and methods of the facts of the case.</p> <p>The exhibit contains opinions for which the factual bases have not been disclosed, including numerous broad and/or conclusory statements made without analysis or sufficient citation to evidence or explanation. <i>See</i> Ex. 1003 ¶¶ 156, 162–166, 186. This exhibit contains opinions that are a legally erroneous use of secondary references and expert testimony to fill gaps in the teachings of the prior art. Ex. 1003 ¶¶ 129–30. Moreover, the exhibit may contain statements that are not Dr. Iyer’s opinion, as large portions of the declaration are nearly identical to the Petition. <i>Compare, e.g.</i>, Pet. 61–75 (analysis of Ground 1), <i>with</i> Ex. 1003 ¶¶ 124–54 (analysis of Ground 1); Pet. 79–80 (Ground 2 analysis), <i>with</i> Ex. 1003 ¶¶ 155–56 (Ground 2 analysis); Pet. 81–94 (Ground 3 analysis), <i>with</i> Ex. 1003 ¶¶ 157–89 (Ground 3 analysis). <i>See also</i> Consolidated Trial Practice Guide, November 2019, at 36 (“Expert testimony, however, cannot take the place of a disclosure in a prior art reference, when that disclosure is required as part of the unpatentability analysis.”).</p> <p>Dr. Suri lacks the required qualification under either party’s proposed definition of a person of ordinary skill in the art.</p> <p>FRE 802: The exhibit and statements included therein are inadmissible hearsay, and the witness has not been made available for cross-examination.</p>
1004	Curriculum Vitae of Suri S. Iyer, Ph.D.	Patent Owner objects to Dr. Iyer’s CV for the same reasons set forth above for his Declaration (Ex. 1003).

		<p>FRE 402: The exhibit includes information that is not relevant to any ground upon which trial was instituted. Petitioner includes a single cite and does not otherwise rely on this exhibit in the Petition. Petitioner’s expert cites this exhibit in his expert report (Ex. 1003) without stating the exhibit’s relevance or referring to any specific portion. <i>See</i> Ex. 1003 ¶¶ 7, 12. <i>See also</i> 37 CFR § 42.104 (“The Board may exclude or give no weight to the evidence where a party has failed to state its relevance or to identify specific portions of the evidence that support the challenge.”).</p> <p>FRE 403: The exhibit includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.</p> <p>FRE 702/703 (Unreliable expert testimony): The witness lacks specialized knowledge in the relevant field of art (formulation and testing of herbicidal compositions) that will help the trier of fact to understand the evidence or to determine a fact in issue.</p> <p>FRE 802: The exhibit and statements included therein are inadmissible hearsay.</p>
1006	Arno Schulz et. al., Stereospecific Production of the Herbicide Phosphinothricin (Glufosinate) by Transamination: Isolation and Characterization of a	<p>FRE 402: The exhibit includes information that is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: The exhibit includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting</p>

	Phosphinothricin-Specific Transaminase from <i>Escherichia coli</i> (Applied and Environmental Microbiology, Jan. 1990).	<p>time, or needlessly presenting cumulative evidence, including because the reference is not prior art to the challenged patent.</p> <p>FRE 802: The exhibit and statements included therein are inadmissible hearsay, and the witness has not been made available for cross-examination.</p> <p>FRE 901: Petitioner has not produced evidence sufficient to support a finding that the exhibit is what Petitioner claims it is.</p> <p>Petitioner contends this exhibit “published in 1990 and qualifies as prior art to the claims of the ’206 patent under 35 USC §102(a)(1).” However, the date on which Petitioner relies is hearsay, inadmissible to prove the date the exhibit was published.</p> <p>The exhibit does not qualify as prior art. Petitioner provides no evidence that the exhibit was publicly accessible before the priority date of the ’206 Patent and thus has not established that the exhibit is prior art. Petitioner failed to identify the circumstances of the reference’s dissemination or how interested persons of ordinary skill in the relevant art could locate the reference. <i>See In re Power Integrations</i>, No. 18-144, at 2-4 (Fed. Cir. Aug. 16, 2018) (upholding Board decision denying institution where a Petition “failed to identify the circumstances of the reference’s dissemination or how interested persons of ordinary skill in the relevant art could locate the reference”).</p>
1007	Hans-Joachim Zeiss, Enantioselective Synthesis of L-Phosphinothricin from L-Methionine	FRE 402: The exhibit includes information that is not relevant to any ground upon which trial was instituted.

