



Transcript of **RICHARD BRUCE VAN BREEMEN, PH.D.**

Date: October 10, 2013

Case: ITMO: CERTAIN OMEGA-3 EXTRACTS FROM MARINE OR
AQUATIC BIOMASS AND PRODUCTS CONTAINING THE SAME

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VIDEOTAPED DEPOSITION OF RICHARD BRUCE VAN BREEMEN, PH.D.
CONDUCTED ON THURSDAY, OCTOBER 10, 2013

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1	1 UNITED STATES INTERNATIONAL TRADE COMMISSION 2 Washington, D.C. 3 -----X 4 In the Matter of : 5 CERTAIN OMEGA-3 EXTRACTS FROM : Inv. No. 6 MARINE OR AQUATIC BIOMASS AND : 337-TA-877 7 PRODUCTS CONTAINING THE SAME : 8 -----X 9 10 Videotaped Deposition of 11 RICHARD BRUCE van BREEMEN, Ph.D. 12 Washington, DC 13 Thursday, October 10, 2013 14 9:11 a.m. 15 16 17 18 19 20 Job No.: 45891 21 Pages: 1 - 211 22 Reported By: Lee Bursten, RMR, CRR	3	1 A P P E A R A N C E S 2 ON BEHALF OF COMPLAINANTS NEPTUNE TECHNOLOGIES & 3 BIORESOURCES INC. and ACASTI PHARMA INC.: 4 SCOTT A. SUKENICK, ESQUIRE 5 COOLEY LLP 6 1114 Avenue of the Americas 7 New York, New York 10036 8 (212) 479-6000 9 10 ON BEHALF OF COMPLAINANTS NEPTUNE TECHNOLOGIES & 11 BIORESOURCES INC. and ACASTI PHARMA INC.: 12 J. ADAM SUPPES, ESQUIRE 13 COOLEY LLP 14 One Freedom Square 15 Reston Town Center 16 11951 Freedom Drive 17 Reston, Virginia 20190 18 (703) 456-8000 19 20 21 22
2	1 Videotaped Deposition of RICHARD BRUCE van 2 BREEMEN, Ph.D., held at the offices of: 3 4 5 KIRKLAND & ELLIS LLP 6 655 Fifteenth Street, NW 7 Washington, DC 20005 8 (202) 879-5000 9 10 11 12 13 Pursuant to notice, before Lee Bursten, 14 Registered Merit Reporter, Certified Realtime 15 Reporter, and Notary Public in and for the District 16 of Columbia, who officiated in administering the oath 17 to the witness. 18 19 20 21 22	4	1 A P P E A R A N C E S C O N T I N U E D 2 ON BEHALF OF RESPONDENTS AKER BIOMARINE AS, AKER 3 BIOMARINE ANTARCTIC AS, AKER BIOMARINE ANTARCTIC 4 USA, INC., OLYMPIC SEAFOOD AS, OLYMPIC BIOTEC 5 LTD., AVOCA, INC., RIMFROST USA, LLC, and 6 BIORIGINAL FOOD & SCIENCE CORP.: 7 MARK A. PALS, ESQUIRE 8 JARED BARCENAS, ESQUIRE 9 KIRKLAND & ELLIS LLP 10 300 North LaSalle 11 Chicago, Illinois 60654 12 (312) 862-2000 13 14 ALSO PRESENT: 15 EDVARD BRAEKKE, ESQUIRE 16 DAVID ANDRE, Videographer 17 18 19 20 21 22

