2019-2076

United States Court of Appeals for the Federal Circuit

HIP, INC.,

Plaintiff-Appellant,

– v. –

HORMEL FOODS CORPORATION, HORMEL FOODS CORPORATE SERVICES, LLC, OSCEOLA FOOD, LLC, ROCHELLE FOODS, LLC, DOLD FOODS, LLC,

Defendants-Appellees.

On Appeal from the United States District Court for the District of Delaware in No. 1:18-cv-00615-CFC, Hon. Colm F. Connolly

COMBINED PETITION FOR PANEL REHEARING AND REHEARING *EN BANC*

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MARCH 20, 2020

FORM 9. Certificate of Interest **Form 9**
Rev. 10/17

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

HIP, INC. **v.** Hormel Foods Corporatin

Case No. 19-2076

CERTIFICATE OF INTEREST

Counsel for the:
☐ (petitioner) ■ (appellant) ☐ (respondent) ☐ (appellee) ☐ (amicus) ☐ (name of party)

Jerry R. Selinger

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
HIP, Inc.	HIP, Inc.	None

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:

Patterson + Sheridan, LLP
Jerry R. Selinger; Todd Patterson; Susan Powley; Kyrie Cameron; Grant Davis; James R. Bender

Brown Patent Law, PLLC
Dennis Brown

Morris, Nichols, Arsht & Tunnell LLP
Karen Jacobs
Michael J. Flynn

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).

No previous appeals have been taken from the same civil action or proceeding to this or any other appellate court. The PTAB decision to institute 2019-00469 on July 15, 2019 rejected the district court's construction that "resembling a pan-fried bacon product" is a substantive limitation and it will be directly affected by this court's decision in the pending appeal.

3/20/2020
Date

/s/ Jerry R. Selinger
Signature of counsel

Please Note: All questions must be answered

Jerry R. Selinger
Printed name of counsel

cc: All Counsel of Record via CM/ECF email notice.

Reset Fields

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RULE 35(b) STATEMENT OF COUNSEL

Based on my professional judgment, I believe this appeal requires an answer to one or more precedent-setting questions of exceptional importance:

1. Whether claims directed to an industrial-scale commercial process for manufacturing products (here food products) of a quality "resembling" a traditional, handmade product are indefinite, and thus invalid, when the specification discloses, *inter alia*, qualitative criteria for assessing the scope of the claimed subject matter, but no quantitative standards or criteria exist for making the claimed comparison?

2. Whether industrial-scale commercial processes for emulating a traditional, handmade product are unpatentable as indefinite under §112 (b) unless analytical tools exist to make the claimed comparison?

Based on my professional judgment, I believe the Rule 36 affirmance may be contrary to at least the following decisions of the Supreme Court of the United States and precedents of this Court: *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 909-910 (2014); *Sonix Tech. Co., v. Publications Int'l., LTD*, 844 F.3d 1270, 1290-91 (Fed. Cir. 2017); *Teva Pharms USA, Inc. v. Sandoz, Inc.*, 789 F.3d 1335, 1376 (Fed. Cir. 2015).

/s/ Jerry R. Selinger
ATTORNEYS FOR HIP, INC.

I. ARGUMENTS IN SUPPORT OF REHEARING OR REHEARING *EN BANC*

A. The Precision Required to Define Claim Scope Cannot be More Specific than Allowed by the Nature of the Inventive Subject Matter

The Supreme Court instructed in *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898 (2014), "that a patent's claims, viewed in light of the specification and prosecution history, [must] inform those skilled in the art **about** the scope of the invention with reasonable certainty." *Id*. at 910 (emphasis added). Pointedly, the Court quoted *Minerals Separation, Ltd. v. Hyde*, 242 U.S. 261, 270 (1916), for its guidance that "the certainty which the law requires in patents is not greater than is reasonable, **having regard to their subject-matter**." *Nautilus*, 572 U.S. at 910-11 (emphasis added).

