UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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DR. SQUATCH, LLC
Petitioner

v.

THE PROCTER & GAMBLE COMPANY
Patent Owner

_____

IPR2024-01174
Patent No. 11,497,706

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PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE

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I. INTRODUCTION

Patent Owner ("P&G") attempts to distinguish Lesniak by rehashing an argument that Lesniak's "antiperspirants" do not include deodorants. P&G is wrong for many reasons, including that the '706 Patent itself makes clear that antiperspirants are deodorants.

P&G relies heavily on an argument that the prior art does not disclose the claimed hardness range, because the '706 Patent supposedly requires hardness to be measured by a unique test rather than the admittedly standard hardness test (ASTM D-1321) recited in the claims. This misreads the specification, which merely describes periodic equipment calibration, not a new test method. But, even if P&G's interpretation were accepted, it would not change the outcome. P&G relies only on the unverified *ipse dixit* of its expert that hardness ranges for the two testing methodologies do not overlap—but he admittedly did not perform any tests to substantiate this assertion. Petitioner's test results confirm that P&G's expert is wrong; a deodorant can be within the claimed hardness range using either testing methodology.

P&G's remaining arguments fare no better. For example, P&G argues that Lesniak's compositions lack stability. P&G is wrong, as Lesniak discloses stable compositions. And prior art does not need to be enabled beyond the scope of the claims at issue, which contain no stability requirements.

II. LESNIAK RENDERS UNPATENTABLE ALL CHALLENGED CLAIMS

A. Lesniak Discloses a Deodorant Stick (Grounds 1-5).

1. Antiperspirants Are Deodorants.

P&G insists that Lesniak does not disclose a deodorant stick, urging the Board to disregard Lesniak's express disclosure that its compositions can be "antiperspirants" and formed into "sticks."[1] As an initial matter, P&G cannot dispute that antiperspirants are deodorants. *See* Ex. 1036, 2 ("[A]ll antiperspirants are deodorants ...."); Ex. 1037, 246 (same).[2] Indeed, the '706 Patent forecloses any such argument by incorporating references that expressly include antiperspirants in the deodorant genus. Ex. 1001, 19:19-26; Ex. 1083, 2:3-31, 5:46-47 (discussing

[1] The Board previously rejected an analogous attempt by P&G to use Dr. Lochhead's testimony to erase prior art disclosures. *See Conopco Inc. v. The Procter & Gamble Co*., IPR2013-00505, Paper No. 69, at 22 (PTAB Feb. 10, 2015) (finding "the clear disclosure on the face of the reference is more credible than Dr. Lochhead's contradictory testimony"), *aff'd*, No. 2015-1680 (Fed. Cir. Aug. 8, 2016).

[2] P&G's website submissions do not controvert the point that antiperspirants fall within the deodorant genus.

"deodorant sticks containing an antiperspirant active" and "the antiperspirant active in the deodorant").[3]

P&G nevertheless contends that Lesniak's antiperspirants must contain aluminum, unlike P&G's claimed aluminum-free deodorants. Tellingly, P&G does not (and cannot) identify any composition in Lesniak with aluminum. *See Almirall, LLC v. Amneal Pharms. LLC*, 28 F.4th 265, 273 (Fed. Cir. 2022) ("[A] reference need not state a feature's absence in order to disclose a negative limitation."). While P&G emphasizes that the FDA requires antiperspirants marketed in the U.S. to contain aluminum, anticipation and obviousness are distinct from FDA regulatory requirements. *See Persion Pharms. LLC v. Alvogen Malta Ops. Ltd*., 945 F.3d 1184, 1193 (Fed. Cir. 2019) ("FDA's approval requirements do not undermine the force of the evidence as to obviousness").

[3] So does a book edited by Dr. Lochhead, which was intended "to review the state of the art" shortly before the priority date of the '647 Patent. Ex. 1081, 92:21-94:18; Ex. 1084, 33 ("[T]he main mechanisms through which deodorant products intended to combat body odors worked were the usage of antiperspirants that prevent perspiration[.]"). Dr. Lochhead's attempt to evade his own book during his deposition undercuts his credibility.

P&G's argument concerning Lesniak's supposed necessity of aluminum is further belied by the fact that Lesniak's compositions include zinc oxide, and zinc compounds were known antiperspirant actives that could be alternatives to aluminum. Ex. 1003, 3:39-4:21, 8:46-48, 10:27 (describing zinc-based antiperspirant compositions); Ex. 1014, ¶¶[0020]-[0026] (same). The '706 Patent expressly states that antiperspirant actives include zinc salts (as well as "any" listed antimicrobial). Ex. 1081, 57:5-61:18; Ex. 1001, 16:40-52.

