

Nos. 18-1590, -1629

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

AJINOMOTO CO., INC., AJINOMOTO HEARTLAND INC.,
Appellants,

v.

INTERNATIONAL TRADE COMMISSION,
Appellee,

CJ CHEILJEDANG CORP., CJ AMERICA, INC., PT CHEILJEDANG INDONESIA,
Intervenors.

CJ CHEILJEDANG CORP., CJ AMERICA, INC., PT CHEILJEDANG INDONESIA,
Appellants,

v.

INTERNATIONAL TRADE COMMISSION,
Appellee,

AJINOMOTO CO., INC., AJINOMOTO HEARTLAND INC.,
Intervenors.

APPEALS FROM THE UNITED STATES INTERNATIONAL TRADE COMMISSION IN
INVESTIGATION No. 337-TA-1005

**AJINOMOTO'S RESPONSE TO CJ'S PETITION
FOR PANEL REHEARING AND REHEARING EN BANC**

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November 6, 2019

CERTIFICATE OF INTEREST

Counsel for Ajinomoto Co., Inc. and Ajinomoto Heartland Inc. certifies the following:

1. The full name of every party represented by me is:

Ajinomoto Co., Inc.
Ajinomoto Animal Nutrition North America, Inc., formerly known as
Ajinomoto Heartland Inc.

2. The name of the real parties in interest (if the parties named in the caption are not the real party in interest) represented by me is:

N/A

3. All parent corporations and publicly held companies that own 10% or more of stock in any party represented by me are:

Ajinomoto Co., Inc.: None

The following entities own, directly or indirectly, more than 10% of the stock of Ajinomoto Animal Nutrition North America, Inc.: Ajinomoto Animal Nutrition Group and Ajinomoto Co., Inc.

4. The names of all law firms and the partners or associates that appeared for the parties now represented by me in the lower tribunal or are expected to appear in this Court (and who have not or will not enter an appearance in this case) are:

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, LLP
Thomas H. Jenkins; Hala S. Mourad; Rachel Erdman; Ashley M. Winkler; D.
Alan White, Ph.D.; Alex K. Chung, Ph.D.¹

5. The title and number of any case(s) 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 are:

Ajinomoto Co., Inc. and Ajinomoto Heartland Inc. v. CJ CheilJedang Corp., CJ America, Inc., and PT CheilJedang Indonesia, Civil Action No. 1:16-cv-03498-JGK (S.D.N.Y.).

¹ Ms. Mourad, Ms. Erdman, Ms. Winkler, Dr. White, and Dr. Chung are no longer with the firm.

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INTRODUCTION

The majority in this case followed the well-established test for determining the tangentiality exception to prosecution history estoppel. Consistent with the law of the Supreme Court and this Court, the majority reviewed the prosecution history, determined the patentee’s objectively apparent reason for the narrowing amendment, and concluded it was tangential to the equivalent in question. As the majority explained, Ajinomoto’s amendment narrowed the range of proteins claimed by the ’655 patent, but did not surrender identical proteins that escaped literal infringement simply by codon randomizing their DNA sequence. Though the dissenting opinion concluded differently (“In my view the ‘reason for the narrowing amendment’ in this case is directly related to the equivalent,” Dissent at 4), there was no dispute concerning the legal framework to be applied; only a disagreement as to result.

Petitioner seeks rehearing by the panel, arguing the majority “misapplied [the] Supreme Court-mandated test” to the facts at hand. Pet. at 2. But none of Petitioner’s alleged errors exist. The majority did not “ignore[] the ‘*how*’—how and to what extent Ajinomoto’s choice to redefine claims narrowed their scope.” Pet. at 9. To the contrary, the majority closely examined the change in language and concluded the amended claim “no longer included the prior-art *E. coli* YfiK protein, and more generally, no longer allowed as wide a range of *amino acid* alterations.” Majority at 21. The majority also did not fail to “compare the rationale to the

accused equivalent.” Pet. at 12. In fact, just the opposite: the majority explained the accused equivalent, a YddG protein produced by the codon-randomized non-*E. coli* *yddG* gene, “had nothing to do with” the rationale for the amendment. Majority at 21. While Petitioner would have liked the case to come out differently, it fails to identify any error in how the majority reached its conclusion.