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5	<p>1 C O N T E N T S</p> <p>2 EXAMINATION OF RICHARD BRUCE van BREEMEN, Ph.D. PAGE</p> <p>3 By Mr. Sukenick 7</p> <p>4</p> <p>5</p> <p>6 E X H I B I T S</p> <p>7 (Attached to transcript)</p> <p>8 VAN BREEMEN DEPOSITION EXHIBITS PAGE</p> <p>9 Exhibit 1 Expert Witness Report of 27</p> <p>10 Richard B. van Breemen, Ph.D.</p> <p>11 Regarding Invalidity of United</p> <p>12 States Patent Numbers</p> <p>13 8,278,351 and 8,383,675</p> <p>14 Exhibit 2 Fujita reference 76</p> <p>15 Exhibit 3 Rogozhin reference 109</p> <p>16 Exhibit 4 US Patent 8,278,351 148</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	7	<p>1 THE VIDEOGRAPHER: The court reporter today</p> <p>2 is Lee Bursten, representing Planet Depos. Would you</p> <p>3 please swear in the witness.</p> <p>4 RICHARD BRUCE van BREEMEN, Ph.D.</p> <p>5 having been duly sworn, testified as follows:</p> <p>6 EXAMINATION BY COUNSEL FOR COMPLAINANTS</p> <p>7 NEPTUNE TECHNOLOGIES & BIORESOURCES INC. and ACASTI</p> <p>8 PHARMA INC.</p> <p>9 BY MR. SUKENICK:</p> <p>10 Q Good morning.</p> <p>11 A Good morning.</p> <p>12 Q How are you today?</p> <p>13 A I'm fine, thank you.</p> <p>14 Q Okay. Good. Would you please state and</p> <p>15 spell your name for the record.</p> <p>16 A Richard Bruce van Breemen. My last name is</p> <p>17 spelled V, lower case V-A-N, space, capital B like</p> <p>18 boy, R, double E, M-E-N.</p> <p>19 Q Have you ever been deposed before?</p> <p>20 A Yes.</p> <p>21 Q How many times?</p> <p>22 A I'm not certain. I think it's more than</p>
6	<p>1 P R O C E E D I N G S</p> <p>2 THE VIDEOGRAPHER: Here begins disk number</p> <p>3 1 in the videotaped deposition of Richard van</p> <p>4 Breemen, Ph.D., in the matter of Certain Omega-3</p> <p>5 Extracts from Marine or Aquatic Biomass and Products</p> <p>6 Containing Same, pending in the United States</p> <p>7 International Trade Commission, investigation number</p> <p>8 337-TA-887.</p> <p>9 Today's date is October 10th, 2013. The</p> <p>10 time on the video monitor is 9:11 a.m. My name is</p> <p>11 David Andre, representing Planet Depos. This video</p> <p>12 deposition is taking place at 655 15th Street,</p> <p>13 Northwest, Washington, DC.</p> <p>14 Will counsel please voice identify</p> <p>15 themselves and state whom they represent.</p> <p>16 MR. SUKENICK: This is Scott Sukenick from</p> <p>17 Cooley LLP, representing the complainants, and with</p> <p>18 me is Adam Suppes, also from Cooley LLP.</p> <p>19 MR. PALS: Mark Pals from Kirkland & Ellis,</p> <p>20 representing the Aker respondents.</p> <p>21 MR. BARCENAS: Jared Barcenas from Kirkland</p> <p>22 & Ellis, representing the Aker respondents.</p>	8	<p>1 five but less than ten times.</p> <p>2 Q Okay. Approximately when?</p> <p>3 A Between 1999 and the present.</p> <p>4 Q Spaced out fairly evenly?</p> <p>5 A Fairly evenly.</p> <p>6 Q How about in the past few years?</p> <p>7 A In the past few years, yes, I was deposed.</p> <p>8 Q How many times in the past four years?</p> <p>9 A In the past four years, I believe it's</p> <p>10 twice.</p> <p>11 Q Do you recall what types of cases, what was</p> <p>12 the subject matter of the cases in which you were</p> <p>13 deposed?</p> <p>14 A You mean in the last four years?</p> <p>15 Q Yes.</p> <p>16 A One concerned dietary supplements. The</p> <p>17 other concerned a pharmaceutical patent.</p> <p>18 Q Did the dietary supplements case involve a</p> <p>19 question of patent validity?</p> <p>20 A That's more of a legal question, and I'm</p> <p>21 not entirely certain. In the way I understood it, it</p> <p>22 was a case of a generics maker and a brand name</p>

