

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

**AKER BIOMARINE AS**  
**Petitioner**

v.

**NEPTUNE TECHNOLOGIES AND BIORESSOURCES INC.**  
**Patent Owner**

---

**CASE IPR: Unassigned**

---

**PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 8,278,351**  
**UNDER 35 U.S.C. §§ 311-319 and 37 C.F.R. §§ 42.1-.80, 42.100-.123**

**Mail Stop "PATENT BOARD"**  
**Patent Trial and Appeal Board**  
**United States Patent and Trademark Office**  
**P.O. Box 1450**  
**Alexandria, VA 22313-1450**

## TABLE OF CONTENTS

INTRODUCTION .....	1
NOTICE OF LEAD AND BACKUP COUNSEL.....	1
NOTICE OF EACH REAL PARTY IN INTEREST .....	1
NOTICE OF RELATED MATTERS.....	1
NOTICE OF SERVICE INFORMATION.....	2
GROUND FOR STANDING.....	2
STATEMENT OF THE PRECISE RELIEF REQUESTED .....	2
THRESHOLD REQUIREMENT FOR INTER PARTES REVIEW .....	3
STATEMENT OF REASONS FOR RELIEF REQUESTED.....	3
I.    THE ‘351 PATENT .....	3
II.   PERSON OF SKILL IN THE ART AND STATE OF THE ART.....	6
III.  CLAIM CONSTRUCTION.....	8
IV.  CLAIM-BY-CLAIM EXPLANATION OF GROUNDS FOR UNPATENTABILITY ..	10
Ground 1: Claims 1-94 are unpatentable under 35 U.S.C. 102(b) over Beaudoin I (Ex. 1002).....	15
Ground 2: Claims 1-94 are unpatentable under 35 U.S.C. 102(b) over Beaudoin II (Ex. 1003).....	22
Ground 3: Claims 1-13, 19-36, 42-59, 65-83, and 89-94 are unpatentable under 35 U.S.C. 102(b) over Maruyama (Ex. 1004) .....	28
Ground 4: Claims 1-6, 9, 12-14, 19-29, 32, 35-37, 42-52, 55, 58-60, 65-76, 79, 82-84, and 89-94 are unpatentable under 35 U.S.C. 102(b) over Fujita (Ex. 1005).....	33
Ground 5: Claims 1-6, 9, 19-29, 32, 42-52, 55, 65-76, 79, and 89-94 are unpatentable under 35 U.S.C. 102(b) over Fricke (Ex. 1006).....	39

Ground 6: Claims 1, 19-21, 24, 42-44, 47 and 65-67 are unpatentable under 35 U.S.C. 102(b) over Rogozhin (Ex. 1008) ..... 44

Ground 7: Claims 1-94 are unpatentable under 35 USC 103(a) over Beaudoin I in view of Bergelson (Ex. 1017) ..... 46

Ground 8: Claims 1-94 are unpatentable under 35 USC 103(a) over Beaudoin I (Ex. 1002) in view of the Final Prospectus (Ex. 1011), 2001 Press Release (Ex. 1012) and Bergelson (Ex. 1017) ..... 50

Ground 9: Claims 1-94 are unpatentable under 35 USC 103(a) over Fujita (Ex. 1005) in view of Watanabe (Ex. 1039), and further in view of Itano (Ex. 1009) and Yasawa (Ex. 1015) ..... 54

Ground 10: Claims 1-94 are unpatentable under 35 USC 103(a) over Fricke (Ex. 1006) in view of Bergelson (Ex. 1017), and further in view of Yasawa (Ex. 1015), Itano (Ex. 1009) the WHO Bulletin (Ex. 1018) ..... 57

V. CONCLUSION..... 60

**INTRODUCTION**

Aker Biomarine AS’s (“Petitioner”) Petition for Inter Partes Review (“Petition”) seeks cancellation of claims 1-94 (“challenged claims”) of U.S. Pat. No. 8,278,351 to Sampalis titled “Natural Marine Source Phospholipids Comprising Polyunsaturated Fatty Acids and Their Applications” (the ‘351 patent)(Exhibit (“Ex.”) 1001)). Concurrently filed herewith are a Power of Attorney and Exhibit List pursuant to § 42.10(b) and § 42.63(e), respectively. The Office is authorized to charge fee deficiencies to Deposit Account 50-4302.

**NOTICE OF LEAD AND BACKUP COUNSEL**

<b>Lead Counsel</b>	<b>Back-up Counsel</b>
J. Mitchell Jones jmjones@casimirjones.com Hand delivery address: CASIMIR JONES SC 2275 Deming Way, St. 310 Middleton, WI 53562 Telephone: (608) 662-1277 Facsimile: (608) 662-1276 Reg. No. 44,174	Amanda Hollis <a href="mailto:amanda.hollis@kirkland.com">amanda.hollis@kirkland.com</a> Hand delivery address: KIRKLAND & ELLIS 300 North LaSalle Chicago, IL 60654 Telephone: 312-862-2011 Facsimile: 312-862-2200 Reg. No. 55,629

**NOTICE OF EACH REAL PARTY IN INTEREST**

Aker Biomarine AS, Fjordallèen 16, P.O. Box 1423 Vika, Oslo Norway 0115 is the real party in interest for Petitioners. Aker Biomarine AS is a wholly owned subsidiary of Aker ASA.

**NOTICE OF RELATED MATTERS**

The '351 patent is the subject of a patent infringement lawsuit filed on October 1, 2012 in the United States District Court of Delaware (C.A. No. 12-1252-GMS) and International Trade Commission (ITC) action Investigation No. 337-TA-877. The '351 patent is also the subject of an Ex Parte Reexamination, Control No. 90/012,698, the request for which has been granted. See Ex. 1065. The '351 patent is a continuation of U.S. Pat. 8,030,348 (the "'348 patent"; Ex. 1069), which is currently subject to an Inter Partes Reexamination with the control number 95/001,774. All claims are currently rejected in the Action Closing Prosecution. (See Ex. 1064.) The '348 patent is also the subject a patent infringement lawsuit filed by Neptune Bioresources & Technologies against Aker Biomarine in the United States District Court of Delaware (1:11-cv-00894-GMS).

### **NOTICE OF SERVICE INFORMATION**

Please address all correspondence to lead counsel at the address shown above. Petitioner also consents to electronic service by email to: [docketing@casimirjones.com](mailto:docketing@casimirjones.com).

### **GROUND FOR STANDING**

Petitioner certifies that the '351 patent is available for *inter partes* review and that Petitioner is not barred or estopped from requesting an *inter partes* review challenging the patent claims on the Grounds identified in this petition.

### **STATEMENT OF THE PRECISE RELIEF REQUESTED**

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.