	<p>and L-Glutamic Acid via L-Vinylglycine (Tetrahedron 1992).</p>	<p>FRE 403: The exhibit includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence, including because the reference is not prior art to the challenged patent.</p> <p>FRE 802: The exhibit and statements included therein are inadmissible hearsay, and the witness has not been made available for cross-examination.</p> <p>FRE 901: Petitioner has not produced evidence sufficient to support a finding that the exhibit is what Petitioner claims it is.</p> <p>Petitioner contends this exhibit “published in 1992 and qualifies as prior art to the claims of the ’206 patent under 35 USC §102(a)(1).” However, the date on which Petitioner relies is hearsay, inadmissible to prove the date the exhibit was published.</p> <p>The exhibit does not qualify as prior art. Petitioner provides no evidence that the exhibit was publicly accessible before the priority date of the ’206 Patent and thus has not established that the exhibit is prior art. Petitioner failed to identify the circumstances of the reference’s dissemination or how interested persons of ordinary skill in the relevant art could locate the reference. <i>See In re Power Integrations</i>, No. 18-144, at 2-4 (Fed. Cir. Aug. 16, 2018) (upholding Board decision denying institution where a Petition “failed to identify the circumstances of the reference’s dissemination or how interested persons of ordinary skill in the relevant art could locate the reference”).</p>
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1013	Excerpts from FH of US Patent Appln No. 62/302,421	<p>FRE 402: The exhibit includes information that is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: The exhibit includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence, including because the reference is not prior art to the challenged patent.</p> <p>FRE 106: This exhibit includes incomplete information as it purports to introduce only excerpts of the file history.</p>
1014	Excerpts from FH of US Patent Appln No. 62/336,989	<p>FRE 402: The exhibit includes information that is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: The exhibit includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence, including because the reference is not prior art to the challenged patent.</p> <p>FRE 106: This exhibit includes incomplete information as it purports to introduce only excerpts of the file history.</p>
1015	Excerpts from FH of US Patent Appln No. 62/413,240	<p>FRE 402: The exhibit includes information that is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: The exhibit includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice,</p>

		<p>confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence, including because the reference is not prior art to the challenged patent.</p> <p>FRE 106: This exhibit includes incomplete information as it purports to introduce only excerpts of the file history.</p>
1016	Excerpts from FH of US Patent Appln. No. 15/445,254	<p>FRE 402: The exhibit includes information that is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: The exhibit includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence, including because the reference is not prior art to the challenged patent.</p> <p>FRE 106: This exhibit includes incomplete information as it purports to introduce only excerpts of the file history.</p>
1018	Excerpts from FH of US Patent Appln. No. 15/787,448	<p>FRE 402: The exhibit includes information that is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: The exhibit includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence, including because the reference is not prior art to the challenged patent.</p>

		FRE 106: This exhibit includes incomplete information as it purports to introduce only excerpts of the file history.
1020	Excerpts from FH of US Patent Appln. No. 16/287,290	<p>FRE 402: The exhibit includes information that is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: The exhibit includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence, including because the reference is not prior art to the challenged patent.</p> <p>FRE 106: This exhibit includes incomplete information as it purports to introduce only excerpts of the file history.</p>
1022	Excerpts from FH of US Patent Appln. No. 16/997,133	<p>FRE 402: The exhibit includes information that is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: The exhibit includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence, including because the reference is not prior art to the challenged patent.</p> <p>FRE 106: This exhibit includes incomplete information as it purports to introduce only excerpts of the file history.</p>
1024	Excerpts from FH of US Patent Appln. No. 27/530,018	FRE 402: The exhibit includes information that is not relevant to any ground upon which trial was instituted.

