

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

----- X
IN THE MATTER OF CERTAIN :
OMEGA-3 EXTRACTS FROM :
MARINE OR AQUATIC BIOMASS : INVESTIGATION NO:
AND PRODUCTS CONTAINING : 337-TA-877
THE SAME, :
----- X

Videotaped Deposition of JACEK JACZYNSKI, PH.D.

Washington, D.C.

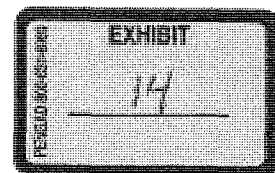
Tuesday, October 15, 2013

9:00 a.m.

Reported by:

Cassandra E. Ellis

Ref. No.: 10545



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<p>1 Deposition of JACEK JACZYNSKI, PH.D., held at 2 the offices of: 3 4 5 COOLEY LLP 6 1299 Pennsylvania Avenue, Northwest 7 Suite 700 8 Washington, DC 20004 9 (202) 842-7800 10 11 Pursuant to agreement, before Cassandra E. Ellis, 12 Registered Professional Reporter and Notary Public of 13 The District of Columbia. 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 APPEARANCES CONTINUED 2 ON BEHALF OF RESPONDENTS ENZYMOTEC: 3 ELIZABETH HOLLAND, ESQUIRE 4 KENYON & KENYON, LLP 5 One Broadway 6 New York, NY 10004-1007 7 (202) 908-6307 8 E holland@kenyon.com 9 10 11 ALSO PRESENT: Joseph Ellis, CLVS 12 Edward Braekke 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
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<p>1 APPEARANCES 2 ON BEHALF OF COMPLAINANTS NEPTUNE TECHNOLOGIES; 3 BIORESOURCES AND ACASTI PHARMA: 4 JONATHAN GRAVES, ESQUIRE 5 LAURA J. CUNNINGHAM, ESQUIRE 6 COOLEY, LLP 7 One Freedom Square 8 Reston Town Center 9 11951 Freedom Drive 10 Reston, Virginia 20190 11 (703) 456-8119 12 Jgraves@cooley.com 13 Lcunningham@cooley.com 14 15 ON BEHALF OF RESPONDENTS AKER: 16 AMANDA HOLLIS, ESQUIRE 17 MARK PALS, ESQUIRE 18 KIRKLAND & ELLIS, LLP 19 300 North LaSalle Street 20 Chicago, Illinois 60654 21 (312) 862-2011 22 Amanda.hollis@kirkland.com 23 24 25</p>	<p>1 CONTENTS 2 EXAMINATION OF JACEK JACZYNSKI, PH.D. PAGE 3 By Ms. Hollis 8 4 5 EXHIBITS 6 (Attached to the Transcript) 7 JACEK JACZYNSKI, PH.D. Deposition Exhibit PAGE 8 Exhibit 1 CV of Jacek Jaczynski 26 9 Exhibit 2 United States Patent Number 42 10 7,763,717 dated 7/27/2010 11 Exhibit 3 United States Patent Number 49 12 8,278,351 dated 10/2/2012 13 Exhibit 4 Drawing 55 14 Exhibit 5 Rebuttal Expert Report of Jacek 127 15 Jaczynski Regarding Validity of The 16 Patents-in-Suit 17 Exhibit 6 Patent Application Bates Stamped 150 18 AKER877ITC00118795 - 837 19 Exhibit 7 Lipids Bates Stamped 154 20 AKER877ITC00070198 - 206 21 Exhibit 8 Patent Cooperation Treaty Bates 168 22 Stamped NEP877ITC-00005782 - 835 23 Exhibit 9 Canadian Demande-Application 183 24 Bates Stamped NEP877ITC-00004087 - 124 25</p>

