

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: IPR2020-01534

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

**PATENT OWNER'S RESPONSE TO PETITION FOR
INTER PARTES REVIEW**

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Antarctic krill (*Euphausia superba*, hereafter referred as krill), at between 300 and 500 million tons, has the largest biomass of any multicellular wild animal species on the planet. The Southwest Atlantic sector of the Southern Ocean, where 70% of the krill population resides, is the main focus of the modern krill fishery, which is managed by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). The annual krill catch in the SW Atlantic sector has been increasing steadily since 2010 and, in the 2019 fishing season (December 2018 to November 2019) it reached 390,195 tons.

The inventors sought to develop methods for efficient production of high-quality krill oil containing phospholipids from krill caught in the South Ocean. They did so by producing krill meal, a denatured krill product, from krill caught in the Southern Ocean on board a ship and then extracting that krill meal after it had been stored for a period of time to provide a phospholipid-rich krill oil. As described in the specification of the U.S. Patent No. 10,010,567 (the ‘567 patent), the methods “avoid decomposition of glycerides and phospholipids in krill oil and compositions produced by those methods. The product obtained by these new methods is virtually free of enzymatically decomposed oil constituents.” Ex. 1001 at 0030 (col. 9, l. 64 – col. 10, l. 1). Decomposition of glycerides and phospholipids results in an increase in the free fatty acid content of the krill oil.

The compositions claims in the '567 patent are characterized in having a low amount of free fatty acids (*i.e.*, less than 3% w/w).

This proceeding involves Petitioner's challenge of the validity of the claims of the '567 patent based on four different but related grounds. First, Petitioner alleges in Ground 1 that claims 1-5, 7-11, and 15-17 are obvious over the combination of Sampalis I, Bottino II, and Randolph. Second, Petitioner alleges in Ground 2 that claims 6, 14, and 20 are obvious over the combination of Sampalis I, Bottino II, Randolph, and Breivik II. Third, Petitioner alleges in Ground 3 that claims 12 and 18 are obvious over the combination of Sampalis I, Bottino II, Randolph, and Bottino I. Fourth, Petitioner alleges in Ground 4 that claims 13 and 19 are obvious over the combination of Sampalis I, Bottino II, Randolph, Yamaguchi, Hardardottir, and Fricke.

All of the asserted Grounds rely on Bottino II for the "less than 3% w/w free fatty acids" limitation, including Ground 1 which is the Ground asserted against both independent claims (claims 1 and 15). Petitioner's asserted grounds for unpatentability should be denied because the combination of references asserted in Ground 1 against the independent claims do not teach or suggest the claim limitation of "less than 3% w/w free fatty acids." Specifically, Petitioner argues that the "unknown" fraction of the Bottino II krill oil is listed as $2 \pm 22\%$ and that the unknown fraction would include free fatty acids. However, Petitioner's

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