Petitioner likewise fails to identify any issue for *en banc* consideration. The majority did not improperly “open[] the door to *post hoc* ‘prosecution-remorse’ arguments” or “expand[] the ‘very narrow’ tangential exception,” as Petitioner contends. Pet. at 16. The tangential exception has always required looking backward over the prosecution history to determine the objective scope of applicant’s surrender, just as the majority did here. The decision contains no expansive language, is unexceptional in its application of the doctrine, and, like many prior decisions by this Court, simply concludes that a tangential prosecution history amendment does not estop a patentee from asserting infringement via the doctrine of equivalents.

Rehearing is not warranted.

BACKGROUND

I. Ajinomoto’s Amendment During Prosecution

Ajinomoto owns U.S. Patent No. 7,666,655, directed to *E. coli* bacteria that have been genetically engineered to increase their production of aromatic L-amino

acids, such as L-tryptophan, and methods of using those bacteria to produce amino acids for commercial use. Majority at 2-3. The '655 patent is founded on the inventors' identification of a specific protein, called YddG, that transports aromatic L-amino acids out of the bacterial cell and into the surrounding culture medium where they can be collected. *Id.* at 3. The '655 patent describes and claims methods for producing aromatic L-amino acids by enhancing bacteria's YddG protein activity. *Id.*

The estoppel issue in this case centers on an amendment pertaining to the various alternatives for defining the claimed YddG protein. As originally filed, claim 1 recited two alternative definitions, the first of which ("A") recited the exact amino acid sequence for the *E. coli* YddG protein, "SEQ ID NO:2," and the second of which ("B") recited an amino acid sequence that differed by "one or several" amino acids from SEQ ID NO:2:

a protein as defined in the following (A) or (B) in a cell of said bacterium:

(A) a protein which comprises the amino acid sequence shown in SEQ ID NO:2 in Sequence Listing;

(B) a protein which comprises an amino acid sequence including deletion, substitution, insertion or addition of one or several amino acids in the amino acid sequence shown in SEQ ID NO:2 in Sequence listing.

Majority at 17; Appx5047. The examiner rejected Ajinomoto's claim on grounds related solely to limitation (B)—namely, that the "one or several" amino acid

differences limitation was so broad that it encompassed, and was therefore anticipated by, a totally different, non-YddG protein known in the art as the “YfiK” protein. Majority at 17; Appx5378. In response, Ajinomoto left alternative (A) unchanged, and replaced alternative (B) with language defining the protein by certain hybridization parameters for its encoding DNA sequence:

(B) a protein which comprises an amino acid sequence ~~including deletion, substitution, insertion or addition of one or several amino acids in the amino acid sequence shown in SEQ ID NO:2 in Sequence listing, and which has an activity of making bacterium having enhanced resistance to L-phenylalanine and/or an amino acid analog~~ that is encoded by a nucleotide sequence that hybridizes with the nucleotide sequence of SEQ ID NO:1 under stringent conditions comprising 60°C, 1 x SSC, 0.1% SDS

Majority at 17; Appx5609. By defining the protein by the ability of its encoding DNA sequence to hybridize with SEQ ID NO:1 (the gene which encodes the *E. coli* YddG protein), Ajinomoto ensured that the resultant protein would bear sufficient similarity to the *E. coli* YddG protein, while avoiding unrelated proteins like YfiK. *See generally*, Appx1342-1343(34:6-39:23); Appx477-481(Q/A409-420). Subsequently during prosecution, Ajinomoto converted limitation (B) to limitation (C), and added a new limitation (B) that defined the protein by “one to five amino acid differences” from SEQ ID NO:2. Appx5691. As a result, the issued ’655 patent includes three alternative ways of defining the claimed YddG protein: (A) the “SEQ ID NO:2” limitation, (B) the “one to five amino acid differences” limitation, and (C) the “hybridization” limitation. Appx200(21:38-49). Ajinomoto alleged

infringement under the doctrine of equivalents of unamended limitation (A). Majority at 18; Appx200(22:56-57).

