

**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**

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**IPR2014-00586**

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**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

Pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. § 42.122(b), Enzymotec Ltd. respectfully submits this Motion for Joinder, together with a Petition for *Inter Partes* Review of U.S. Patent No. 8,278,351, Petition IPR2014-00586 (the “Enzymotec IPR”). Enzymotec requests joinder of the Enzymotec IPR with *Aker Biomarine AS v. Neptune Technologies and Bioresources, Inc.*, Case IPR2014-00003 (the “Aker IPR”). The Aker IPR was instituted on March 24, 2014, and it likewise concerns U.S. Patent No. 8,278,351 (the “’351 patent”).

In the Aker IPR, the Board instituted trial on claims 1-6, 9, 12, 13, 19-29, 32, 35, 36, and 42-46 of the ’351 patent. (Institution of *Inter Partes* Review, Aker IPR, Paper No. 22 at p. 2 (March 24, 2014).) The Enzymotec IPR seeks institution of *inter partes* review of additional claims of the ’351 patent, namely claims 47-52, 55, 58, 59, and 65-69.<sup>1</sup> As will be shown below, these claims are virtually identical to the claims at issue in the Aker IPR, with the sole exception of minor differences in the preamble language. Because the differences in the claims at issue in the Aker and Enzymotec

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<sup>1</sup> On April 4, 2014, Enzymotec filed another petition for IPR on the ’351 patent (directed to the same claims at issue in Aker’s IPR, *i.e.*, claims 1-6, 9, 12, 13, 19-29, 32, 35, 36, and 42-46), together with a motion for joinder with Aker’s IPR. *See* IPR2014-00556.

IPRs are so minor, the identical prior art, grounds of unpatentability, and expert declarations that are the subject of Aker's IPR are at issue in Enzymotec's IPR.

Joinder of the Enzymotec IPR to the Aker IPR is appropriate. The Enzymotec IPR will not introduce new issues, prior art, or expert declarations. In addition, Enzymotec is willing to cooperate with Aker to streamline discovery and briefing. Joinder will therefore promote the efficient resolution of the question of validity of a patent in a single proceeding, and will not prejudice the parties to the Aker IPR. Absent joinder, Enzymotec will be prejudiced because its petition is time-barred, and its interests may not be adequately represented in the Aker IPR.

## **II. MATERIAL FACTS**

Neptune Technologies and Bioresources, Inc. ("Neptune" or "Patent Owner") owns the '351 patent. On October 2, 2012, Neptune sued Enzymotec in district court for alleged infringement of this patent. (*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 Enzymotec and others alleging violation of 19 U.S.C. § 1337 by importation into the U.S. of articles that allegedly infringe the '351 patent. (ITC Investigation No. 337-TA-887, the "ITC Investigation.") On May 13, 2013, the district court case against Enzymotec was

stayed pending resolution of the ITC Investigation. On December 16, 2014, the ITC Investigation was stayed, pending Neptune and Enzymotec's efforts to conclude a settlement agreement.

On March 24, 2014, the Board instituted Aker's IPR on claims 1, 3-6, 9, 12, 13, 19-24, 26-29, 32, 35, 36, and 42-46 of the '351 patent, on the ground of anticipation by WO 00/23546 to Beaudoin ("Beaudoin I"). (Institution of *Inter Partes* Review, Aker IPR, Paper No. 22 at pp. 8-16 (March 24, 2014).) The Board also instituted *inter partes* review of these same claims, plus claims 2 and 25, on the ground of obviousness over Fricke et al., *Lipid, Sterol, and Fatty Acid Composition of Antarctic Krill*, LIPIDS, Vol. 19, No. 11, pp. 821-827 ("Fricke"), Bergelson, *Lipid Biochemical Preparations*, Elsevier/North-Holland Biomedical Press ("Bergelson"), JP Pat. App. Pub. Hei 8-231391 ("Yasawa"), *Bio and High Technology Announcement* ("Itano"), and *WHO News and Activities, Nutritional Value of Antarctic Krill* ("the WHO Bulletin"). (*Id.* at pp. 21-27.)

Enzymotec's IPR seeks institution of trial with respect to claims 47-52, 55, 58, 59, and 65-69 of the '351 patent on the same two grounds at issue in Aker's IPR, namely: (1) anticipation by Beaudoin I; and (2) obviousness over Fricke, Bergelson, Yasawa, Itano, and the WHO Bulletin. (Petition for *Inter Partes* Review of U.S. Patent 8,278,351, Petition IPR2014-00586.)

### III. STATEMENT OF REASONS FOR THE RELIEF REQUESTED

The Leahy-Smith America Invents Act permits joinder of like review proceedings, *e.g.* an *inter partes* review 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).

#### A. 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

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