

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: IPR2020-01533

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

PATENT OWNER'S SUR-REPLY TO PETITIONER'S REPLY

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioner has failed to provide any analysis under the “rule of reason” that establishes why Dr. Tilseth’s testimony of conception and reduction to practice of the claimed invention is not credible. In fact, Petitioner failed to take Dr. Tilseth’s deposition regarding his Declaration and the corroborating documents cited therein. Instead of analyzing the evidence provided by Dr. Tilseth as a whole under the rule of reason, Petitioner focuses solely on the issue of whether a single exhibit (Ex. 2003) specifically discloses cooking during the krill meal production process. This narrow focus ignores dispositive portions of Dr. Tilseth’s testimony and evidences a failure to understand that the rule of reason analysis requires “an evaluation of all pertinent evidence . . . so that a sound determination of the credibility of the inventor’s story may be reached.” *NFC Technology, LLC v. Mattal*, 871 F.3d 1367, 1372 (Fed. Cir. 2017). Petitioner’s analysis further ignores controlling case law that provides that the rule of reason does not require that evidence have a source independent of the inventors on every aspect of conception and reduction to practice. *E.I. du Pont De Nemours & Co. v. Unifrax I LLC*, 921 F.3d 1060, 1077 (Fed. Cir. 2019). The law requires only that the corroborative evidence, including circumstantial evidence, support the credibility of the inventors’ story. *Id.* Dr. Tilseth’s testimony and supporting corroborative evidence

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