

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RIMFROST AS,
Petitioner,

v.

AKER BIOMARINE ANTARCTIC AS,
Patent Owner.

Cases:

IPR2017-00745 (Patent 9,078,905 B2)

IPR2017-00746 (Patent 9,028,877 B2)

IPR2017-00747 (Patent 9,078,905 B2)

IPR2017-00748 (Patent 9,028,877 B2)

Record of Oral Hearing
Held: April 24, 2018

Before LORA M. GREEN, ERICA A. FRANKLIN, and JACQUELINE T.
HARLOW, *Administrative Patent Judges*.

IPR2017-00745 (Patent 9,078,905 B2)
IPR2017-00746 (Patent 9,028,877 B2)
IPR2017-00747 (Patent 9,078,905 B2)
IPR2017-00748 (Patent 9,028,877 B2)

APPEARANCES:

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The above-entitled matter came on for hearing on Tuesday, April 24, 2018, commencing at 1:00 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

IPR2017-00745 (Patent 9,078,905 B2)
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1 PROCEEDINGS

2 - - - - -

3 JUDGE GREEN: Please be seated. Let me know when you're
4 ready.

5 Good afternoon, everybody. We are on the record. Please make
6 sure that all cell phones are turned off, as they can interfere with the
7 microphones.

8 This is the final oral hearing in IPR 2017-00745, -00746, -00747,
9 and -00748. Judge Franklin is in the hearing room with us, she is on my
10 right; and Judge Harlow is attending remotely from Denver.

11 At this time, we would like counsel to introduce yourselves and
12 your colleagues, beginning with Petitioner.

13 MR. HARRINGTON: Yes, James Harrington, lead counsel for
14 Petitioner Rimfrost AS. I am here with my partner, Michael --

15 JUDGE HARLOW: Counsel, I'm sorry. I believe your
16 microphone is off, and I cannot hear you in Denver.

17 JUDGE GREEN: Is the green light on?

18 **(Pause in the proceedings.)**

19 JUDGE GREEN: You can start over again, Mr. Harrington.

20 MR. HARRINGTON: Okay, James Harrington, lead counsel for
21 Petitioner Rimfrost AS --

22 JUDGE HARLOW: I'm sorry, Mr. Harrington. The sound is gone
23 again.

24 **(Pause in the proceedings.)**

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1 MR. HARRINGTON: Judge Harrington, lead counsel for
2 Petitioner Rimfrost AS. I am here with my partner Michael Chakansky, first
3 backup counsel.

4 JUDGE GREEN: Okay, thank you.

5 And Patent Owner?

6 MR. CASIMIR: David Casimir, lead counsel for Aker Biomarine,
7 with John Mitchell Jones, my co-counsel.

8 JUDGE GREEN: Okay, thank you. Welcome to the Board.

9 Consistent with our previous order, Patent Owner and Petitioner
10 each have 60 minutes to present their arguments. Petitioner will proceed
11 first to present its case in chief as to the challenged claims and may reserve
12 rebuttal time to respond to the arguments made by Patent Owner.
13 Thereafter, Patent Owner will respond to Petitioner's case.

14 As Judge Harlow is attending remotely, the parties are reminded to
15 identify which slide they are on or, if you are using the record, to identify
16 where in the record you are, in order to allow Judge Harlow to follow along.

17 The parties are also reminded that, as we stated in our order,
18 demonstratives are only an aid to oral hearing and not evidence of record.

19 Counsel for Petitioner, you may proceed. How much time would
20 you like to reserve for rebuttal?

21 MR. HARRINGTON: I'd like to reserve 20 minutes, if I could.

22 JUDGE GREEN: Okay. And I will just say that rebuttal is only to
23 respond to what Patent Owner says. You can't bring in new argument at that
24 time.

25 MR. HARRINGTON: Understood. Thank you.

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1 JUDGE GREEN: So Whenever you're ready.

2 MR. HARRINGTON: Okay, thank you. Good afternoon. We're
3 here to discuss four different petitions that we brought against two different
4 patents. The first we refer to as the '905 patent; the second we refer to as the
5 '877 patent. Both patents relate to the production of lipids from krill to
6 obtain a krill oil composition.

7 And moving to slide 2, the first thing we wanted to note is that
8 we're dealing with natural lipid components of krill. This is a slide
9 presentation or a slide from a presentation from Patent Owner's expert,
10 Dr. Hoem, who is also their chief scientist, and this slide indicates that the
11 lipids extracted from krill naturally contain 44 percent phospholipids, 34
12 percent triglycerides, and if we look to the right there, shaded in blue, that
13 indicates the different subcomponents of the phospholipids, two of which are
14 phosphatidylcholine at 38 percent and phosphatidylethanolamine at 2.6
15 percent.

16 And what we will see later is the ether variety of what we call the
17 PC and the PE will show up later. So later on we'll see reference to AAPC,
18 that's the alkylacylphosphatidylcholine, and AAPE, that the
19 alkylacylphosphatidylethanolamine, both prominent ether-phospholipids that
20 are intrinsic to the extraction of the general phospholipid extraction.

21 So moving on to slide 4 and the '905 patent, we wanted to note that
22 the earliest effective filing date is January 2008, since that is the first
23 disclosure of ether-phospholipid content, which is an element relied upon to
24 obtain allowance of the claims, and we just wanted to note up front that both

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