

22-1951, 22-1952, 22-1953

United States Court of Appeals
for the Federal Circuit

JODI A. SCHWENDIMANN,

Appellant,

v.

NEENAH, INC.,

Appellee.

*Appeals from the United States Patent and Trademark Office,
Patent Trial and Appeal Board, in IPR2020-1361,
IPR2020-1363, and IPR2021-16*

**COMBINED PETITION FOR PANEL REHEARING AND
PETITION FOR REHEARING EN BANC**

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November 10, 2023

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF INTEREST

Case Number 2022-1951, 2022-1952, 2022-1953

Short Case Caption Schwendimann v. Neenah, Inc.

Filing Party/Entity Jodi A. Schwendimann

Instructions:

1. Complete each section of the form and select none or N/A if appropriate.
2. Please enter only one item per box; attach additional pages as needed, and check the box to indicate such pages are attached.
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I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 11/10/2023

Signature: /s/Devan V. Padmanabhan

Name: Devan V. Padmanabhan

FORM 9. Certificate of Interest

Form 9 (p. 2)
March 2023

<p>1. Represented Entities. Fed. Cir. R. 47.4(a)(1).</p>	<p>2. Real Party in Interest. Fed. Cir. R. 47.4(a)(2).</p>	<p>3. Parent Corporations and Stockholders. Fed. Cir. R. 47.4(a)(3).</p>
<p>Provide the full names of all entities represented by undersigned counsel in this case.</p>	<p>Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities.</p> <p><input checked="" type="checkbox"/> None/Not Applicable</p>	<p>Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities.</p> <p><input checked="" type="checkbox"/> None/Not Applicable</p>
<p>Jodi A. Schwendimann</p>	<p>N/A</p>	<p>N/A</p>

Additional pages attached

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

None/Not Applicable Additional pages attached

NA		

5. Related Cases. Other than the originating case(s) for this case, are there related or prior cases that meet the criteria under Fed. Cir. R. 47.5(a)?

Yes (file separate notice; see below) No N/A (amicus/movant)

If yes, concurrently file a separate Notice of Related Case Information that complies with Fed. Cir. R. 47.5(b). **Please do not duplicate information.** This separate Notice must only be filed with the first Certificate of Interest or, subsequently, if information changes during the pendency of the appeal. Fed. Cir. R. 47.5(b).

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

None/Not Applicable Additional pages attached

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STATEMENT OF COUNSEL REQUIRED BY
FEDERAL CIRCUIT RULE 35(B)

Based on my professional judgment, I believe the panel decision is contrary to the following precedent of this Court: *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005).

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

1. Where the Panel is presented with inconsistent claim constructions from the Board and the District Court, is it permissible for the Panel to issue a Rule 36 affirmance without indicating which claim constructions were held correct, thereby making it impossible for Patent Owner and the public to know how the claims were construed, and making it impossible for Patent Owner to seek review of the claim constructions?

2. Assuming, *arguendo* (and with no way of knowing), that the Panel found that the District Court's constructions of the claim terms were correct (and either rejected the Board's claim constructions or somehow reconciled the two sets of claim constructions), was it erroneous for the Panel to invalidate claims as anticipated where there was no express or inherent disclosure that the prior art reference contained each of the claim limitations in the invalidated patent claims?

POINTS OF LAW & FACT PANEL HAS OVERLOOKED OR MISAPPREHENDED (FED. R. APP. P. 40(a)(2))

Pursuant to Federal Rule of Appellate Procedure 40(a)(2), Patent Owner states that the Panel’s Rule 36 affirmance overlooked or misapprehended the following points of law or fact:

Under Rule 36, “[t]he court may enter a judgment of affirmance without opinion, citing this rule, when it determines that any of the following conditions exist and an opinion would have no precedential value: ... (4) the decision of an administrative agency warrants affirmance under the standard of review in the statute authorizing the petition for review; or (5) a judgment or decision has been entered without an error of law.” Fed. Cir. R. 36(a)(4) & (5).¹

