COCONA EXHIBIT A
RESPONSE TO VF'S EXHIBIT B INVALIDITY CONTENTIONS

	U.S. Pat. No. 8,945,278	VF's D.C.COLO.LPtR 8 Contentions	Cocona's D.C.COLO.LPtR 10 Response
		▪ pre-AIA 35 U.S.C. § 102 (b) recites: "A person shall be entitled to a patent unless — ... (b) ***the invention was*** patented or described ***in a printed publication in this or a foreign country*** or in public use or on sale in this country, ***more than one year prior to the date of the application for patent in the United States."*** ▪ Current 35 U.S.C. § 102 recites: "(a) NOVELTY; PRIOR ART.—A person shall be entitled to a patent unless— (1) the claimed invention was patented, ***described in a printed publication***, or in public use, on sale, or otherwise available to the public ***before the effective filing date of the claimed invention."*** ▪ The Dutta '007 Publication published on December 7, 1995. The '178 Patent claims priority to a provisional application with a filing date of May 9, 2006. As such, the Dutta '007 Publication was a printed publication over eight years before the effective filing date of the '278 Patent. Accordingly, the Dutta '007 Publication qualifies as prior art to the '278 Patent under pre-AIA 35 U.S.C. § 102 (b) and current 35 U.S.C. § 102.	The Dutta '007 Publication ("Dutta") does not anticipate or obviate any of claims 27 or 35-37 of the '278 Patent. VF has failed to show that Dutta discloses the "water-proof composition" recited by claim 27 for at least the reason that VF has failed to apply the appropriate claim constructions. VF's invalidity analysis relies on allegations of inherent disclosure, yet the contentions fail to provide a legally sufficient inherency analysis for any claim element. Where VF asserts anticipation, VF's contentions fail to show that the asserted reference is enabling. Where VF asserts obviousness, VF's contentions fail to provide a legally sufficient obviousness rationale. VF's contentions fail to articulate or apply the *Graham* factors, and fail to provide a legally sufficient obviousness rationale in view of *KSR*. VF's alleged motivations to combine references reflect mere attorney argument that is based on impermissible hindsight. VF fails to show that a person or ordinary skill in the art would be successful in combining the alleged references, particularly in view of VF's apparent claim constructions. Cocona will amend its responses, if necessary, once the Court issues a Markman Order.

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		▪ The Haggquist '359 Publication published on January 29, 2004. The '178 Patent claims priority to a provisional application with a filing date of May 9, 2006. As such, the Haggquist '359 Publication was a printed publication over two years before effective filing date of the '278 Patent. Accordingly, the Haggquist '359 Publication qualifies as prior art to the '278 Patent under pre-AIA 35 U.S.C. § 102 (b) and current 35 U.S.C. § 102.	
27	A water-proof composition comprising:	▪ VF does not believe the preamble of claim 27 is a limitation. If Cocona argues otherwise, then this limitation is explicitly or inherently disclosed by the Dutta '007 Publication as set forth below. <u>Dutta '007 Publication</u> ▪ "The material of the invention can be in the form of a ***waterproof***, air permeable, water vapor permeable non-porous polymer film or sheet made of a polymer resin..." (Abstract)	Cocona contends that the preamble of claim 27 is limiting for at least the reason that the preamble provides the antecedent basis for "the composition" as recited by the claim.
	a liquid-impermeable breathable ***cured base material*** comprising a first thickness;	▪ This limitation is explicitly or inherently disclosed by the Dutta '007 Publication as set forth below. <u>Dutta '007 Publication</u> ▪ Example 1B: referencing polyurethane solution that is cast and dried into a film and then heated to post-cure the film. (p. 18, ll.11-21)	According to VF's non-infringement chart, a polyurethane (PU) layer is not a "cured base material." Accordingly, in view of VF's apparent claim construction, this element is not met by Dutta alone or in combination with any reference. VF fails to establish that Dutta inherently discloses this limitation.
	a plurality of	▪ VF contends that based on claim construction, the	Cocona contends that, based on claim construction, Dutta does not disclose the "plurality of active