		<p>FRE 403: The exhibit includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence, including because the reference is not prior art to the challenged patent.</p> <p>FRE 106: This exhibit includes incomplete information as it purports to introduce only excerpts of the file history.</p>
1026	U.S. Patent No. 8,383,137 (“Mondaressi”)	<p>FRE 402: The exhibit includes information that is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: The exhibit includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence, including because the reference is not prior art to the challenged patent.</p> <p>35 USC § 321; 37 CFR § 42.104: Petitioner does not present this exhibit as prior art that forms any basis for any asserted invalidity ground. <i>See also</i> 37 CFR § 42.104 (“The Board may exclude or give no weight to the evidence where a party has failed to state its relevance or to identify specific portions of the evidence that support the challenge.”).</p>
1027	Excerpts from FH of US Patent Appln. No. 18/179,136	<p>FRE 402: The exhibit includes information that is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: The exhibit includes information whose probative value to any ground upon</p>

		<p>which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence, including because the reference is not prior art to the challenged patent.</p> <p>FRE 106: This exhibit includes incomplete information as it purports to introduce only excerpts of the file history.</p>
1029	U.S. Patent No. 10,888,095 (“Bhoge et al.”)	<p>FRE 402: The exhibit includes information that is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: The exhibit includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence, including because the reference is not prior art to the challenged patent.</p> <p>35 USC § 321; 37 CFR § 42.104: Petitioner does not present this exhibit as prior art that forms any basis for any asserted invalidity ground. <i>See also</i> 37 CFR § 42.104 (“The Board may exclude or give no weight to the evidence where a party has failed to state its relevance or to identify specific portions of the evidence that support the challenge.”).</p>
1030	Monika Ruhland et al., A comparative investigation of the metabolism of the herbicide glufosinate in cell cultures of transgenic	<p>FRE 402: The exhibit includes information that is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: The exhibit includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice,</p>

	<p>glufosinate-resistant and non-transgenic oilseed rape (<i>Brassica napus</i>) and corn (<i>Zea mays</i>), Environ. Biosafety Res. (2002).</p>	<p>confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence, including because the reference is not prior art to the challenged patent.</p> <p>FRE 802: The exhibit and statements included therein are inadmissible hearsay, and the witness has not been made available for cross-examination.</p> <p>FRE 901: Petitioner has not produced evidence sufficient to support a finding that the exhibit is what Petitioner claims it is.</p> <p>Petitioner contends this exhibit “published in 2002 and qualifies as prior art to the challenged claims patent [sic] under 35 USC §102(a)(1).” However, the date on which Petitioner relies is hearsay, inadmissible to prove the date the exhibit was published.</p> <p>The exhibit does not qualify as prior art. Petitioner provides no evidence that the exhibit was publicly accessible before the priority date of the '206 Patent and thus has not established that the exhibit is prior art. Petitioner failed to identify the circumstances of the reference’s dissemination or how interested persons of ordinary skill in the relevant art could locate the reference. <i>See In re Power Integrations</i>, No. 18-144, at 2-4 (Fed. Cir. Aug. 16, 2018) (upholding Board decision denying institution where a Petition “failed to identify the circumstances of the reference’s dissemination or how interested persons of ordinary skill in the relevant art could locate the reference”).</p> <p>35 USC § 321; 37 CFR § 42.104: Petitioner does not present this exhibit as prior art that forms any basis for any asserted invalidity ground. <i>See also</i> 37 CFR § 42.104 (“The Board</p>
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		may exclude or give no weight to the evidence where a party has failed to state its relevance or to identify specific portions of the evidence that support the challenge.”).
1031	Federal Register, 63(88):25195-6 (1998)	<p>FRE 402: The exhibit includes information that is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: The exhibit includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence, including because the reference is not prior art to the challenged patent.</p> <p>35 USC § 321; 37 CFR § 42.104: Petitioner does not present this exhibit as prior art that forms any basis for any asserted invalidity ground. <i>See also</i> 37 CFR § 42.104 (“The Board may exclude or give no weight to the evidence where a party has failed to state its relevance or to identify specific portions of the evidence that support the challenge.”).</p>
1032	Hans-Joachim Zeiss, Enantioselective Synthesis of Both Enantiomers of Phosphinothricin via Asymmetric Hydrogenation of α -Acylamido Acrylates, J. Org. Chem. 1991	<p>FRE 402: The exhibit includes information that is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: The exhibit includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence, including because the reference is not prior art to the challenged patent.</p>

