

PATENT OWNER ORAL PRE

UNITED STATES PATENT AND TRADEMARK

BEFORE THE PATENT TRIAL AND APPEAL

RIMFROST AS,
Petitioner,

v.

AKER BIOMARINE ANTARCTIC AS,
Patent Owner.

IPR2020-01534
Patent 10,010,567 B2

INSTITUTED GROUP

Claims Challenged	35 U.S.C. §	Re
1–5, 7–11, 15–17	103(a) ²	Sampalis I, ³ Randolph ⁵
6, 14, 20	103(a)	Sampalis I, E Randolph, B
12, 18	103(a)	Sampalis, I, B Randolph, B

Claims Challenged	35 U.S.C. §	Re
13, 19	103(a)	Sampalis I, E Randolph, F Hardardottir

INDEPENDENT CLA

1. Encapsulated krill oil comprising a capsule containing *Eup* suitable for oral administration, said krill oil comprising great phosphatidylcholine w/w of said krill oil, less than 3% free fat oil and astaxanthin esters.

15. Encapsulated krill oil comprising a soft gel capsule containing krill oil suitable for oral administration, said krill oil comprising phosphatidylcholine w/w of said krill oil, less than 3% free fat oil, less than about 3% lysophosphatidylcholine w/w of said k mg/kg astaxanthin esters.

COMBINED REFERENCES DO NOT THAN 3% FREE FATTY ACID L

- Ground 1, applied against independent claims 1 and 15, relies on Bottino limitation of less than 3% free fatty acids.
- Petitioner asserts that the “unknown” fraction in Table 2 of Bottino was less than 3% free fatty acids and that since the value reported for the Station 11 is 2 +/- 22% that the value is less than 2%.

Petition at 74:

less than 3% free fatty acids w/w of said krill oil; and

Bottino II (Exhibit 10)

pp. 0001-0003; Table 2:

Table 2 reports that the level of “unknown” components of the *Euphausia superba* is 2 ± 22 (i.e., 2 ± 22%). Free fatty acid content is represented by this “unknown” component. Free fatty acid content of this extract is at most 2%. Tallon Decl. (Exhibit 10)

COMBINED REFERENCES DO NOT THAN 3% FREE FATTY ACID

Table 2. The lipids of Antarctic krill

	<i>E. superba</i>		<i>E. crys</i>
	Station 8 (1)*	Station 11 (2)	Station 13 (4)
			weight %
Waxes	—	—	44 ± 10‡
Steroid esters	—	—	2 ± 3
Triglycerides	8	36 ± 6	—
Diglycerides	17	4 ± 5	—
Complex lipids	54	58 ± 14	53 ± 8
PC†		48	46
PE†		8	6
Lyso PC		1	1
PG†		1	—
Unknown§	21	2 ± 22	1 ± 2

Ex. 1038, Bottino II

* Number of determinations in parentheses.

† PC, Phosphatidylcholine; PE, phosphatidylethanolamine; PG, phosphatidylglycerol.

‡ Weight per cent plus or minus the standard deviation.

§ R_f between those of triglycerides and diglycerides. The recovered amount is too small for further characterization.

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