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<p>9</p> <p>1 maker, and the brand name company wanted the generic 2 product not on the market. So I'm not sure if that's 3 a validity case or not. I don't think so, but... 4 Q Which side did you provide testimony on 5 behalf of? 6 A I was asked to provide testimony on behalf 7 of the generics maker. 8 Q And do you recall testifying as to whether 9 the brand name company's patent was invalid? 10 A I'm not sure there even was a patent in 11 that case. There was a patent in the pharmaceutical 12 case. This was a marketing question, whether or not 13 a generics maker could claim that their product was 14 similar to the brand name or not. 15 Q Okay. And in the pharmaceutical case, did 16 you provide testimony -- well, what was the 17 pharmaceutical case about? 18 A Pharmaceutical case was a situation where a 19 patented pharmaceutical company -- a company with a 20 patented pharmaceutical didn't -- was suing a 21 generics maker so that they weren't able to market 22 their product, that was the -- as I recall.</p>	<p>11</p> <p>1 legal issues and you're not sure, but you did submit 2 a report in this case in which you opined that the 3 asserted patents are invalid, correct? 4 A Which case do you mean? 5 Q Our current case. 6 A Okay. In the current case, I have 7 expressed opinions about several issues of the 8 conception of the patent, the written description of 9 the patent. That I have done. 10 Q And do you understand those opinions as 11 having to do with the validity of the asserted 12 patents? 13 A I've received some education during this 14 process about the legal terms, and I have put in my 15 report what I understand some of these legal terms to 16 mean, and how I implied them in my report. So I 17 don't recall exactly if I used the word "validity." 18 But I can check the report, or you can point out to 19 me where I talked about it in the report if it's 20 there. I just don't remember. 21 Q Okay. We'll get to the report in a moment. 22 I'll just note that the title of the report, "Expert</p>
<p>10</p> <p>1 Q And do you recall that the brand name 2 company accused the generic company of infringing a 3 patent? 4 A Yes, that is what I recall. 5 Q Did you opine on questions of patent 6 infringement or patent validity? 7 A Again, those are legal terms. I'm not 8 exactly certain. But what I was asked to comment on 9 was about the composition of matter of the products. 10 I'm not sure if that was validity or infringement, 11 exactly how. My opinion had to do with the 12 composition of matter of the products in question. 13 Q Okay. But you don't recall whether your 14 opinion had anything to do with whether those 15 products infringed or did not infringe the asserted 16 patent or patents? 17 A I'm not -- I don't recall exactly. 18 Q Okay. And you don't recall whether you 19 examined the asserted patent or patents to opine on 20 whether they were valid? 21 A I don't remember. 22 Q Okay. Now, you said before, those are</p>	<p>12</p> <p>1 Witness Report of Richard van Breemen, Ph.D., 2 Regarding Invalidity of United States Patent Numbers 3 8,278,351 and 8,383,675," does that refresh your 4 recollection as to whether your report touched on the 5 validity or invalidity of the asserted patents? 6 A Okay. Okay. Yes. Invalidity I discussed 7 in my report, and I expressed my opinions about it in 8 the report. 9 Q Okay. You've been deposed several times, 10 but let me now just take a moment and just run 11 through some of the ground rules for today. I'm 12 going to ask you questions, and you're going to 13 provide the answers. At times, counsel may object to 14 my question, may object to the form of my question. 15 In these situations, you're still required to answer 16 them. 17 Do you understand that? 18 A I understand. 19 Q There may be occasions when counsel objects 20 and instructs you not to answer, and counsel and I 21 may have some discussion about that, but unless you 22 are instructed not to answer, you understand that</p>