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	active particles in contact with the liquid-impermeable breathable cured base material,	"active particles" include particles that absorb water, such as hydrophilic absorbent particle because the specification of the '278 Patent recites: "These particles may provide such properties because they are 'active.' That is, the surface of these particles may be active. ***Surface active particles are active because they have the capacity to cause chemical reactions at the surface or physical reactions, such as, adsorb or trap substances***, including substances that may themselves be a solid, liquid, gas or any combination thereof. ***Examples of substances that may be trapped or adsorbed by active particles include***, but are not limited to, pollen, ***water***, butane, and ambient air." (Col. 4, ll. 4-12) ▪ This limitation is explicitly or inherently disclosed by the Dutta '007 Publication as set forth below. <u>Dutta '007 Publication</u> ▪ "It has now surprisingly been discovered that the water vapor transmission rate (WVTR) of ***a nonporous polymeric film can be increased by incorporating into it hydrophilic absorbent particles. Particles that absorb water*** are not known for an ability to increase water vapor transmission rates. The compositions of this	particles" as claimed. As shown in the '278 Patent, the "active particles" "adsorb or trap substances" to increase MVTR as claimed. The '278 Patent discloses, for example: "These particles may provide such properties because they are 'active.' That is, the surface of these particles may be active. Surface active particles are active because they have the capacity to cause chemical reactions at the surface or physical reactions, such as, adsorb or trap substances, including substances that may themselves be a solid, liquid, gas or any combination thereof. Examples of substances that may be trapped or adsorbed by active particles include, but are not limited to, pollen, water, butane, and ambient air. Certain types of active particles (such as activated carbon) have an adsorptive property because each particle has a large surface area made up of a multitude of pores (e.g., pores on the order of thousands, tens of thousands, or hundreds of thousands per particle). It is these pores that provide the particle or, more particularly, the surface of the particle with its activity (e.g., capacity to adsorb)." Col. 4:4-19. VF's citation to Dutta discloses "absorbent" particles, not "adsorbent" particles as described by the '278 Patent. *See, e.g.*, Dutta page 9, lines 15-22. Moreover, as discussed above, in view of VF's apparent claim construction, Dutta does not disclose

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		invention provide for controlled increase in WVTR of the non-porous polymer film or of composites containing it which can be used in articles of protective clothing and medical dressing with balanced properties of protection and comfort to the user." (p. 4, ll. 20-28) ▪ Example 1B referencing Sephadex G-200-50 particles that are stirred into a polyurethane solution that is cast and dried into a film and then heated to post-cure the film. (p. 18, ll.11-21)	the "cured base material" and so fails to anticipate or obviate the claim. VF fails to establish that Dutta inherently discloses this limitation.
	the plurality of active particles comprising a second thickness; and	▪ This limitation is explicitly or inherently disclosed by the Dutta '007 Publication as set forth below. <u>Dutta '007 Publication</u> ▪ "For example, a layered arrangement of the polymer resin and the absorbent particles can be used to fabricate useful products." (p. 12, ll. 26-27) ▪ Example 1B referencing Sephadex particles "with a particle size of 20-50 micrometers." (p. 18, ll.11-21)	Cocona contends that, based on claim construction, Dutta does not disclose the "plurality of active particles" or the "cured base material" for at least the reasons given above. Accordingly, Dutta fails to disclose this claim element alone or in combination with other references. VF fails to establish that Dutta inherently discloses this limitation.
	wherein, the first thickness comprises a thickness at least 2.5 times larger than the second thickness but less than an order of	▪ This limitation is explicitly or inherently disclosed by the Dutta '007 Publication as set forth below. ▪ During prosecution, Cocona defined the thickness of the second layer to be equivalent to active particle size. In the Response filed on June 5, 2013 to the Office Action mailed on February 1, 2013, Cocona recites that the support for the second thickness	Cocona contends that, based on claim construction, Dutta does not disclose the "plurality of active particles" or the "cured base material" for at least the reasons given above. Accordingly, Dutta fails to disclose this claim element alone or in combination with other references. Cocona also contends that, based on claim

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	magnitude larger than the second thickness,	amendment, while not explicitly listed in the specification, is supported based on "the attached Product Data Sheet for the Asbury 5565TM powdered coconut activated carbon, the particle size for the Asbury 5564TM powdered coconut activated carbon comprises about 10 microns (second thickness)." Accordingly, Cocona stated that the second thickness is equivalent to the active particle size. As such, the claim interpretation of "second thickness" should be equated to the particle size of the activated particle. <u>Dutta '007 Publication</u> ▪ "The size of the absorbent-type particles are within a broad range of 0.1 to 300 micrometers when dry. Preferably, the particle size range of the water-swellable particles is ***0.1 to 100 micrometers***, depending on the film thickness needed for a given application." (p. 9, ll. 18-22) ▪ "Sephadex G-200-50 a Tradename from Sigma Chemical Co., with a particle size of ***20-50 micrometers***..." (p. 18, ll. 14-16) ▪ "When the absorbent particles are dispersed in a polymer resin, the ***size of the particles plays an important role*** in obtaining the polymer film of this invention. In order for the polymer film to be air impermeable, it is necessary that the hydrophilic absorbent particles are at least partially embedded in the polymer resin such that at least one surface of the film is substantially smooth by being free of the	construction, Dutta fails to disclose the "second thickness" in view of VF's erroneous assertion of prosecution disclaimer or estoppel. VF fails to establish that Dutta inherently discloses this limitation.

