

NOTE: This disposition is nonprecedential.

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

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**SYNGENTA CROP PROTECTION AG,**  
*Cross-Appellant*

**v.**

**UPL LTD.,**  
*Appellant*

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2025-1018, 2025-1019

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Appeals from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. PGR2023-  
00017.

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Decided: October 14, 2026

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Before TARANTO, HUGHES, and CUNNINGHAM, *Circuit Judges*.

TARANTO, *Circuit Judge*.

UPL Ltd. (UPL) owns U.S. Patent No. 11,445,727, whose subject is certain fungicidal combinations—of a di-thiocarbamate fungicide, a succinate dehydrogenase inhibitor (SDHI) fungicide, and at least one of an ergosterol biosynthesis inhibitor (EBI) fungicide or a quinone outside inhibitor (QOI) fungicide. ’727 patent, Abstract. Syngenta Crop Protection AG (Syngenta) successfully sought from the Patent and Trademark Office (PTO) a post-grant review (PGR), under 35 U.S.C. §§ 321–329, of all claims of the ’727 patent, asserting unpatentability on several anticipation and obviousness grounds. The PTO’s Patent Trial and Appeal Board (Board) held all challenged claims to be unpatentable. *Syngenta Crop Protection AG v. UPL Ltd.*, No. PGR2023-00017, 2024 WL 3549758, at \*37 (P.T.A.B. July 26, 2024) (*Decision*). UPL appeals.

During the PGR proceedings, Syngenta requested leave from the Board to file a motion for sanctions against UPL, alleging that various field trials reported in the ’727 patent never took place. J.A. 5734–36. The Board denied the request. J.A. 5734. Syngenta cross-appeals.

We reject both UPL’s and Syngenta’s challenges, and we therefore affirm the challenged Board rulings.

## I

### A

The patent identifies various fungicides used on crops to control diseases, improve harvest quality, and increase yields. ’727 patent, col. 1, lines 22–27, col. 2, lines 11–26. SDHI fungicides, such as benzovindiflupyr, bind to particular sites in fungal cells to inhibit fungal respiration and are known in the art “to control a broad spectrum of fungal

diseases.” *Id.*, col. 1, lines 28–36, col. 3, lines 4–10, 61–65. Dithiocarbamate fungicides, such as mancozeb, attack multiple sites within fungal cells and provide broad-spectrum disease control for over 70 crops. *Id.*, col. 1, lines 50–60, col. 3, lines 8–10. The patent adds that other classes of fungicides, such as EBIs and QOIs, also provide “a broad spectrum of disease control” when mixed with SDHIs. *Id.*, col. 1, lines 37–42.

The ’727 patent asserts that, as plants come to show resistance to fungicides, combinations of these fungicides can help maintain their effectiveness. *Id.*, col. 1, line 65, through col. 2, line 4. In particular, the patent says, adding a dithiocarbamate fungicide and SDHI to at least one of a QOI or EBI “led to better greening in the crop[,] thereby increasing the level of photosynthesis occurring within the plant, thereby leading to a greater yield from the crop to which they were applied.” *Id.*, col. 3, lines 11–32. Claim 1 of the patent claims:

1. A fungicidal combination consisting of ben-zovindiflupyr, mancozeb, and at least another fungicide selected from an ergosterol biosynthesis inhibitor fungicide, and a quinone outside inhibitor fungicide,

wherein the ergosterol biosynthesis inhibitor is selected from azaconazole, bitertanol, bromuconazole, cyproconazole, difenoconazole, diniconazole, epoxiconazole, etaconazole, fenbuconazole, fluquinconazole, flusilazole, flutriafol, hexaconazole, imibenconazole, ipconazole, metconazole, myclobutanil, penconazole, propiconazole, simeconazole, tebuconazole, tetraconazole, triadimefon, triadimenol, triticonazole, prothioconazole, imazalil, oxpoconazole, pefurazoate, prochloraz, triflumizole,

fenarimol, nuarimol, pyrifenox, pyrisoxazole, triforine, and mixtures thereof; and

wherein the quinone outside inhibitor fungicide is selected from azoxystrobin, coumoxystrobin, enoxastrobin, flufenoxystrobin, picoxystrobin, pyraoxystrobin, mandestrobin, pyraclostrobin, pyrametostrobin, triclopyricarb, kresoxim-methyl, dimoxystrobin, fenaminostrobin, metominostrobin, trifloxystrobin, famoxadone, fluoxastrobin, fenamidone, pyribencarb, and mixtures thereof.

*Id.*, col. 21, lines 40–61. Claim 2 is similar, but instead of requiring “at least another fungicide” selected from the two groups of EBIs and QOIs, it requires one fungicide from the EBI group *and* one fungicide from the QOI group. *Id.*, col. 21, lines 62–64. Claims 1 and 2 are the only claims we need to discuss in order to resolve the disputes between the parties.