Since *Nautilus*, the court has upheld claims as definite when "inherent parameters" can be discerned from the intrinsic evidence, *Biosig Instruments, Inc. v. Nautilus, Inc*., 783 F.3d 1374, 1384 (Fed. Cir. 2015)("spaced apart"), when the challenged term has an established meaning in the art, *DDR Holdings, LLC v. Hotel.com, L.P.*, 773 F.3d 1245, 1261 (Fed. Cir. 2014) ("visually perceptible elements" construed as "'look and feel' elements that can be seen"), based on examples and procedures in the written description and prosecution history, *Sonix Tech. Co., v. Publications Int'l., LTD*, 844 F.3d 1270, 1290-91 (Fed. Cir. 2017) ("visually negligible"); *Guangdong Alison Hi-Tech Co., v. ITC*, 936 F.3d 1353,

1362 (Fed. Cir. 2019) ("lofty batting"), by employing a goal of the patent, *Mentor Graphics Corp. v. Eve-USA, Inc.*, 851 F.3d, 1275, 1291 (Fed. Cir. 2017) ("displayed visually near"), and based on examples supporting functional language, *BASF Corp. v. Johnson Mathey Inc*., 875 F.3d 1360, 1367 (Fed. Cir. 2017) ("effective to catalyze").

Conversely, the court has deemed claims indefinite when a claim term is purely subjective, based on an individual user's purely subjective preference, *Intellectual Ventures I LLC v. T-Mobile USA, Inc.*, 902 F.3d 1372, 1381 (Fed. Cir. 2018) ("QoS [quality of service] requirements"), purely subjective with insufficient guidance from the intrinsic evidence, *Interval Licensing LLC v. AOL, Inc.*, 766 F.3d 1364, 1371-74 (Fed. Cir. 2014) ("in an unobtrusive manner that does not distract a user"), and when claim language meant several different things without an informed choice among contending definitions, *Teva Pharms USA, Inc. v. Sandoz, Inc.*, 789 F.3d 1335 (Fed. Cir. 2015) ("molecular weight").

While precedent consistently holds that purely subjective terms are indefinite, decisions of this court appear to conflict as to the scope of objective guidance required for terms that are not purely subjective. Several decisions have elevated "reasonable certainty" into a rigorous requirement of "objective boundaries." *Interval Licensing*, 766 F.3d at 1371; *Biosig*, 783 F.3d at 1381 (summarizing *Interval Licensing*), while other decisions indicate "objective"

guidance does not require quantitative precision. *DDR*, 773 F.3d at 1260 ("sufficiently objective meaning"); *Sonix*, 844 F.3d at 1378 ("objective baseline"). Further, precedential decisions are inconsistent about the continued viability of this Court's pre-*Nautilus* requirement that when a claim uses a term of degree, the patent specification should supply "some standard for measuring that degree." Compare *Interval Licensing,* 766 F.3d at 1370-71 ("[I]t is not enough, as some of the language in our prior cases may have suggested, to identify 'some standard for measuring the scope of the phrase'") with *Mentor Graphics*, 851 F.3d at 1290, *Biosig*, 783 F.3d at 1378 (citing "some standard for measuring that [term of] degree" with approval).

The uncertainty about the appropriate benchmark against which to measure claim indefiniteness is particularly acute when, as here, there are no analytical tools or criteria for determining claim scope with mathematical precision. The absence of analytical tools cannot mean entire classes of inventive subject matter are disqualified from patent protection for that reason alone. Yet, that is exactly what the district court demanded, ignoring disclosed qualitative criteria while relying on the type of expert evidence denounced as inappropriate in *Teva* and *Sonix*.

B. The Inventive Process of the '610 Patent

Prior to the inventive process of U.S. Patent No. 9,510,610 (the "'610 Patent"), prior art technology for making industrial-scale quantities of precooked sliced bacon used continuous microwave systems or linear impingement ovens, but those made sliced-bacon products that did not compare favorably to pan-fried bacon. '610 Patent, 1:19-2:16; Appx509. Spiral ovens existed, but were not an obvious choice for cooking sliced bacon given the need to circulate cooking medium without blowing bacon slices off the conveyor belt, the enormous production quantities needed, and the fire risk from the deluge of fat rendered during the cooking process.[1] Appx312 (¶10). Mr. Howard's inventive solution was an industrial-scale commercial process using a spiral oven, as defined by the body of claims 1-3, and which resulted in "a pre-cooked sliced bacon product resembling a pan-fried bacon product." '610 Patent, 9:29-10:48 (claims 1-3).