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		particles. Therefore, ***the minimum thickness of the polymer film is controlled by the size of the particles. Larger the size of the hydrophilic particles used, higher would be the minimum thickness of the polymer film that will be air impermeable***." (pp. 10-11, ll. 37-8) ▪ Example 1B shows the required first thickness (film thickness of 76.2 µm) and second thicknesses (Sephadex with known particle size of 20-50 micrometers) in Table 1 below: [Table 1 removed for formatting] In summary, Example 1B of Table 1 shows a polymer film thickness of 76.2 µm utilized with Sephadex having particles sized from 20-50 µm. As such, the film thickness is 2.5 larger but less than 10x (1 order of magnitude) greater than the particle size as required by this limitation. (e.g., 25 µm (within the 20-50 µm stated particles size of Sephadex) x 2.5 = 75 µm; 76.2 µm (the film thickness) > 75 µm; 25 µm x 10 = 250 µm; and 76.2 µm < 250 µm).	
	the active particles improve the moisture vapor transport capacity of the composition, and	▪ This limitation is explicitly or inherently disclosed by the Dutta '007 Publication as set forth below. <u>Dutta '007 Publication</u> ▪ "It has now surprisingly been discovered that ***the water vapor transmission rate (WVTR) of a***	Cocona contends that, based on claim construction, Dutta does not disclose the claimed composition for at least the reason that Dutta does not disclose the "plurality of active particles" or the "cured base material," as discussed above. Accordingly, Dutta fails to disclose this claim element alone or in

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		nonporous polymeric film can be increased by incorporating into it hydrophilic absorbent particles. Particles that absorb water are not known for an ability to increase water vapor transmission rates. The compositions of this invention provide for controlled increase in WVTR of the non-porous polymer film or of composites containing it which can be used in articles of protective clothing and medical dressing with balanced properties of protection and comfort to the user." (p. 4, ll. 20-28) ▪ See improved WVTR between Comparative Example 1 and Example 1B in Table 1 below: [Table 1 removed for formatting]	combination with other references. VF fails to establish that Dutta inherently discloses this limitation.
	a moisture vapor transmission rate of the water-proof composition comprises from about 600 g/m2/day to about 11000 g/m2/day.	▪ This limitation is explicitly or inherently disclosed by the Dutta '007 Publication as set forth below. <u>Dutta '007 Publication</u> ▪ See WVTR of 6730 g/m2/day for Example 1B in Table 1 below: [Table 1 removed for formatting]	Cocona contends that, based on claim construction, Dutta does not disclose the claimed composition for at least the reason that Dutta does not disclose the "plurality of active particles" or the "cured base material," as discussed above. Accordingly, Dutta fails to disclose this claim element alone or in combination with other references. VF fails to establish that Dutta inherently discloses this limitation.
35	The composition of claim 27, wherein	▪ According to Cocona's infringement chart, any use of any activated particle inherently results in the claimed odor absorbance properties. Accordingly,	Cocona contends that, based on claim construction, Dutta, alone or in combination with Haggquist, does not disclose composition of claim 35 for at least the

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	the composition possesses odor absorbance properties at least in part due to the active particles.	this limitation is inherently disclosed by the Dutta '007 Publication's disclosure of activated particles. It is also explicitly or inherently disclosed as follows: <u>Dutta '007 Publication</u> ▪ "Furthermore, depending on the particular end use, the polymer can also contain functional ingredients like odor-absorbing agents, anti-bacterial agents, fragrances, antifungal agents, hemostatic agents and wound-healing agents." (p. 10, ll. 4-7) **<u>In the Alternative</u>** If the Dutta '007 Publication does not explicitly or inherently disclose this element, then this element is: ▪ Obvious over the Dutta '007 Publication that recites, "Furthermore, depending on the particular end use, the polymer can also contain functional ingredients like odor-absorbing agents, anti-bacterial agents, fragrances, antifungal agents, hemostatic agents and wound-healing agents." (p. 10, ll. 4-7) ▪ Obvious over the Dutta '007 Publication in view of the Haggquist '359 Publication - It also would have been obvious for a person of ordinary skill in the art in 2004 to modify the active particles of the Dutta '007 Publication to have odor absorbance properties in view of the active particles with odor absorbance as disclosed by the Haggquist '359 Publication. For example, the Haggquist '359 Publication recites, "***Active particles can provide***	reason that Dutta does not disclose the "plurality of active particles" or the "cured base material" as discussed above. VF fails to establish that Dutta inherently discloses the composition of claim 35. VF fails to provide an analysis of the *Graham* factors and fails to provide a legally sufficient obviousness rationale under *KSR* for the combination of Dutta and Haggquist. VF fails to provide a legally sufficient explanation of why a person of ordinary skill in the art would be motivated to combine the references, and why their combination would be successful. For example, according to VF's non-infringement chart, a polyurethane (PU) layer is not a "cured base material." Accordingly, the alleged combination of Dutta and Haggquist does not disclose every element of the claim, and a person of ordinary skill in the art would not have been motivated to combine them and arrive at the claimed composition.