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Page 6	<p>1 EXHIBITS CONTINUED</p> <p>2 (Attached to the Transcript)</p> <p>3 JACEK JACZYNSKI, PH.D. Deposition Exhibit PAGE</p> <p>4 Exhibit 10 Data on Oil Produced, Purified and 195</p> <p>5 Reprocessed Bates Stamped</p> <p>6 NEP877ITC-00395104 - 131</p> <p>7 Exhibit 11 Journal of Lipid Research Article: 207</p> <p>8 Blood compartmental metabolism of</p> <p>9 Docosahexaenoic acid (DHA) in humans after</p> <p>10 Ingestion of a single dose of [13 C]DHA in</p> <p>11 Phosphatidylcholine</p> <p>12 Exhibit 12 Patent Cooperation Treaty WO 250</p> <p>13 97/39759 Bates Stamped</p> <p>14 AKER877ITC00491551 - 564</p> <p>15 Exhibit 13 Research & Development for 252</p> <p>16 Processing and Usage of Marine Products</p> <p>17 Comprehensive Report March 1985</p> <p>18 Japanese/English Translated Document</p> <p>19 Bates Stamped AKER877ITC00803100 - 163</p> <p>20 Exhibit 14 Expert Report of Dr. Jacek 277</p> <p>21 Jaczynski Regarding Infringement By</p> <p>22 The Respondents and Complainants'</p> <p>23 Domestic Industry</p> <p>24</p> <p>25</p>	Page 8	<p>1 having been first duly sworn, testified as follows:</p> <p>2 EXAMINATION BY COUNSEL FOR RESPONDENT AKER</p> <p>3 BY MS. HOLLIS:</p> <p>4 Q Good morning, Dr. Jaczynski.</p> <p>5 A Good morning.</p> <p>6 Q Have you ever been deposed before?</p> <p>7 A No, I have not.</p> <p>8 Q Have you ever been involved in any</p> <p>9 litigation, at all?</p> <p>10 A Define involvement, please.</p> <p>11 Q Have you ever been a witness in any</p> <p>12 litigation before?</p> <p>13 A No, I have not.</p> <p>14 Q Have you ever been involved in a litigation</p> <p>15 under any meaning of involved?</p> <p>16 MR. GRAVES: Objection, vague and</p> <p>17 ambiguous.</p> <p>18 A I'm still confused about your term</p> <p>19 "involved".</p> <p>20 Q Well, what connection have you ever had to</p> <p>21 a litigation?</p> <p>22 A I was -- I was asked to review certain do-</p> <p>23 -- in this litigation I was asked to review certain</p> <p>24 documents and -- and provide opinions.</p> <p>25 Q This litigation, meaning this ITC case in</p>
Page 7	<p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: Good morning. This is</p> <p>3 the beginning of disc number one in the deposition of</p> <p>4 Jacek -- Jacek Jaczynski, taken in the matter of</p> <p>5 Certain Omega-3 Extracts from Marine Biomass and</p> <p>6 Products Containing Same, with an Investigation Number</p> <p>7 337-TA-877. Today's date is October 15th, 2013, and</p> <p>8 the time on the monitor is 9:09 a.m. My name is</p> <p>9 Joseph Ellis, I am the videographer, the court</p> <p>10 reporter is Cassandra Ellis, and we are here with</p> <p>11 TransPerfect Legal Solutions. If counsel would please</p> <p>12 introduce yourselves, and whom you represent, after</p> <p>13 which the court reporter will swear in the witness and</p> <p>14 we may proceed.</p> <p>15 MS. HOLLIS: This is Amanda Hollis, from</p> <p>16 Kirkland and Ellis, represent the Aker respondents,</p> <p>17 with me is Mark Pals and Edward Braecke.</p> <p>18 MR. GRAVES: Jonathan Graves, from Cooley,</p> <p>19 LLP, representing the complainants and the witness.</p> <p>20 MS. HOLLAND: Elizabeth Holland, of Kenyon</p> <p>21 and Kenyon, representing the Enzymotec respondents.</p> <p>22 MR. GRAVES: Also with me is Laura</p> <p>23 Cunningham, from Cooley, LLP, for complainants and the</p> <p>24 witness.</p> <p>25 JACEK JACZYNSKI, PH.D.</p>	Page 9	<p>1 which you're being deposed right now?</p> <p>2 A Correct.</p> <p>3 Q Okay. Other than this case have you ever</p> <p>4 been connected or involved in a litigation?</p> <p>5 A No, I have not.</p> <p>6 Q How long did you prepare for today's</p> <p>7 deposition?</p> <p>8 A For the deposition, itself?</p> <p>9 Q Yes.</p> <p>10 A That's your question?</p> <p>11 Q Yes.</p> <p>12 A Okay. Based on my best memory I would</p> <p>13 estimate about two weeks, meaning I -- I reviewed some</p> <p>14 reports and relevant literature.</p> <p>15 Q And did you meet with your counsel?</p> <p>16 A Yes, I did. Yes, I did.</p> <p>17 Q Which attorneys did you meet with?</p> <p>18 A John, Laura, and Adam.</p> <p>19 Q Anyone else?</p> <p>20 A Also, on the phone, Scott.</p> <p>21 Q Scott who?</p> <p>22 A Sukenick.</p> <p>23 Q Okay.</p> <p>24 A John Graves, Laura Cunningham, Adam Suppes,</p> <p>25 Suppes, Suppes.</p>

