

UNITED STATES PATENT AND TRADEMARK OFFICE

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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RIMFROST AS

Petitioner

v.

AKER BIOMARINE ANTARCTIC AS

Patent Owner

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Case: IPR2020-01533

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

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**REPLY DECLARATION OF DR STEPHEN J. TALLON**

## TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
DECLARATION OF DR STEPHEN J. TALLON .....	3
BASIS FOR OPINION .....	3
‘046 PETITION GROUNDS FOR INVALIDITY .....	5
PROBLEMS WITH PO’s RELIANCE ON ITS EXHIBITS .....	6
FOR REDUCTION TO PRACTICE .....	6
PROBLEMS WITH PO’s EXPERT DR JACZYNSKI’S CONCLUSIONS .....	20
Krill meal claim construction.....	20
Budziński EX1008 discloses a stable krill meal.....	27
suitable for extraction after storage for 13 months.....	27
Fricke describes denaturation, storage and extraction of cooked krill. ....	33
Breivik II (EX1037) describes denaturation of krill and extraction of krill oil.....	38
THE CITED COMBINATION OF PRIOR ART RENDERS THE CLAIMS OBVIOUS, AND POSITA WOULD BE MOTIVATED TO MAKE THIS COMBINATION. ....	45
Processing of ‘fresh krill’ on board (PO’s points 1 & 7).....	47
Oxidative and hydrolytic stability of krill meal (PO’s point 2).....	49
Use of solvents on ships (PO’s points 3 & 4). ....	53
PO argues that Fricke lacks sufficient detail (point 5). ....	59
Flammability of krill meal (PO’s point 6). ....	60
MISCHARACTERIZATIONS OF MY DEPOSITION TESTIMONY .....	62
CONCLUDING OPINION.....	76

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 krill<sup>1</sup> (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.

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<sup>1</sup> 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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