II. The ITC Litigation

The CJ product at issue is the result of two design-around attempts made by CJ during the litigation below. The lawsuit began in May 2016, when Ajinomoto sought an exclusion order in the ITC to stop CJ's importation of animal-feed tryptophan products made using bacteria and methods that Ajinomoto believed infringed the '655 patent. Majority at 6. Shortly after being served with the complaint, CJ designed two new bacterial strains in an attempt to avoid infringement. *Id.* at 6-7. The first ("Strain A") utilized a non-*E. coli* YddG protein, instead of the *E. coli* YddG protein, and therefore did not literally infringe limitation (A) reciting SEQ ID NO:2. *Id.* But because the DNA sequence encoding the non-*E. coli* YddG protein still literally infringed limitation (B), CJ was not able to avoid the '655 patent. *Id.* at 21-22; Appx129-132.

CJ designed its next new strain ("Strain B") using a technique called "codon randomization." Majority at 6-7. Codon randomization takes advantage of certain redundancies in the genetic code, which permits slight changes to DNA sequences that nonetheless result in the exact same protein. *Id.* at 7, n.5. Using this artifice in Strain B, CJ was able to tweak the DNA sequence encoding its infringing non-*E. coli* YddG protein just enough to bring Strain B outside the literal scope of

the '655 patent—despite that Strain B uses the *exact same* non-*E. coli* YddG protein as infringing Strain A. *Id.* at 21-22; Appx843(Q/A121); Appx551(Q/A686). CJ's witnesses admitted that the reason for making these changes in Strain B was privileged; there was no “technical” reason for doing so. Appx10694(151:12-24, 152:15-21); Appx10641(156:22-157:7).

Because CJ was still using YddG to practice the patented invention, Ajinomoto asserted that Strain B infringed the '655 patent under the doctrine of equivalents. The Commission agreed with Ajinomoto, finding that the non-*E. coli* YddG protein produced via codon randomization was equivalent to the claimed protein and rejecting CJ's assertion that Ajinomoto was barred from asserting equivalence by the doctrine of prosecution history estoppel. Appx37-44. As the Commission explained, Ajinomoto's amendment, which narrowed the claims to YddG but was unrelated to codon-randomized versions of the same protein, was tangential to the accused equivalent. Appx44.

III. The Panel Decision

The majority opinion affirmed the Commission's determination. The majority agreed that the non-*E. coli* YddG protein produced via codon randomization in CJ's Strain B is equivalent to the claimed *E. coli* YddG protein in function, way, and result—an issue CJ no longer challenges. Majority at 22-24. The majority also agreed that Ajinomoto is not estopped from asserting infringement

because its amendment was only tangential to the accused equivalent. *Id.* at 16-22. As the majority explained, Ajinomoto’s amendment “had nothing to do with choosing among several DNA sequences in the redundant genetic code that correspond to the same protein,” as CJ had done in Strain B. *Id.* at 21. Rather, “[t]he objectively evident rationale for the amendment was to limit the set of proteins within the claim’s scope so that it no longer included the prior-art *E. coli* YfiK protein and, more generally, no longer allowed as wide a range of *amino acid* alterations (hence changes in the protein).” *Id.* The majority’s analysis followed the precedents of this Court and the Supreme Court, relying on several similar cases in which this Court has likewise found the tangential exception satisfied. *Id.* at 18-21.

The dissenting opinion took a different view, arguing the majority “ignore[d] how the patentee deliberately elected to narrow the claims,” *id.* at 6, and that “[his] view the tangential exception cannot apply,” *id.* at 7. The central dispute between the majority and dissent was not about the proper legal test or the place of the tangential exception in the law. Rather, it was about how to interpret the particular excerpt from the ’655 patent prosecution history: whether the reason for the amendment was to “limit[] the amino-acid makeup of the proteins included in one of the alternatives covered by the claim,” Majority at 22, or to “exclude those proteins made by an encoding nucleotide sequence that does not hybridize with SEQ

ID NO:1 under the specific conditions,” Dissent at 7. On that point, the majority and dissent simply had different views.