C. The '610 Patent Discloses Objective Baselines and Qualitative Guidance

The '610 Patent and its prosecution history provide a wealth of detail sufficient to inform those skilled in the art about the scope of the invention with reasonable certainty, having regard to the inventive subject matter. The claims provide boundaries/baselines. They define the invention as an industrial-scale

[1] Sliced bacon must lose at least 60% of its weight to meet USDA's requirement for precooked bacon. Appx27 n.6.

commercial process. Appx513 ("spiral oven"), Appx25. They limit the comparison to whether industrial quantities of bacon made practicing the claim steps (a-e) "resemble[s] a pan-fried bacon product." Appx2128. They require that the bacon slices have lost at least 60% of their weight during cooking. Appx27, n.6 (precooked or fully cooked). Thus, the claims alone show the comparison does not rely on the purely subjective tastes of an ultimate consumer. Rather, the focus is on a hypothetical POSITA skilled in the relevant art. Appx27 n.5.

The "Summary of the Invention" discloses a three-way **qualitative** comparison **and** a clear boundary. In particular, the product produced by the inventive process "does not have burned or blackened outer edges [the clear boundary] and is **much closer** than a microwaved product to home-fried bacon [the qualitative comparison]." (Emphasis added.) The Summary also states the inventive process "can produce a precooked sliced bacon product of generally any desired crispness and generally any desired color ranging from light gold to very dark golden brown." '610 Patent, 2:23-28, 32-34. While the '610 Patent recognizes the breadth of crispness and color of the inventive product resembling a pan-fried bacon product, "breadth is not indefiniteness." *BASF*, 875 F.3d at 1367, quoting *SmithKline Beecham Corp. v. Apotex Corp*., 403 F.3d 1331, 1341 (Fed. Cir. 2005). The inventive subject matter does not depend on any particular individual preference for pan-fried bacon quality.

The written description sets forth (a) two embodiments disclosing both a range and preferred process parameters that provide further guidance about the inventive process, '610 Patent, 7:9-40, and an Example. Appx513, 8:59-9:18. The Example identifies specific process conditions for the industrial-scale quantities of sliced bacon produced by the inventive process: a temperature, a Vaisala analyzer value, cooking time, pressure within the oven slightly above atmospheric, and cooking medium circulation rate. The Example also identifies the length, width and thickness of the raw bacon slices, their initial surface temperature and the load factor of the bacon slices on the conveyor belt. Finally, the Example instructs that the resulting cooked product is "substantially the same as a bacon product which has been pan-fried at 500°F for five minutes (2.5 minutes on each side)." '610 Patent, 9:14-17.

The "Background" section states the unremarkable fact that prior art processes "used in the industry" had not been able to provide bacon having the same "texture, bite, mouth feel, color and appearance"[2] as pan-fried bacon cooked in the home. *Id*., 1:22-26. The one reference to those underlying organoleptic factors in the "Detailed Description" is the **qualitative** conclusion that the patented process produces a cooked sliced bacon product "which has **much more** of a pan-

[2] Those are underlying, unclaimed organoleptic criteria that stimulate human sense organs. Appx26 n.4.

fried texture, bite, mouth feel, appearance, and color" than prior art products produced by microwave systems. *Id*., 8:11-16 (emphasis added).

HIP's expert (Mr. Corliss) and Hormel's expert (Mr. Gunawardena) agreed that there are no "standards" that define or describe the texture, mouth feel, bite, appearance or color of pan-fried bacon, nor are there analytical definitions for those underlying criteria. Appx27, Appx1075. However, there was no evidence contradicting the Summary's qualitative conclusion that the patented product has "**much more** of a pan-fried texture …" than prior art products produced by microwave systems.

Indeed, documentary extrinsic evidence showed skilled artisans well-understood this qualitative comparison. As one example, an April 2006 document from Hormel's R&D test unit includes a picture with the caption that the tested sliced bacon "has appearance and flavor of 'pan-fried' bacon." Appx714, *see also* Appx1052 (¶15). Further, a 2014 Hormel "training guide" included side-by-side pictures of Bacon 1 and bacon made by a microwave oven system, crowing: "The color is brighter, the strips are longer and thicker, the aroma is stronger." Appx980. That same guide instructed employees to tell commercial buyers that Hormel's accused product, Bacon 1, "delivers the flavor, texture and appearance of bacon cooked from raw…." Appx981. And the training guide had pictures

comparing Bacon 1 against cooked-from-raw bacon, concluding Bacon 1 "has that same cooked from raw appearance and appeal." Appx1005.