## B

In January 2023, Syngenta petitioned for a PGR of the ’727 patent. Syngenta asserted three grounds of unpatentability relevant to its appeal: (1) that claims 1, 3–5, 7, 9, and 10 were anticipated by Godoy,<sup>1</sup> which is a Brazilian publication describing various fungicides for controlling Asian soybean rust; (2) that claims 1 and 3–10 were anticipated by U.S. Patent No. 9,314,022 (Tobler) and claims 1–10 would have been obvious based on Tobler alone or in combination with Godoy; and (3) that claims 1–10 would

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<sup>1</sup> Godoy et al., *Efficiency of Multisite Fungicides in Controlling Asian Soybean Rust, Phakopsora Pachyrhizi, in the 2015/16 Harvest: Summarized Results of Cooperative Trials*, 121 EMBRAPA SOJA, CIRCULAR TÉCNICA (Aug. 2016); J.A. 1853–59.

have been obvious based on WO Application Publication No. 2015/079334 (De Oliveira) in view of Wiglesworth (a published abstract addressing SDHIs),<sup>2</sup> Godoy, and/or Tobler. The prior-art references all focus on similar fungicidal combinations.

Godoy identifies a multitude of fungicidal combinations for treating Asian soybean rust. In particular, Godoy discloses the application of two fungicidal compounds of “azoxystrobin + benzovindiflupyr<sup>1</sup> and mancozeb” at different doses, where footnote 1 states “[a]dded Nimbus 0,6 L ha-1.” J.A. 1856.

Tobler addresses the “needs of agricultural practice for increased crop tolerance and/or increased activity against phytopathogenic fungi, such as *Phakopsora pachyrhizi*,’ which causes Asian soybean rust.” *Decision*, at \*18 (quoting A1863, col. 1, lines 34–39). It includes two groups of embodiments, E1 and E2, where one potential E1 embodiment is “mancozeb+TX1.” J.A. 1876, col. 28, lines 6–8, 40. TX1 is further defined as having two parts: “the compound A-1.1+a compound selected from the group p.” *Id.*, col. 28, lines 10–11. The first part, *i.e.*, compound A-1.1, the parties agree, is benzovindiflupyr. The second part, “group p,” includes 250 expressly identified fungicidal components, one of them being azoxystrobin (claimed in the ’727 patent’s claims)—which Tobler says is among the examples that are “especially suitable” for the composition. J.A. 1873, col. 22, lines 59–63.

De Oliveira teaches “a fungicidal combination” that “comprises a first dithiocarbamate fungicide, and at least a second fungicide selected from a demethylation inhibitor, quinone outside inhibitor [QOI], succinate dehydrogenase

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<sup>2</sup> M. D. Wiglesworth & A. H. Tally, *Solatenol Fungicide – a New SDHI Fungicide from Syngenta*, 105 (2d Supp.) PHYTOPATHOLOGY 11–12 (2015); J.A. 1950–51.

inhibitor [SDHI], quinone inside inhibitor[,] or combinations thereof.” J.A. 1902. It further specifies combinations where: the dithiocarbamate is mancozeb; the QOI is selected from trifloxystrobin, picoxystrobin, azoxystrobin, or pyraclostrobin (all of which are claimed QOIs in the ’727 patent); and the preferred demethylation inhibitor is selected from prothioconazole, tebuconazole, cyproconazole, epoxiconazole, metconazole, and tebuconazole (all of which are claimed EBIs in the ’727 patent). J.A. 1907; *see* ’727 patent, col. 21, lines 44–61. The disclosure enumerates specific combinations, each involving mancozeb:

A(2): mancozeb + azoxystrobin [QOI] + cyproconazole [EBI]; . . .

B(2): mancozeb + pyraclostrobin [QOI] + epoxiconazole [EBI]; . . .

C(2): mancozeb + cyproconazole [EBI] + picoxystrobin [QOI]; [and] . . .

D(2): mancozeb + picoxystrobin [QOI] + tebuconazole [EBI.]

J.A. 1919 (fungicidal classifications added for clarity).

None of De Oliveira’s disclosures explicitly includes benzovindiflupyr. Syngenta thus argued in its petition that a relevant artisan would combine the teachings of Wiglesworth, Godoy, and Tobler, which each include disclosures of benzovindiflupyr, with the above-mentioned compounds in De Oliveira. Wiglesworth, for example, in a collection of abstracts relating to phytopathology, describes the use of benzovindiflupyr as a broad-spectrum foliar fungicide. J.A. 1950. Notably, the publication states that benzovindiflupyr has a “key strength[] of . . . activity on Asian soybean rust,” for which it is “extremely efficacious.” J.A. 1950–51. Syngenta’s expert Dr. Brannen testified that Godoy and Tobler similarly describe the benefits of using benzovindiflupyr with compounds described in De Oliveira. J.A. 1721, 1724 (citing J.A. 1856; J.A. 1883).

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In its final written decision on July 26, 2024, the Board construed the terms “combination” and “composition” as “not exclud[ing] a composition formed by applying the component fungicides sequentially.” *Decision*, at \*13. The Board also construed the “consisting of” limitation present in the claims “according to its legal meaning so that the claimed combinations include the recited fungicide components and no other fungicides.” *Id.* (internal quotation marks omitted). Ultimately, the Board held that (1) claims 1, 3–5, 7, 9, and 10 are unpatentable under 35 U.S.C. § 102 for anticipation by Godoy; (2) claims 1 and 3–10 are unpatentable for anticipation by Tobler; and (3) claim 2 is unpatentable under 35 U.S.C. § 103 for obviousness based on De Oliveira in view of Wiglesworth, Tobler, and Godoy. *Decision*, at \*37.

UPL timely appealed from the Board’s final written decision. We have jurisdiction under 28 U.S.C. § 1295(a)(4)(A) and 35 U.S.C. §§ 141(c) and 329.

