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(THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS)

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MAILED

DEC 21 2012

CENTRAL REEXAMINATION UNIT

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. *90/012,698*.

PATENT NO. *8278351*.

ART UNIT *3991*.

DEC 26 2012

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above identified *ex parte* reexamination proceeding (37 CFR 1.550(f)).

Where this copy is supplied after the reply by requester, 37 CFR 1.535, or the time for filing a reply has passed, no submission on behalf of the *ex parte* reexamination requester will be acknowledged or considered (37 CFR 1.550(g)).

Petition for Inter Partes Review
Of U.S. Patent 8,278,351
Exhibit
ENZYMOTEC - 1065

Order Granting / Denying Request For Ex Parte Reexamination	Control No.	Patent Under Reexamination
	90/012,698	8278351
	Examiner	Art Unit
	BRUCE CAMPELL	3991

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The request for *ex parte* reexamination filed *02 October 2012* has been considered and a determination has been made. An identification of the claims, the references relied upon, and the rationale supporting the determination are attached.

Attachments: a)☐ PTO-892, b)☒ PTO/SB/08, c)☐ Other: _____

1. ☒ The request for *ex parte* reexamination is GRANTED.

RESPONSE TIMES ARE SET AS FOLLOWS:

For Patent Owner's Statement (Optional): TWO MONTHS from the mailing date of this communication (37 CFR 1.530 (b)). **EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c).**

For Requester's Reply (optional): TWO MONTHS from the **date of service** of any timely filed Patent Owner's Statement (37 CFR 1.535). **NO EXTENSION OF THIS TIME PERIOD IS PERMITTED.** If Patent Owner does not file a timely statement under 37 CFR 1.530(b), then no reply by requester is permitted.

2. ☐ The request for *ex p* [illegible] mination is DENIED.

This decision is not appealable (35 U.S.C. 303(c)). Requester may seek review by petition to the Commissioner under 37 CFR 1.181 within ONE MONTH from the mailing date of this communication (37 CFR 1.515(c)). **EXTENSION OF TIME TO FILE SUCH A PETITION UNDER 37 CFR 1.181 ARE AVAILABLE ONLY BY PETITION TO SUSPEND OR WAIVE THE REGULATIONS UNDER 37 CFR 1.183.**

In due course, a refund under 37 CFR 1.26 (c) will be made to requester:

a) ☐ by Treasury check or,

b) ☐ by credit to Deposit Account No. _____, or

c) ☐ by credit to a credit card account, unless otherwise notified (35 U.S.C. 303(c)).

/Bruce Campell/ Primary Examiner, Art Unit 3991		

cc:Requester (if third party requester)

Request for Ex Parte Reexamination

A request for *ex parte* reexamination of claims 1-94 of U.S. Patent 8,278,351 was filed October 2, 2012 by a third party requester.

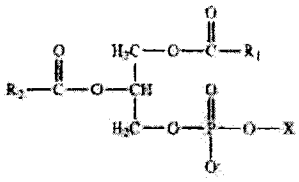
Decision on Request

A substantial new question of patentability (SNQ) affecting claims 1-94 of United States Patent Number 8,278,351 is raised by the request for ex parte reexamination.

Claims

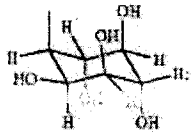
In reexamination, patent claims are construed broadly. In re Yamamoto, 740 F.2d 1569, 1571, 222 USPQ 934, 936 (Fed. Cir. 1984) (claims given "their broadest reasonable interpretation consistent with the specification"). This Request is directed to claims 1-94 of U.S. Patent 8,278,351. Claim 1 is representative:

1. A krill extract comprising:
a phospholipid of the general formula (I)



(I)

wherein R1 and R2, each together with the respective carboxyl groups to which each is attached, each independently represents a docosahexaenoic acid (DHA) or an eicosapentanoic acid (EPA) residue, and X is $—CH_2CH_2NH_3$, $—CH_2CH_2N(CH_3)_3$, or



and
wherein the extract is suitable for human consumption.

Documents Submitted by Requester

The following documents were submitted by Requester as the basis for this Request.

WO 00/23546, published April 27, 2000 by Beaudoin et al. (Beaudoin I)

Canadian Application 2,251,265, published April 21, 2000 by Beaudoin et al. (Beaudoin II)

WO 97/39759, published October 30, 1997 by Stoll

Neptune Final Prospectus dated May 11, 2001

Neptune Press Release dated June 14, 2001

Beaudoin I was applied in a rejection during prosecution of the '351 patent. Beaudoin II and Stoll were cited in an information disclosure statement but not relied upon by the examiner. None of the other references were considered during prosecution of the '351 patent.

Requester has also submitted evidentiary declarations under 37 CFR 1.132 by Bjørn Ole Haugsgjerd, Richard B. van Breemen and Ivar Storrø.

Requester's Proposed SNQs

1. Requester considers claims 1-94 unpatentable over the **Neptune final prospectus** as evidenced by Beaudoin I and the Haugsgjerd, van Breemen and Storrø declarations (Request, pp. 8-40).

The **Neptune final prospectus** is a prospectus for a stock offering by Neptune, the assignee of the '351 patent and apparently the licensee of the Beaudoin applications / patents. The prospectus describes in general terms Neptune's krill oil product and the method by which it is made, and cites the Beaudoin applications (pp. 11-14). The prospectus does not disclose that the Neptune krill oil contains lipids as recited in the '351 patent claims. Beaudoin I, which Requester cites as "evidence," was

applied in a rejection during prosecution of the '351 patent (discussed further below). Therefore the prospectus does not appear to disclose any new technical information that was not considered during examination of the '351 patent. The Haugsgjerd and van Breemen declarations do not discuss the Neptune prospectus and are therefore not evidence relating to the prospectus. Similarly, the Storrø declaration cites the prospectus in its explanation of what Beaudoin I discloses, but does not provide any evidence regarding the prospectus.

Because it does not disclose any new technical information not previously considered by the Office during prosecution of the '351 patent, the Neptune final prospectus does not raise a SNQ with regard to claims 1-94.

2. Requester considers claims 1-94 unpatentable over the **Neptune press release** as evidenced by Beaudoin I and the Haugsgjerd, van Breemen and Storrø declarations (Request, pp. 40-71).

The **Neptune press release** announces that Neptune "has reached the final stage to obtain a patent" based, apparently, on the Beaudoin applications. The press release describes in general terms Neptune's krill oil product and the method by which it is made. The press release does not disclose that the Neptune krill oil contains lipids as recited in the '351 patent claims. Beaudoin I, which Requester cites as "evidence," was applied in a rejection during prosecution of the '351 patent (discussed further below). Therefore the press release does not appear to disclose any new technical information that was not considered during examination of the '351 patent. The Haugsgjerd, van Breemen and Storrø declarations do not discuss the Neptune press release and are therefore not evidence relating to the press release.

Because it does not disclose any new technical information not previously considered by the Office during prosecution of the '351 patent, the Neptune press release does not raise a SNQ with regard to claims 1-94.

3. Requester considers claims 1-94 unpatentable over **Beaudoin I** alone, as evidenced by the Neptune final prospectus and the Haugsgjerd, van Breemen and

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