D. The Prosecution History Shows "Pan-Fried Bacon" Had a Well-Established Meaning to Skilled Artisans

The inventor, patent counsel, the Examiner, and outside experts understood the meaning of "resembling a pan-fried bacon product," consistent with the term having a well-established plain and ordinary meaning. The phrase was added by claim amendment to distinguish over prior art. Appx247-251, Appx254, Appx294-297. Applicant's attorney thereafter used that phrase in continuing efforts to distinguish over the prior art. Appx261, Appx413-416, Appx421. Inventor Howard and Professor J. Roy Escoubas submitted Rule 132 Affidavits in which they opined that bacon produced by the inventive process "resembles a pan-fried product," while bacon produced by a microwave process does not "resemble a pan-fried bacon product." Appx305 (¶3), Appx306 (¶5) (Howard); Appx316-318 (¶22, with pictures) (Escoubas). The Examiner also treated the phrase as a substantive limitation without questioning its meaning. Appx471, Appx442-443, Appx1128.

Furthermore, Hormel's expert, Mr. Gunawardena, in his 2018 IPR declaration, showed he had no difficulty understanding that phrase. He swore, without qualification (albeit incorrectly), that certain prior art could produce "pre-cooked sliced bacon product resembling a pan-fried bacon product." Appx1426-1427 (¶56).

And as noted above and also below, discussed extrinsic evidence from Hormel confirmed "pan-fried bacon" had (and continues to have) a regular and established meaning in the art. The district court ignored this intrinsic and extrinsic evidence.

E. The District Court Committed Legal Error in its Analysis of the Intrinsic Evidence by Demanding Mathematical Precision

The district court committed legal error by requiring quantitative objective criteria: (1) establishing bright-line demarcation between pan-fried bacon and microwaved bacon; or, (2) for measuring or determining organoleptic properties underlying the overall taste of pan-fried bacon. Appx26. The most reasonable explanation as to why the district court did so was because of confusion, in light of the inconsistencies in this court's precedent discussed above, about the perceived need in post-*Nautilus* jurisprudence for analytical tools to determine precise, objective boundaries. The district court's insistence on such certainty is far greater than the law requires, having regard for the subject matter of Mr. Howard's inventive process and the written description. *Nautilus*, 572 U.S. at 901.

In its search through the '610 Patent for analytical tools, the district court quoted, but then ignored, the Summary's clear boundary (no "burned or blackened outer edges") and the three-way qualitative comparison ("much closer than a microwaved product to home-fried bacon"). Appx26. Likewise, the district court ignored that the '610 Patent's only discussion of underlying organoleptic factors outside of the Background was in providing a **qualitative** comparison of bacon

produced by the inventive process against prior art microwaved bacon, namely "**much more** of a pan-fried texture …." '610 Patent, 8:11-16 (emphasis added). This is "some standard" for measuring "resembling a pan-fried bacon product." The district court instead insisted on "crispometers" "or other objective tools or criteria to measure or identify the underlying sensory parameters of pan-fried bacon." Appx33.

The district court's reliance on its questions to HIP's expert about **quantitative** details was legal error. Appx27-30. The conclusory responses of Hormel's expert that the claim term was "very subjective" and "he did not find an objective standard" in the intrinsic or extrinsic evidence are entitled to no deference or weight. Appx1955, 1978. Responses to those questions cannot support an inference that the actual claim term is purely subjective. *Teva*, 789 F.3d at 1342. The district court's finding based on this conclusory testimony is incorrect and not entitled any deference. Appx30. *Teva*, 789 F.3d at 1342; *Sonix,* 844 F.3d at 1376.

The district court's demand for analytically precise tools or criteria was equally clear in its incorrect conclusion that the Example "does not inform a POSITA **how to determine** whether bacon cooked by the claimed invention resembles pan-fried bacon." Appx31, citing Appx1970-71 (emphasis added). The example teaches a POSITA that following the specified conditions, the inventive bacon slices (input at the equivalent of a total feed rate of 2.7 tons/hour) have a "crispness, appearance and degree of golden brown color which are substantially

the same" as the Example's pan-fried bacon slices. '610 Patent, 9:13-17. A POSITA would use normal human eyesight and palette senses to understand what the inventor meant by the Example's "substantially the same" teaching. *See, e.g.*, *Sonix*, 844 F.3d at 1378 ("The question whether something is visually negligible . . . involves what can be seen by the normal human eye. This provides an objective baseline . . . ."). The Example's teaching, alone or as part of the intrinsic evidence, would provide the "reasonable certainty" the law requires, having regard for the nature of the claimed subject matter. *Nautilus*, 572 U.S. at 901.