A POSA would recognize Lesniak's stick compositions include aluminum-free deodorants. Indeed, this is consistent with an examiner's recent rejection of P&G's arguments concerning Lesniak in other applications. Ex. 1077. Lesniak's stick compositions contain at least 25% liquid triglyceride, structurants, an antimicrobial, and optionally essential oil. Dr. Lochhead admitted that, in the context of P&G's patents, stick compositions with those ingredients "would be considered a deodorant." Ex. 1081, 25:2-27:7.

2. Lesniak's Other Applications Are Irrelevant.

P&G seeks to limit Lesniak to a subset of applications, such as sunscreens and diaper creams. But these alternative applications do not change the fact that the compositions are antiperspirants/deodorants. Ironically, P&G recognizes, in the context of its other patents, that "wax based cosmetic stick compositions" have

multiple applications, including "sun care, moisturizing or analgesic sticks and *antiperspirants/deodorant sticks*." Ex. 1043, Abstract, 1:5-9.

P&G also focuses on Lesniak's use of zinc oxide at a concentration of 11-20%, which it contends to be suitable for a sunscreen or diaper cream but not "useful" in deodorants. POR, 18. P&G's argument contradicts the '706 Patent. *First*, the claims require only an antimicrobial, without reciting any concentration. P&G does not dispute that zinc oxide is an antimicrobial and would function as such at Lesniak's concentrations. *See* Ex. 1081, 87:15-23, 99:4-21 (agreeing zinc oxide has "antibacterial effects"). *Second*, the '706 Patent states that, for a deodorant, the antimicrobial may be present in a concentration up to 30% by weight (including magnesium hydroxide at a concentration of 25%). Ex. 1001, 10:44-56. Thus, the '706 Patent defines deodorants in a way that encompasses Lesniak's compositions. *Third*, other deodorants were known to contain the same amount of zinc oxide as Lesniak's compositions. *See* Ex. 1072 at 1-2 (disclosing deodorants having "from 0.5 to 20%" zinc oxide).

3. P&G's Enablement Arguments Fail Because Lesniak Overcame Stability Issues and the Challenged Claims Have No Stability Limitations.

P&G argues that Lesniak cannot render unpatentable any claims because Lesniak does not "enable" a "stable" deodorant stick. P&G is wrong.

First, no challenged claim recites ***any*** requirements for stability, let alone stability at the "high" temperatures (49°C (120°F)) described by Lesniak. *See* Ex. 1003, Table 2. And "[e]nablement of prior art [only] requires that the reference teach a skilled artisan to make or carry out what it discloses *in relation to the claimed invention*." *In re Antor Media Corp*., 689 F.3d 1282, 1290-91 (Fed. Cir. 2012) (emphasis original). Consequently, it is irrelevant whether the Lesniak compositions satisfy unclaimed stability requirements at high temperatures. *Id.*

Second, the specification of the '706 Patent does not disclose any high-temperature stability data. Thus, P&G would have no basis for imputing such stability requirements to its claims (and tellingly does not try to do so). If accepted, P&G's enablement arguments would invalidate P&G's claims for lack of enablement inasmuch as the '706 Patent lacks stability data for ***any*** claimed compositions. P&G's argument is further undercut by Dr. Lochhead's testimony that P&G's compositions are stable because (1) they were tested for hardness, (2) they do not contain water, and/or (3) a POSA would "know" how to make them stable. Ex. 1081, 35:23-43:24. Dr. Lochhead's three criteria for stability are equally met by Lesniak's compositions.

Third, Lesniak overcame any stability issues, as it expressly discloses compositions that are "physically stable at high and low temperatures." Ex. 1003, 5:23-32. Lesniak achieves this by using "a second wax having a melting point of 73

to 90° C." *Id.*, 1:39-54. Lesniak's compositions (nos. 8 and 11) that had such a wax ("CastorWax MP80") passed all stability tests. *Id.*, Table 2. P&G misplaces reliance on Lesniak's "comparative composition[s]" (nos. 1-7, 9-10) that failed the more onerous stability tests because they did not embody Lesniak's invention, lacking a secondary wax with a sufficiently high melting point. *Id.*; Ex. 1081, 84:16-86:9. Thus, Lesniak teaches that a secondary structurant with a sufficiently high melting point made the compositions more stable. Lesniak also details how to make its compositions, thus enabling its stable deodorant sticks. *Id.*, 15:9-45.

