

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RIMFROST AS,
Petitioner,

v.

AKER BIOMARINE ANTARCTIC AS,
Patent Owner.

IPR2020-01532 (Patent 9,644,169 B2)
IPR2020-01533 (Patent 9,816,046 B2)

Record of Oral Hearing
Held: January 12, 2022

Before ERICA A. FRANKLIN, JON B. TORNQUIST, and
MICHAEL A. VALEK, *Administrative Patent Judges*.

IPR2020-01532 (Patent 9,644,169 B2)
IPR2020-01533 (Patent 9,816,046 B2)

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The above-entitled matter came on for hearing on Wednesday,
January 12, 2022, commencing at 2:00 p.m. EST, via Videoconference.

1 PROCEEDINGS

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3 2:00 p.m.

4 JUDGE TORNQUIST: Okay, great. Okay. We are here on oral
5 hearing for IPR 2020, 1532 and 1533 Rimfrost AS v. Aker, or Aker
6 Biomarine Antarctic AS. Per our hearing order, each side will have 60
7 minutes total to present their arguments for both cases. Petitioner, bearing
8 the burden of proof, will start first and you can reserve time for rebuttal.

9 Then we'll hear from patent owner, who can also reserve a short
10 period of time for rebuttal or sur-rebuttal, if they so choose. Then we hear
11 the rebuttal and sur-rebuttal arguments.

12 We have the parties' exhibits. And as you all know, we're all
13 appearing remotely here today, so please clearly announce what page and
14 exhibit you're referring to as you work through either the demonstratives or
15 the exhibits in this case.

16 From time to time, since we're appearing remotely, we'll have people
17 drop either audio or visual. If that should happen let us know immediately
18 and we'll work with the hearing staff to connect everyone back up and then
19 we'll just keep on moving from there.

20 With that, Petitioner, when you're ready and please let us know how
21 much time you'd like to reserve for rebuttal.

22 MR. HARRINGTON: Yes, thank you. My name is James
23 Harrington, lead counsel for Petitioner Rimfrost AS. I'm here with the first
24 backup counsel, Michael Chakansky. We'd like to reserve 20 minutes for
25 rebuttal.

26 JUDGE TORNQUIST: Okay. When you're ready.

1 MR. HARRINGTON: Okay. Let me just share my screen here.
2 Let's see where is it. Okay. May it please the board, again, my name's
3 James Harrington, lead counsel for Petitioner Rimfrost AS. And we're here
4 on another one of what we call the krill oil IPRs. Petitioner Rimfrost has
5 successfully challenged five other patents, krill oil patents owned by the
6 patent owner Aker, and we're here to discuss two more, US patent number
7 9,644,169 and US patent number 9,816,046.

8 Moving to Slide 2, we provide the various grounds, invalidity
9 grounds for the '169 patents.

10 And moving to Slide 3, we provide the various references and
11 invalidity grounds relied on in the '046 patent. And these references, with
12 the exception of one reference, Budzinski, have all been utilized in the
13 previous five IPRs. So these would likely be familiar to the board.

14 One reference I mentioned, Budzinski, is relied upon for the storage
15 element which we feel would be obvious, but we wanted to include it the
16 grounds just for good measure to expressly disclose the 13-month storage
17 time.

18 Moving on to Slide 4, using the Claim 1 from each of the patents, we
19 show, sort of, the key elements here. And again, really with the exception
20 of the storage period from 1 to 24 months in the '169 patent and 1 to 36
21 months for the '046 patent, the patent owner is essentially conceding the
22 obviousness of the other elements. So the obviousness analysis really
23 wound up focusing on the storage period.

24 And on Slide 5 we see the same is true for the other two independent
25 claims, Claim 12 in the '169 patent and Claim 13 in the '046 patent. Again,

1 all of these elements have been analyzed in the previous IPRs with the
2 exception of the storage period of 1 to 24 or 36 months.

3 If we move to Slide 8, instead of really making a serious argument
4 against obviousness, the patent owner is now essentially conceding
5 obviousness in order to support its argument to try to antedate the Breivik II
6 reference. And because there was various gaps in their corroboration story
7 with regard to Dr. Tilseth's testimony, the examinst of the patent owner has,
8 sort of, switched gears now and said well, you know, in order to, sort of, fill
9 in those gaps everything is now obvious. And in part they rely on much of
10 the testimony of Petitioner's expert, Dr. Tallon.

11 If we move to Slide 9 we see that many of the elements of the claims
12 are asserted to be obvious by the patent owner, again citing Dr. Tallon's
13 testimony. We see that on the Slide 9. And there are additional elements
14 that we highlight on Slide 10.

15 Moving to Slide 11, collateral estoppel should apply in this case in
16 view of the previous IPRs in which Rimfrost successfully validated the other
17 Aker patents.

18 If we move to Slide 12, we can see in the third row there the five
19 continuation applications that were successfully invalidated, the '905 and the
20 '877 patent. That -- those final written decisions were appealed and the
21 final written decision's finding on patentability were affirmed in both cases.

22 And then we also have final written decisions where -- which were
23 not appealed in the '453 patent, the '752 patent and the '765 patent, again, the
24 board finding that about -- all of the claims unpatentable in those IPRs.

25 And so today we're arguing the '169 and the '046 patent, both of which are
26 continuations from the '453 patent.

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