### C

Syngenta’s cross-appeal is from a Board decision of July 30, 2024, four days after the final written decision issued. *Decision*, at \*1; J.A. 5734. The background is as follows. In its petition for a PGR, Syngenta challenged the ’727 patent’s recitation of experimental results said to show unexpected positive effects of “the addition of dithiocarbamates on the efficacy of [SDHIs] alone and when combined with a co-fungicide such as a [QOI] and/or [EBI] fungicide,” ’727 patent, col. 20, lines 21–26. J.A. 282–87. Tables 1 and 2 in the patent purport to demonstrate an “increase in [disease] control” and “efficacy” when mancozeb is added to a combination of an SDHI with a QOI or EBI. ’727 patent, col. 20, line 37, through col. 21, line 14. The patent, using the past tense that implies an actual experiment, states “that the addition of mancozeb enhanced the efficacy of the combination and surp[ri]singly gave a synergistic effect.” *Id.*, col. 21, lines 19–21.

The challenge to the assertions of synergistic effects and unexpected results led to discovery disputes before the Board. Syngenta sought discovery of the field-trial data reported in the patent and also sought to depose an inventor named on the patent. J.A. 672. The Board denied Syngenta's discovery requests. J.A. 704. Syngenta carried out its own field trials in response to the trials disclosed in the patent. *See* J.A. 2344, 4236–345. UPL successfully sought discovery of Syngenta's field-trial data. *See* J.A. 524–28.

Syngenta suspected that the field trials described in the '727 patent had not occurred and the reported results were fabricated. On July 24, 2024, two days before the final written decision was issued, Syngenta, invoking 37 C.F.R. § 42.11, requested leave from the Board to file a motion for sanctions against UPL. J.A. 5735–36. Six months earlier, UPL had notified the Board that it was withdrawing its reliance on the field-trial data in the patent in the PGR proceeding. J.A. 691. On July 30, 2024, the Board denied Syngenta's request for leave, reasoning that “[UPL] affirmatively withdrew ‘any substantive reliance on the ’727 patent examples in this proceeding’” and, “[b]ecause [UPL] did not rely on the field trial data, there does not appear to be any basis for [Syngenta's] proposed motion for sanctions.” J.A. 5734 (quoting J.A. 691).

Syngenta timely appealed from the denial of leave to file the sanctions motion. We have statutory jurisdiction under 28 U.S.C. § 1295(a)(4). *See ClearOne, Inc. v. Shure Acquisition Holdings, Inc.*, 35 F.4th 1345, 1349 (Fed. Cir. 2022).

## II

We begin with UPL's appeal. We review the Board's legal conclusions without deference and its factual findings for substantial-evidence support. *Corephotonics, Ltd. v. Apple Inc.*, 84 F.4th 990, 1001 (Fed. Cir. 2023). This court decides a claim-construction dispute de novo if the resolu-

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tion is based on intrinsic evidence, while reviewing any material subsidiary factual findings about extra-patent usage for substantial-evidence support. *Dionex Softron GmbH v. Agilent Technologies, Inc.*, 56 F.4th 1353, 1358 (Fed. Cir. 2023). Anticipation is a question of fact, and the Board's finding on the question is reviewed for substantial-evidence support. *Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1341 (Fed. Cir. 2016). Obviousness is a question of law, to be answered based on subsidiary facts, with the Board's answer to the overall question reviewed under the de novo standard and its findings on the subsidiary factual issues reviewed for substantial-evidence support. *Corephotonics*, 84 F.4th at 1003. A finding is supported by substantial evidence if "a reasonable mind might accept [the evidence] as adequate to support a conclusion." *Consolidated Edison Company of New York v. National Labor Relations Board*, 305 U.S. 197, 229 (1938). The Board's determinations of whether a petition adequately presents a particular theory and whether a reply is properly confined by, *e.g.*, the applicable bar on the petitioner changing the petition's theory, are, as relevant here, reviewed for abuse of discretion. *See Corephotonics*, 84 F.4th at 1002–03 (explaining standards in context of inter partes reviews).

## A

UPL asks us to set aside the Board's unpatentability determination on the ground that there was a set of fatal pleading deficiencies in Syngenta's petition. Specifically, UPL argues that Syngenta's PGR petition was missing legally required statements of claim construction and explanations in several respects to show how Godoy and Tobler disclose the "consisting of" claim limitation, how De Oliveira discloses or suggests that limitation, and how Godoy and Tobler disclose the "combination" and "composition" claim limitations. UPL's Opening Br. at 34–41, 55–

57. The Board saw no prejudicial pleading defect. *Decision*, at \*10–11. We see no abuse of discretion in that conclusion.

Syngenta stated in its petition that the claim terms should be given their ordinary and customary meaning and that it “d[id] not anticipate any [claim-construction] controversy” but noted that “composition or combination . . . are used interchangeably in the specification.” J.A. 232. UPL agreed in its preliminary response that all terms should be given their ordinary and customary meaning (while proceeding to define the terms), *see* J.A. 333–35, and UPL formally proposed the terms for construction in its post-institution response, *see* J.A. 563–65. Syngenta addressed these arguments in its reply. *See* J.A. 715–18. In a materially similar situation, we have explained that “where a patent owner in an IPR first proposes a claim construction in a patent owner response, a petitioner must be given the opportunity in its reply to argue and present evidence of anticipation or obviousness under the new construction.” *Axonics, Inc. v. Medtronic, Inc.*, 75 F.4th 1374, 1384 (Fed. Cir. 2023).