Fourth, non-enabled references can still render claims obvious. *Raytheon Techs. Corp. v. General Elec. Co.*, 993 F.3d 1374, 1380 (Fed. Cir. 2021). At minimum, Lesniak sufficiently teaches a deodorant stick with the relevant ingredients for purposes of § 103, especially in view of P&G's admissions concerning the POSA's ability to adjust waxes to achieve, *e.g.*, stability. Specifically, P&G acknowledged in a patent incorporated into the '706 Patent that a POSA could "easily" employ waxes with suitable melting points to alter the properties of deodorant sticks. Ex. 1041, 4:37-44. The patent family at-issue further concedes that "[i]t is ***known*** that to formulate a solid antiperspirant or deodorant stick, the structurants generally have a melting point above 50° C. ***to***

provide a stable structure to the stick." Ex. 1081, 34:22-35:4.[4] The '706 Patent thus recognizes that, consistent with Lesniak's teachings, a POSA knew how to make stable deodorants. Ex. 1086, ¶7.

Fifth, P&G has the burden to prove lack of enablement. *See Antor*, 689 F.3d at 1288. Yet, P&G failed to introduce any evidence that Lesniak's inventive compositions were unstable and, thus, has not overcome the enablement "presump[tion]." *Id.*

B. A POSA Would Have Been Motivated to Improve/Modify Lesniak's Deodorant Sticks Despite Their Completeness (Grounds 1-5).

P&G tries to conjure a non-existent tension between Petitioner's position that Lesniak teaches "complete" deodorants/antiperspirants and Petitioner's motivations to modify Lesniak. A complete deodorant is merely one that qualifies as a deodorant without the need for additional ingredients. It does not mean that Lesniak's formulations were perfect or that a POSA lacked any reason to improve or modify them. *See* Ex. 1081, 43:25-44:18 (admitting "there was a motivation to make [deodorants] better," notwithstanding that they were "complete").

[4] Emphasis added throughout.

C. A POSA Would Have Been Motivated to Add Magnesium Hydroxide to Lesniak's Compositions Because Phinney Teaches the Benefits of Magnesium Hydroxide in Deodorants (Grounds 2-5).

P&G argues against the motivation to combine by expressing misguided and irrelevant views about Phinney. Phinney teaches that: (i) zinc oxide has "low activity" as a "deodorant agent"; (ii) magnesium hydroxide is "an effective deodorant"; and (iii) zinc and magnesium compounds have synergistic effects, hence motivating a POSA to add magnesium hydroxide to Lesniak's zinc oxide deodorants. Ex. 1004, 1:13-3:16, 5:61-67. It is irrelevant whether (as P&G emphasizes) the zinc oxide converts into zinc hydroxide in embodiments of Phinney.

While P&G notes that Phinney teaches additional benefits associated with potassium chloride, P&G fails to explain how that weighs against the combination of Phinney's magnesium hydroxide with Lesniak's zinc oxide deodorants. *In re Fulton*, 391 F.3d 1195, 1200 (Fed. Cir. 2004) ("Our case law does not require that a particular combination must be the preferred, or the most desirable, combination … in order to provide motivation[.]"). Even if a POSA would have been motivated to incorporate other ingredients from Phinney, it would not undermine the obviousness argument.

P&G points out that some of Phinney's compositions contain water, whereas Lesniak's compositions are anhydrous. But a POSA would have expected that magnesium hydroxide would act as an antimicrobial, and bolster the deodorizing

activity of zinc oxide, regardless of the presence or absence of water. *See* Ex. 1072, 1-2, 5 (disclosing deodorants without added water and with zinc oxide and/or magnesium hydroxide); Ex. 1081, 100:14-106:8 (conceding, after repeatedly mischaracterizing Ex. 1072, that it discloses zinc oxide and magnesium hydroxide as "actives" for deodorants that do not contain water); Ex. 1086, ¶9.

P&G's criticisms of Phinney further fall short because "no express suggestion would have been needed to prompt one to substitute a known, interchangeable alternative for another, to perform a common function." *Conopco*, IPR2013-00505, Paper No. 69, at 23; *see Almirall*, 28 F.4th at 273 (similar). Magnesium hydroxide and zinc oxide were known options for deodorant antimicrobials. *See* Ex. 1072, 1-2, 5; Ex. 1086, ¶9.

D. Bianchi-518 Teaches the Claimed Hardness Range and Renders Obvious the Challenged Claims in Combination with Lesniak (Ground 4).