The district court concluded the Example provided no probative teaching, for two reasons. First, the specification did not "define – or explain in any way how to measure or assess – the bacon's crispness, appearance, or degree of golden brown color …." Appx31. However, that sentence is unsupported by any evidence that a skilled artisan would need such definitions or explanations to understand the Example's teaching of inventive sliced bacon that is "substantially the same" as pan-fried. *See, e.g.*, *BASF*, 875 F.3d at 1367 (rejecting unsupported observation that claims lacked "a particular measurement method" to determine whether a composition is sufficiently "effective," even coupled with unsupported conclusion a POSITA would need that information). A POSITA comparing the pan-fried bacon slices to the precooked bacon slices, all produced under the specified

conditions, would understand what the inventor meant when the Example states they are "substantially the same." Appx27 n.5 (level of skill).

Second, the district court deemed the Example fatally flawed because it failed to "identify the characteristics of the pan or bacon." Appx31. The district court relied on testimony from Hormel's expert that those characteristics vary widely, and inferred (incorrectly) from the expert's testimony that variability can "affect substantially the crispness, appearance, and color of bacon fried in a pan." *Id*. However, Hormel's expert testimony only purported to show that variations in these characteristics did not provide mathematical "guidelines." Appx1970 (lines 12-15). The district court's inference that the underlying variations "affect substantially the crispness, appearance, and color of bacon fried in a pan" is legal error and unsupported by evidence.[3]

More importantly, such variations are not relevant. The cooked product **is still** pan-fried bacon with a "crispness, appearance and degree of golden brown color which are substantially the same" as the industrial-scale sliced bacon produced by the inventive process. '610 Patent, 8:14-16. Consequently, the district court's reliance on Hormel's expert to conclude the Example "does not

[3] The Example states that bacon thickness is about 3 mm. '610 Patent, 8:60-61. HIP's expert, whom the district court also found credible when responding to questions from the court, explained to the court pan characteristics were not germane because the bacon slices were cooked on the top of the pan at 500ºF. Appx2119 (lines 15-24), Appx 30 n.7.

inform a POSITA how to determine whether bacon cooked by the claimed invention resembles pan fried bacon" can only mean the district court was requiring quantitative, mathematical precision. The law does not require this degree of mathematical precision in the inventive subject matter at hand. *Sonix*, 844 F.3d at 1379; *Biosig*, 783 F.3d at 1382-84.

Furthermore, the district court committed legal error in relying on Hormel's expert testimony for the court's conclusion that the Example "does not inform a POSITA how to determine whether bacon cooked by the claimed invention resembles pan-fried bacon." Doing so violated the mandate in *Teva* that the meaning a POSITA would give to "the disclosure in the specification" is a question of law, and the district court's conclusion was entitled to no weight, as well as misdirected. *Teva*, 789 F.3d at 1342; *accord Sonix*, 844 F.3d at 1376 (quoting *Teva*). The Example had more than sufficient information, having in mind the inventive subject matter. *Nautilus*, 572 U.S. at 909-910.

Further, the district court cited no evidence for its ultimate conclusion that the absence of objective tools or criteria about the underlying sensory parameters makes the term "resembling a pan-fried bacon product" purely subjective and dependent on the unpredictable vagaries of any one person's opinion. Appx33. While individual preferences for a specific quality of pan-fried bacon may be

subjective, that preference is not relevant and is from within the universe of pan-fried bacon. The district court committed legal error by requiring too much.