A petition must identify “[h]ow the construed claim is unpatentable under” 35 U.S.C. §§ 102–103 (as relevant here) and “specify where each element of the claim is found in the prior art.” 37 C.F.R. § 42.204(b)(4); *see also* 35 U.S.C. § 322(a)(3) (requiring a PGR petition to “identif[y], in writing and with particularity, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim”); 37 C.F.R. § 42.22 (requiring “a detailed explanation of the significance of the evidence”). Syngenta’s petition identifies each of the three prior-art references and what claims are challenged based on each reference. J.A. 220–21. For each of the three references, it contains a table quoting the claim language on the left and identifying, on the right, where the reference teaches each limitation for

which such a teaching is claimed. J.A. 237–41 (Godoy), 256–64 (Tobler), 275–82 (De Oliveira).

The Board reasonably concluded that the foregoing was enough for the petition and that, once UPL presented claim-construction arguments in its pre- and post-institution responses, Syngenta was entitled to respond in its reply with an elaboration of why the petition-identified prior-art passages did indeed teach the limitations at issue. The Board’s decision relied on that unchanged prior-art-passage/claim-limitation correspondence, not some altered mapping of claim limitations to prior art. We see no violation of applicable pleading requirements. *See Corephotronics*, 84 F.4th at 1001–02 (elaborating in inter partes review context).

## B

UPL argues that the Board erroneously construed both “combination” and “composition” as allowing sequential applications of component fungicides. UPL’s Opening Br. at 49–55; *see Decision*, at \*11–13 & n.10. We agree with the Board’s construction.

First, the Board properly concluded that the two terms in this patent have the same meaning in the disputed respect. Before the Board, UPL agreed with such common-meaning treatment, but only conditionally, arguing that if the Board were to construe “composition” in Syngenta’s favor by allowing sequential applications, then “combination” should be construed differently, as requiring pre-application mixing. UPL’s Opening Br. at 54; J.A. 563 n.1. We see no basis for such differential treatment.

UPL does not point the court to any meaningful, material difference between the two terms in the patent, other than occasional disparate usage that does not suggest a difference in the disputed respect. In fact, the patent and the language in the patent often interchanges its use of the two terms. *See, e.g.*, ’727 patent, col. 2, lines 30–45 (describing

both “fungicidal combinations” and “synergistic compositions” with the same component fungicides). And identical treatment in the disputed respect is strongly supported by the specification passage that is central to the dispute over sequential application:

The *combinations* of the present invention may be sold as a pre-mix *composition* or a kit of parts such that individual actives may be mixed before spraying. Alternatively, the kit of parts may contain succinate dehydrogenase inhibitor fungicide and the dithiocarbamate fungicide pre-mixed and the third active may be admixed with an adjuvant such that the two components may be tank mixed before spraying.

The *composition* of the present invention maybe [*sic*] applied simultaneously as a tank *mix* or a *formulation* or may be applied sequentially. The application may be made to the soil before emergence of the plants, either pre-planting or post-planting. The application may be made as a foliar spray at different timings during crop development, with either one or two applications early or late post-emergence.

’727 patent, col. 19, lines 54–67 (all emphases added). The passage plainly contemplates sequential application and does so while using “combination” and “composition” interchangeably in this respect. This is hardly surprising as a matter of ordinary meaning, and we have recognized such interchangeability previously. See *PIN/NIP, Inc. v. Platte Chemical Co.*, 304 F.3d 1235, 1244 (Fed. Cir. 2002) (“Although the specification uses various terms to describe the invention—‘composition,’ ‘mixture,’ ‘combination,’ and ‘conjunction’—they all mean essentially the same thing.” (internal citations omitted)).

What we have just quoted from the specification as indicating the two terms should be given the same meaning

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in the disputed respect also makes clear that the proper meaning in this patent is one that allows sequential applications of component fungicides. The above-quoted passage states with clarity that the “composition . . . may be applied sequentially.” ’727 patent, col. 19, lines 61–63. It also uses “may” language in referring to a pre-application mix. *Id.*, col. 19, lines 54–60. Moreover, the method claims of the patent do not distinguish between sequential and pre-mixed applications. *Id.*, col. 23, lines 1–29.

Thus, we agree with the Board’s construction of “composition” and “combination” as including sequential applications of component fungicides.

### C

UPL challenges the Board’s anticipation and obviousness determinations as unsupported by substantial evidence. UPL’s challenges focus on the “consisting of” and “combination”/“composition” limitations. We reject these challenges.

### 1

We note at the outset the undisputed proper construction of “consisting of.” As the Board concluded, adopting the parties’ agreed-on construction, “consisting of” means “the claimed combinations include the recited fungicide components *and no other fungicides*.” *Decision*, at \*13 (emphasis added); *see* J.A. 566 (UPL before Board); J.A. 716–17 (Syngenta before Board). The dispute before us is over application of that construction to the prior art. *See* UPL’s Opening Br. at 41 (stating the Board’s construction is “correct[]” but “misapplied”).