P&G argues that Bianchi-518's hardness range does not overlap with the claimed hardness ranges, even though the reported numbers indisputably overlap.[5]

[5] P&G alludes to Lesniak's own hardness range, which it contends cannot be converted to the claimed values. A POSA would have looked to Bianchi-518 notwithstanding Lesniak's hardness disclosure because Bianchi-518, unlike Lesniak, expressly ties its hardness range to the consumer acceptability

According to P&G, its claims require a different hardness test than the standard ASTM D-1321 test discussed by Bianchi-518. That argument fails.

To begin, the '706 Patent claims recite measuring hardness with an "ASTM D-1321 needle." While P&G does not dispute that Bianchi-518 discloses an overlapping hardness range that also is measured with an ASTM D-1321 needle, P&G contends that the '706 Patent's claimed use of "ASTM D-1321" should be understood to *require* a nonstandard variation of the ASTM D-1321 test purportedly discussed in the specification.

Specifically, P&G re-writes its claims to recite, "***[a 50-g total force]*** ASTM D-1321 needle," so as to exclude the standard methodology of adding an additional 50-g weight at the time the test is performed. POR, 38 (alteration original). However, the bracketed language does not appear in any claim, such that P&G's attempt to add "50-g total force" contravenes hornbook law that precludes "reading limitations from the specification into the claims" absent a disclaimer or express definition. *Phillips v. AWH Corp*., 415 F.3d 1303, 1323 (Fed. Cir. 2005) (en banc); *IQRIS*

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requirements for antiperspirants (and thus deodorant). Contrary to P&G's contention, Bianchi-518's range is not specific to Bianchi-518's compositions, but rather relates to the consumer preference for antiperspirants/deodorants generally. Ex. 1002, 31.

Techs. LLC v. Point Blank Enters., 130 F.4th 998, 1004 (Fed. Cir. 2025). Notably, P&G does not even seek to construe any term, much less identify a disclaimer or definition that could justify its argument.

Even if P&G had sought a construction, its argument would still fail. The only hardness testing method mentioned in the claims is "ASTM D-1321." The plain language of the claims thus precludes P&G's construction excluding ASTM D-1321. Furthermore, the specification of the '706 Patent similarly reports hardness measured "by penetration with [an] ASTM D-1321 needle." Ex. 1001, 15:10-13.

Additionally, the portion of the specification that P&G relies upon to allege a modified test is not part of the test at all. P&G cites a partial quote that "the total weight of the shaft and needle is 50±0.2 grams." But P&G omits the preceding language, which states that this is the weight to be used for "[p]eriodic calibration" to "confirm" that the equipment is in proper working order. Ex. 1001, 22:59-23:4. That "[p]eriodic calibration" section precedes a section identifying what needs to be confirmed "[a]t the time of use." *Id.*, 23:5-10. Only after those sections pertaining to equipment checks does the specification set forth the test. *Id*., 23:13-62 ("Sample Preparation and Measurement"). Moreover, the "[p]eriodic calibration" comports with the ASTM D-1321 standard, which likewise requires that the "weight of the needle shall be 2.5 g" and the "weight of the plunger shall be 47.5 g," for a 50-g total weight of the needle assembly. Ex. 2018, 5. Although the ASTM D-1321 standard

further describes using an additional 50-g weight during the test, a POSA would not read the '706 Patent's silence on this weight as excluding it. Ex. 1086, ¶2. Rather, a POSA would consult the details of the ASTM D-1321 standard identified by the '706 Patent to ensure compliance. Relatedly, the specification does not support P&G's implicit claim construction requiring a "50-g total force," as the specification says nothing about a 50-g ***force*** and instead merely describes the total ***weight*** for calibration of the shaft and needle (50-g, as specified in ASTM D-1321). Ex. 1001, 22:59-23:4; Ex. 1086, ¶3.

Notably, the PTAB rejected similar arguments advanced by P&G, with the support of Dr. Lochhead, in another IPR that it lost. In *Conopco,* the relevant claims recited a shampoo having four measurable properties, each with an associated numerical range. P&G argued that the claims required the properties to be measured using methods set forth in the specification. The Board rejected that argument because "[n]either the express claim language, nor the disclosure, limits the methods that may be used to evaluate the four" properties. IPR2013-00505, Paper No. 69, at 7.