Here, because of the Rule 36 affirmance, it is unknown whether the Panel affirmed because (1) it agreed with the **Board’s** claim construction and anticipation analysis; or (2) it agreed with the **District Court’s** claim construction but still found the claims anticipated. To the extent the Panel agreed with the Board’s claim constructions, the Panel misapprehended the standard of review for claim construction – i.e., de novo review. *E.g., Kaken Pharm. Co. v. Iancu*, 952 F.3d 1346, 1350 (Fed. Cir. 2020) (this Court reviews “the Board’s claim

¹ Sub-parts (1), (2), and (3) do not apply because the appeal is not an appeal from a “trial court,” there was no “jury verdict,” and it is not an appeal from “summary judgment, directed verdict, or judgment on the pleadings.” Fed. Cir. R. 36(a)(1)-(3).

construction de novo” (internal citation omitted)). Under de novo review, applying *Phillips*, both the claim terms themselves and the specification state that the materials must perform a function. Therefore, affirmance of the Board’s constructions – which did not require that the materials perform any function – was not warranted. To the extent the Panel agreed with the District Court’s claim construction but still found the claims anticipated, the Panel misapprehended the “facts” because there was **no** evidence – let alone “substantial evidence” (i.e., the relevant standard of review – *see id.*) – supporting a finding that Kronzer anticipated. In particular, there was **no** evidence that Kronzer disclosed – expressly or inherently – that the cited materials performed the requisite functions required by the District Court’s claim constructions, and it is black-letter law that a reference does not anticipate unless it discloses – expressly or inherently – every claim limitation. *See Therasense, Inc. v. Becton, Dickinson & Co.*, 593 F.3d 1325, 1332–33 (Fed. Cir. 2010) (“For a claim to be anticipated, each claim element must be disclosed, either expressly or inherently, in a single prior art reference.”).

To the extent the Panel issued its Rule 36 affirmance under subsection (a)(5), the Panel overlooked or misapprehended one or more “error[s] of law” by the Board, including (1) to the extent the Panel adopted the Board’s constructions, construing the claims in a manner that disregarded *Phillips* and/or (2) finding that a

prior art reference can anticipate when it neither expressly nor inherently discloses each claim limitation.

BACKGROUND & ARGUMENT

I. BACKGROUND

The heart of Patent Owner’s present Combined Petition for Panel Rehearing and Petition for Rehearing En Banc is the issue that – although both bodies were supposed to apply the same standard for construing the claims (i.e., *Phillips*) – the two bodies adopted different claim constructions, and the Panel’s Rule 36 affirmance makes it unclear which claim constructions the Panel adopted when it engaged in the anticipation analysis. For this reason, Patent Owner sets forth below a brief background of the challenged patent claims, the District Court’s claim constructions, the Board’s claim constructions, the prior art reference, and the parties’ arguments on appeal.

A. Procedural Background

The IPRs underlying this appeal arose out of a patent case Schwendimann filed against Neenah asserting infringement of three patents: U.S. Patent Nos. 6,410,200 (the “200 Patent”), 6,723,773 (the “773 Patent”), and 7,008,746 (the “746 Patent”). *Schwendimann v. Neenah, Inc.*, Case No. 19-361 (D. Del.). Neenah filed Petitions for *inter partes* review challenging each of the Schwendimann Patents.

The Board ultimately held that all of the challenged claims are unpatentable as anticipated by Kronzer-769, as summarized below:

IPR (Appeal Case No.)	Patent	Claims	Prior Art
IPR2020-01361 (22-1951)	'773	1, 10, 12, 14	Kronzer-769
IPR2020-01363 (22-1952)	'200	1, 2, 6, 11, 19-21, 29, 57, 58, 64, 70	Kronzer-769
IPR2021-00016 (22-1953)	'746	5, 19	Kronzer-769

B. The Delaware Court's Claim Constructions

On February 9, 2021—after the Board's instituted the IPRs at issue here—the Delaware District Court construed the relevant claim terms in the parallel district court proceeding between Schwendimann and Neenah. *See* Appx638-658. The Delaware District Court's constructions are set forth below:

Claim Term	Construction
"film-forming binder"	"A material, or a combination of materials, that facilitates release and/or adhesion of the composition." Appx656.
"acrylic dispersion"	"An acrylic material, or a combination of materials including an acrylic material, that is dispersed in a medium and provides release and/or adhesion of the composition." Appx656-657.
"water repellent"	"A material or materials that provide(s) water resistance." Appx657.
"elastomeric emulsion"	"A material dispersed in a medium that provides elastomeric properties such as mechanical stability, flexibility, and stretchability." Appx654-755.
"plasticizer"	"A material or combination of materials that act(s) as a softening agent." Appx655.

