

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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BOREALIS AG,  
Petitioner,

v.

BERRY PLASTICS CORPORATION,  
Patent Owner.

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Case IPR2016-00235  
Patent 8,883,280 B2

Before FRED E. McKELVEY, SALLY C. MEDLEY, and SHERIDAN K. SNEDDEN, *Administrative Patent Judges*.

McKELVEY, *Administrative Patent Judge*.

DECISION

Declining to Institute *Inter Partes* Review  
37 C.F.R. § 42.108

I. Introduction

A. Background

Pending before the Board is a “PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 8,883,280 [B2].” Paper 2.

Patent Owner timely filed a Preliminary Response. Paper 9.

### B. The Parties

Petitioner is Borealis AG. Paper 2, page 1.

Patent Owner is Berry Plastics Corporation. Paper 5, page 2.

### C. Involved Patent

The involved patent is U.S. Patent No. 8,883,280 B2 issued 11 November 2014. Ex. 1001 (“Polymeric Material for an Insulated Container”).

The patent contains claims 1–66. Ex. 1001, col. 24:2 to col. 30:26.

Petitioner seeks cancellation of claims 1–14, 36–42, 44–48, 51–54, 61, 62, 65, and 66. Paper 2, page 1:1–2.

### D. Preliminary Response

In its Preliminary Response, Patent Owner—while disagreeing with the arguments made in the Petition—nevertheless advises the Board that it has filed a disclaimer of the claims of the patent sought to be cancelled by the Petition. Paper 9, page 2; Ex. 2002 (Disclaimer of Patent under 37 CFR 1.312(a)—signed by counsel for Patent Owner).

Subsequent to filing of the Preliminary Response, Patent Owner filed a second disclaimer of the claims sought to be cancelled. Ex. 2003, page 4 (Disclaimer of Patent under 37 CFR 1.321(a)—signed by Jason Humphrey, Vice-President Tax—Berry Plastics Corp.).

## II. Analysis

The Director has delegated to the Board authority to determine whether to institute an *inter partes* review. 37 C.F.R. § 42.4(a) (2015).

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The Director has determined that:

The patent owner may file a statutory disclaimer under 35 U.S.C. 253(a), in compliance with §321(a) of this chapter, disclaiming one or more claims in the patent. No *inter partes* review will be instituted based on disclaimed claims.

37 C.F.R. § 41.107(e) (2015).

In view of the disclaimer (Ex. 2003), an *inter partes* review will not be instituted.

### III. Order

Upon consideration of the Petition (Paper 2) and the second disclaimer (Ex. 2003), and for the reasons given, it is

ORDERED that the Petition is *denied* as to all challenged claims.

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