

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SYNGENTA CROP PROTECTION AG,
Petitioner,

v.

FMC Corporation,
Patent Owner.

PGR2020-00028
Patent 10,294,202 B2

Before SUSAN L. C. MITCHELL, ZHENYU YANG, and
CYNTHIA M. HARDMAN, *Administrative Patent Judges*.

HARDMAN, *Administrative Patent Judge*

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

The current record reflects a disputed issue of fact as to whether Petitioner has identified all real parties in interest in this proceeding. Specifically, in the Petition, Petitioner identifies itself as the real party in interest, and states “[w]hile not a real-party-in-interest, Syngenta AG owns 100% of Syngenta Crop Protection AG.” Paper 1, 3. In its Preliminary Response, Patent Owner argues that the Petition “fails to name all real parties in interest” because Petitioner did not name parent companies Syngenta AG, ChemChina, and CNAC. Paper 7, 2, 61.

Under 35 U.S.C. § 322(a)(2), a petition for post-grant review may be considered only if it identifies all real parties in interest. We generally accept a petitioner’s initial identification of real parties in interest, unless the patent owner presents some evidence to support its argument that an unnamed party should be included as a real party in interest. *See Worlds Inc. v. Bungie, Inc.*, 903 F.3d 1237, 1242 (Fed. Cir. 2018) (explaining that “an IPR petitioner’s initial identification of the real parties in interest should be accepted unless and until disputed by a patent owner,” and that “a patent owner must produce some evidence to support its argument that a particular third party should be named a real party in interest”). Because Patent Owner here “produce[d] *some* evidence that tends to show that a particular third party should be named a real party in interest,” *id.* at 1244 (emphasis in original), and in the interest of addressing early in the proceeding whether Syngenta AG, ChemChina, and/or CNAC are real parties in interest, the Board authorizes the parties to submit additional information to address Patent Owner’s contention that Syngenta AG, ChemChina, and CNAC are real parties in interest here.

ORDER

In consideration of the foregoing, it is hereby:

ORDERED that on or before September 22, 2020, Petitioner may, if it chooses, update its Mandatory Notices to add one or more of Syngenta AG, ChemChina, and/or CNAC as a real party in interest;

FURTHER ORDERED that, if after the above deadline Patent Owner continues to dispute whether Syngenta AG, ChemChina, and/or CNAC are real parties in interest in this proceeding, Patent Owner is authorized to file, on or before September 29, 2020, a brief, which shall not exceed 7 pages, limited to addressing whether Syngenta AG, ChemChina, and/or CNAC are real parties in interest in this proceeding;

FURTHER ORDERED that Petitioner is authorized to file, on or before October 6, 2020, a response to any such brief, which response shall not exceed 7 pages, and shall be limited to addressing whether Syngenta AG, ChemChina, and/or CNAC are real parties in interest in this proceeding;

FURTHER ORDERED that the parties may support their briefs with citations to relevant evidence; and

FURTHER ORDERED that no additional briefing is authorized at this time.

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