Claim Term	Construction
“retention aid”	“A material that aids in the binding of an applied colorant.” Appx657-658.

Neenah asked the Delaware District Court to include in its construction a list of “exemplary materials.” Appx660-661. The Delaware District Court declined to do so because the “evidence at trial will address the specific materials in the accused products that are alleged to satisfy these requirements.” Appx654.

C. The Board’s Claim Constructions

The Board’s constructions differed in two ways from those of the District Court. **First**, the Board did **not** adopt a construction that refers to **the function** of each material. For example, unlike the District Court, the Board did **not** construe “film-forming binder” to be a material that “facilitates release and/or adhesion of the composition.” The Board stated that its decision to exclude these functions was based upon both the claim language and the specification.

With respect to the claim language, the Board found that the “language of the claims themselves” has no “express requirement in any of the independent claims that the film-forming binder, elastomeric emulsion, water repellent, plasticizer, or wax dispersion perform a particular function.” Appx46; *id.* (finding that the language of the claims does not contain any “express” functional requirements); Appx97 n. 15 (“[W]e do not adopt Patent Owner’s construction for the term ‘retention aid’ that requires the performance of a particular function”).

With respect to the specification, the Board found that “[w]hen describing these exemplary materials, the specification does not require that they provide a specific function in the claimed release layer.” Appx47. In response to Schwendimann’s argument that, elsewhere, the specification described precisely what function each of the materials must perform, the Board found that “[a]t most, ... these statements in the Specification describe the specific function of the film-forming binder, elastomeric emulsion, water repellent, and plasticizer in Release Layer 1, a preferred embodiment of the invention.” Appx48 (citing Appx242, 11:20–24). With respect to the specification’s discussion of the “retention aid,” the Board acknowledged that the function described in the specification’s discussion of “retention aid” was not part of any preferred embodiment but held that the function was optional because the specification “states retention aids ‘**may** be incorporated for the purpose of aiding in the binding of the applied colorant.’” Appx49 (emphasis added & citing Appx1720 (quoting Appx265, 9:5–10, which corresponds to Appx241, 9:54–58); Pet. 21 (citing Appx241, 9:54–10:8)); *see also* Appx49 (“Similar permissive language appears in the portions of the Specification discussing plasticizers and water repellants.” (citing Appx241, 10:35–37, 10:47–50)).

In sum, the District Court’s constructions did refer to the function of each material, whereas the Board’s constructions do not.

Second, in contrast to the District Court, the Board held that “the claimed ‘film-forming binder’ and ‘retention aid’ would at least **encompass the explicit examples** recited in the ’746 patent specification.” Appx87 (emphasis added and citing Appx284, 8:18–31 and Appx296, 11:58–12:67 (exemplary film-forming binders), Appx285, 9:7:25 (exemplary retention aids)); *see also* Appx51 (“[T]he claimed ‘film-forming binder,’ ‘elastomeric emulsion,’ ‘water repellant,’ ‘plasticizer,’ ‘wax dispersion,’ and ‘retention aid’ would at least encompass the explicit examples recited in the ’200 patent Specification.” (emphasis added)).

The Board acknowledged that its construction differed from the Court in this regard because the Court “did not expressly include all of the exemplary materials in its constructions” (Appx50), but the Board nevertheless concluded that the District Court’s claim constructions were consistent with the Board’s. Appx50-51. The Board stated that its constructions were consistent with the District Court’s constructions because the District Court had found that:

nothing in the claim language requires that any of these materials ‘impart’ any ‘desired characteristics’ to the release layer.” Indeed, “[n]othing in the claims refers to—let alone requires—any ‘amount’ of any of the recited materials. Likewise, nothing in the specification suggests that . . . any other material in the claims [] is required to be present in any particular amount.” . . . [Patent Owner’s] construction threatens to limit the claims to the disclosed embodiments, which here would be improper.