ARGUMENT

IV. There Is No Issue For Panel Rehearing

The majority opinion is consistent with precedent. Under well-established law, the presumption that a narrowing amendment surrenders “the territory between the original claim and the amended claim” can be rebutted by showing “the rationale underlying the amendment . . . bear[s] no more than a tangential relation to the equivalent in question.” *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722, 740 (2002) (“*Festo VIII*”). This tangential exception is crucial to preserving the policy underlying the doctrine of equivalents, which protects patentees from unscrupulous infringers who make “unimportant and insubstantial changes . . . which, though adding nothing, would be enough to take the copied matter outside the claim.” *Graver Tank & Mfg. Co. v. Linde Air Prods. Co.*, 339 U.S. 605, 607 (1950). As the Supreme Court explained, there is no reason “to foreclose claims of equivalence for aspects of the invention that have only a peripheral relation to the reason the amendment was submitted.” *Festo VIII*, 535 U.S. at 738.

The majority followed the framework set forth by *Festo* and its progeny. It presumed surrender arising from Ajinomoto’s amendment, examined the

prosecution history to determine the scope of that surrender, and concluded the reason for Ajinomoto's amendment was unrelated to the equivalent in question. CJ would have liked a different result, but fails to identify any errors warranting panel rehearing.

1. CJ's first argument, that the majority "improperly allowed Ajinomoto to re-claim what it surrendered," Pet. at 8-11, is based on the legally erroneous, bright-line view that an applicant's narrowing amendment necessarily gives up all scope between the original and amended claims—no exceptions, no nuances. CJ's position would, of course, abolish the rule. The tangential exception exists precisely to *prevent* such a rigid formulation—it directs the court to "consider[] *what* equivalents were surrendered during the prosecution of the patent, rather than imposing a complete bar." *Festo VIII*, 535 U.S. at 738 (emphasis added). Doing so requires determining "the patentee's objectively apparent reason for the narrowing amendment," which must be "discernible from the prosecution history focus[ing] on the context in which the amendment was made." *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.* 344 F.3d 1359, 1369-70 (Fed. Cir 2003) ("*Festo X*").

That is exactly what the majority did here. The majority reviewed the examiner's rejection and Ajinomoto's response to determine "[t]he objectively evident rationale for the amendment." Majority at 21. The majority explained that

the original claim was rejected because original limitation (B) reciting “one or several” amino acid differences was so broad that it encompassed the entirely different prior-art YfiK protein. *Id.* at 17. Ajinomoto overcame the rejection by narrowing its claims to more specifically recite the YddG protein and those sufficiently similar to it. *Id.* Specifically, by amending limitation (B) to define the claimed protein by the hybridization parameters of its encoding DNA sequence, Ajinomoto “limit[ed] the set of proteins within the claim’s scope so that it no longer included the prior-art *E. coli* YfiK protein and, more generally, no longer allowed as wide a range of *amino acid* alterations.” *Id.* Ajinomoto’s scope of surrender thus did not include CJ’s accused equivalent, which employs a YddG protein exactly as contemplated by the ’655 patent claims, but which merely escapes literal infringement through use of codon randomization. *Id.* at 21-22 (“[T]he non-*E. coli* YddG protein is identical whether produced from the codon-randomized or the non-codon-randomized version of the non-*E. coli yddG* gene.”).

The majority’s analysis is thus not grounded in improper acceptance of *post hoc* “prosecution-remorse” arguments, as CJ contends. Pet. at 9. To the contrary, it simply follows *Festo*’s directive to review the public prosecution history record to determine the objective scope of surrender. *Festo*, 344 F.3d at 1369. The real crux of the dispute, by CJ and the dissent, is simply based on a differing interpretation of that public record. Under their reading of the ’655 prosecution history, the

hybridization language used in limitation (B) is somehow divorced from the protein that is produced and claimed. Pet. at 8; Dissent at 4. But what CJ and the dissent misunderstand is that defining a protein by the hybridization parameters of its encoding DNA sequence is still *defining the protein*: the DNA hybridization criteria simply tells you *what* protein will ultimately be produced after the genetic processes of transcription and translation. Appx1342-1343(34:6-39:23). And it is the resulting *protein* that is claimed by the '655 patent, not the encoding DNA sequence. Appx201(23:19-22) (“in which said protein is”). Thus, as the majority correctly concluded, “the reason for the narrowing amendment [was] limiting the amino-acid makeup of *the proteins* included in one of the alternatives covered by the claims;” it “had nothing to do with choosing among several DNA sequences in the redundant genetic code that correspond to the same protein.” Majority at 21-22 (emphasis added). Ajinomoto’s amendment therefore did not surrender the equivalent used in CJ’s Strain B, which contains the exact same YddG *protein* as infringing Strain A, but which escapes literal infringement simply through codon randomization of the encoding DNA sequence. *Id.*

2. CJ is also incorrect that the cases relied on by the majority “highlight its errors.” Pet. at 11-12. To the contrary, those cases supply apt examples where, just as here, this Court has found the tangential exception satisfied. Majority at 19-20 (discussing *Insituform Techs., Inc. v. CAT Contracting, Inc.*, 385 F.3d 1360 (Fed.

