

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

PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 8,883,280

TABLE OF CONTENTS

	Page
I. PRELIMINARY STATEMENT	1
II. STATEMENT OF PRECISE RELIEF REQUESTED FOR EACH CLAIM CHALLENGED	4
A. Claims for Which Review is Requested.....	4
B. Statutory Grounds of Challenge.....	4
III. BACKGROUND ART	4
A. Polymeric Materials for Forming Insulative Cellular Structures.....	4
B. High Melt Strength Polypropylene (HMS-PP) Blends for Forming Insulative Cellular Structures	5
1. HMS-PP	5
2. Other polymer materials to control properties of foams.....	6
3. Additives	7
IV. THE '280 PATENT.....	9
A. Overview of the Disclosure.....	9
B. Claim Construction.....	10
1. Preamble (Claims 1 and 44-47)	11
2. “impact copolymer”(Claims 44, 46, 47, 51-54, 61, 65, 66)	12
3. “inert gas” (Claims 46 and 51).....	13
4. “extrudate” (Claim 52).....	14
5. “article” (Claim 53).....	15

V.	CLAIMS 1-14, 36-42, 44-48, 51-54, 61, 62, 65, AND 66 OF THE '280 PATENT ARE UNPATENTABLE.....	15
A.	Ground 1: EP '716 Anticipates Claims 1-2, 4-6, 8-11, 13, 14, 36, 45, 46, 65, and 66	15
1.	Claim 1: Independent formulation claim	16
2.	Claim 2: First material is a homopolymer	22
3.	Claim 4: First polymer melting temperature	23
4.	Claim 5: Polyethylene-based second polymer.....	23
5.	Claims 6 and 8: Nucleating agent.....	24
6.	Claims 9, 10, and 36: Blowing agent.....	24
7.	Claim 11: Fatty acid-based slip agent.....	25
8.	Claims 13 and 14: Additional components.....	25
9.	Claim 45: Independent formulation claim	26
10.	Claim 46: Independent formulation claim	27
11.	Claims 65 and 66: Independent process and structure claims	28
B.	Ground 2: EP '716 Renders Obvious Claims 5, 37-39, and 46	30
1.	Claim 5: Polyethylene material.....	30
2.	Claims 37-39: Blowing agent	31
3.	Claim 46: Independent formulation claim.....	34
C.	Ground 3: EP '716 in View of Park Renders Claim 7 Obvious	35
D.	Ground 4: EP '716 in View of Fackler, as Evidenced by PP Handbook, Encyclopedia, or Lee, Renders Claims 40 and 41 Obvious.....	37

E.	Ground 5: EP '716 in View of Fackler and Park, as Evidenced by PP Handbook, Encyclopedia, or Lee Renders Claim 42 Obvious.....	40
F.	Ground 6: EP '716 in View of Sheppard, as Evidenced by PP Handbook, Renders Claim 12 Obvious.....	43
G.	Ground 7: EP '716 in View of the Admitted Prior Art HMS-PP, DAPLOY™ WB140 HMS, Renders Claims 1-6, 8-11, 13-14, 36-39, 44-46, 51-53, 61, 62, 65, and 66 Obvious	45
	1. Claims 1, 2, 4-6, 8-11, 13, 14, 36-39, 45, 46, 65, and 66	49
	2. Dependent Claims 3 and 4: Melt strength and melting temperature.....	49
	3. Independent Claims 44 and 51.....	50
	4. Independent Claims 52 and 53.....	51
	5. Independent Claim 61	52
	6. Dependent Claim 62: A rolled strip.....	53
H.	Ground 8: EP '716 in View of DAPLOY™ WB140 HMS and Park Renders Claims 7 and 47 Obvious.....	54
	1. Dependent Claim 7: Citric acid based nucleating agent.....	54
	2. Independent Claim 47	54
I.	Ground 9: EP '716 in View of DAPLOY™ WB140 HMS, and Further in View of Sheppard and PP Handbook, Renders Claims 12 and 54 Obvious	55
	1. Dependent Claim 12: Slip agent	55
	2. Independent Claim 54.....	56
J.	Ground 10: EP '716 in View of DAPLOY™ WB140 HMS and Further in View of Fackler, as Evidenced by PP Handbook, Encyclopedia, or Lee, Renders Claims 40 and 41 Obvious.....	57

K.	Ground 11: EP '716 in View of DAPLOY™ WB140 HMS and Further in View of Fackler and Park, as Evidenced by PP Handbook, Encyclopedia, or Lee, Renders Claim 42 Obvious	58
L.	Ground 12: EP '716 in View of DAPLOY™ WB140 HMS and Park, and Further in View of Reiners and PP Handbook, Renders Claim 48 Obvious	58
VI.	MANDATORY NOTICES	59
A.	Real Party-in-Interest:	59
B.	Related Matters.....	59
C.	Lead and Back-Up Counsel, and Service Information	59
VII.	GROUND FOR STANDING.....	60
VIII.	CONCLUSION.....	60

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.