Even assuming, *arguendo*, the '706 Patent required hardness to be tested under P&G's supposedly unique test, that could only matter if there were evidence that Bianchi's hardness range (using the standard test) did not overlap with the range under P&G's proposed test. Here, P&G relies on nothing but Dr. Lochhead's

unsupported conjecture that the claimed hardness range under P&G's proposed test and the Bianchi range "are not overlapping at all." Ex. 2011, ¶92; *see* Ex. 1081, 115:7-124:19.[6] But, neither P&G nor Dr. Lochhead conducted any hardness testing to support this "not overlapping" assumption; and actual testing proves their assumption is incorrect. Specifically, testing confirms that a deodorant stick can fall within the claimed range regardless of whether it is measured using the standard test or P&G's purported modification thereof (*i.e.*, without the 50 g weight called for). In other words, Dr. Lochhead's assumption is wrong; the hardness ranges overlap. Ex. 1086, ¶¶4-5. Indeed, the average delta between the two test methods is about 37 mm*10, which means that the claimed range and Bianch-518's range overlap regardless of the test used.[7] *Id.* Thus, even if P&G's incorrect interpretation of the '706 Patent were adopted, its claims would still be unpatentable because P&G does

[6] Dr. Lochhead's assumption is especially unfounded because he does not regularly conduct hardness tests. *Id.*

[7] Notably, P&G marked its Native deodorant with U.S. Patent No. 11,540,999 (Ex. 1080). The '999 Patent's sole independent claim recites a hardness range of 80 to 140. Ex. 1082. Importantly, Native's hardness falls comfortably within the 80-140 range using the standard ASTM D-1321 test, but falls outside of that range under P&G's proposed test. Ex. 1078.

not even attempt to overcome the presumption of obviousness that applies where ranges overlap (*e.g.*, by establishing criticality). *EI DuPont de Nemours & Co. v. Synvina CV*, 904 F.3d 996, 1006 (Fed. Cir. 2018). In any event, any difference here is merely one of "degree" (harder vs. softer, predictably changing based on the amount of structurant), and not a new "kind" of unexpected result. *Id.*; *see* Ex. 1086, ¶6. Thus, the claims are obvious.

Moreover, even if P&G's interpretation of the claims were adopted and the ranges did not overlap, P&G's nonobviousness argument would *still* fail. "[I]t is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *In re Boesch*, 617 F.2d 272, 276 (C.C.P.A. 1980) ("[D]iscovery of an optimum value of a result effective variable in a known process is ordinarily within the skill of the art."); *In re Kulling*, 897 F.2d 1147, 1148-49 (Fed. Cir. 1990) (finding that "[t]he determination of the precise amount [of] wash solution and water used in the wash is a matter of routine optimization obvious to one of ordinary skill in the art balancing normal considerations of [] purity … [and] dissolution"). Adjusting the amount of structurant (*e.g.*, beeswax) to achieve a desired hardness was a matter of routine optimization well within the skill of a POSA, as P&G conceded in its prior art patent incorporated into the '706 Patent. Ex. 1041, 2:64-68, 4:37-44 (explaining that a POSA could "easily" adjust waxes to achieve desired "soft[ness]" based on

balancing known considerations, with "[h]igher levels of wax lead[ing] to lower wear rates, and lower levels of wax tend[ing] to give higher wear rates and a softer, less desirable structure").

Here too, P&G's loss in *Conopco* is instructive. The Board there held claims obvious even without prior art disclosure of: (1) P&G's new tests (assays) for measuring four claimed properties (indices); (2) the claimed values for those properties; (3) any way to "convert[] the prior art assay values into the [claimed] index values." IPR2013-00505, Paper No. 69, at 24 (finding it "sufficient that a [POSA] art would have had the desire, and the tools, to formulate a shampoo in which the four properties are optimized; an awareness of meeting the index values is not required").

E. A POSA Would Have Been Motivated to Add Baking Soda to Lesniak's Compositions (Ground 3).

P&G argues that a POSA would not have been motivated to add baking soda to Lesniak's compositions because baking soda was known to cause irritation for some users. This argument fails because less-preferred combinations can still "provide motivation for the current invention." *In re Fulton*, 391 F.3d at 1200; *Allied Erecting & Dismantling Co. v. Genesis Attachments, LLC*, 825 F.3d 1373, 1381 (Fed. Cir. 2016) ("[A] given course of action often has simultaneous advantages and disadvantages, and this does not necessarily obviate motivation to combine.").

Lesniak's antimicrobial, zinc oxide, was thought to have low efficacy (Ex. 1004, 1:13-3:16) and baking soda was known to be an "excellent" antimicrobial for deodorants. Ex. 1002, 49. That provides a motivation to add baking soda to Lesniak's compositions. It does not matter that different antimicrobials may have had other advantages.

