

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 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. This method is different from prior art methods which emphasized the necessity of using fresh krill and on board processing. This method is claimed in U.S. Patent No. 9,816,046 (the '046 patent) which is the subject of this *Inter Partes* Review.

This proceeding involves Petitioner's challenge of the validity of the claims of the '046 patent based on three different but related grounds. First, Petitioner alleges that claims 1-10 are obvious under pre-AIA 35 U.S.C. §103 over the

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