

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RIMFROST AS

Petitioner

v.

AKER BIOMARINE ANTARCTIC AS

Patent Owner

Case: IPR2018-01178

U.S. Patent No. 9,375,453

**PETITIONER'S THIRD UPDATED SUBMISSION OF
MANDATORY NOTICE INFORMATION**

Petitioner Rimfrost AS provides the following updated Mandatory Notices pursuant to 37 C.F.R. § 42.8. In this case, updated information is provided regarding proceedings before the PTAB in connection with patents in the same patent family as the '453 Patent. In connection with two *inter partes* review proceedings, Final Written Decisions were issued determining that the related patents were unpatentable. See paragraphs in italics below for updated content since the Second Updated Submission of Mandatory Notice Information (Paper 16).

RELATED MATTERS

Aker has asserted two patents - U.S. Patent Nos. 9,078,905 and 9,028,877 in a pending litigation commenced by Aker against Olympic Holding AS; Rimfrost AS; Emerald Fisheries AS, Rimfrost USA, LLC; Avoca Inc.; and Bioriginal Food & Science Corp. *See* Case No. 1:16-CV-00035-LPS-CJB (D. Del.). (Complaint, Exhibit 1021). The litigation was stayed pursuant to 28 U.S.C. § 1659 in view of Investigation No. 337-TA-1019 instituted by the U.S. International Trade Commission on September 16, 2016. The ITC proceeding, *In the Matter of Certain Krill Oil Products and Krill Meal for Production of Krill Oil Products*, related to Aker's U.S. Patent Nos. 9,028,877, 9,078,905, 9,072,752, 9,320,765, and 9,375,453. The ITC Investigation identified Olympic Holding AS, Rimfrost AS,

Emerald Fisheries AS, Avoca Inc., Rimfrost USA, LLC, Rimfrost New Zealand Limited and Bioriginal Food & Science Corp. as respondents. (Exhibit 1023). On May 23, 2017, ITC Investigation No. 337-TA-1019 was effectively terminated. (Exhibit 1054). In addition, a Stipulation of Dismissal as to Avoca Inc. was granted by the Delaware District Court on May 30, 2017.

On January 27, 2017, Petitioner filed petitions in IPR2017-0745 and IPR2017-0747 requesting review of claims 1-20 of U.S. Patent No. 9,078,905. On February 3, 2017, Petitioner filed petitions in IPR2017-0746 and IPR2017-0748 requesting review of claims 1-19 of U.S. Patent No. 9,028,877. Each of these IPRs was instituted on August 16, 2017. On September 6, 2017, the Delaware District Court action was stayed pending resolution of the IPRs. (Exhibit 1078).

On December 15, 2017, Petitioner filed a petition in IPR2018-00295 requesting review of claims 1-48 of U.S. Patent No. 9,320,765. This IPR was instituted on June 14, 2018.

On February 9, 2018, Petitioner filed a petition in PGR2018-0033 requesting review of claims 1-20 of U.S. Patent No. 9,644,170.

On June 26, 2018, Petitioner filed a Petition in IPR2018-01179 requesting review and cancellation of claims 33-61 of the '453 patent.

On August 10, 2018, the PTAB issued Final Written Decisions (FWD) in the following inter partes review proceedings of patents in the same patent family as the '453 Patent:

IPR2017-00745, FWD determining Claims 1-20, i.e., all claims, of U.S. Patent 9,078,905 B2 have been shown to be unpatentable on the grounds presented;

IPR2017-00746, FWD determining that Claims 1-19, i.e., all claims, of U.S. Patent 9,028,877 B2 have been shown to be unpatentable on the grounds presented;

IPR2017-00747, FWD determining that Claims 1-20 of U.S. Patent 9,078,905 B2 have not been shown to be unpatentable on the grounds presented; and

IPR2017-00748, FWD determining that Claims 1-19 of U.S. Patent 9,028,877 B2 have not been shown to be unpatentable on the grounds presented.

On August 29, 2018, institution was denied in PGR2018-0033, requesting review of claims 1-20 of U.S. Patent No. 9,644,170 (a patent in the same patent family as the '453 Patent) based on the determination that the '170 Patent was not eligible for post grant review.

On September 21, 2018, Petitioner filed IPR2018-01730 seeking inter partes review of claims 1-20 of U.S. Patent No. 9,072,752 (a patent in the same patent family as the '453 Patent).

On October 12, 2018, Patent Owner filed Notices of Appeal seeking review of the FWD's in IPR2017-0045 and IPR2017-0046.

On January 14, 2019, IPR2018-01179 was instituted on claims 33-61 of the '453 patent.

On March 12, 2019, IPR2018-01730 was instituted on claims 1-20 of U.S. Patent No. 9,072,752 (a patent in the same patent family as the '453 Patent).

On June 12, 2019, the PTAB issued a Final Written Decision (Paper 35) in IPR2018-00295 finding claims 1-48 of U.S. Patent No. 9,320,765 unpatentable, and denying Patent Owner's contingent Motion to Amend to replace claims 25-32 with substitute claims 49-56 as unpatentable over the prior art.

On July 12, 2019, Patent Owner filed a Request for Rehearing (Paper 36) of the FWD in IPR2018-00295 denying Patent Owner's contingent Motion to Amend to replace U.S. Patent No. 9,320,765 claims with substitute claims. *On August 15, 2019, Petitioner filed its Response to Patent Owner's Request for Rehearing (Paper 37). On September 4, 2019, Patent Owner filed its Reply to Petitioner's Response on Request for Rehearing.*

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