As part of its challenge to the Board’s application of “consisting of,” UPL suggests that, as a matter of law, a reference that describes a combination of the claim-required components cannot meet the “consisting of” limitation unless the reference affirmatively indicates exclusion of additional components. *See* UPL’s Opening Br. at 36–

39. UPL provides no authority to support such a legal requirement. What a relevant artisan would find disclosed or suggested by a reference is a factual matter. Even a reference that uses “comprising” language in its disclosure may well be understood to disclose a combination of only specified components even if the description also covers combinations having additional components: The “comprising” term includes the set of enumerated elements both *with* additional elements and *without* additional elements. *See Georgia-Pacific Corp. v. U.S. Gypsum Co.*, 195 F.3d 1322, 1328 (Fed. Cir. 1999), *opinion amended on reh’g*, 204 F.3d 1359 (Fed. Cir. 2000) (“The set of mats that are ‘comprised’ of glass fibers *includes the subset of mats that ‘consist’ of glass fibers* and also includes mats made up of glass fibers and other substances.” (emphasis added)); *cf. Eye Therapies, LLC v. Slayback Pharma, LLC*, 141 F.4th 1264, 1272 (Fed. Cir. 2025) (holding that the prior art did not teach a “consisting essentially of” limitation when all prior art “involved compositions including active agents other than” the claimed component). We therefore turn to whether the Board committed reversible error in its factual findings about the three pieces of prior art at issue in this case.

## 2

Regarding Godoy, it is undisputed that Godoy discloses a treatment of benzovindiflupyr, mancozeb, and azoxystrobin and that the combination of those three elements, if accompanied by no other fungicides, anticipated claim 1 of the ’727 patent (under the Board’s and our claim constructions). But Godoy’s treatments involve an additional component, “Nimbus,” J.A. 1856, which, UPL argues, is an additional fungicide whose inclusion precludes Godoy from coming within the ’727 patent’s “consisting of” claim limitation. *See* UPL’s Opening Br. at 41–44. We disagree. The Board found that Nimbus, as cited in Godoy, was not a fungicide. *Decision*, at \*15–17. That finding is supported by

substantial evidence, and it suffices for finding that Godoy meets the “consisting of” claim limitation.

Anticipation requires a showing that each limitation of a claim is found in a single reference, either expressly or inherently. *Perricone v. Medicis Pharmaceutical Corp.*, 432 F.3d 1368, 1375–76 (Fed. Cir. 2005). The disclosure must enable a relevant artisan to make what is relied on as disclosed, *see In re Gleave*, 560 F.3d 1331, 1334 (Fed. Cir. 2009), but can suffice even if the reference also discloses “alternatives,” *Hewlett-Packard Co. v. Mustek Systems, Inc.*, 340 F.3d 1314, 1324 n.6 (Fed. Cir. 2003). Application of the non-inherency part of the disclosure standard depends on what a relevant artisan would understand the reference to disclose (a matter of fact), not what the reference may suggest as an alternative or addition to what is disclosed. *See Acoustic Technology, Inc. v. Itron Networked Solutions, Inc.*, 949 F.3d 1366, 1373 (Fed. Cir. 2020); *Akamai Technologies, Inc. Cable & Wireless Internet Services, Inc.*, 344 F.3d 1186, 1192 (Fed. Cir. 2003); *see also Blue Calypso*, 815 F.3d at 1341–44 (discussing what a relevant artisan would “at once envisage”).

Nimbus does not appear in the “active ingredient” column of the table, leading a relevant artisan to understand Nimbus, as mentioned in Godoy, to be something other than an active fungicide in the Godoy combination. J.A. 1856 (excluding Nimbus from the list of “[a]ctive ingredients (a.i.), commercial product (C.P.) and dose of fungicides evaluated . . .”). Because Godoy is a Brazilian publication addressing treatment of Asian soybean rust, J.A. 1854, the Board further credited considerable evidence that Nimbus was used in Brazil as a mineral-oil adjuvant instead of a fungicide in treating Asian soybean rust. *Decision*, at \*15–17. For example, Syngenta presented testimony of its in-house counsel stating that Nimbus referred to a “mineral oil adjuvant” rather than a sulfur-based fungicide. J.A. 2486–87 (“[Nimbus] distributed in Brazil by Syngenta or

an affiliated company is composed of mineral oil . . . [Nimbus] . . . does not contain a fungicide.”). The Board further credited patent-application evidence stating that Nimbus was a “commercially available tank mix adjuvant,” *Decision*, at \*17; see J.A. 3521; J.A. 3524 (applying Nimbus at the same application rate as in Godoy), and other evidence that Nimbus does not have a fungicidal effect, *Decision*, at \*17; see J.A. 3533–37 (showing data involving Nimbus as a “standard adjuvant[]”); J.A. 3702 (showing testimony from Syngenta’s expert that the data shows “Nimbus has no effect” and is a “commercial adjuvant”).

UPL argues that Nimbus, even if it is a mineral oil, can still exhibit fungicidal properties. But that contention rests on UPL’s evidence that Nimbus showed effectiveness on bananas, peach scabs, and pelargonium rust, not any evidence of use on soybeans, which is what Godoy discusses. *Decision*, at \*16. The Board properly asked what would be understood about Godoy’s disclosure of Nimbus, and not about Nimbus generally, and it had ample evidence that Nimbus would not have been understood to be acting as a fungicide in Godoy. See *Hewlett-Packard*, 340 F.3d at 1324 n.6 (“The anticipation analysis asks solely whether *the prior art reference* discloses and enables the claimed invention . . . .” (emphasis added)).