Appx20 (citing Appx653). The portion of the District Court’s claim construction that the Board relied upon, however, was addressing the parties’ “first dispute,”

which was “whether the transfer sheet need only incorporate a component that is capable of providing the identified characteristic, as Defendants contend, or must incorporate such a component **in sufficient amount** to actually provide the desired characteristic, as Plaintiffs contend.” Appx653 (emphasis added). The District Court “agree[d] with Defendants” that “the transfer sheet need only incorporate a component that is capable of providing the identified characteristic.” Appx653. The District Court went on to construe each claim term to include a required function. Appx654-657 (construing each of the claim terms to require that each material “provide,” “act,” “facilitate,” or “aid” in the performance of specified functions). Thus, the District Court’s constructions are not consistent with the Board’s constructions.

As a result of the Board’s departures from the District Court’s constructions, the Board’s constructions refer to chemicals from the examples, but do not require that the materials perform any function.

D. The Board’s Findings that All of the Challenged Claims Are Anticipated by Kronzer-769

Only one prior art reference is at issue: the Board based all of its unpatentability findings on the Kronzer-769 reference. Consistent with its claim constructions, the Board found that the presence of certain chemicals in Kronzer-769 anticipated the claims of the Patents-in-Suit; the Board did not require Neenah to point to any disclosure that the chemicals performed any particular function, and

the Board did not require Neenah to present evidence that the chemicals inherently performed a function.

With respect to a “film-forming binder”/“acrylic dispersion,” the Board found that “Kronzer-769 teaches that the second thermoplastic polymer in its third layer can include polyacrylates, polymethacrylates, an ethylene-acrylic acid copolymer, or an ethylene vinyl acetate copolymer.” Appx53 (citing Appx1069 (quoting Appx240-241, 8:64–9:9)); Appx25. With respect to a “water repellent,” the Board found that “Kronzer-769 teaches that its third layer can include polyethylene or waxes.” Appx54-55; *see also* Appx54 (“Kronzer-769 teaches that the third layer can include polyurethane or additives such as ‘petroleum-based waxes, mineral and vegetable oils, low molecular weight polyethylene, and amide and ester waxes . . . and the like.’”). With respect to an “elastomeric emulsion,” the Board found that Kronzer-769 teaches that its third layer can include “acrylonitrile-butadiene-styrene, ethylene-vinyl acetate, or poly (vinyl chloride).” Appx54-55; *see also* Appx53 (“Kronzer-769 indicates its third layer is ‘typically formed from an emulsion or dispersion,’ and can include acrylonitrile-butadiene-styrene copolymers, ethylene-vinyl acetate copolymers, polyurethanes, nitrile-butadiene rubbers, or latex”). With respect to a plasticizer, the Board found that “Kronzer-769 discloses a release layer that includes a ‘plasticizer.’” Appx54.

With respect to whether the materials were “arranged as in the claims,” the Board found that they were because Example 7F contains (1) Michem Prime 4983, an ethylene-acrylic acid dispersion; (2) Geon 352, a poly(vinyl chloride) latex; (3) Micropowders MPP 635VF, a high density polyethylene wax; and (4) Santicizer 160, a butyl benzyl phthalate. Appx58. Under the Board’s construction, this was sufficient because, in the Board’s view, EAA is always a “film-forming binder”/“acrylic dispersion”; “latex” is always an “elastomeric emulsion”; and “wax” is always “water repellent.” Therefore, the Board found that Krozner-769 discloses the materials as arranged in the claimed inventive combinations.

E. The Appeal.

Patent Owner appealed the Board’s decision, including (1) the Board’s claim constructions and (2) the Board’s decision on validity, which rested upon those claim constructions. Regarding the Board’s claim constructions, Patent Owner explained that the Board’s claim constructions – which construed the claim limitations to include a list of materials, rather than a particular function – violated *Phillips* because they were counter to both (1) the plain and ordinary meaning of the claim terms and (2) the written description. *See, e.g., Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (claim terms “are generally given their ordinary and customary meaning” (internal quotation omitted)); *id.* at 1315 (claims “must be read in view of the specification, of which they are a part” (internal

quotation omitted)). Regarding the Board’s invalidity findings, Patent Owner explained that, having adopted these erroneous claim constructions, the Board’s anticipation analysis ran counter to the black-letter law that a reference does not anticipate unless it discloses – expressly or inherently – every claim limitation. *See Therasense, Inc. v. Becton, Dickinson & Co.*, 593 F.3d 1325, 1332–33 (Fed. Cir. 2010) (“For a claim to be anticipated, each claim element must be disclosed, either expressly or inherently, in a single prior art reference.”).