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<p style="text-align: right;">Page 10</p> <p>1 Q Have you ever spoken to anyone at Neptune? 2 A Yes, I did. 3 Q Who? 4 A It was on the phone, a really brief 5 discussion. You're asking me to remember names and I 6 believe it was Dr. Sampalis, I believe. It was some 7 other person on the phone, but I was about -- I'm 8 going to -- my best estimate, that was about, I 9 believe, 2003. 10 Q 2003? 11 A Correct. 12 Q Other than -- 13 A I didn't say it was, perhaps it was. 14 Q Okay. Other than possibly Dr. Sampalis, 15 who else, if anyone, have you spoken with at Neptune? 16 A There was a second person on the phone, but 17 I really cannot recall even their first name. I know 18 it was a male, that's all I know. 19 And I believe it was just one phone call, 20 early on. 21 Q Do you under- -- do you have any 22 understanding as to whether that second person was at 23 Neptune? 24 A We just called in with my colleague at 25 work, and we were together on the phone, and then I</p>	<p style="text-align: right;">Page 12</p> <p>1 assumed, as well, that it was probably Dr. Sampalis. 2 Q Did Neptune assist you with getting krill 3 for your research? 4 A No, they did not. 5 Q Has Neptune ever provided any assistance to 6 you whatsoever? 7 MR. GRAVES: Objection, vague and 8 ambiguous. 9 A Assistance, you mean -- would you define 10 assistance? 11 Q Assistance in any of your work or research. 12 A In my work? Meaning -- 13 Q Yes. 14 A How -- how would you define my research and 15 work? 16 Q Your -- let's say your work outside of this 17 litigation. 18 A Professional work, as associated with the 19 university? 20 Q Tell you what, has Neptune ever provided 21 you any assistance, whatsoever, outside of this 22 litigation? 23 A Could you define assistance, again, please? 24 Q Is there a meaning of assistance that would 25 include something Neptune has done for you?</p>
<p style="text-align: right;">Page 11</p> <p>1 think we just reached a receptionist and she patched 2 us through to who I believe Dr. Sampalis was, but I 3 can't remember if she really identified herself. I 4 think we just assumed that was her. But I -- and, 5 again, it was a long time ago. 6 Q Why were you communicating with Neptune 7 back then? 8 A Because we wanted to initiate research on 9 krill, and that was really our intent, to -- to obtain 10 research quantity of sample of krill oil, and I 11 believe, back then, that was the only company who -- 12 who would be -- who was available, really, to -- to 13 provide krill oil. 14 Q Did you -- 15 A I just learned about it, I don't know, 16 probably int- -- internet search, so it's a -- just a 17 name that came up, and then we just found a phone 18 number, we called in, and I believe receptionist just 19 patched us through. 20 Now, I really cannot, again, it's at least 21 10 years, I believe 10 years ago, and, you know, I've 22 made several phone calls with different people, and I 23 believe that was Dr. Sampalis. But again, I can't 24 remember whether or not she identified herself as 25 such, I just assumed, and my colleague, I believe she</p>	<p style="text-align: right;">Page 13</p> <p>1 MR. GRAVES: Objection, vague and 2 ambiguous. 3 A I -- I'm still unclear about your 4 definition of assistance. In simple terms, please? 5 Q What don't you understand about the word 6 assistance? 7 A Like CPR would be assistance that I would 8 consider. If I'm at work, and I fall and faint, 9 someone would assist me to resuscitate me with CPR, 10 that -- that's really what came up to my mind right 11 away. 12 Q Okay. And in a broad sense has Neptune 13 provided you any assistance outside of this 14 litigation? 15 A No, they did not. The only connection I 16 had with Neptune, to my recollection, that was the 17 only phone call that I had, and, really, that was the 18 only time that we -- and we -- I believe they -- 19 because we really requested a sample of krill oil and 20 they, I'm not sure who, but someone from Neptune sent 21 us -- sent us a bunch of forms to fill out. And we 22 tried our best, we filled out, we gave it lot of time, 23 and so on, but then we sent those forms in, and 24 nothing happened, so we just kind of quit. 25 Q Was that your only connection to Neptune</p>