The Board properly could, as it did, find that UPL failed to offer competing evidence that undermined Syngenta’s evidence showing that Nimbus in Godoy is *not* a fungicide—a determination that involved no shifting of the burden of persuasion. *Decision*, at \*16–17. UPL’s own expert testified that Nimbus, and other mineral oils, could actually have a “negative effect” on the plant and can increase disease incidence. J.A. 4641 (“In a sense, you can actually increase disease sometimes by applying oils.”). UPL’s expert testimony that “mineral oils,” but not specifically Nimbus, “ha[ve] fungicidal activity at concentrations as low as 0.25%,” see J.A. 4424–25, does not undermine the Board’s finding. The same expert agreed that one would

need to “know both the application rate and the concentration” to properly compare mineral oils’ fungicidal activity, J.A. 3682–87, and in any event the question is what the Godoy reference in particular discloses.

We conclude that substantial evidence supports the Board’s finding that Nimbus is not a fungicide when used on soybeans in the context of Godoy. That is enough, given our claim construction, to reject UPL’s challenge to the Board’s holding that Godoy anticipated claims 1, 3–5, 7, 9, and 10 of the ’727 patent.<sup>3</sup>

3

Regarding Tobler, UPL’s primary argument is that a relevant artisan would not understand Tobler to disclose the claimed combinations of the ’727 patent. UPL’s Opening Br. at 61. UPL relies for this argument on the assertion that there are over 30,000 potential combinations of three-ingredient compounds presented in Tobler. *Id.* at 63–64 (arguing that a relevant artisan would have to select: (1) embodiment E1 over other embodiments in the patent, (2) mancozeb + TX1 among a list of 120 options for E1, and (3) one of the claimed EBIs or QOIs from 250 “group p” components). We reject UPL’s argument for setting aside the Board’s finding that Tobler disclosed the claimed combinations to a relevant artisan. *Decision*, at \*20–26.

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<sup>3</sup> Because we hold that the Board is correct in its claim construction of “combination” and “composition,” we need not address UPL’s arguments that Godoy fails to disclose fungicides mixed before application. UPL’s Opening Br. at 57–61. UPL agrees that Godoy discloses “associated treatments” and that this can refer to sequential applications, *id.* at 58–59, which suffices to meet the “combination”/“composition” limitations as properly construed.

A reference may disclose and thereby anticipate a combination required by a claim at issue even if it also discloses alternatives. *See Hewlett–Packard*, 340 F.3d at 1324 n.6. It is therefore no answer to the Board that Tobler discloses embodiment E2 if it sufficiently discloses embodiment E1, and the same is true for the other plural-embodiment disclosures. And substantial evidence supports the Board’s finding that a relevant artisan would understand Tobler to disclose the combination required for anticipation here.

Tobler explicitly enumerates the claimed compound consisting of the compound A-1.1 (*i.e.*, benzovindiflupyr) + a compound selected from the group p + mancozeb. J.A. 1876, col. 28, lines 10–11. The referred-to “group p” is explicitly identified as including 250 named possibilities, J.A. 1873–75, col. 22, line 58, through col. 25, line 67, characterizing them as “[e]specially [s]uitable” for “[c]ompositions [a]ccording to the [i]nvention,” J.A. 1873, col. 22, lines 61–62. The Board found that 47 of those components are present in the lists within the ’727 patent’s claim 1, *Decision*, at \*23, and UPL has not shown otherwise on appeal. The Board further observed that Tobler identified certain “group p” compounds as “especially preferred compositions,” many of which are named in the ’727 patent’s claim 1 (*e.g.*, azoxystrobin, picoxystrobin, difenoconazole, propiconazole, and others), *Decision*, at \*24 (citing J.A. 1869, col. 13, line 50, through col. 14, line 6), and UPL has not shown otherwise on appeal. This is substantial evidence supporting the finding that Tobler “specifically discloses the fungicides recited in claim 1.” *Decision*, at \*26.

UPL argues that the Board’s finding is infected by a violation of the law governing anticipation. We see no legal error. UPL relies primarily for this argument on *Mylan Pharmaceuticals Inc. v. Merck Sharp & Dohme Corp.*, 50 F.4th 147, 153 (Fed. Cir. 2022). But *Mylan* did not involve facts akin to those here, so rejection of anticipation there does not imply lack of anticipation here. The reference at issue in *Mylan* did not expressly disclose what the claim at

issue required, namely, “a 1:1 stoichiometry of the sitagliptin [dihydrogenphosphate (DHP)] salt”; instead, it disclosed “sitagliptin hydrochloride salt,” and the patent owner offered supplemental expert testimony that a sitagliptin DHP salt would form under similar conditions. *Id.* In that circumstance, we held that there was no “express disclosure” of the required compound. *Id.* at 151, 153–54. Here, in contrast, Tobler expressly discloses the claimed combination by explicit recitations. There is no “gap[]” to be filled by expert testimony about experiments to show formation of the claimed compound. *Id.* at 154.

UPL has not pointed to any other authority for a rule of law that bars the Board’s determination in this case. As the Board recognized, *Decision*, at \*21, the present case does not involve an assertion that a prior-art reference’s recitation of a genus anticipates a later-claimed species that is within the genus but not expressly named in the prior-art reference. We have recognized that such a situation is “often treated differently” from one, like the present case, in which the assertedly anticipatory reference expressly lists the elements at issue in the patent claim at issue, *In re Gleave*, 560 F.3d at 1337, with anticipation being more easily found in the latter situation (*i.e.*, in a case like the present case), *see id.* at 1377–78; *Perricone*, 432 F.3d at 1376–77; *see also In re Petering*, 301 F.2d 676, 681 (CCPA 1962). Here, we see no error of law in the Board’s determination that Tobler, with its clear recitation of a three-component combination and express reference to examples within the combination that are especially suitable for the identified use, would have been understood by a relevant artisan to disclose what is claimed in the ’727 patent.

