

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BOREALIS AG
Petitioner

v.

BERRY PLASTICS CORPORATION,
Patent Owner

Case IPR2016-00564
Patent 8,883,280
Filed: February 12, 2016

**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, 15-36, 40, 42, 43, 54-61, 63, and 64 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 Disclaimers Under 37 C.F.R. § 1.321(a)

The Patent Owner previously disclaimed claims 1-14, 36-42, 44-48, 51-54, 61, 62, 65, and 66 of the ‘280 Patent in statutory disclaimers filed on March 9, 2016, and March 22, 2016. Copies of the disclaimers and related documents are of record in this proceeding as Exhibits 2101 and 2102.

The Patent Owner has now also disclaimed claims 15-35, 43, 55-60, 63, and 64 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 and related documents effecting this disclaimer is attached as Exhibit 2103. 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. Conclusion

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 2016-00564 to its Deposit Account 080219.

Respectfully Submitted,

/Yung-Hoon Ha/

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CERTIFICATE UNDER 37 CFR § 42.24(d)

Under the provisions of 37 CFR § 42.24(d), the undersigned hereby certifies that the word count for the foregoing Patent Owner's Preliminary Response totals 301 words, as counted by the word processing program used to prepare this paper, which is less than the 14,000 words allowed under 37 CFR § 42.24(a)(i).

Respectfully submitted,

/Yung-Hoon Ha/

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Pursuant to 37 C.F.R. § 42.63(e) Patent Owner submits the following current Exhibit List and Exhibit 2103.

<u>Exhibit</u>	<u>Description</u>
2101	Statutory disclaimer and related documents filed in U.S. Patent No. 8,883,280 on March 9, 2016
2102	Statutory disclaimer and related documents filed in U.S. Patent No. 8,883,280 on March 22, 2016
2103	Statutory disclaimer and related documents filed in U.S. Patent No. 8,883,280 on May 23, 2016

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