In response, Neenah argued that the Board’s claim constructions were correct because nothing in the claim language or specification requires the material to perform any particular function. Alternatively, Neenah argued that – even under the District Court’s claim constructions that Patent Owner had urged the Board to adopt – the claims were still anticipated.

On reply, Patent Owner explained why the claims would not be anticipated if Patent Owner’s claim constructions (i.e., the District Court’s claim constructions) were adopted because there was no evidence that any of the components of Kronzer-769 actually imparted the required characteristics to the Kronzer-769 image transfer sheet.

F. The Panel’s Rule 36 Affirmance.

On October 11, 2023, the Panel issued a Rule 36 affirmance. Fed. Cir. R. 36. Pursuant to that Rule, the affirmance included no written opinion articulating

whether (1) the Board’s construction, (2) the District Court’s construction, or – somehow – (3) both sets of constructions were correct under *Phillips*.

II. ARGUMENT

A. The Panel’s Issuance of a Rule 36 Affirmance Results in Uncertainty as to the Proper Construction of the Claim Terms.

The District Court and the Board were required to apply the same standards for construing the claims – i.e., the standard set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303, 1324 (Fed. Cir. 2005) (en banc). See Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board, 83 Fed. Reg. 51,340, 51,340 (Oct. 11, 2018) (codified at 37 C.F.R. § 42.100(b) (2020) (changing the claim construction standard to be the “same claim construction standard that is used to construe the claim in a civil action in federal district court”). And yet, although they purportedly both applied the same rules, their analysis led to different results: the two bodies adopted different claim constructions for each claim term.

Because of the Panel’s Rule 36 affirmance, however, Patent Owner and the public do not know which of the two sets of claim constructions the Panel found were correct.

The Panel’s Rule 36 affirmance could have been decided at least three ways. The **first** possibility is that the Panel adopted the Board’s claim constructions and rejected the District Court’s constructions, finding the claims anticipated for the

same reason the Board did – i.e., because Kronzer disclosed specific materials (without reaching the issue of whether Kronzer disclosed the function of each material). A **second** possibility is that the Panel adopted the District Court’s claim constructions but found, somehow, that the claims were anticipated under those claim constructions. A **third** possibility is that the Panel believed that the two sets of claim constructions could, somehow, be reconciled, though it is unclear how the Panel would have decided whether Kronzer anticipated under some reconciled set of claim constructions.

The result of these three possibilities is Patent Owner – and the public – are left to guess which of these alternative scenarios the Panel actually intended (i.e., which set of claim constructions it found was correct) when it affirmed. This uncertainty as to which claim constructions were adopted makes it impossible for Patent Owner to seek certiorari with the United States Supreme Court, because Patent Owner does not know whether the error was in the claim construction, the anticipation analysis, or both. For the claims of the asserted patents that have **not** been invalidated, the uncertainty results in the public (and Patent Owner) not knowing the scope of the patent claims. For these reasons, Patent Owner respectfully petitions for a panel rehearing or, in the alternative, a rehearing en banc, followed by a written decision that articulates the proper construction of the claim terms under *Phillips*.

Patent Owner respectfully submits that a written decision articulating the basis for affirmance will help to maintain uniformity of decisions by resolving a conflict between the Board's and the District Court's constructions and answer a question of exceptional importance – i.e., what is the proper construction of the claim terms. *See* Fed. Cir. Internal Operating Procedure No. 13(2)(a), (b) & (d). Patent Owner respectfully submits that, in the absence of such a written opinion, two different sets of claim constructions from two different bodies applying the same standard exist, which is contrary to this Court's decision in *Phillips*. *See* Fed. Cir. R. 35(a)(2).

B. If the Panel Believed that the District Court's Claim Constructions Were Correct, the Panel's Affirmance Violates the Rule that a Prior Art Reference Cannot Anticipate Unless It Inherently or Expressly Discloses Every Claim Limitation.