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		performance enhancing properties such as odor adsorption, moisture management, ultraviolet light protection, chemo-protective properties, bio-hazard protective properties, fire retardance, antibacterial protective properties, antiviral protective properties, antifungal protective properties, antimicrobial protective properties, and combinations thereof. The active particles can include, but are not limited to, activated carbon, graphite, aluminum oxide (activated alumina), silica gel, soda ash, aluminum trihydrate, baking soda, p-methoxy-2-ethoxyethyl ester Cinnamic acid (cinoxate), zinc oxide, zealites, titanium dioxide, molecular filter type materials, and other suitable materials." (para. 30.)	
36	The composition of claim 27, wherein the composition possesses quick drying properties at least in part due to the active particles.	▪ According to Cocona's infringement chart, any use of any activated particle inherently results in the claimed quick drying properties. Accordingly, this limitation is inherently disclosed by the Dutta '007 Publication's disclosure of activated particles. It is also explicitly or inherently disclosed as follows: <u>Dutta '007 Publication</u> ▪ "The hydrophilic absorbent particles are insoluble in an aqueous environment but possess absorptive capacity greater than 1.0 (i.e. in the range of 1.0 to 500 grams), preferably greater than 10 grams of water per gram of dry particles." (p. 9, ll. 25-28) Based on this absorptive capacity, the hydrophilic absorbent particles as disclosed in the Dutta '007 Publication inherently provide quick drying	Cocona contends that, based on claim construction, Dutta, alone or in combination with Haggquist, does not disclose the composition of claim 36 for at least the reason that Dutta does not disclose the "plurality of active particles" or the "cured base material" as discussed above. VF fails to establish that Dutta inherently discloses the composition of claim 36. VF fails to provide an analysis of the *Graham* factors and fails to provide a legally sufficient obviousness rationale under *KSR* for the combination of Dutta and Haggquist. VF fails to provide a legally sufficient explanation of why a person of ordinary skill in the art would be

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		properties. **<u>In the Alternative</u>** If the Dutta '007 Publication does not explicitly or inherently disclose this element, then this element is: ▪ Obvious over the Dutta '007 Publication - It would have been obvious for a person of ordinary skill in the art in December 1995 that the hydrophilic absorbent particles provide quick drying properties because the Dutta '007 Publication recites, "The hydrophilic absorbent particles are insoluble in an aqueous environment but possess absorptive capacity greater than 1.0 (i.e. in the range of 1.0 to 500 grams), preferably greater than 10 grams of water per gram of dry particles." (p. 9, ll. 25-28). Since the hydrophilic absorbent particles disclosed in the Dutta '007 Publication absorb water, a person of skill in the art would know that the application of hydrophilic absorbent particles to the substrate should therefore inherently provide a quick drying property. ▪ Obvious over the Dutta '007 Publication in view of the Haggquist '359 Publication - It would have been obvious for a person of ordinary skill in the art in 2004 to modify the active particles of the Dutta '007 Publication to have quick drying properties in view of the active particles with moisture management as disclosed by the Haggquist '359 Publication. For example, The Dutta '0007 Publication recites, "The hydrophilic absorbent	motivated to combine the references, and why their combination would be successful. For example, according to VF's non-infringement chart, a polyurethane (PU) layer is not a "cured base material." Accordingly, the alleged combination of Dutta and Haggquist does not disclose every element of the claim, and a person of ordinary skill in the art would not have been motivated to combine them and arrive at the claimed composition.