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<p style="text-align: right;">13</p> <p>1 you'll be providing honest answers, correct?</p> <p>2 A I understand.</p> <p>3 Q Okay. The court reporter here is writing</p> <p>4 down everything we say, so two things about that:</p> <p>5 First, when I'm asking the question, please allow me</p> <p>6 to finish asking my question before you start</p> <p>7 answering, and I will likewise allow you to finish</p> <p>8 answering before I ask my next question. Okay?</p> <p>9 A Thank you.</p> <p>10 Q Okay. And secondly, nods and other</p> <p>11 gestures obviously can't be easily transcribed, so</p> <p>12 please provide your answers in words. Okay?</p> <p>13 A I will.</p> <p>14 Q All right. We'll be taking breaks from</p> <p>15 time to time. If you need a break for any reason,</p> <p>16 just let me know, and, you know, we'll be reasonable</p> <p>17 about breaks. Okay?</p> <p>18 A Okay.</p> <p>19 Q Now, you were sworn in at the start of this</p> <p>20 deposition. And do you understand that you are</p> <p>21 required to provide honest answers to the best of</p> <p>22 your ability?</p>	<p style="text-align: right;">15</p> <p>1 A I met with counsel last week to prepare for</p> <p>2 today's meeting, yes.</p> <p>3 Q Okay. Any other meetings or phone calls to</p> <p>4 prepare for today's deposition?</p> <p>5 A The week before last, I met with counsel as</p> <p>6 well. And we did talk about this deposition.</p> <p>7 Q Okay. Every time I ask this question, we</p> <p>8 come up with another instance.</p> <p>9 MR. PALS: Objection.</p> <p>10 BY MR. SUKENICK:</p> <p>11 Q So are there any other times that you can</p> <p>12 think of that you met with counsel or spoke with</p> <p>13 counsel on the phone with the idea of preparing for</p> <p>14 today's deposition?</p> <p>15 MR. PALS: Objection to form and the</p> <p>16 characterization.</p> <p>17 A I met with counsel several times over the</p> <p>18 last several weeks. At these meetings, we have</p> <p>19 discussed the case, discussed reports that I have</p> <p>20 written, and of course, it comes up that I will be</p> <p>21 deposed at some point. So in that sense, I have</p> <p>22 prepared for this deposition on several occasions.</p>
<p style="text-align: right;">14</p> <p>1 A I understand.</p> <p>2 Q Is there any reason as you sit here today</p> <p>3 that you may be unable to provide honest answers?</p> <p>4 A I know of no reason why I should not be</p> <p>5 able to provide honest answers. I will provide</p> <p>6 honest answers.</p> <p>7 Q Okay. If I ask a question and you don't</p> <p>8 understand my question, please ask for clarification.</p> <p>9 If you don't ask for clarification, I'll assume that</p> <p>10 you understood the question, okay?</p> <p>11 MR. PALS: Objection to form.</p> <p>12 A I will ask for clarification of questions</p> <p>13 as necessary.</p> <p>14 BY MR. SUKENICK:</p> <p>15 Q What did you do to prepare for today's</p> <p>16 deposition?</p> <p>17 A I met with counsel yesterday to prepare for</p> <p>18 today's deposition. I met with counsel on other</p> <p>19 occasions to prepare reports as well.</p> <p>20 Q Okay. Aside from yesterday's meeting, did</p> <p>21 you have any other meetings or phone calls with</p> <p>22 counsel to prepare for today's deposition?</p>	<p style="text-align: right;">16</p> <p>1 But yesterday was the first -- was a day,</p> <p>2 the most recent day that I prepared for this</p> <p>3 deposition. And last week was another day that I</p> <p>4 prepared for this deposition. Those meetings were</p> <p>5 specifically with this deposition in mind. At other</p> <p>6 times, there was other matters that we discussed,</p> <p>7 such as my reports.</p> <p>8 BY MR. SUKENICK:</p> <p>9 Q Okay. I understand. Last week's meeting,</p> <p>10 was that also a single day?</p> <p>11 A I met on a single day with counsel in the</p> <p>12 Kirkland & Ellis offices in Chicago last week. There</p> <p>13 were other discussions on phone calls last week as</p> <p>14 well.</p> <p>15 Q And who was present in those meetings and</p> <p>16 who was on the line on the phone calls?</p> <p>17 MR. PALS: Objection to form.</p> <p>18 A Well, yesterday I met with Mark Pals and</p> <p>19 Jared Barcenas here in Washington, DC. Last week I</p> <p>20 met with Mark Pals and Jared Barcenas and others.</p> <p>21 There were others present last week, and I talked</p> <p>22 with some others yesterday. Yesterday also present</p>

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