An additional basis for Patent Owner's Petition is that – if the Panel believed that the District Court's claim constructions were correct, then the Board's invalidation of the claims violated Federal Circuit precedent. It is black-letter Federal Circuit law that, “[f]or a claim to be anticipated, each claim element must be disclosed, either expressly or inherently, in a single prior art reference.” *Therasense, Inc. v. Becton, Dickinson & Co.*, 593 F.3d 1325, 1332–33 (Fed. Cir. 2010). To the extent the affirmance was based upon a belief that the District Court's claim constructions were correct, the Panel's affirmance of the Board's anticipation decision violates this rule regarding inherent or express disclosure. In

particular, the District Court’s claim constructions required that the materials in Kronzer-769 actually performed a particular function, but the Kronzer reference did not disclose – expressly or inherently – that the materials the Board relied upon in its anticipation analysis actually performed each of those functions.

It is undisputed that whether any particular material acts as a “retention aid”—including the materials identified as “retention aids” in the Schwendimann Patents—depends on the composition of which it is a part. As Dr. Christopher Ellison, Schwendimann’s expert witness, explained, whether any given material is a “retention aid”—*i.e.*, aids in the retention of an applied colorant—“depends entirely on the compound of which it is a part and the conditions of that composition.” Appx677-678, ¶ 27. The same is true for each of the required components of the claimed release layer. Appx677-682, ¶¶ 27-32; *see also* Manual of Patent Examining Procedures (“MPEP”) at § 2164.03 (referring to “the well-known unpredictability of chemical reactions”). Neither Neenah nor the Board disagreed with Dr. Ellison’s testimony on this point.

Under the Board’s anticipation analysis, Neenah was not required to show – for example – that Kronzer-769 disclosed that its “latex” actually provides elastomeric properties such as mechanical stability, flexibility, and stretchability. The Board’s anticipation analysis also did not analyze whether the materials **inherently** performed any function. For example, Neenah was not required to

present evidence that “latex” inherently (or always) provides elastomeric properties such as mechanical stability, flexibility, and stretchability in every composition to which it is added. Therefore, to the extent that the Panel’s affirmance on anticipation was based upon a finding that the District Court’s claim constructions were correct, the Panel erred in finding anticipation where there was no express or inherent disclosure that the materials served the requisite functions.

CONCLUSION AND RELIEF SOUGHT

For the reasons stated herein, Schwendimann respectfully petitions for a panel rehearing or an en banc rehearing.

Respectfully submitted,

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ADDENDUM

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

JODI A. SCHWENDIMANN,
Appellant

v.

NEENAH, INC.,
Appellee

2022-1951, 2022-1952, 2022-1953

Appeals from the United States Patent and Trademark Office, Patent Trial and Appeal Board in Nos. IPR2020-01361, IPR2020-01363, IPR2021-00016.

JUDGMENT

DEVAN V. PADMANABHAN, Padmanabhan & Dawson PLLC, Minneapolis, MN, argued for appellant. Also represented by MICHELLE DAWSON, BRITTA LOFTUS, PAUL J. ROBBENOLT.

JOSEPH J. RICETTI, Bryan Cave Leighton Paisner LLP, New York, NY, argued for appellee. Also represented by ALEXANDER DAVID WALDEN; K. LEE MARSHALL, San Francisco, CA.

THIS CAUSE having been heard and considered, it is

ORDERED and ADJUDGED:

PER CURIAM (MOORE, *Chief Judge*, STOLL and
CUNNINGHAM, *Circuit Judges*).

AFFIRMED. See Fed. Cir. R. 36.

ENTERED BY ORDER OF THE COURT

October 11, 2023
Date



Jarrett B. Perlow
Clerk of Court

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

Case Number: 2022-1951, 2022-1952, 2022-1953

Short Case Caption: Schwendimann v. Neenah, Inc.

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The foregoing filing complies with the relevant type-volume limitation of the Federal Rules of Appellate Procedure and Federal Circuit Rules because it meets one of the following:

- the filing has been prepared using a proportionally-spaced typeface and includes 3640 words.
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- the filing contains _____ pages / _____ words / _____ lines of text, which does not exceed the maximum authorized by this court's order (ECF No. _____).

Date: 11/10/2023

Signature: /s/Devan V. Padmanabhan

Name: Devan V. Padmanabhan