

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

**ENZYMOTEC LTD.,
Petitioner**

v.

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

IPR2014-00556

**MOTION FOR JOINDER UNDER 35 U.S.C. 315(c) AND
37 C.F.R. §§ 42.22 AND 42.122(b)**

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450**

I. STATEMENT OF THE PRECISE RELIEF REQUESTED

Enzymotec Ltd. (“Enzymotec”) respectfully submits this Motion for Joinder, together with a Petition for *Inter Partes* Review of U.S. Patent No. 8,278,351, Petition IPR2014-00556. Pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. § 42.122(b), Enzymotec requests institution of an *inter partes* review and joinder with the *inter partes* review concerning the same patent in *Aker Biomarine AS v. Neptune Technologies and Bioresources, Inc.*, Case IPR2014-00003 (the “Aker IPR”), which was instituted on March 24, 2014. Enzymotec’s request for joinder is timely. It is also narrowly-tailored to the same claims, prior art, and grounds of unpatentability that are the subject of Aker’s IPR. In addition, Enzymotec is willing to streamline discovery and briefing. Accordingly, joinder is appropriate because it will not prejudice the parties to the Aker IPR and will promote the efficient resolution of the question of validity of a patent in a single proceeding. Absent joinder, Enzymotec will be prejudiced because its interests may not be adequately represented in the Aker IPR.

II. MATERIAL FACTS

Neptune Technologies and Bioresources, Inc. (“Neptune” or “Patent Owner”) owns U.S. Patent 8,278,351 (the “351 Patent”). On October 2, 2012, Neptune sued Aker and Enzymotec in district court for alleged infringement of this patent. (*Neptune et al. v. Aker et al.*, D. Del., 1:12cv1252; *Neptune et al. v.*

Enzymotec et al., D. Del., 1:12cv1253.) On January 29, 2013, Neptune filed a complaint with the International Trade Commission against Aker, Enzymotec, and others alleging violation of 19 U.S.C. § 1337 by importation into the U.S. articles that allegedly infringe the '351 patent. (ITC Investigation No. 337-TA-887, the “ITC Investigation.”) Aker and the additional parties to the ITC Investigation have settled; Enzymotec remains a respondent in that proceeding.¹ On June 13, 2013 and May 13, 2013, respectively, the district court cases against Aker and Enzymotec were stayed pending resolution of the ITC Investigation. On December 16, 2014, the ITC Investigation was stayed, pending the parties’ efforts to conclude a settlement agreement.

On March 24, 2014, the Board instituted Aker’s IPR on two grounds of unpatentability: (1) anticipation by WO 00/23546 to Beaudoin (“Beaudoin I”); and (2) obviousness over Fricke et al., *Lipid, Sterol, and Fatty Acid Composition of Antarctic Krill*, LIPIDS, Vol. 19, No. 11, pp. 821-827 (“Fricke”), L.D. Bergelson, *Lipid Biochemical Preparations*, Elsevier/North-Holland Biomedical Press (“Bergelson”), Japanese Patent Application Publication No. Hei 8-231391 (“Yasawa”), *Bio and High Technology Announcement* (“Itano”), and *WHO News*

¹ Enzymotec USA, Inc., Enzymotec Ltd.’s subsidiary, also remains as a Respondent in the ITC Investigation.

and Activities, Nutritional Value of Antarctic Krill (“the WHO Bulletin”).

(Institution of *Inter Partes* Review, Aker IPR Paper No. 22, March 24, 2014.)

III. STATEMENT OF REASONS FOR RELIEF REQUESTED

A. Legal Standard

The Leahy-Smith America Invents Act (AIA) permits joinder of like review proceedings, *e.g.* an *inter partes* review (IPR) may be joined with another *inter partes* review. 37 C.F.R. § 42.122(a). The Board has discretion to join parties to an existing *inter partes* review. 35 U.S.C. § 315(c). In deciding whether to exercise its discretion, the Board considers factors including: (1) the movant’s reasons why joinder is appropriate; (2) whether the new petition presents any new grounds of unpatentability; (3) what impact (if any) joinder would have on the trial schedule for the existing review; and (4) how briefing and discovery may be simplified. *Dell Inc. v. Network-1 Security Solutions, Inc.*, Decision on Motion for Joinder, IPR2013-00385, Paper No. 17 at 4 (July 29, 2013).

B. Enzymotec’s Motion For Joinder is Timely

The instant Petition and this Motion for Joinder are timely under 35 U.S.C. § 315(c) and 37 C.F.R. § 42.122(b). While, as a general proposition, *inter partes* review may not be instituted more than one year after the date on which a petitioner is served with a complaint alleging infringement of the patent-at-issue (35 U.S.C. § 315(b)), the one year period does not apply when a petition for *inter*

partes review is accompanied by a motion for joinder filed within one month of institution of the *inter partes* review for which joinder is requested. 37 C.F.R. § 42.122(b). This Motion for Joinder and the accompanying Petition are timely, as they are submitted within one month of the March 24, 2014 institution of the Aker IPR.

C. Joinder is Appropriate

Joinder is appropriate because Enzymotec will be unduly prejudiced if joinder is denied. As noted above, Enzymotec remains a respondent in the ITC Investigation, wherein Neptune is asserting the '351 patent against Enzymotec. That Investigation was stayed in December 2013 pending the parties' efforts to conclude a settlement agreement, but to date the parties have been unable to reach settlement. Accordingly the stay in the ITC Investigation will be lifted on April 14, 2014, and the hearing will be held beginning April 28, 2014. (Order No. 43, Setting Amended Procedural Schedule, ITC Investigation 337-TA-877.)

At this stage, in order to challenge Neptune's claims in an *inter partes* review, the only option available to Enzymotec is to file its petition and simultaneously request joinder to Aker's IPR pursuant to 37 C.F.R. § 42.122(b). Therefore, absent joinder, Enzymotec's petition for *inter partes* review would be barred. Enzymotec would be prejudiced if the Board refuses joinder, as its interests may not be adequately represented in the Aker IPR.

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