

RIMFROST AS,
Petitioner,
v.
AKER BIOMARINE ANTARCTIC AS,
Patent Owner.

IPR2020-01534

U.S. Patent No. 10,010,567 B2

PETITIONER'S DEMONSTRATIVES

For Petitioner

Lead Counsel: James F. Harrington, Esq. Reg. No: 44,741

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Back Up Counsel: John T. Gallagher, Esq. Reg. No: 35,516

‘567 PATENT INVALIDITY GROUNDS

TABLE I			
Ground	References	Basis	Claims Challenged
1	Sampalis I (EX1012) Bottino II (EX1038) Randolph (EX1011)	35 U.S.C. §103(a)	1-5, 7-11, 15-17
2	Sampalis I (EX1012) Bottino II (EX1038) Randolph (EX1011) Breivik II (EX1037)	35 U.S.C. §103(a)	6, 14, 20
3	Sampalis I (EX1012) Bottino II (EX1038) Randolph (EX1011) Bottino I (EX1007)	35 U.S.C. §103(a)	12, 18
4	Sampalis I (EX1012) Bottino II (EX1038) Randolph (EX1011) Fricke (EX1010)* Yamaguchi (EX1162) Hardardottir (EX1164)	35 U.S.C. §103(a)	13, 19

*In an argument about Fricke (EX1010), Patent Owner asserts that “Fricke 1984 (Ex. 1010) . . . was not included in an instituted Ground”. ‘567 Sur-reply, Paper 17, pp. 6-7.fn2.. However, Fricke was and is

INDEPENDENT CLAIMS 1 AND 15

1. Encapsulated krill oil comprising a capsule containing *Euphausia superba* krill oil suitable for oral administration, said krill oil comprising greater than 30% phosphatidylcholine w/w of said krill oil, **less than 3% free fatty acids w/w of said krill oil** and astaxanthin esters.

15. Encapsulated krill oil comprising a soft gel capsule containing *Euphausia superba* krill oil suitable for oral administration, said krill oil comprising greater than 30% phosphatidylcholine w/w of said krill oil, **less than 3% free fatty acids w/w of said krill oil**, less than about 3% lysophosphatidylcholine w/w of said krill oil and at least 100 mg/kg astaxanthin esters.

- Patent Owner is only contesting whether Petitioner has demonstrated that Table 2 of Bottino II discloses a krill oil extract with less than 3% free fatty acid (FFA) content.

COLLATERAL ESTOPPEL APPLIES

'567 PATENT FAMILY CHART

U.S. Provisional Patent Application No. 60/920,483, filed Mar. 28, 2007 (EX1005)	U.S. Provisional Patent Application No. 60/975,058, filed Sep. 25, 2007 (EX1004)	U.S. Provisional Patent Application No. 60/983,446, filed Oct. 29, 2007 (EX1003)	U.S. Provisional Patent Appl'n No. 61/024,072, filed Jan. 28, 2008 (EX1002) <i>[First mention of ether phospholipids]</i>	
<u>NON-PROVISIONAL</u> U.S. Patent Application, Ser. No. 12/057,775, filed Mar. 28, 2008 (EX1024), U.S. Patent Appl' Pub. No. , US2008/0274203 A1, published November 6, 2008 (EX1043), now U.S. Patent No. 9,034,388, issued May 19, 2015 (EX1047)				
<u>CONTINUATION</u> 9,078,905 (EX1116) IPR2017-00745 FWD (EX1103) Cancelled EX1156	<u>CONTINUATION</u> 9,028,877 (EX1068) IPR2017-00746 FWD (EX1104) Cancelled EX1155	<u>CONTINUATION</u> 9,375,453 (EX1067) IPR2018-01178 IPR2018-01179 FWDs unpatentable EX1157 & EX1158	<u>CONTINUATION</u> 9,072,752 (EX1118) IPR2018-01730 FWD unpatentable EX1159	<u>CONTINUATION</u> 9,320,765 (EX1117) IPR2018-00295 FWD unpatentable EX1129
<u>CONTINUATION</u> U.S. patent application Ser. No. 15/180,439 filed June 13, 2016 (EX1063) now U.S. Pat. No. 9,644,170 (EX1093) issued May 9, 2017		<u>CONTINUATION</u> U.S. patent application Ser. No. 15/180,431 filed June 13, 2016 (EX1111) now U.S. Pat. No. 9,644,169 (EX1110) issued May 9, 2017		
<u>CONTINUATION</u> U.S. patent application Ser. No. 15/589,605 filed May 8, 2017 (EX1115) now U.S. Pat. No. 10,010,567 (EX1114) issued July 3, 2018		<u>CONTINUATION</u> U.S. patent application Ser. No. 15/589,572 filed May 8, 2017 (EX1113) now U.S. Pat. No. 9,816,046 (EX1001) issued November 14, 2017		

TERMINAL DISCLAIMER

All claims of the '567 patent were rejected as non-statutory double patenting as "not patentably distinct" from, *inter alia*, the '453, '90 and '765 patents. The Owner filed terminal disclaimers with respect to all four patents.

'567 Petition, Paper 10128 (double patenting disclaimer), 10116 (disclaimer), 10116 (claims).

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