

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AKER BIOMARINE AS and  
ENZYMOTEC LTD. and  
Petitioners,

v.

NEPTUNE TECHNOLOGIES AND BIORESSOURCES INC.,  
Patent Owner.

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Case IPR2014-00003<sup>1</sup>  
Patent 8,278,351 B2

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Before LORA M. GREEN, JACQUELINE WRIGHT BONILLA, 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 Tuesday, August 27, 2014, among  
Amanda Hollis, representing Petitioner, Aker Biomarine AS (“Aker”);  
Elizabeth Holland, representing Petitioner, Enzymotec LTD (“Enzymotec”)  
Laura Cunningham, representing Patent Owner, Neptune Technologies and

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<sup>1</sup> Case IPR2013-00556 has been joined with this proceeding.

Bioresources Inc. (“Neptune”); and Judges Green, Bonilla, and Snedden. A court reporter was present on the call, and a transcript of the call will be filed by Patent Owner in due course.<sup>2</sup> Aker requested the call to request authorization to file a motion for additional discovery of identified documents.

According to Aker, the documents demonstrate inconsistent positions that have been taken by Neptune, or are, at a minimum, relevant to the issues in this *inter partes* review. Aker contended that documents were all produced during an ITC proceeding involving the ’351 patent, but that Neptune objects to their production in the instant proceeding as they contain Neptune’s confidential information. Aker argued that the presence of confidential information should not prevent Neptune’s production in this proceeding, as Neptune and Aker have agreed to a modified protective order, and Neptune has filed a motion for its entry. Paper 60.

Neptune responded that the material relates to its business confidential information, and protective orders in PTAB proceedings differ from those in ITC proceedings, as the Board may declassify information filed under seal if it is used in the final decision. Neptune also disagreed as to the relevance of the documents to the instant proceeding.

Because of the complexity of the issues involved, we authorized Aker to file a motion requesting additional discovery, to be no more than 15 pages, and also authorized Neptune to file an opposition of no more than 7 pages. We directed Aker’s attention to *Garmin Int’l, Inc. v. Patent of Cuozzo Speed Techs. LLC*, Case IPR2012-00001 (PTAB Mar. 5, 2013) (Paper No. 26) slip. op. at 6-7, which notes

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<sup>2</sup>This order summarizes the statements made during the conference call. A more detailed record may be found in the transcript.

that the request is to be based on more than a mere possibility of finding something useful. Aker should direct us to evidence tending to show beyond speculation that in fact something useful will be uncovered. We further noted that *Garmin* distinguishes between “useful” and “relevant” or “admissible,” where “useful” means “favorable in substantive value to a contention of the party moving for discovery.” *Id.* at 7.

Accordingly, it is

ORDERED that Aker is authorized to file a motion requesting additional discovery. The motion is to be no more than 15 pages, and is due Thursday, September 4, 2014;

FURTHER ORDERED that Neptune is authorized is allowed to file an opposition to Aker’s motion for additional discovery. The opposition is to be no more than 7 pages, and is due Thursday, September 11, 2014.

Case IPR2014-00003  
Patent 8,278,351 B2

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