

**Aker BioMarine AS and Enzymotec Ltd. and Enzymotec USA,
Inc., Petitioners,**

v.

**Neptune Technologies & Bioresources Inc.,
Patent Owner.**

**Case No. IPR2014-00003/IPR2014-00556
Patent 8,278,351**

Oral Hearing – October 31, 2014

Patent Owner's Demonstrative Exhibits

Claim Construction

BRI Must Be “In Light of” the Specification

In *inter partes* review, “a claim in an unexpired patent shall be given its broadest reasonable construction **in light of the specification** of the patent in which it appears.”

-- 37 C.F.R. 42.100(b)

“[W]e indulge a ‘heavy presumption’ that a claim term carries its ordinary and customary meaning’ ... [t]empering the presumption, claims ‘must be read in view of the specification, of which they are a part’ ... [t]he specification ‘is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.’”

-- *Chimei Innolux Corp. v. Semiconductor Energy Lab. Co., LTD*, IPR2013-00066, Paper 10 (Apr. 24, 2013) (citing *Phillips v. AWH Corp.*, 415 F.3d 1303, 1317 (Fed. Cir. 2005) (en banc); *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002)).

--PO Response at 9

Neptune's Constructions Are the BRI

- Neptune's proposed constructions are firmly rooted in plain and ordinary meaning and the specification's teachings
- Petitioners distort or cherry pick from the specification to advance constructions designed to suit their prior art arguments – even to the point of disputing constructions that they and their expert, Dr. Brenna, agreed to in prior ITC litigation between the parties
- Petitioners' proposed constructions lack expert support – in fact, Dr. Brenna testified that he applied Neptune's constructions to form his opinions in this case

--PO Response at 9-14

“suitable for human consumption”

Term appears in all challenged claims and all independent claims of the '351 patent:

- claim 1: “A krill extract comprising...”
- claim 24: “A capsule, tablet, solution, syrup, or suspension comprising a krill extract comprising...”
- claim 47: “A food, beverage, energy bar, or nutritional supplement comprising a krill extract comprising...”
- claim 70: “A cosmetic preparation comprising a krill extract comprising...”
- claim 94: “An Antarctic krill oil extract comprising...”

--PO Response at 11

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