Cir. 2004); *Regents of Univ. of Cal. v. Dakocytomation Cal., Inc.*, 517 F.3d 1364 (Fed. Cir. 2008); *Intervet Inc. v. Merial Ltd.*, 617 F.3d 1282 (Fed. Cir. 2010)).

CJ's purported point of distinction is: "In those cases—unlike here—patentee explicitly explained *how* its amendment overcame the rejection and informed the Court and the public what was being surrendered," while here, "Ajinomoto gave no explanation for how the redefinition narrowed the scope of the claims." Pet. at 8-9, 11. Not so. In *Intervet*, for example, there was no "explanation" by the patentee during prosecution that led to the Court's decision—it was simply "the specifics of the amendment and the rejection that provoked the amendment" that were enough to determine the scope of surrender. *Intervet*, 617 F.3d at 1291-92. Moreover, CJ is wrong that Ajinomoto was "silent" here as to the basis for its narrowing objection. Pet. at 10. Ajinomoto explained in its response that "[i]n view of this amendment, Livshits et al [disclosing the YfiK protein] no longer anticipates the claimed invention." Appx5617. As the majority correctly concluded, this explanation, read in context with the language of the amendment and the examiner's rejection, did not support a scope of surrender that would include a YddG protein produced from a *codon-randomized* gene that, but for the codon randomization, would fall within the literal scope of the claims. *Festo VII*, 535 U.S. at 740 (it is only "when the court is unable to determine the purpose underlying a narrowing amendment" that the presumption governs).

The dissent's attempts to distinguish the majority's cited cases likewise fail. The dissent explains that the amendment in *Insituform* limited “the location of the vacuum source, not the number of vacuum sources,” and the amendment in *Regents* limited “the type of blocking method, not the particular types of nucleic acids that could be used in that method.” Dissent at 6-7. But the same is true here: Ajinomoto's amendment “limit[ed] the set of proteins within the claim's scope,” not the ways in which such proteins can be made. Majority at 21. Similarly, the question the dissent says remained after the amendment in *Intervet*—“which nucleotide sequences are ‘properly characterized’ as being included under the claim language,” Dissent at 7—is similar to the one that remained here; namely, whether a protein produced by a codon-randomized gene was “properly characterized” as an equivalent, given the undisputed fact that the “YddG protein is identical whether produced from the codon-randomized or the non-codon-randomized version of the non-*E. coli yddG* gene.” Majority at 21-22.

The majority decision is thus unremarkable among the library of decisions by this Court. As has been held many times before, the tangential exception was satisfied because the prosecution history demonstrated that the objective rationale for the amendment was unrelated to the accused equivalent. And though the dissent notes this Court has recognized the doctrine is “very narrow,” it is not non-existent—

nor should it be. *Festo VIII*, 535 U.S. at 740 (“[T]here are some cases . . . where the amendment cannot reasonably be viewed as surrendering a particular equivalent.”).

3. CJ’s contention that the majority made “a different comparison than the Supreme Court mandated in *Festo*” is likewise incorrect. Pet. at 12-13. All parties and judges agree: the correct analysis is whether “the rationale underlying the amendment bears no more than a tangential relation to the equivalent in question.” Majority at 16; Dissent at 18; Pet. at 12. That is exactly what the majority did. Majority at 21 (“Here, we conclude . . . the amendment was tangential to the equivalent in question.”). CJ contends the majority somehow erred in observing that the way CJ was able to avoid literal infringement was through codon randomizing one strain to create another. Pet. at 12-13. But those are simply the facts of this case; the majority did not somehow err by observing them.