F. Hormel's Internal Documents Further Evidence that "resembling a pan-fried bacon product" Had (and Has) a Plain and Ordinary Meaning

The term pan-fried bacon permeates Hormel's own documents from 2005 to 2018, both those focused internally and those directed toward its commercial customers. These documents all use the term with no hint of confusion, further showing that the term has, and had, an established meaning to a POSITA.[4]

Sampling only pre-filing-date documents,[5] a July 2005 Foods Research Report uses the phrase "texture, aroma and taste similar to pan fried bacon." Appx1431-1432. An October 2005 Research Report used the same phrase. Appx1434-1435. A February 2006 internal memorandum used the phrase "a product with the color and the mouth feel similar to pan fry." Appx1440. An April 2006 document from Hormel's R&D test unit includes a picture with the caption that the tested sliced bacon "has appearance and flavor of 'pan-fried' bacon." Appx714, *see also* Appx1052 (¶15). A May 2006 Test Unit Budget Request used the phrase "[p]recooked bacon with pan fried appearance and enhanced flavor compared to MW processing." Appx1442. A November 2007 research memorandum explained the work was intended to produce sliced bacon

[4] The district court ruled the term had its plain and ordinary meaning if not indefinite. Appx1925-1926.
[5] The full list is in the Brief for Appellant, at 17-20.

products that could "live up [to] the **gold standard** of fresh pan fried bacon." Appx1444 (emphasis added). *See also* Appx716-717 (2006 Hormel Capital Request with executive explanations about approval). The district court recognized the importance of these documents on the record, Appx2114, yet the opinion ignores them.

CONCLUSION

The petition for rehearing and for rehearing *en banc* should be granted. The specification discloses claim boundaries, qualitative criteria for assessing the scope of the claimed subject matter and a comparative Example. The prosecution history and extrinsic evidence show the term has a plain and ordinary meaning. No quantitative standards or criteria exist for making the claimed comparison. The Court should clarify this is sufficient to provide *Nautilus* notice, having regard for the inventive subject matter.

Respectfully submitted,

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Counsel for Plaintiff-Appellant

ADDENDUM

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

HIP, INC.,
Plaintiff-Appellant

v.

HORMEL FOODS CORPORATION, HORMEL FOODS CORPORATE SERVICES, LLC, OSCEOLA FOOD, LLC, ROCHELLE FOODS, LLC, DOLD FOODS, LLC,
Defendants-Appellees

2019-2076

Appeal from the United States District Court for the District of Delaware in No. 1:18-cv-00615-CFC, Judge Colm F. Connolly.

JUDGMENT

JERRY ROBIN SELINGER, Patterson & Sheridan LLP, Dallas, TX, argued for plaintiff-appellant. Also represented by JAMES BENDER, Greensboro, NC.

KURT JOHN NIEDERLUECKE, Fredrikson & Byron, PA, Minneapolis, MN, argued for defendants-appellees. Also

represented by LAURA LYNN MYERS, BARBARA MARCHEVSKY, TIMOTHY MICHAEL O'SHEA.

THIS CAUSE having been heard and considered, it is

ORDERED and ADJUDGED:

PER CURIAM (PROST, *Chief Judge,* BRYSON and WALLACH, *Circuit Judges*).

AFFIRMED. See Fed. Cir. R. 36.

ENTERED BY ORDER OF THE COURT

March 6, 2020
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

CERTIFICATE OF SERVICE

United States Court of Appeals
for the Federal Circuit
No. 2019-2076
----------)
HIP, INC.,
Plaintiff-Appellants,
v.
HORMEL FOODS CORPORATION, HROMEL FOODS CORPORATE SERVICES, LLC, OSCEOLA FOOD, LLC, ROCHELLE FOODS, LLC, DOLD FOODS, LLC,
Defendants-Appellees.
----------)

I, Robyn Cocho, being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

Counsel Press was retained by Patterson + Sheridan, LLP, Attorneys for Plaintiff-Appellants to print this document. I am an employee of Counsel Press. On the 20th day of March, 2020, I served the within **Petition for Panel Rehearing and Rehearing En Banc** to

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via email and Express Mail by causing 2 true copies to be deposited, enclosed in a properly addressed wrapper, in an official depository of the U.S. Postal Service.

Unless otherwise noted, 19 copies have been hand-delivered to the Court on the same date as above.

March 20, 2020

/s/ Robyn Cocho
Robyn Cocho

CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.R.F. § 42.24(d), the undersigned hereby certifies that this Petition complies with the type-volume limitation of 37 C.F.R. § 42.24 because this brief contains 3,347 words, excluding the parts exempted by 37 C.F.R. § 42.24(a).

Dated: March 20, 2020

Respectfully submitted,

/s/Jerry R. Selinger
USPTO Reg. No. 26,582
Lead Counsel for Patent Owner