

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BOREALIS AG
Petitioner

v.

BERRY PLASTICS CORPORATION,
Patent Owner

Case IPR2016-00235
Patent 8,883,280
Filed: November 30, 2015

**PATENT OWNER'S PRELIMINARY RESPONSE
UNDER 37 C.F.R. § 42.107**

I. Introduction

Petitioners filed the above-captioned *inter partes* review petition to challenge the validity of claims 1-14, 36-42, 44-48, 51-54, 61, 62, 65, and 66 of U.S. Patent No. 8,883,280 (“the ‘280 Patent”). Berry Plastics Corporation (“the Patent Owner”) respectfully submits this preliminary response to the petition.

II. Statutory Disclaimer Under 37 C.F.R. § 1.321(a)

The Patent Owner has disclaimed claims 1-14, 36-42, 44-48, 51-54, 61, 62, 65, and 66 of the ‘280 Patent under 35 U.S.C. § 253(a) in compliance with 37 C.F.R. § 1.321(a). A copy of the submission of a Form PTO/SB/43 effecting this disclaimer is attached as Exhibit 2002. The filing of this statutory disclaimer is not an admission or acquiescence by Patent Owner regarding the merits of Petitioner’s challenge to the disclaimed claims. Patent Owner disagrees with Petitioner’s arguments in the petition and reserves the right to rebut such arguments with respect to any other patents and/or patent applications.

III. Counsel

Because all of the claims challenged in the above-captioned petition are no longer at issue, an *inter partes* review should not be instituted. See 37 C.F.R.

§ 42.107(e) (“No *inter partes* review will be instituted based on disclaimed claims.”)

The Patent Owner respectfully requests that the petition be dismissed.

The Patent Trial and Appeal Board is hereby authorized to charge any fees associated with IPR 2016-00235 to its Deposit Account 080219.

Respectfully Submitted,

/John V. Hobgood/

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Certificate of Service

I hereby certify that on March 10, 2016, I caused a true and correct copy of the foregoing materials:

- Patent Owner's preliminary response under 37 C.F.R. § 42.107
- Exhibit 2002

to be served via email on the following attorneys for Petitioner:

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