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1 prior to this litigation and the reexamination of the
 2 '348 patent?
 3 A Based on my recollection, to the best of my
 4 knowledge and memory, I would say yes. You see, you
 5 -- you have to realize, I -- I work with quite a few
 6 companies, and I have lot of students I teach, I do
 7 research, so you're asking me to remember a detail
 8 that I just, to the best of my recollection, I would
 9 like to emphasize that.
 10 Q Prior to 2003, had you ever received krill
 11 or krill oil?
 12 A Now you throw in krill, so it's not just
 13 krill oil. So I -- I'm thinking, krill oil we'd -- I
 14 would say we did not receive krill oil. And for sure
 15 we never received krill oil from Neptune.
 16 Now, when you're asking about krill, I
 17 believe -- again, you're asking me to remember, and
 18 I'll try my best, I'm sure we have krill right now, in
 19 our freezers. We have freeze-dried krill, blocks of
 20 krill, but 2000 -- did you say 2- -- 2003?
 21 Q Yes.
 22 A I -- I really cannot remember, maybe, maybe
 23 not, this is really vague recollection, maybe, maybe,
 24 if you can pinpoint -- if you can pinpoint the
 25 specific -- is there a paper that we wrote, perhaps,

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1 that would -- and I -- I -- I'm trying my best. I
 2 cannot remember.
 3 Q What is your area of expertise?
 4 A Food science with emphasis on seafood
 5 science.
 6 Q When is the first time you did research on
 7 krill?
 8 A On krill? Again, I have a hard time
 9 understanding your term of research. Would you
 10 elaborate on research, itself?
 11 Q When is the first time you ever worked on
 12 krill?
 13 A Like reading papers or actually using krill
 14 in the lab with extractions or purifications?
 15 Q Actually using krill for anything.
 16 A For anything?
 17 Q Yes.
 18 A As, for example, reading papers and doing
 19 my own research, would that include research, under
 20 your term?
 21 Q My question was, when did you first work
 22 with krill?
 23 A Again, I'm confused about the term "work".
 24 Q You don't understand the word work?
 25 A I -- I do, but perhaps your term work may

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1 not exactly overlap with how I understand work, for
 2 me, work with krill would include reading papers.
 3 Q Okay.
 4 A With -- with the subject krill.
 5 Q Okay. With your understanding of the word
 6 work when is the first time you worked on krill?
 7 A Again, I would estimate -- I would estimate
 8 around '97, '98.
 9 Q And in your definition of the term work
 10 you're including reading papers of krill?
 11 A Correct. Correct.
 12 Q When is the first time you worked with
 13 krill, the animal?
 14 A Again, you're asking me to remember, as in
 15 the lab?
 16 Q Yes.
 17 A Okay. I believe we did it first with my
 18 post-doc, Dr. Chen, that was probably early 2003, oh,
 19 there you go, that's probably when we got our first
 20 block of krill.
 21 Q Are you an expert in mass spectrometry?
 22 A Not necessarily.
 23 Q Are you an expert in marketing?
 24 MR. GRAVES: Objection, vague and
 25 ambiguous.

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1 A Marketing as in?
 2 Q Marketing of products?
 3 MR. GRAVES: Objection, vague and
 4 ambiguous.
 5 A Products meaning krill?
 6 Q Any kind of products, nutraceutical
 7 products, pharmaceutical products, consumer products?
 8 MR. GRAVES: Same objection.
 9 A I don't really market anything, really, to
 10 be honest to you.
 11 Q So no?
 12 A Not necessarily.
 13 Q When you say "not necessarily" do you mean
 14 no?
 15 A I mean not necessarily.
 16 Q What do you mean by not necessarily?
 17 A It's just not necessarily.
 18 Q Has anyone besides Neptune hired you as a
 19 consultant?
 20 A Again, you're asking me to remember. And
 21 consultant meaning being paid for certain work outside
 22 of the university?
 23 Q Yes.
 24 A Is that your -- that's what you mean by
 25 consultant?

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