

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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BASF CORPORATION  
Petitioner

v.

INGEVITY SOUTH CAROLINA, LLC  
Patent Owner

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Case IPR2019-00202  
Patent RE38,844

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**PETITIONER'S REQUEST FOR  
REHEARING OF INSTITUTION DECISION**

Mail Stop PATENT BOARD  
Patent Trial and Appeal Board  
U.S. Patent & Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

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Petitioner BASF requests rehearing of the Board’s decision denying institution of *Inter Partes* Review of U.S. Patent No. RE38,844. (See Paper 10 (“DI”).) For each of the three supposed “faults” identified in the Institution Decision, the Board overlooked or misunderstood portions of the record or made factual findings unsupported by substantial evidence. BASF respectfully requests the Board review the decision denying institution and institute a trial on the merits.

## **I. Standard of Review**

The Board reviews its institution decisions for abuse of discretion. 37 C.F.R. § 42.71(c). Abuse of discretion occurs if the decision is based on an erroneous interpretation of law, a factual finding not supported by substantial evidence, or an unreasonable judgment in weighing relevant factors. *In re Gartside*, 203 F.3d 1305, 1315–16 (Fed. Cir. 2000). A request for rehearing must “identify all matters the party believes the Board misapprehended or overlooked.” 37 C.F.R. § 42.71(d).

## **II. Argument**

The Board identified three “faults” that, added together, persuaded the Board that the Petition did not have a reasonable likelihood of prevailing. (DI, pp. 16–20.) Each of the alleged “faults” is based on matters that the Board misapprehended, overlooked, or on erroneous factual findings not supported by substantial evidence.

### **A. The Board erred in finding no reason that the Meiller/Park honeycomb would have 73.8% voidages.**

The Board found that “there is no reason in the record to conclude that the resulting honeycomb” from Park’s Formulation D “would have voidages of exactly 73.8%.” (DI, p. 18.) The Board’s conclusion overlooked BASF’s arguments and is based on factual findings that are not supported by substantial evidence.

**1. The Board overlooked evidence that voidage percentage is tunable.**

The Board made a factual finding that Park “does not give us any reason to conclude that voidages percentage is a property of the honeycomb that may be tuned to whatever value is desired.” (DI, p. 19.) The Board overlooked BASF’s substantial evidence that the percentage of voids in a honeycomb is adjustable and thus tunable simply by varying the physical structure of the honeycomb cells produced by the extrusion process. (Petition, p. 37; BASF-1003, ¶108.)

**a. Proposed combination of Park with Meiller or Abe.**

The ’844 patent discloses a two-stage approach to automotive evaporative emissions: a first high-capacity stage and a second low-capacity stage that captures “bleed emissions” from the first stage. (Petition, p. 7.) Bleed emissions occur when a car is not running. (Petition, pp. 1–2.) The claims use an invented term, “incremental adsorption capacity” or “IAC,” to define both stages. This capacity measure is directly correlated with the well-known measurement, butane working capacity (BWC). (*Id.* at 11–12.) The high-capacity stage requires an adsorbent volume with an IAC above 35 g/L and the low-capacity stage requires an adsorbent volume with

an IAC below 35 g/L. (*Id.* at 18.) The first stage is conventional. (*Id.* at 22–25.) The '844 patent discloses an embodiment, Example 2, for the low-IAC second stage using a honeycomb structure “prepared according to the method described in [Park].” (Petition, p. 38 (quoting BASF-1001, 7:29–31).) The patent indicates that the Example 2 honeycomb achieves a low IAC through two different dilutions: (1) adding “extrusion formulation ingredients” such as clay (“compositional dilution”) and (2) forming the ingredients into a honeycomb having an “open cell structure” which introduces “bed voidages” or holes. The voidages further reduce the amount of carbon per unit area of the honeycomb (“structural dilution”). (*Id.* at 38–39.)

BASF asserted Meiller, Abe, and Park in obviousness grounds. (Petition, pp. 4–5.) Both Meiller and Abe disclose the same two-stage approach of the '844 patent by using a honeycomb made of activated carbon in a second stage, but do not describe the IAC of their honeycombs. (Petition, pp. 19–21, 58–59.) BASF demonstrated that a POSITA would have combined Meiller with Park and Abe with Park, resulting in honeycombs with inherently low IAC. (Petition, pp. 18, 22, 38, 59.)

BASF provided evidence that the honeycombs of Park utilize both types of dilution used by the '844 patent to achieve its Example 2 low-IAC honeycomb. First, Park describes “structural dilution” using a preferred “open frontal area” of 70–85%, desirably 73.8%. (Petition, p. 36.) Second, Park discloses four formulations (labeled A–D) that each mix carbon with extrusion formulation ingredients with vary-

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