		<p>FRE 802: The exhibit and statements included therein are inadmissible hearsay, and the witness has not been made available for cross-examination.</p> <p>FRE 901: Petitioner has not produced evidence sufficient to support a finding that the exhibit is what Petitioner claims it is.</p> <p>35 USC § 321; 37 CFR § 42.104: Petitioner does not present this exhibit as prior art that forms any basis for any asserted invalidity ground. <i>See also</i> 37 CFR § 42.104 (“The Board may exclude or give no weight to the evidence where a party has failed to state its relevance or to identify specific portions of the evidence that support the challenge.”).</p> <p>The exhibit does not qualify as prior art. Petitioner has not alleged and does not provide evidence that the exhibit was publicly accessible before the priority date of the ’206 Patent and thus has not established that the exhibit is prior art. Petitioner failed to identify the circumstances of the reference’s dissemination or how interested persons of ordinary skill in the relevant art could locate the reference. <i>See In re Power Integrations</i>, No. 18-144, at 2-4 (Fed. Cir. Aug. 16, 2018) (upholding Board decision denying institution where a Petition “failed to identify the circumstances of the reference’s dissemination or how interested persons of ordinary skill in the relevant art could locate the reference”).</p>
1033	Declaration of Stuart Feldstein	<p>FRE 402: The exhibit includes information that is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: The exhibit includes information whose probative value to any ground upon</p>

		<p>which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.</p> <p>FRE 802: The exhibit and statements included therein are inadmissible hearsay, and the witness has not been made available for cross-examination.</p>
1034	CV of Stuart Feldstein	<p>FRE 402: The exhibit includes information that is not relevant to any ground upon which trial was instituted. Petitioner does not cite or otherwise rely on this exhibit in any papers filed with the Board. <i>See also</i> 37 CFR § 42.104 (“The Board may exclude or give no weight to the evidence where a party has failed to state its relevance or to identify specific portions of the evidence that support the challenge.”).</p> <p>FRE 403: The exhibit includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence, including because the reference is not prior art to the challenged patent.</p> <p>FRE 802: The exhibit and statements included therein are inadmissible hearsay, and the witness has not been made available for cross-examination.</p>
1035	Certified Translation Nutrichem 2024 Annual Report	<p>FRE 106: This exhibit includes incomplete information as it purports to introduce only excerpts of the file history.</p>

1036	BASF Report 2025	<p>FRE 402: The exhibit includes information that is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: The exhibit includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence, including because the reference is not prior art to the challenged patent.</p> <p>FRE 802: The exhibit and statements included therein are inadmissible hearsay.</p>
1037	Albaugh 2024 Sustainability Report	<p>FRE 402: The exhibit includes information that is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: The exhibit includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence, including because the reference is not prior art to the challenged patent.</p> <p>FRE 802: The exhibit and statements included therein are inadmissible hearsay.</p>
1038	CoAXium™ Wheat Production System driven by Aggressor™	<p>FRE 402: The exhibit includes information that is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: The exhibit includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative</p>

		evidence, including because the reference is not prior art to the challenged patent. FRE 802: The exhibit and statements included therein are inadmissible hearsay.
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Respectfully submitted,

Dated: August 11, 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 Mandatory Notice Pursuant to 37 C.F.R. §42.8 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: August 11, 2026

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