

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NESTLÉ USA, INC.,

Petitioner,

v.

STEUBEN FOODS, INCORPORATED,

Patent Owner

Case IPR2015-00249

Patent 6,481,468

PATENT OWNER'S AMENDED NOTICE OF APPEAL

via PTAB E2E
Patent Trial and Appeal Board

via Hand delivery
Director of the United States Patent and Trademark Office
Office of the General Counsel
Madison Building East, Room 10B20
600 Dulany Street
Alexandria, VA 22314

via CM/ECF
United States Court of Appeals for the Federal Circuit

Patent Owner Steuben Foods, Inc. hereby gives notice to the Director of the Patent and Trademark Office, pursuant to 35 U.S.C. §§ 141 and 142 and 37 C.F.R. §§ 90.2 and 90.3, of its appeal to the United States Court of Appeals for the Federal Circuit from the Final Written Decision on Remand by the Patent Trial and Appeal Board (“the Board”) entered on August 16, 2019 (Paper 169), the Board’s Decision Denying Patent Owner’s Request for Rehearing on the Motion to Terminate entered on August 16, 2019 (Paper 168)¹, an Order by Andrew Hirshfeld entered on January 14, 2022, denying review of the Final Written Decision on Remand, and from all orders, decisions, rulings, findings, and opinions relating to or underlying those decisions.

For the limited purpose of providing the Director with the information requested in 37 C.F.R. § 90.2(a)(3)(ii), Patent Owner anticipates that the issues on its appeal include, but are not limited to: whether the January 14, 2022, Order denying review violated the Federal Vacancies Reform Act, the Appointments Clause, separation of powers, the deadlines imposed under 35 U.S.C. § 316(a)(11), or the Supreme Court’s mandate in *United States v. Arthrex, Inc.*, 141 S. Ct. 1970

¹ Patent Owner has previously attached with the Original Notice of Appeal Paper 169 and Paper 171, as the public version of Paper 168.

(2021); whether the Board erred when it ruled that Petitioner had met its burden in proving by a preponderance of the evidence that claims 9 and 21 are unpatentable over either (1) Biewendt, Takei, and ZFL, or (2) ZFL, Takei, and BevTech; claims 20 and 23 are unpatentable over either (1) Biewendt and Takei, and ZFL, or (2) ZFL, Takei, and BevTech; claim 22 is unpatentable over either (1) Biewendt, Takei, and Chambers, (2) Biewendt, Takei, Campden, and Rose, or (3) ZFL, Takei, and BevTech; any finding or determination supporting or relating to the foregoing issues; and any other issues decided adversely to Patent Owner in any orders, decisions, rulings, or opinions in the above-captioned *inter partes* review proceeding.

Pursuant to 37 C.F.R. § 90.3 and Rule 4(a)(3) of the Federal Rules of Appellate Procedure, the Original Notice of Appeal was timely, having been filed within 63 days after the date of the Final Written Decision and the Decision Denying Request for Rehearing.

Copies of Patent Owner's Amended Notice of Appeal are being filed simultaneously today with the Director, the Patent Trial and Appeal Board, and the Clerk of the United States Court of Appeals for the Federal Circuit.

Patent Owner's Amended Notice of Appeal
Case IPR2015-00249
U.S. Patent No. 6,481,468

Respectfully submitted,

GARDELLA GRACE P.A.

Dated: February 23, 2022

/W. Cook Alciati/
W. Cook Alciati
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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I hereby certify that on this 23rd day of February, 2022, a true and correct copy of the foregoing Patent Owner's Amended Notice of Appeal was served on counsel of record for Petitioner by filing this document through the PTAB E2E System as well as delivering a copy to the following address(es):

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I hereby certify that on this 23rd day of February, 2022, in addition to being filed electronically through the PTAB E2E System, a true and correct copy of the foregoing Patent Owner's Amended Notice of Appeal was served by hand with the Director of the United States Patent and Trademark Office, at the following address:

Director of the United States Patent and Trademark Office
c/o Office of the General Counsel
Madison Building East, 10B20
600 Dulany Street
Alexandria, VA 22314-5793

I hereby certify that on this 23rd day of February, 2022, a true and correct copy of the foregoing Patent Owner's Amended Notice of Appeal was filed electronically with the Clerk's Office of the United States Court of Appeals for the Federal Circuit via CM/ECF.

Dated: February 23, 2022

/W. Cook Alciati/
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