

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AKER BIOMARINE AS  
Petitioner

v.

NEPTUNE TECHNOLOGIES AND BIORESSOURCES INC.  
Patent Owner

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Case IPR2014-00003  
Patent 8,278,351

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Before LORA M. GREEN and SHERIDAN K. SNEDDEN,  
*Administrative Patent Judges.*

GREEN, *Administrative Patent Judge.*

ORDER  
Conduct of the Proceeding  
*37 C.F.R. § 42.5*

A conference call was held on Wednesday, May 28, 2014, among Amanda Hollis and Mitch Jones, representing Petitioner; Steve Alteiri and Laura Cunningham, representing Patent Owner; and Judges Green and Snedden. A court reporter was present on the call, and a transcript of the call was filed by Patent Owner.<sup>1</sup> Patent Owner requested the call to obtain authorization to file a motion for additional discovery, pursuant to 37 C.F.R. § 42.51.

Patent Owner noted that during the deposition of Petitioner's expert, Mr. Bjorn Ole Haugsgjerd, when discussing experiments he conducted based on Beaudoin, Mr. Haugsgjerd identified different documents that he created contemporaneously with those experiments, such as laboratory notebooks and protocols for the experiments, as well as several reports related to the experiments. Patent Owner noted that as Mr. Haugsgjerd had identified the existence of these documents at his deposition, as well as the relevance of the documents referenced by Mr. Haugsgjerd at his deposition to the challenge on which trial was instituted over the Beaudoin reference, it is an appropriate area to seek additional discovery.

Petitioner responded that they would oppose any such motion for additional discovery. According to Petitioner, there are privilege concerns with respect to the reports prepared by Mr. Haugsgjerd, as they were written for litigation in the District Court of Delaware involving U.S. Patent No. 8,030,348 ("the '348 patent"), to which the patent at issue claims priority, as well as for reexamination of the '348 patent. As to the laboratory notebooks, Petitioner stated that they were Mr. Haugsgjerd's notebooks, in his possession in Norway, and that the notebooks also contained information not related to the Beaudoin experiments. Upon inquiry,

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<sup>1</sup>This order summarizes the statements made during the conference call. A more detailed record may be found in the transcript (Ex. 2026).

Patent Owner noted that they would be satisfied with copies of the notebook pages that dealt with the Beaudoin experiments, and they would not necessarily need the entire notebooks.

As relevant to Mr. Haugsgjerd's documents discussed herein, Patent Owner is authorized to file a motion for additional discovery, which is to be no longer than ten (10) pages, which should be filed with the Board by May 30, 2014. Petitioner is authorized to file an opposition to the motion, which is also to be no longer than 10 pages, which should be filed with the Board no later than June 4, 2014. We understand that Patent Owner would like a decision on the motion by June 13, 2014, but note that may not be possible given the workload of the judges on the panel. In that regard, we note that the parties may stipulate to changes to DUE DATES 1 through 3, and also note that there should be some flexibility in the schedule given that Patent Owner is not planning on filing a motion to amend. Thus, we encourage the parties to confer as needed to accommodate our schedule in deciding Patent Owner's motion for additional discovery. If the parties cannot come to such agreement, they should request an additional conference call with the panel. In order to aid the parties in coming to an agreement, we authorize the parties to stipulate to changes in DUE DATES 4 and 5, with the proviso that, if the parties are going to request oral argument, the request for oral argument be filed by DUE DATE 4 as set forth in the scheduling order.

Petitioner also stated during the call that it felt that Patent Owner had gone beyond the scope of Mr. Haugsgjerd's direct testimony, as Mr. Haugsgjerd's direct testimony was in essence only five paragraphs, while Patent Owner questioned Mr. Haugsgjerd for a full seven hours. We noted that anything that is reasonably related to the declarant's direct testimony would not be considered outside the scope of the direct. We reminded the parties that if it felt a line of cross-

examination was clearly improper, it should contact the Board to obtain guidance, as there is very little we can do once the deposition is over. Moreover, we remind Petitioner that it also can file a motion to exclude the cross-examination testimony of Mr. Haugsgjerd, so long as an objection as to “the content, form, or manner of taking the deposition [was] . . . made on the record during the deposition.” 37 C.F.R. § 42.53(f)(8).

Accordingly, it is

ORDERED that Patent Owner is authorized to file a motion for additional discovery to be no longer than ten (10) pages and due no later than May 30, 2014;

FURTHER ORDERED that Petitioner is authorized to file an opposition to Patent Owner’s a motion for additional discovery to be no longer than ten (10) pages and due no later than June 4, 2014;

FURTHER ORDERED that Patent Owner is not authorized to file a reply to Petitioner’s opposition to Patent Owner’s motion for additional discovery; and

FURTHER ORDERED that the parties are authorized to stipulate to changes in DUE DATES 4 and 5, with the proviso that, if the parties are going to request oral argument, the request for oral argument be filed by DUE DATE 4 as set forth in the scheduling order.

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Patent 8,278,351

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