Case: 17-1977 Document: 64 Page: 1 Filed: 10/17/2018

United States Court of Appeals for the Hederal Circuit

No. 2017-1977

E.I. DUPONT DE NEMOURS & COMPANY, ARCHER DANIELS MIDLAND COMPANY,

Appellants,

- v. -

SYNVINA C.V.,

Appellee.

ON APPEAL FROM THE UNITED STATES PATENT AND TRADEMARK OFFICE, PATENT TRIAL AND APPEAL BOARD IN NO. IPR2015-01838 (ADMINISTRATIVE PATENT JUDGES CHRISTOPHER G. PAULRAJ, TONI R. SCHEINER AND SHERIDAN K. SNEDDEN)

COMBINED PETITION FOR PANEL REHEARING AND REHEARING EN BANC

Paul M. Richter, Jr.
PEPPER HAMILTON LLP
The New York Times Building
620 Eighth Avenue, 37th Floor
New York, New York 10018
(212) 808-7200

and –

Mark A. Chapman HUNTON ANDREWS KURTH LLP 200 Park Avenue New York, New York 10166 (212) 309-1000

Counsel for Appellee Synvina C.V.

October 17, 2018



FORM 9. Certificate of Interest

Form 9 Rev. 10/17

UNITED STATES CO	OURT OF APPEALS FOR THE	FEDERAL CIRCUIT			
E.I. DuPont de Nemours v. Synvina C.V.					
Case No. 17-1977					
CERTIFICATE OF INTEREST					
Counsel for the: ☐ (petitioner) ☐ (appellant) ☐ (respondent) ☐ (appellee) ☐ (amicus) ☐ (name of party)					
Synvina C.V.					
certifies the following (use "None" if applicable; use extra sheets if necessary):					
1. Full Name of Party Represented by me	2. Name of Real Party in interest (Please only include any real party in interest NOT identified in Question 3) represented by me is:	3. Parent corporations and publicly held companies that own 10% or more of stock in the party			
Synvina C.V.	None.	Avantium N.V. and BASF SE			
4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court (and who have not or will not enter an appearance in this case) are: Kenyon & Kenyon LLP: Michael Glynn					



FORM 9. Certificate of Interest

Form 9 Rev. 10/17

5. The title and number of any case known to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. See Fed. Cir. R. 47. 4(a)(5) and 47.5(b). (The parties should attach continuation pages as necessary).

None.

10/17/2018

Date

Please Note: All questions must be answered

/s/ Paul M. Richter, Jr.

Signature of counsel

Paul M. Richter, Jr.

Printed name of counsel

cc: Counsel of Record





TABLE OF CONTENTS

			Page
I.	RUI	LE 35(b) STATEMENT	1
II.		NTS OF LAW OR FACT OVERLOOKED OR APPREHENDED BY THE PANEL	2
III.		GUMENT IN SUPPORT OF PANEL REHEARING AND FEARING <i>EN BANC</i>	4
	A.	The Panel Erroneously Failed to Analyze Whether Appellants Met the Requirements For Article III Standing At the Time They Filed This Appeal	4
	В.	The Panel Erroneously Imposed a "Presumption of Obviousness" and Improperly Shifted the Burden to Patent Owner to Prove Non-Obviousness	9
	C.	The Panel Incorrectly Concluded that Temperature and Oxygen Partial Pressure Are "Results-Effective Variables" and Overlooked The Substantial Evidence to the Contrary	



Case: 17-1977 Document: 64 Page: 5 Filed: 10/17/2018

TABLE OF AUTHORITIES

	Page(s)
Cases	
Consumer Watchdog v. Wis. Alumni Research Found., 753 F.3d 1258 (Fed. Cir. 2013)	5
Davis v. Fed. Election Comm'n, 554 U.S. 724 (2008)	1, 2, 5
n re Aller, 220 F.2d 454 (C.C.P.A. 1955)	16
n re Antonie, 559 F.2d 618 (C.C.P.A. 1977)	16
in re Applied Materials, Inc., 692 F.3d 1289 (Fed. Cir. 2012)	3, 14
in re Cyclobenzaprine Hydrochloride Extended-Release Capsule Patent Lit 676 F.3d 1063 (Fed. Cir. 2012)1, 3	
n re Geisler, 116 F.3d 1465 (Fed. Cir. 1997)	12
n re Magnum Oil Tools Int'l, Ltd., 829 F.3d 1364 (Fed. Cir. 2016)	2, 10, 11
in re Woodruff, 919 F.2d 1575 (Fed. Cir. 1990)	12
ron Grip Barbell Co. v. USA Sports Inc., 392 F.3d 1317 (Fed. Cir. 2004)	12
KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398 (2007)	4, 14, 17
Lang v. Pacific Marine & Supply Co., 895 F.2d 761 (Fed. Cir. 1990)	7
Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)	6. 8

DOCKET

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.

