

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

ENZYMOTEC, LTD.  
Petitioner

v.

NEPTUNE TECHNOLOGIES AND BIORESSOURCES INC.  
Patent Owner

Patent No. 8,278,351  
Filing Date: July 25, 2011  
Issue Date: October 2, 2012

Title: NATURAL MARINE SOURCE PHOSPHOLIPIDS COMPRISING  
POLYUNSATURATED FATTY ACIDS AND THEIR APPLICATIONS

---

*Inter Partes* Patent Review No.: IPR2014-00636  
Petition Filed: April 23, 2014

---

**PETITIONER ENZYMOTEC, LTD.  
AND  
PATENT OWNER NEPTUNE TECHNOLOGIES AND BIORESSOURCES INC.'S  
JOINT MOTION TO TERMINATE PROCEEDING  
UNDER 35 U.S.C. § 317**

**I. STATEMENT OF RELIEF REQUESTED**

Pursuant to 35 U.S.C. § 317(a) and 37 C.F.R. § 42.72, and the Board's order of May 5, 2014 authorizing this motion (IPR2014-00636, Paper No. 8, (Green)), Petitioner Enzymotec Ltd. ("Enzymotec") and Patent Owner Neptune Technologies and Bioresources Inc. ("Neptune") jointly request termination of *Inter Partes* Review IPR2014-00636 of U.S. Patent No. 8,278,351 ("the '351 Patent").

**II. STATEMENT OF FACTS**

This review has not been instituted. Enzymotec filed its petition for review on April 23, 2014, and Neptune has not yet filed a preliminary response. On April 27, 2014, the parties reached settlement of certain adversarial matters between them ("Settlement Agreement," see *infra*). Specifically, the parties agreed to terminate the following adversarial matters:

- An International Trade Commission ("ITC") investigation, 337-TA-877, regarding Enzymotec's alleged infringement of the '351 Patent and U.S. Patent No. 8,383,675 ("the '675 Patent")<sup>1</sup> and the alleged invalidity and unenforceability of those patents;
- Three actions in the United States District Court for the District of Delaware,

---

<sup>1</sup> Aker Biomarine AS ("Aker") was also a Respondent in this Investigation.

- namely (i) case no. 11-cv-00895 regarding Enzymotec's alleged infringement of U.S. Patent No. 8,030,348 ("the '348 Patent") and the alleged invalidity and unenforceability of that patent, (ii) case no. 12-cv-1253 regarding Enzymotec's alleged infringement of the '351 Patent and the alleged invalidity and unenforceability of that patent, and (iii) case no. 13-cv-341 regarding Enzymotec's alleged infringement of the '675 Patent and the alleged invalidity and unenforceability of that patent<sup>2</sup>; and
- This *Inter Partes* Review action and *Inter Partes* Review Case Nos. IPR2014-00466 and IPR2014-00586.

The parties note other related proceedings before the USPTO:

- The '351 Patent is subject to three *Inter Partes* Reviews. *Inter Partes* Review IPR2014-00003 was filed on October 1, 2013 and has been instituted. *Inter Partes* Review IPR2014-00556 was filed on April 4, 2014 and is pending.

---

<sup>2</sup> Patent Owner notes that it was involved as plaintiff and another party, Aker, was involved as defendant in three related actions in the United States District Court for the District of Delaware, namely (i) case no. 11-cv-00894 regarding Aker's alleged infringement of the '348 Patent, (ii) case no. 12-cv-1252 regarding Aker's alleged infringement of the '351 Patent, and (iii) case no. 13-cv-340 regarding Aker's alleged infringement of the '675 Patent. All of these matters have settled, and the cases noted in (ii) and (iii) have been dismissed.

*Inter Partes* Review IPR2014-00586 (noted above) was filed on April 11, 2014 and is pending. As mentioned, the parties agreed to terminate the latter *Inter Partes* Review.

- The '351 Patent is also subject to *Ex Parte* Reexamination Control No. 90/012,698 (filed October 2, 2012). This reexamination has been stayed pending the outcome of *Inter Partes* Review IPR2014-00003 (see Paper 25 of IPR2014-00003).
- The '675 Patent claims priority from the '351 Patent. The '675 Patent is subject to *Inter Partes* Review IPR2014-00466 (noted above), which was filed on February 27, 2014 and is pending. As mentioned, the parties agreed to terminate this *Inter Partes* Review.
- The '351 patent claims priority from the '348 Patent, which is subject to *Inter Partes* Reexamination Control No. 95/001,774 (filed October 19, 2011). This reexamination is in progress.
- The following currently pending U.S. patent application claims priority from the '675 Patent or related patents: U.S. Patent Application No.13/750,663, filed January 25, 2013. In addition, U.S. Patent Application No. 13/280,182, filed October 24, 2011, claims priority from the '675 Patent or related patents. It issued as U.S. Patent No. 8,680,080 on March 25, 2014.

### III. ARGUMENT

#### A. Termination of IPR2014-00636 is Appropriate

The Board should terminate IPR2014-00636 for at least the following reasons.

First, the statutory condition for termination under 35 U.S.C. § 317(a) is satisfied – this joint request for termination is being filed before the Board has decided the merits of the proceeding. Indeed, the Board has not yet issued a decision on the petition to institute a review.

Second, the parties have agreed to terminate this proceeding, in connection with their Settlement Agreement.

Third, the merits of the petition have not been determined, no motions (other than a motion for joinder with *Inter Partes* Review IPR2014-00003) or other matters are outstanding, and concluding this review at this early juncture promotes efficient use of the resources of the Board and saves expense for the parties.

#### B. A True Copy of the Parties' Settlement Agreement is Filed Herewith

The parties' Settlement Agreement has been made in writing, and a true and correct copy is filed herewith as business confidential information pursuant to 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74, as Exhibit 2001. A Joint Request to File a Settlement Agreement as Business Confidential Information under 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74 is also being filed herewith.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.