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		particles are insoluble in an aqueous environment but possess absorptive capacity greater than 1.0 (i.e. in the range of 1.0 to 500 grams), preferably greater than 10 grams of water per gram of dry particles." (p. 9, ll. 25-28). Since the hydrophilic absorbent particles disclosed in the Dutta '007 Publication absorb water, a person of skill in the art would know that the application of hydrophilic absorbent particles to the substrate should therefore inherently provide a quick drying property. Further, Haggquist '359 publication recites, "***Active particles can provide performance enhancing properties such as*** odor adsorption, ***moisture management***, ultraviolet light protection, chemo-protective properties, bio-hazard protective properties, fire retardance, antibacterial protective properties, antiviral protective properties, antifungal protective properties, antimicrobial protective properties, and combinations thereof. The active particles can include, but are not limited to, activated carbon, graphite, aluminum oxide (activated alumina), silica gel, soda ash, aluminum trihydrate, baking soda, p-methoxy-2-ethoxyethyl ester Cinnamic acid (cinoxate), zinc oxide, zealites, titanium dioxide, molecular filter type materials, and other suitable materials." (para. 30.) As such, a person of skill in the art would know that the activated particles could provide moisture management, such as quick drying due to the water absorptive properties of the disclosed active particles in both references.	

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37	The composition of claim 27, wherein the active particles are selected from the group consisting of: activated carbon, aluminum oxide (activated alumina), silica gel, soda ash, aluminum trihydrate, baking soda, p-methoxy-2-ethoxyethyl ester cinnamic acid (cinoxate), zinc oxide, zeolites, titanium dioxide, molecular filter-type materials, and any suitable combination thereof.	▪ This limitation is explicitly or inherently disclosed by the Dutta '007 Publication as set forth below. Dutta '007 Publication ▪ Example 1B referencing Sephadex G-200-50 "with a particle size of 20-50 micrometers." (p. 18, ll.11-21). Sephadex G-200-50 is a known molecular-filter type material. (*See* http://www.sigmaaldrich.com/catalog/product/aldrich/271233?lang=en&region=US) ▪ Further, Dutta discloses use of, "Talc, silica, calcium carbonate, carbon black, titanium dioxide." (pp. 9-10, ll. 36-1). **In the Alternative** If the Dutta '007 Publication does not explicitly or inherently disclose this element, then this element is: ▪ Obvious over the Dutta '007 Publication that in Example 1B references Sephadex G-200-50 "with a particle size of 20-50 micrometers." (p. 18, ll.11-21). Sephadex G-200-50 is a known molecular-filter type material. (*See* http://www.sigmaaldrich.com/catalog/product/aldrich/271233?lang=en&region=US)	Cocona contends that, based on claim construction, Dutta, alone or in combination with Haggquist, does not disclose the composition of claim 37 for at least the reason that Dutta does not disclose the "plurality of active particles" or the "cured base material" as discussed above. VF fails to establish that Dutta inherently discloses the composition of claim 37. VF fails to provide an analysis of the *Graham* factors and fails to provide a legally sufficient obviousness rationale under *KSR* for the combination of Dutta and Haggquist. VF fails to provide a legally sufficient explanation of why a person of ordinary skill in the art would be motivated to combine the references, and why their combination would be successful. For example, according to VF's non-infringement chart, a polyurethane (PU) layer is not a "cured base material." Accordingly, the alleged combination of Dutta and Haggquist does not disclose every element of the claim, and a person of ordinary skill in the art would not have been motivated to combine them and arrive at the claimed composition.

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		▪ Obvious over the Dutta '007 Publication that discloses use of "Talc, silica, calcium carbonate, carbon black, titanium dioxide." (pp. 9-10, ll. 36-1). ▪ Obvious over the Dutta '007 Publication in view of the Haggquist '359 Publication - It also would have been obvious for a person of ordinary skill in the art in 2004 to modify the active particles of the Dutta '007 Publication to be one of the active particles as disclosed by the Haggquist '359 Publication since the Haggquist '359 publication recites that the active particles "are active because they have the capacity to absorb or trap substances ...for example, pollen, water" similar to the water absorbing particles disclosed in the Dutta '007 Publication. For example, the Haggquist '359 Publication recites, "The active particles can include, but are not limited to, ***activated carbon***, graphite, ***aluminum oxide*** (activated alumina), ***silica gel***, ***soda ash***, ***aluminum trihydrate***, ***baking soda***, p-methoxy-2-ethoxyethyl ester ***Cinnamic acid (cinoxate)***, ***zinc oxide***, ***zealites***, ***titanium dioxide***, molecular filter type materials, and other suitable materials." (para. 30.)	