4. Finally, CJ’s reliance on the rationale of the dissent provides no reason for rehearing. The majority and dissent agree on the legal framework and they agree on the relevant facts; they simply disagree on their interpretation of the ’655 prosecution history. And as the majority correctly recognized, the dissent’s overly restrictive reading would go far beyond what was surrendered, preventing Ajinomoto from asserting infringement by an identical YddG protein simply because it was created through the artifice of codon randomization. Just as this Court has concluded before, “[s]uch a draconian preclusion would be beyond a fair

interpretation of what was surrendered,” *Intervet*, 617 F.3d at 1292, and would improperly “subordinat[e] substance to form,” *Graver*, 339 U.S. at 608.

V. There Is No Issue For En Banc Rehearing

This case presents no issue of exceptional importance. There is no question as to *Festo*’s legal framework for determining tangentiality. There is no question as to how that framework is to be applied in determining the scope of prosecution history estoppel. The only dispute in this case was whether, on this particular prosecution history record, in light of these particular facts pertaining to codon randomization and DNA hybridization, the objectively apparent reason for Ajinomoto’s narrowing amendment was tangential to the specific YddG protein used in CJ’s tryptophan-producing bacterial strain. CJ’s cry that the majority’s decision “opens the door to *post hoc* ‘prosecution remorse’ arguments” or “create[s] a new, improper tangential exception standard which abrogates PHE and the public-notice function” is unsupported by any such language in the narrowly written majority opinion. Pet. at 15-16.

Nor does this case, or the recently issued decision in *Eli Lilly & Co. v. Hospira, Inc.*, 933 F.3d 1320 (Fed. Cir. 2019), evidence a growing “split” in this Court’s caselaw. Pet. at 15-16. As the Supreme Court contemplated in *Festo*, there will be instances in which the tangential exception is met, and those where it is not. *Festo VII*, 535 U.S. at 739 (“We have considered what equivalents were surrendered

during the prosecution of the patent, rather than imposing a complete bar that resorts to the very literalism the equivalents rule is designed to overcome.”). This Court’s faithful application of the *Festo* framework to the facts before it is no departure from the norm.

Finally, even if there were some unanswered question as to the contours of the tangential exception or how to apply it (and there is not), this case is not the vehicle to address them. The majority recognized at the outset that, “[a]s an initial matter, CJ’s argument for prosecution history estoppel in this case involves an unusual circumstance.” Majority at 18. That is: the claim limitation under which Ajinomoto asserted infringement via the doctrine of equivalents is *not* the “hybridization” limitation resulting from amendment during prosecution. *Id.* Instead, Ajinomoto asserted that the YddG protein in CJ’s Strain B is equivalent to the *unamended* (A) limitation reciting SEQ ID NO:2—which went entirely *unchanged* throughout all of prosecution. *Id.* For that reason, Ajinomoto’s principal argument against prosecution history estoppel in this case has always been that there should be *no presumption of estoppel in the first place*, consistent with this Court’s law. *See, e.g., Ericsson, Inc. v. Harris*, 352 F.3d 1369, 1375 (Fed. Cir. 2003) (prosecution history estoppel does not apply to a limitation that “was never amended and therefore cannot be subject to the *Festo* presumption”); *Abbott Labs v. Dey, L.P.*, 287 F.3d 1097, 1103 (Fed. Cir. 2002) (prosecution history estoppel applies only if

the “limitations at issue were amended during prosecution”). The majority in this case chose not to address that question, instead resolving the case on the tangential exception. Majority at 18. Given this underlying issue, and the unusual circumstance it presents, this case would not serve the Court’s efforts in clarifying the law.

CONCLUSION

The petition for panel and *en banc* rehearing should be denied.

Dated: November 6, 2019

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME AND
TYPEFACE REQUIREMENTS**

This brief complies with the type-style and type-volume requirements of Federal Rules of Appellate Procedure 32(a)(2) and 35(b)(2) and Federal Circuit Rules 32(b) and 35(e). This petition contains 3,869 words, as determined by the word-count function of Microsoft Word, excluding the parts of the brief exempted by Federal Circuit Rule 35(c)(2). This brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14 point font.

Dated: November 6, 2019

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CERTIFICATE OF SERVICE

I hereby certify that today, November 6, 2019, the foregoing Ajinomoto's Response to CJ's Petition for Panel Rehearing and Rehearing En Banc was filed and served electronically on all counsel of record using the Court's CM/ECF system.

Dated: November 6, 2019

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