

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TIDE INTERNATIONAL (USA), INC.,
Petitioner,

v.

UPL NA INC.,
Patent Owner

Case IPR2020-01113
Patent 7,473,685

PETITIONER'S REPLY TO UPL'S RESPONSE

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EXHIBIT LIST

- 1001 U.S. Patent No. 7,473,685 (“the ’685 patent”)
- 1002 Prosecution History of the ’685 patent
- 1003 Declaration of William Geigle
- 1004 Curriculum Vitae of William Geigle
- 1005 U.S. Patent No. 6,387,388 (“Misselbrook”)
- 1006 Chinese Patent Publication No. 1127588A
- 1007 Certified Translation of Chinese Patent Publication No. 1127588A (“CN ’588”)
- 1008 Japanese Patent Publication No. 9-315902A
- 1009 Certified Translation of Japanese Patent Publication No. 9-315902A (“JP ’902”)
- 1010 U.S. Patent No. 6,030,924 (“Mayer”)
- 1011 “Basic Information about Pesticide Ingredients,” U.S. Environmental Protection Agency, at <https://www.epa.gov/ingredients-used-pesticide-products/basic-information-about-pesticide-ingredients>, last accessed 6/4/20
- 1012 “Reregistration Eligibility Decision for Acephate,” U.S. Environmental Protection Agency, Prevention, Pesticides, and Toxic Substances, September 2001
- 1013 Search Results for Chemical Name: Acephate that are “Active” at EPA’s Pesticide Product and Label System, at: <https://iaspub.epa.gov/apex/pesticides/f?p=PPLS:1>, last accessed 6/3/20
- 1014 Search Results for Chemical Name: Acephate that are “Inactive” at EPA’s Pesticide Product and Label System, at:

<https://iaspub.epa.gov/apex/pesticides/f?p=PPLS:1>, last accessed 6/3/20

- 1015 Order: re Claim Construction *UPL NA Inc. v. Tide International (USA), Inc. et al.*, No. 8:19-cv-1201-RSWL-KS (C.D. Cal.), Doc. 83 (4/10/20)
- 1016 CIPAC webpage describing “History,” at <https://www.cipac.org/index.php/about-us/history>, last accessed 6/6/20
- 1017 Excerpts of *Particle Size Characterization*, Ajit Jillavenkatesa et al., National Institute of Standards and Technology, Technology Administration, U.S. Department of Commerce, Special Publication 960-1 (Jan. 2001), at https://tsapps.nist.gov/publication/get_pdf.cfm?pub_id=850451, last accessed 6/4/20
- 1018 U.S. Patent No. 6,875,381 (“the ’381 patent”)
- 1019 Excerpt from the Prosecution History of the ’381 patent
- 1020 U.S. Patent Publication No. 2002/0114821A1 (“Lescota”)
- 1021 U.S. Patent No. 4,892,866 (“Itzel”)
- 1022 CIPAC webpage entitled “MT 47 – Persistent Foaming,” at <https://www.cipac.org/index.php/f18/370-mt-47-persistent-foaming>, last accessed 6/6/20
- 1023 CIPAC webpage entitled “Errata,” at https://www.cipac.org/index.php?option=com_content&view=category&id=97&Itemid=562, last accessed 6/6/20
- 1024 Excerpts from *Chemistry and Technology of Agrochemical Formulations*, D.A. Knowles, Ed. (1998)
- 1025 “Sulfonation and Sulfation Processes,” Norman C. Foster, *Chemithon* (1997)
- 1026 CIPAC webpage entitled “Content of CIPAC Handbook F,” at <https://www.cipac.org/index.php/methods-publications/handbooks/handbook-f>, last accessed 6/10/20

- 1027 Joint Status Report, *UPL NA Inc. v. Tide International (USA), Inc. et al.*, No. 8;19-cv-1201-RSWL-KS (C.D. Cal.), Doc. 84 (4/20/20)
- 1028 May 2020 email correspondence from *UPL NA Inc. v. Tide International (USA), Inc. et al.*, No. 8;19-cv-1201-RSWL-KS (C.D. Cal.)
- 1029 “China Judicial Assistance Information,” U.S. Department of State, Bureau of Consular Affairs, at <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/China.html>, last accessed 6/16/20
- 1030 “Hong Kong Judicial Assistance Information,” U.S. Department of State, Bureau of Consular Affairs, at <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/HongKong.html>, last accessed 6/16/20
- 1031 “Ministry of Foreign Affairs of the People’s Republic of China National Immigration Administration Announcement on Temporary Suspension of Entry by Foreign Nationals Holding Valid Chinese Visas or Residence Permits,” Mar. 26, 2020, at https://www.fmprc.gov.cn/mfa_eng/wjbxw/t1761867.shtml via Wayback Machine, last accessed 6/16/20
- 1032 “Proclamation on Suspension of Entry as Immigrants and Nonimmigrants of Persons who Pose a Risk of Transmitting 2019 Novel Coronavirus,” White House, at <https://www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-immigrants-nonimmigrants-persons-pose-risk-transmitting-2019-novel-coronavirus/>, last accessed 6/16/20
- 1033 “Chapter 599C, Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation,” Hong Kong e-Legislation, Feb. 8, 2020, at <https://www.elegislation.gov.hk/hk/cap599C>, last accessed 6/16/20
- 1034 Order: re Defendant’s Motion to Stay Litigation Pending *Inter Partes Review*, *Spin Master Ltd. v. Mattel, Inc.*, CV 18-3435-RSWL-GJS (C.D. Cal.) (11/21/18)
- 1035 Tide Stipulation to UPL Regarding IPR Proceedings

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