

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RIMFROST AS

Petitioner

v.

AKER BIOMARINE ANTARCTIC AS

Patent Owner

Case: IPR2020-01533

U.S. Patent No. 9,816,046 B2

REPLY DECLARATION OF DR STEPHEN J. TALLON

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DECLARATION OF DR STEPHEN J. TALLON

1. I make this declaration in support of Petitioner's Reply to Patent Owner's ("PO's") Response (Paper 9) to Petition in IPR2020-01533 ("POR").

BASIS FOR OPINION

2. I have reviewed the Declaration of Dr. Snorre Tilseth, EX2001, ("Tilseth Dec.") and accompanying exhibits, and disagree with his conclusions overall and as described in detail in the discussion below.

3. I have reviewed the Declaration of Dr. Jacek Jaczynski, EX2015, ("Jaczynski Dec.") and accompanying exhibits, and disagree with his conclusions overall and as described in detail in the discussion below.

4. I have reviewed Patent Owner's Response to Petition, Paper No. 09, and disagree with the conclusions set forth therein and as described in detail in the discussion below.

5. I have reviewed the Deposition of Dr. Jacek Jaczynski, EX1170, ("Jaczynski Dep.").

6. Furthermore, after reviewing the foregoing, I hereby reaffirm my opinion from my earlier Declaration, EX1006, including that all claims of U.S. Patent

9,816,046 (“the ‘046 Patent”) would have been obvious to a POSITA in view of the prior art cited.

7. In forming my opinions, I have also relied on my own education, work experiences and knowledge, see my CV in my declaration, EX1006, the documents referenced in Appendix E to my declaration, EX1006.

8. I begin by noting some of the many admissions made by at least one of PO’s experts about what a POSITA would have known. Among other things, PO’s expert concedes that Budziński describes a krill meal which is stable for 13 months (Jaczynski Dec., EX2015 at ¶¶ 57-58), concedes that Fricke describes storage and extraction of “cooked”, *i.e.*, denatured krill¹ (Jaczynski Dec., EX2015 at ¶ 40), and concedes that Breivik describes krill denaturation and extraction (Jaczynski Dec., EX2015 at ¶¶ 37, 55) and thus PO’s expert concedes that the prior art references in combination disclose the ‘046 patent claim elements of extracting a krill oil from a denatured krill meal after storage. These are discussed in detail below.

¹ PO has equated to “denature lipases and phospholipases” with “destroy the activity of lipases and phospholipases”. See Tallon Dec., EX1006, ¶¶ 117-131.

'046 PETITION GROUNDS FOR INVALIDITY

9. The chart below summarizes my understanding of the grounds Petitioner is asserting for the invalidity of the '046 patent.

Ground	References	Basis	Claims Challenged
1	Breivik II (EX1037), Yoshitomi (EX1033), Budziński (EX1008), Fricke (EX1010), Bottino II (EX1038), Sampalis I (EX1012)	35 U.S.C. §103(a)	1-10
2	Breivik II (EX1037), Yoshitomi (EX1033), Budziński (EX1008), Fricke (EX1010), Bottino II (EX1038), Randolph (EX1011)	35 U.S.C. §103(a)	11, 12
3	Breivik II (EX1037), Yoshitomi (EX1033), Budziński (EX1008), Fricke (EX1010), Bottino II (EX1038), Randolph (EX1011), Sampalis I (EX1012)	35 U.S.C. §103(a)	13-19

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