F. P&G's Arguments Further Confirm Lesniak Renders Obvious Claims 16-23 (Ground 5).

P&G's only arguments regarding the inclusion of starch, stearyl alcohol, and triethyl citrate in Lesniak's compositions (as required by claims 16-23) turn on the mistaken stability argument addressed above. P&G concedes that starch and stearyl alcohol were known structurants that had been successfully used to thicken deodorant compositions. *See Almirall*, 28 F.4th at 273 (obvious to "substitute one known" option for another); *Conopco*, IPR2013-00505, Paper No. 69, at 22 (similar). A POSA could have employed those structurants in Lesniak's compositions while keeping the "tiny amount" of castor wax for stability.[8] Ex. 1081, 85:25-86:25. And P&G concedes that triethyl citrate was a known antimicrobial that could both combat odor and prevent degradation of liquid triglycerides in deodorants. P&G offers no explanation for how adding an antimicrobial renders compositions unstable. P&G's vague, generic averments to "complex[ity]" and

[8] Again, P&G's claims do not require stability.

"differences" between references (POR, 48) evade the issue at hand: whether a POSA would have been motivated to include these particular ingredients in accordance with their conventional usage.

P&G's attempt to demonstrate that the claims of the '706 patent have written description support in a priority application underscores the obviousness of claims 16-23. The priority application mentions sunflower seed oil and jojoba oil twice, amongst dozens of other structurants and emollients, without any teaching to use sunflower or jojoba oil rather than the other structurants and emollients. *See* Ex. 1081, 61:23-75:17. It discloses magnesium hydroxide as a third-tier, less effective antimicrobial. *Id.* Yet Dr. Lochhead opines that the mere inclusion of sunflower oil, jojoba oil, and magnesium hydroxide in laundry lists provides an adequate "reason[]" to select a specific combination of those precise ingredients for the nine/ten-ingredient combination in claims 16-23. *Id.*; Ex. 2011, 72. Notably, written description requires a greater showing than obviousness. *Lockwood v. Am. Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997) (explaining that a "description which renders obvious the invention" does not suffice for § 112). Dr. Lochhead's written description opinions thus confirm the obviousness of claims 16-23.

III. NATIVE RENDERS OBVIOUS THE CHALLENGED CLAIMS

A. A POSA Would Have Been Motivated to Modify Native (Grounds 6-8).

P&G posits that a POSA would not have been motivated to modify Native because Native itself does not identify any deficiencies with the deodorant. The Supreme Court rejected this reasoning in *KSR*, eschewing a "rigid rule" requiring "precise teachings" and an explicit motivation from the prior art in favor of a "common sense" approach. *See KSR Int'l Co. v. Teleflex Inc*., 550 U.S. 398, 418-21 (2007). In any event, as discussed below, Easy Homemade explicitly provides the motivation to modify Native.

B. Bianchi-254 Teaches the Claimed Hardness Range and Renders Obvious the Challenged Claims in Combination with Native (Grounds 6-8).

P&G's arguments with respect to Native's hardness fail for the same reasons that they fail with respect to Lesniak. *See* Section II(D). In addition, P&G's interpretation of Bianchi-254 contradicts its interpretation of the '706 Patent claims. Bianchi-254's "Hardness Method" identifies only the relevant needle ("a 2.5 gm brass/steel tapered needle (DIN 51-579)"), without describing any additional weight or explicitly mandating full compliance with the DIN 51-579 standard. Ex. 1008, [0117]. Indeed, Dr. Lochhead testified that Bianchi-254 "deviat[es]" from the DIN 51-579 standard, just like he believes the '706 Patent deviates from the ASTM D-1321 standard. Ex. 1081, 112:11-114:6. Yet P&G asserts that a POSA following the

teachings of Bianchi-254 would consult and adhere to the DIN 51-579 standard, including its use of a 50-g weight described in that standard but not explicitly called for in Bianchi-254. *Id.* Similarly, a POSA interpreting the '706 Patent's claims would adhere to the ASTM D-1321 standard, including its use of the 50-g weight.

C. A POSA Would Have Been Motivated to Follow Bianchi-254's Guidance on the Quantitative Amounts of Ingredients in Deodorants with a Reasonable Expectation of Success (Grounds 6-8).

P&G argues that a POSA could not have combined the teachings of Native and Bianchi-254 because Bianchi-254 includes aluminum and silicone in its compositions. P&G ignores that Native already achieved a silicone and aluminum-free deodorant stick, so a POSA therefore would not have to draw on Bianchi-254's teachings for those features. Ex. 1002, 67-71. Native further discloses the relative amounts of each ingredient in that stick. *Id.* Bianchi-254 simply provides a POSA with guidance on the quantitative amounts of those ingredients and preferred hardness.

