

none of the Claims are entitled to claim priority to the Provisional Application or a priority date of July 27, 2001.

### **3.2 Effect of Priority Date on Invalidity**

170. I understand that the priority date to which the Claims of the '351 patent is entitled affects (i) whether certain references are prior art and (ii) the subsections of § 102 under which references qualify as prior art. The table below shows, on a reference-by-reference basis, the effect of the priority date on the prior art status of various references.

<b>Reference</b>	<b>If Priority Date is July 27, 2001</b>	<b>If Priority Date is July 29, 2002</b>
Ex. 1011. Neptune's "Final Prospectus" (the "Neptune Prospectus,"), which published on May 11, 2001.	§ 102(a)	§ 102(a) § 102(b)
Ex. 1012. Neptune press release titled "Neptune Technologies & Bioresources Soon to Obtain a Major	§ 102(a)	§ 102(a) § 102(b)

Patent in Over 30 Countries”  (“Neptune Press Release,”), which  published on June 14, 2001.		
Ex. 1002. WO 00/23546 (“Beaudoin I”), which published on April 27, 2000.	§ 102(a)  § 102(b)	§ 102(a)  § 102(b)
Ex. 1003. CA 2,251,265 (“Beaudoin II,”), published on April 21, 2000.	§ 102(a)  § 102(b)	§ 102(a)  § 102(b)
Ex. 1004. Japanese Unexamined Patent Application Publication No. 02-215351, titled Krill Phospholipids Fractioning Method (“Maruyama,”), was filed by Kazuki Maruyama et al. It published on August 28, 1990.	§ 102(a)  § 102(b)	§ 102(a)  § 102(b)
Ex. 1010. WO 97/39759 to Stoll et al. (“Stoll,”) titled “Omega-3 fatty acids and omega-3 phosphatidylcholine in	§ 102(a)  § 102(b)	§ 102(a)  § 102(b)

<p>the treatment of bipolar disorder,” published on October 30, 1997.</p>		
<p>Ex. 1006. Fricke et al., <i>Lipid, Sterol, and Fatty Acid Composition of Antarctic Krill</i>, <i>Lipids</i>, Vol. 19, No. 11, pp. 821-827 (1984) (“the Fricke Article”) The Fricke Article published in November 1984.</p>	<p>§ 102(a) § 102(b)</p>	<p>§ 102(a) § 102(b)</p>
<p>Ex. 1009. Itano Refrigerated Food Co., Ltd., Bio &amp; High Technology Announcement and Natural Astaxanthin &amp; Krill Lecithin (on or before December 28, 1994) (“the Itano Brochure,”). The Itano Brochure was published by at least December 28, 1994, when it was cited to the U.S.P.T.O during the prosecution of U.S. Pat. No.</p>	<p>§ 102(a) § 102(b)</p>	<p>§ 102(a) § 102(b)</p>

5,527,533.		
<p>Ex. 1014. Japanese Patent No. 60-153779, titled Supplementary nutritive food comprises vitamin=E and soybean lecithin dissolved in oil with high eicosapentaenoic acid content (“Fukuoka ,”), was filed by Osamu Fukuoka et al. It was published on August 13, 1985.</p>	<p style="text-align: center;">§ 102(a) § 102(b)</p>	<p style="text-align: center;">§ 102(a) § 102(b)</p>
<p>Ex. 1015. Japanese Patent Publication No. H08-231391, titled Dementia-Improving Medicine (“Yazawa”), was filed by Kazuyoshi Yazawa et al. It was published on September 10, 1996.</p>	<p style="text-align: center;">§ 102(a) § 102(b)</p>	<p style="text-align: center;">§ 102(a) § 102(b)</p>
<p>Ex. 1005. The Fisheries Agency, General Report on Research and Development of Techniques in</p>	<p style="text-align: center;">§ 102(a) § 102(b)</p>	<p style="text-align: center;">§ 102(a) § 102(b)</p>

<p>Processing and Utilization of Marine Products (March 1985) (the “General Report”). I understand that the General Report, including the Fujita Reference, was published in March 1985, and is therefore prior art to each of the ‘351 Patent under at least 35 U.S.C. § 102(b), even under Patentee’ earliest alleged priority date. <i>See</i> Expert Witness Report of Theodore F. Welch, Ph.D Regarding Public Accessibility of Certain References at ¶¶ 25-44; <i>see also</i> Van Breemen Declaration at ¶¶ 36-40.</p>		
<p>Ex. 1008. Canadian Patent No. 1098900, titled Method for the Processing of Krill to Produce Protein, Lipids and Chitin</p>	<p>§ 102(a) § 102(b)</p>	<p>§ 102(a) § 102(b)</p>

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