Accordingly, we conclude that substantial evidence supports the Board’s finding that Tobler discloses claims 1 and 3–10 of the ’727 patent. We hold that the Board did not err in ruling that Tobler anticipated those claims.

Finally, UPL challenges the Board's ruling that the fungicidal combination of claim 2 of the '727 patent would have been obvious based on De Oliveira, in combination with Wiglesworth, Godoy, and Tobler. UPL's Opening Br. at 47. De Oliveira includes four disclosures of mancozeb with an EBI and QOI listed in claim 2. *See id.*; J.A. 1919; *Decision*, at \*31. Syngenta's challenge regarding claim 2 requires adding benzovindiflupyr to those De Oliveira disclosures. The Board found that a relevant artisan would have had a motivation to combine De Oliveira's teachings with the disclosures of benzovindiflupyr in the other prior art invoked by Syngenta. *Decision*, at \*31–33. UPL challenges that factual finding. We conclude that substantial evidence supports the Board's finding of such motivation.

De Oliveira, concerned with soybean rust, itself discloses adding a SDHI in various combinations. *See, e.g.*, J.A. 1902, 1923. Benzovindiflupyr was undisputedly a known SDHI, though De Oliveira does not name it. But Wiglesworth expressly states that benzovindiflupyr is "extremely efficacious on soybean rust." J.A. 1950–51. Tobler describes benzovindiflupyr as synergistic with each of azoxystrobin and cyproconazole, both of which are components in one of De Oliveira's combinations (the A(2) combination), and as highly effective at controlling Asian soybean rust. *See* J.A. 1883–91, tbls. B2–7; J.A. 1724 (Syngenta's expert stating: "Tobler further discloses and shows that [benzovindiflupyr] has synergistic activity with each of azoxystrobin and cyproconazole."). And Godoy teaches that fungicidal combinations, including benzovindiflupyr in combination with mancozeb and azoxystrobin (*i.e.*, two of the components in De Oliveira's A(2) disclosure) improved disease control of Asian soybean rust. *See* J.A. 1856; J.A. 1761 (Syngenta's expert so stating). The Board could find a motivation to make the combination at issue as a way of enhancing improved disease control in a documented way.

UPL's sole evidentiary argument relies simply on the fact that De Oliveira itself already names certain SDHIs other than benzovindiflupyr for a possible combination. UPL's Opening Br. at 47–49. But there is no basis for any suggestion of a teaching away from benzovindiflupyr as an available alternative to the SDHIs mentioned by De Oliveira. And the law of obviousness does not rule out alternatives just because they are less desirable (though even that has not been shown here). *See Decision*, at \*32. In this circumstance, the Board could readily find that a relevant artisan would have had a motivation to take a three non-SDHI-component combination in De Oliveira and add the known benzovindiflupyr SDHI from other prior art, with its touted efficacy, as an alternative to the SDHIs named in De Oliveira. UPL has identified no legal bar to that finding.

Thus, we hold that the Board did not err in ruling that claim 2 is unpatentable for obviousness based on De Oliveira in view of Wiglesworth, Godoy, and Tobler. For that reason, and for the reasons set forth regarding the anticipation challenges, the Board's final written decision is affirmed.

### III

In its cross-appeal, Syngenta challenges the Board's denial of leave to file a motion for sanctions. The Board denied the motion because UPL had already withdrawn its reliance on the data whose inclusion in the '727 patent was the foundation of Syngenta's sanctions request. J.A. 5734. We affirm the denial, seeing no reversible error in light of the language of the relevant sanctions regulation, 37 C.F.R. § 42.11.

As an initial matter, we conclude that, under Article III of the Constitution and its established injury-causation-redressability requirement, *see, e.g., Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016), Syngenta has standing to seek review of the denial of standing. It identifies a cognizable

concrete injury from denial of the opportunity to seek recovery of money it expended in litigation over what it says was UPL's inclusion of fabricated data in its patent, and UPL's reliance on it during the proceeding, and the asserted injury could be redressed if the motion was allowed to be filed and Syngenta is right on the merits of its sanctions claim. To the extent that UPL argues that Syngenta could not receive redress because 37 C.F.R. § 42.11(d)(2) bars consideration of the sanctions motion, *see* UPL's Response and Reply Br. at 48, that is an argument about the merits of the sanctions-relief request. But "[f]or standing purposes, we accept as valid the merits of [the claimant's] legal claims." *Federal Elections Commission v. Ted Cruz for Senate*, 596 U.S. 289, 298 (2022) (citing *Warth v. Seldin*, 422 U.S. 490, 500 (1975)); *see Rocky Mountain Helium, LLC v. United States*, 841 F.3d 1320, 1325 (Fed. Cir. 2016); *cf. Eregli Demir Ve Celik Fabrikalari T.A.S. v. United States International Trade Commission*, 177 F.4th 1319, 1336 (Fed. Cir. 2026) (similar point in mootness setting). Moreover, although Syngenta may not have complied with court-order or case-law requirements to address its standing in its opening brief as cross-appellant, as UPL argues, *see* UPL's Response and Reply Br. at 43–45; Fed. Cir. No. 25-1018, ECF No. 24, such requirements are not themselves jurisdictional, and we need not reach that issue because we agree with UPL on the merits that the Board properly denied leave to seek sanctions.