Moreover, P&G fails to explain how the "differences" between Native and Bianchi-254 matter for its claims. For example, removing silicone oil from Bianchi-254's compositions would just increase the concentration of liquid triglyceride so as to maintain the total amount of oil called for in Bianchi-254. *Id.* Further, a POSA could achieve Bianchi-254's hardness (regardless of aluminum) by simply increasing the amount of Native's structurants (e.g., stearyl alcohol) to increase

hardness, or decreasing those ingredients to decrease hardness. Ex. 1086, ¶6. P&G's belief that a POSA could not "implement" (POR, 4) this binary concept (e.g., more stearyl alcohol=harder; less stearyl alcohol=softer) defies credulity. Here too, P&G mistakenly relies on Lesniak's purported "stability" issues, ignoring that Lesniak teaches how to make stable compositions by including a higher melting point secondary structurant, as the '706 Patent concedes was known in the art.

P&G's speculation that it may not have been "possible" to combine Native and Bianchi-254 in view of their different ingredients also is irrelevant. "[I]t is not necessary that [prior art] be physically combinable to render obvious" claims. *Allied*, 825 F.3d at 138; *see In re Etter*, 756 F.2d 852, 859 (Fed. Cir. 1985) (en banc).

Finally, P&G's theory that a POSA formulating an aluminum-free deodorant would not have "looked to" Bianchi-254 for guidance contradicts the '706 Patent, which incorporates references disclosing aluminum-containing antiperspirants for their disclosure of "suitable" structurants, emulsifiers, antimicrobials, and other ingredients. Ex. 1001, 16:16-19, 19:19-26; Ex. 1041; Ex. 1083; Ex. 1081, 46:22-52:22 (admitting that inventors of natural, aluminum-free deodorants included aluminum-containing "antiperspirants" in the field of their invention and looked to aluminum and silicone-containing formulations "to see how to put other formulations together" because "that's what a POSA does").

D. A POSA Would Have Been Motivated to Add Magnesium Hydroxide to Native Based on Easy Homemade's Teaching of the Substitution of Magnesium Hydroxide for Baking Soda (Grounds 7-8).

P&G incorrectly contends that a POSA would not have been motivated to replace Native's baking soda with magnesium hydroxide. "There is a motivation to combine when a known technique 'has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way,' *KSR*, 550 U.S. at 417, using the 'prior art elements according to their established functions[.]'" *Intel Corp. v. PACT XPP Schweiz AG*, 61 F.4th 1373, 1380-81 (Fed. Cir. 2023). A known antimicrobial for deodorants, baking soda, caused irritation for some users, and another known antimicrobial for deodorants, magnesium hydroxide, ameliorated that issue when substituted for baking soda. Ex. 1002, 82-83; Ex. 1081, 53:6-55:12. "Nothing more is required to show a motivation to combine under *KSR*." *Intel*, 61 F.4th at 1381.

Although P&G insists that "Easy Homemade does not actually teach removal and substitution of baking soda" (POR, 60), P&G overlooks Easy Homemade's statements that "baking soda can easily be swapped for magnesium hydroxide," Ex. 1009, 6, 9. P&G alludes to the alleged lack of detail on Easy Homemade's formulations, which is beside the point. Native discloses all the ingredients for a deodorant stick; Easy Homemade just directs the POSA to substitute one known antimicrobial for another.

P&G incorrectly alleges that Easy Homemade was not publicly accessible because it had not been indexed by search engines. The Federal Circuit explicitly declined to adopt such an indexing requirement in *Voter Verified, Inc. v. Premier Election Soln's*, 698 F.3d 1374, 1380 (Fed. Cir. 2012). The Court in *Voter Verified* treated online material as prior art notwithstanding the absence of indexing evidence because it was "available to the extent that persons interested" could locate it with "reasonable diligence." *Id.* at 1380. The Board has abided by this precedent, recognizing online references as prior art despite the lack of indexing evidence. *See LG Elecs., Inc. v. Multimedia Techs. Pte. Ltd.*, IPR2024-00353, Paper No. 28, at 21-25 (P.T.A.B. May 12, 2025) (finding lack of indexing evidence inconsequential because the prior art had an associated review that showed "an interested person actually found the [reference] online"). Easy Homemade contains reviews from interested persons that show such persons not only could have located—but actually did locate—the website, confirming its public accessibility. Ex. 1009, 7-8; Ex. 1016, 7-8; Ex. 1018, 6.

