

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

RIMFROST AS
Petitioner

v.

AKER BIOMARINE ANTARCTIC AS
Patent Owner

CASE IPR: IPR2020-01532

U.S. Patent No. 9,644,169 B2

Patent Owner's Submission In Lieu of Denial Motion to Strike

Mail Stop "PATENT BOARD"
Patent Trial and Appeal Board
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

In an e-mail dated October 5, 2021, the Board authorized filing of a three-page paper identifying, by page and line, any evidence or argument in the Reply that it considers to be improper. Petitioner is authorized to file a three-page response to this submission.

I. Identification of Improper Evidence and Argument

A. “Some months” argument and evidence from Ex. 1160

Petitioner’s Reply (Paper 15), p. 20:

Turning to Fricke, it cannot be disputed that Fricke describes cooking krill to obtain denatured product that was stored for **some months**, and that the resulting extract possessed 1-3% free fatty acids. Exhibit 1010, pp. 0001-0003; Tallon Decl., ¶¶ 303-309; Tallon Reply, ¶¶ 68, 105.

(Emphasis added).

Support for the phrase “some months” comes from Ex. 1160 which was newly filed with Petitioner’s Reply. See Tallon Reply (Ex. 1086) ¶¶63-64, 68.

The phrase “some months” does not appear in Ex. 1010 in relation to cooked krill.

This is a new argument and new evidence intended to supplement Petitioner’s arguments in the Grounds in the Petition and subsequently instituted by the Board.

Petitioner’s Reply (Paper 15), p. 20-21:

The Board also concluded that, based on a subsequent Fricke publication (Exhibit 2006), the samples processed in Fricke were extracted after being stored “some months.” *Id.*, 21-22; see Tallon Reply, ¶¶ 62-65.

Ex. 2006 from IPR2017-00746 is Ex. 1160 in this proceeding, newly filed with Petitioner's Reply. This is a new argument and new evidence intended to supplement Petitioner's arguments in the Grounds in the Petition and subsequently instituted by the Board.

B. Statement implicating Grounds other than those that were instituted

Petitioner's Reply (Paper 15), p. 7:

As initial matter, Patent Owner erroneously maintains the claims of the '169 patent must be found patentable if Breivik II is antedated. POR, 6. Patent Owner ignores, however, that one or more alternative references are provided for every limitation for which Breivik II is cited. *See, e.g.*, Petition, 69-89.

This statement implies that there are Grounds that do not include Breivik II.

Breivik II is the first reference cited in both instituted Grounds.

Respectfully submitted,

CASIMIR JONES SC

Dated: November 9, 2021

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 9th day of November 2021, a copy of the foregoing **Patent Owner's Sur-Reply to Petitioner's Reply, Patent Owner's Updated Exhibit List, Patent Owner's Submission In Lieu of Denial Motion to Strike and Exhibit 2024** were served in their entirety electronically (as consented to by Petitioner) to the attorneys of record as follows:

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