

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

IPR2014-00636

MOTION FOR JOINDER UNDER 37 C.F.R. §§ 42.22 AND 42.122(b)

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United States Patent and Trademark Office
P.O. Box 1450
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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 IPR2014-00636 (the “Enzymotec IPR”). 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. Additionally, Enzymotec’s petition is narrowly-tailored to only one additional claim of the ’351 patent,¹ and it includes only the same two grounds of unpatentability that are the subject of the Aker IPR. In addition, Enzymotec is willing to streamline discovery and briefing.

¹ Enzymotec has also filed two other IPR petitions and motions for joinder with respect to the ’351 patent. Specifically, on April 4, 2014, Enzymotec filed petition IPR2014-00556 (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. On April 11, 2014, Enzymotec filed petition IPR2014-00586 (directed to the claims 47-52, 55, 58, 59, and 65-69), together with a motion for joinder with Aker’s IPR.

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 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 9, 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, but the stay was lifted on April 14, 2014.

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.)

The Enzymotec IPR seeks institution of trial with respect to claim 94 of the ’351 patent on two grounds. The first ground is anticipation by Beaudoin I, which is the identical ground at issue in the Aker IPR. The second ground is obviousness over Fricke, Bergelson, Yasawa, and Itano. This is also the identical ground at issue in the Aker IPR, with the exception that Enzymotec’s IPR does not include the WHO Bulletin, which is one of the prior art references included in the second ground at issue in the Aker IPR.

III. STATEMENT OF REASONS FOR 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, in general, *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.

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