P&G's only alleged authority for its position, *First Solar Inc. v. Rovshan Sade*, IPR2023-00827, Paper 13 (Nov. 16, 2023), is inapposite. There, the Board merely denied institution. While it noted a "question" as to the public accessibility of a reference, it did not deny institution based on accessibility alone but rather based

on "combined deficiencies" that included claim limitations missing from the alleged anticipatory reference. *Id.* at 18.

E. A POSA Did Not Need a Motivation to "Add" Baking Soda to Native Because Native Already Contained Baking Soda (Grounds 7-8).

P&G alleges that a POSA could not have a motivation to both add and remove baking soda from Native, so Native does not render unpatentable claim 8, which requires baking soda. But a POSA would not need a motivation to add baking soda to Native, since Native already contains baking soda, which was thought to be an "excellent" antimicrobial for deodorants. Ex. 1002, 49. Both baking soda and magnesium hydroxide were known options for antimicrobials, which P&G does not dispute. *Id.*, 26. P&G fails to identity anything unexpected regarding the inclusion or removal of baking soda. Moreover, as discussed above, a combination of prior art does not need to be the most preferred option to render obvious a claim, and multiple viable motivations may exist simultaneously.

F. P&G's Arguments Further Confirm Native Renders Obvious Claims 16-23

P&G's arguments regarding the inclusion of triethyl citrate and sunflower seed oil in Native (as required by claims 16-23) fail for the reasons discussed in Section II(F), above. P&G again misplaces reliance on supposed stability issues, without even attempting to explain how the substitution of sunflower seed oil or triethyl citrate would render compositions unstable. Again, stability can be achieved

by including a secondary structurant (such as castor wax, which Native contains) with a sufficiently high melting point.

P&G dismisses Stoia's teachings about sunflower seed oil's benefits because Stoia does not use the word, "deodorant." But Stoia explicitly relates to cosmetic products. Ex. 1058, 45. P&G concedes that deodorants constitute cosmetic products; its own patent refers to them as such. Ex. 1043, Abstract, 1:5-9. Moreover, Stoia expressly acknowledges that sunflower seed oil's benefits exist "[r]egardless of the applied product." Ex. 1058, 47.

P&G also suggests that Native already contains an ingredient, tocopherol, with similar benefits as sunflower seed oil. But substituting a known option for another does not render claims nonobvious. *Almirall*, 28 F.4th at 273. Again, P&G does not even attempt to reconcile its nonobviousness argument with its position on written description that merely mentioning an ingredient twice in laundry lists provides enough of a "reason" to select that particular ingredient amongst dozens of other options.

IV. SQUATCH RENDERS OBVIOUS CLAIMS 16-23 (GROUND 9).

Squatch is prior art at least because Dr. Lochhead "failed to identify any rationale to distinguish [the claimed 9 or 10 ingredients] from the other listed" options in the '706 Patent's priority application. *Purdue Pharma L.P. v. Iancu*, 767 F. App'x 918, 924 (Fed. Cir. 2019); Ex. 1081, 61:23-75:17. P&G misplaces reliance

on *Allergan USA, Inc. v. MSN Labs. Private Ltd*., 111 F.4th 1358, 1372, 1374-75 (Fed. Cir. 2024). In that case, no one disputed that the specification disclosed the claimed combination of ingredients; defendant only challenged the sufficiency of disclosure for the claims' omission of a glidant. The Court in *Allergan* distinguished the situations presented here, where the specification discloses "thousands" of possible formulations from a "laundry list of ingredients," without describing the specific claimed combination or providing "blaze marks" that direct a POSA to that combination. *Id.*

P&G incorrectly claims that Squatch is not a printed publication because Mr. Pinto's testimony about it lacks corroboration. But P&G does not even attempt to controvert the corroborating evidence attached to Mr. Pinto's declaration, including: (1) a marketing repository with the actual photographs published on the website at the time of its launch; (2) quality assurance records; (3) timestamped Shopify records; and (4) a timestamped YouTube video. Ex. 1059, 3-4.

V. CONCLUSION

For these reasons, Petitioner submits that claims 1-8 and 10-23 of the '706 Patent are unpatentable.

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CERTIFICATE OF COMPLIANCE WITH 37 C.F.R. § 42.24

I hereby certify that this petition complies with the word count limitation of 37 C.F.R. § 42.24(c) because the Reply contains a total of 5596 words. This total excludes the cover page, signature block, and the parts of the petition exempted by 37 C.F.R. § 42.24.

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CERTIFICATE OF SERVICE

The undersigned certifies that a complete copy of this Reply and all Exhibits and other documents filed together with this Reply were served on P&G's counsel of record, on this date:

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