The regulation governing sanctions motions gives the Board "discretion to determine whether a party may file a sanctions motion in the first place," *ClearOne*, 35 F.4th at 1351, and also sets limits on such a filing. *See* 37 C.F.R. §§ 42.11(d), 42.12(a). "We review questions of compliance with the Board's procedures for an abuse of discretion." *ClearOne*, 35 F.4th at 1351. The Board abuses its discretion if its decision "(1) is clearly unreasonable, arbitrary, or fanciful; (2) is based on an erroneous conclusion of law; (3) rests on clearly erroneous fact finding; or (4) involves a

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record that contains no evidence on which the Board could rationally base its decision.” *Id.* (quoting *Intelligent Bio-Systems, Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1367 (Fed. Cir. 2016)).

The regulation at issue states:

A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates paragraph (c) of this section. The motion must be authorized by the Board under § 42.20 prior to filing the motion. At least 21 days prior to seeking authorization to file a motion for sanctions, the moving party must serve the other party with the proposed motion. *A motion for sanctions must not be filed or be presented to the Board if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service of such motion or within another time the Board sets.*

37 C.F.R. § 42.11(d)(2) (emphasis added).

Syngenta evidently complied with the first two sentences. It sought permission from the Board before filing its motion for sanctions and also furnished UPL the proposed motion at least 21 days before seeking authorization from the Board. *See* J.A. 5735–36. But the Board denied leave to file the sanctions motion, relying on the proscription stated in the sentence italicized above. The Board ruled—clearly relying on that sentence, though without citation—that Syngenta could not file or present its motion because (months earlier) UPL had withdrawn the basis for the motion (reliance on the allegedly fabricated data). J.A. 5734.

We see no legal or other reversible error in that ruling. The relied-on sentence of the language, also known as the safe-harbor provision, is both firm and broad: A motion for sanctions “*must not* be filed or be presented to the Board”

if “the challenged *paper, claim, defense, contention, or denial*” is withdrawn or appropriately corrected. 37 C.F.R. § 42.11(d)(2) (emphases added). It embodies a choice of an institutional policy that gives primacy to prospectively narrowing disputes in a proceeding even when one litigant has incurred expenses because of blameworthy litigation conduct by another. That policy, though hardly the only policy an adjudicatory system could adopt, is embodied in the 21-day-notice requirement to give the adversary a chance to withdraw or correct the basis of the potential sanctions, with the at-issue sentence then declaring that such withdrawal or correction precludes seeking sanctions.

We see no abuse of discretion in the Board’s application of the regulatory bar in this matter. The Board could reasonably find that UPL, in January 2024, had withdrawn from the proceeding the position that was the subject of the sanction motion, namely, any reliance on the data Syngenta alleged to be fabricated, on which UPL had relied for arguments about synergistic effects of combining fungicides. J.A. 691. Indeed, in alerting UPL to its proposed sanctions motion, Syngenta requested materially the same withdrawal of reliance. *See* Fed. Cir. No. 25-1018, ECF No. 22, Ex. 2 at 85 (requesting that UPL “withdraw its arguments relating to purported synergy,” along with a request to compensate Syngenta for its fees and costs). There is no evident basis for us to deem the regulation inapplicable just because Syngenta incurred significant expenses from the allegedly improper reliance, as it stresses; sanctionable conduct so typically, if not inevitably, inflicts costs on the adversary that leaving such costs unredressed (so as to try to reduce prospective litigation costs) must be seen as an inevitable byproduct of the clear language of the regulation, not a result that would justify our court in disturbing the Board’s application of it.

Syngenta points to *Spectrum Solutions LLC v. Longhorn Vaccines & Diagnostics LLC*, No. IPR2021-00847, 2024 WL 3561972 (P.T.A.B. July 11, 2024), in which the

PTO's Director interpreted the safe-harbor provision to be triggered by a "good faith effort to comply with the safe harbor provision," *id.* at \*16, which Syngenta argues UPL did not make. Syngenta's Reply Br. at 13. It suffices to say that *Spectrum Solutions*, whatever its force as interpretation of the regulation, provides no basis for overturning the Board's action in this case. *Spectrum Solutions* suggests an expansive view of the safe-harbor provision; it does not suggest a narrowing, by the addition of a separate good-faith requirement, that would exclude from the harbor an express, definitive withdrawal that comes clearly within the regulation's language. See *Spectrum Solutions*, 2024 WL 3561972, at \*16 ("[A]ny meaningful, good faith effort to comply with the safe harbor provision could have included, for example, . . . withdrawing or correcting the assertion in the work product brief that the ABL witnesses testified that no other related testing existed.").

We conclude that the Board did not abuse its discretion in denying Syngenta leave to file its sanctions motion. Accordingly, we affirm that denial.<sup>4</sup>

#### IV

We have considered the remainder of UPL's arguments on appeal and Syngenta's arguments on cross-appeal. They are either immaterial to the outcome in light of what we have decided or are unpersuasive. For the foregoing reasons, we affirm the decisions of the Board.

The parties shall bear their own costs.

**AFFIRMED**

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<sup>4</sup> We also deny UPL's motion to strike portions of Syngenta's reply brief (Fed. Cir. No. 25-1018, ECF No. 46).