

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 No.: IPR2020-01533

**U.S. Patent 9,816,046**

Issue Date: November 14, 2017

Title: Bioeffective Krill Oil Compositions

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**PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE  
PURSUANT TO 37 C.F.R. § 42.24(c)**

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## I. INTRODUCTION

Patent Owner wants the Board to cast aside common sense and find simply storing denatured krill for 1-36 months prior to solvent extraction is novel and affords patentability to the process recited in the '046 patent. It was known, however, that sufficiently heating krill prevents the rapid enzymatic decomposition of krill lipids by lipases and phospholipases, and results in a stable denatured product with improved storage properties. It was also unremarkable that krill caught in the middle of the Antarctic Ocean would need to be stored for at least a month while being transported back to land for further processing.

It is not disputed, with the exception of the '046 patent's 1-36 month storage limitation, the Board, in finding U.S. Patent Nos. 9,028,887, 9,375,453, 9,078,905, 9,072,752 and 9,320,765 unpatentable, determined claims virtually identical to the claims of the '046 patent were obvious, and the '046 patent's limitations were disclosed in the prior art.

To avoid the sixth "krill oil" patent in the same patent family from being found unpatentable, Patent Owner now argues Breivik II does not qualify as prior art because the '046 patent's invention was reduced to practice before Breivik II's priority date. This attempt to antedate Breivik II, however, rests on the uncorroborated testimony of one of the '046 patent's inventors, Dr. Tilseth, that

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