

From: [Cutri, Elizabeth A.](#)
To: [Cunningham, Laura](#); [Hollis, Amanda](#); [De Vries, Mike W.](#); [J. Mitchell Jones](#); [Holland, Elizabeth J.](#); [Hardman, Cynthia Lambert](#)
Cc: [Farmer, Dean](#); [Graves, Jon](#)
Subject: RE: IPR2014-00003
Date: Thursday, September 25, 2014 12:01:00 PM

Laura,

Thank you for speaking with me yesterday. AKBM does not agree that Exhibit 1107 is not relevant. As I stated during the call, Neptune's representation to the FDA that Beaudoin is the "processing techniques used" to make "Neptune Krill Oil™," which the '351 patent says is the "present invention," is relevant to the issue of inherent anticipation. A product that is the natural result of a prior art process is not patentable. You stated that Exhibit 1107 does not show that Beaudoin is used to make any Neptune product. When I asked you to explain this, you did not provide a response.

You stated that the NKO trademarked product is not the subject of Exhibit 1107. I pointed you to the seventh page of the PDF, which states, "Appendix G: processing techniques used: Neptune Krill Oil™." You had no response, other than to say that you did not have the document in front of you, needed to look at it again, and were not sure what products it refers to. As I stated during the call, if Neptune contends that Exhibit 1107 does not relate to the same "Neptune Krill Oil™" referred to at column 19, line 46 of the '351 patent, Petitioners would like to know that. If this is Neptune's position, please let us know, and explain the basis therefor. I inquired as to whether Neptune has submitted any other document to the FDA as evidence of the process for making NKO. You said you did not know of any such document.

In response to my question about why Neptune contends Exhibit 1107 is inadmissible under Federal Rule of Evidence 403, you stated that Exhibit 1107 and/or Petitioners' reliance on it was misleading or confusing. We disagree. Petitioners' reply brief contains only a few words about the document, which are accurate. You also stated that it would be a waste time for the Board to "wade through the hundreds of pages" of the document and figure out what it means. We disagree with this as well. The import of the document is readily apparent, and the Board can quickly and easily identify the most useful pages, including because Petitioners highlighted relevant portions. Any minor time investment required to read the relevant portions of the exhibit does not substantially outweigh its probative value.

Neptune should withdraw its objection to Exhibit 1107. If Neptune declines to do so and moves to exclude, Petitioners will oppose.

Liz

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From: Cunningham, Laura [mailto:lcunningham@cooley.com]
Sent: Wednesday, September 24, 2014 11:14 AM
To: Cutri, Elizabeth A.; Hollis, Amanda; De Vries, Mike W.; J. Mitchell Jones; Holland, Elizabeth J.; Hardman, Cynthia Lambert
Cc: Farmer, Dean; Graves, Jon
Subject: RE: IPR2014-00003

Liz,

How about 4:15 ET? We can use this dial-in:

Tel: 1-888-453-4412
Passcode: 731192

Regards,
Laura

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Admission to the DC bar pending

From: Cutri, Elizabeth A. [mailto:elizabeth.cutri@kirkland.com]
Sent: Wednesday, September 24, 2014 11:49 AM
To: Cunningham, Laura; Hollis, Amanda; De Vries, Mike W.; J. Mitchell Jones; Holland, Elizabeth J.; Hardman, Cynthia Lambert
Cc: Farmer, Dean; Graves, Jon
Subject: RE: IPR2014-00003

Laura,

We propose a meet-and-confer today at any time after 2 pm Central.

Liz

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From: Cunningham, Laura [<mailto:lcunningham@cooley.com>]
Sent: Tuesday, September 23, 2014 8:31 PM
To: Hollis, Amanda; De Vries, Mike W.; Cutri, Elizabeth A.; J. Mitchell Jones; Holland, Elizabeth J.; Hardman, Cynthia Lambert
Cc: Farmer, Dean; Graves, Jon
Subject: IPR2014-00003

Counsel:

Pursuant to 37 C.F.R. 42.64(b)(1), Neptune hereby provides notice of its objections to AKBM Ex. 1107, which was served with Petitioners' Reply on September 18, 2014. The correspondence between Neptune and the FDA contained in Ex. 1107 is irrelevant to the alleged anticipation by Beaudoin, and Petitioners' argument regarding this exhibit is misleading. Neptune intends to move to exclude this exhibit pursuant to Federal Rules of Evidence 402 and/or 403.

Neptune is willing to meet and confer with Petitioners regarding its objections if Petitioners wish to do so.

Regards,
Laura

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