

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AFTON CHEMICAL CORPORATION

Petitioner

v.

INFINEUM INTERNATIONAL LIMITED

Patent Owner

IPR2017-01321

Patent 8,076,274

PETITIONER'S REPLY TO
PATENT OWNER'S RESPONSE ON GROUNDS 1, 2, AND 5

TABLE OF CONTENTS

I.	Introduction.....	1
II.	The ‘274 Patent Employs Antioxidants to Address the Oxidation of Magnesium Detergents	1
III.	Ground 1:Colclough Anticipates Claims 1-11	3
A.	Component G of Colclough is Used at 0.4 wt.%	3
B.	Petitioner Tested SASH of Colclough Using the Identified Commercial Product.....	4
C.	Burden of Production, Not Patentability, Shifted to Infineum	4
	1. Infineum Fails the Burden of Production	5
	2. Diluted Components Clearly Indicated in Colclough.....	5
	3. MSDS Component Ranges Cannot Support Infineum’s Assertions.....	6
D.	Infineum’s Other Arguments are Without Merit	8
IV.	Ground 2:Nicholson in view of ACEA-2004 Renders Claims 1-12 Obvious	8
A.	Example IV of Nicholson Invalidates Claims 1-12	9
	1. Petitioner’s Evidence is Unrebutted	9
	2. Motivation to Combine Nicholson and ACEA-2004	9
	3. No Impermissible Hindsight	10
B.	Nicholson Provides a Specific Example That Meets the Broad Limitations of Claim 1	13
C.	Age of Nicholson is not Relevant to Obviousness Combination.....	14
D.	No Teaching Away in the Cited References	14

E.	Infineum Cannot Base Unexpected Results on Examples that are Not Commensurate with the Scope of the Claims	15
F.	Obvious to Use Magnesium Range in Claim 3	17
G.	Dispersants in Example IV have 0.8 mass% nitrogen and this Satisfies Claims 6 and 7	18
1.	Infineum used Misleading Nitrogen Calculations	21
2.	No Criticality of Range Shown.....	24
H.	Fenoglio Does Not Indicate the Proposed Variation in Nitrogen	25
V.	Ground 5:Nicholson and ACEA-2004 in view of Arrowsmith ‘371 Renders Claim 13 Obvious	26
VI.	Conclusion	26

TABLE OF AUTHORITIES**Federal Cases**

<i>Altaire Pharm. v. Paragon Biotech, Inc.</i> , App.No. 2017-1487, pp.14-19 (Fed. Cir. May 2, 2018).....	20
<i>Celeritas Techs., Ltd. v. Rockwell Int’l Corp.</i> , 150 F.3d 1354, 1361 (Fed. Cir. 1998)	8
<i>Eli Lilly & Co. v. Barr Labs</i> , 251 F.3d 955, 971 (Fed. Cir. 2001)	13
<i>EWP Corp. v. Reliance Universal Inc.</i> , 755 F.2d 898, 907 (Fed. Cir. 1985).....	12
<i>In re Clemens</i> , 622 F.2d 1029, 1036 (C.C.P.A. 1980).....	15
<i>In re Gurley</i> , 27 F.3d 551, 553 (Fed. Cir. 1994).....	14
<i>In re McLaughlin</i> , 443 F.2d, 1392, 1395 (C.C.P.A. 1971).....	11
<i>In re NuVasive, Inc.</i> , 842 F.3d 1376, 1380 (Fed. Cir. 2016)	26
<i>In re Peterson</i> , 315 F.3d 1325, 1330 (Fed. Cir. 2003)	17
<i>In re Rosenberger</i> , 116 F.2d 507, 511 (C.C.P.A. 1941).....	8
<i>In re Woodruff</i> , 919 F.2d 1575 (Fed. Cir. 1990).....	25
<i>In re Wright</i> , 569 F.2d 1124, 1127 (CCPA 1977)	14
<i>Iron Grip Barbell Co. v. USA Sports, Inc.</i> , 392 F.3d 1317, 1325 (Fed. Cir. 2004)	14
<i>KSR Int’l Co. v. Teleflex Inc.</i> , 550 U.S. 398 (2007)	12
<i>Tech. Licensing Corp. v. Videotek, Inc.</i> , 545 F.3d 1316, 1326–27 (Fed. Cir. 2008).5	

Wm. Wrigley Jr. Co. v. Cadbury Adams USA LLC, 683 F.3d 1356, 1362-64 (Fed. Cir. 2012)15

Wyers v. Master Lock Co., 616 F.3d 1231, 1246 (Fed. Cir. 2010).....16

Cases

3D-Matrix, Ltd. v. Menicon Co., Ltd., IPR2014-00398, Paper 11:9 (PTAB Aug. 1, 2014)19

Costco Wholesale Corp. v. Robert Bosch LLC, IPR2016-00038, Paper 68:17 (PTAB Mar. 30, 2017)20

Monsanto Co. v. Pioneer Hi-Bred Int'l, Inc., IPR2013-00022, Paper 43:4 (PTAB Apr. 11, 2013)19

Federal Regulations

29 C.F.R. §1910.1200, Table-D.1 (2012)7

37 C.F.R. §42.65 19, 20

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.