

UNITED STATES PATENT AND TRADEMARK OFFICE

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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RIMFROST AS

Petitioner

v.

AKER BIOMARINE ANTARCTIC AS

Patent Owner

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Case: PGR 2018-00033

U.S. Patent No. 9,644,170

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**PETITIONER'S FIRST UPDATED SUBMISSION OF  
MANDATORY NOTICE INFORMATION**

Petitioner Rimfrost AS provides the following updated Mandatory Notices pursuant to 37 C.F.R. § 42.8. In this case, updated information is provided regarding proceedings before the PTAB in connection with patents in the same patent family as the '170 Patent. In connection with two *inter partes* review proceedings, Final Written Decisions were issued determining that two of the related patents were unpatentable. See paragraphs in italics below for updated content.

### **RELATED MATTERS**

Aker has asserted two patents - U.S. Patent Nos. 9,078,905 and 9,028,877 - in a pending lawsuit brought by Aker Biomarine Antarctic AS against Olympic Holding AS; Rimfrost AS; Emerald Fisheries AS, Rimfrost USA, LLC; Avoca Inc.; and Bioriginal Food & Science Corp. Case No. 1:16-CV-00035-LPS-CJB (D. Del.). (Complaint, Exhibit 1021). The litigation was stayed pursuant to 28 U.S.C. § 1659 in view of Investigation No. 337-TA-1019 instituted by the United States International Trade Commission on September 16, 2016 as noticed in the Federal Register. The ITC proceeding, entitled In the Matter of Certain Krill Oil Products and Krill Meal for Production of Krill Oil Products, related to U.S. Patent Nos. 9,028,877, 9,078,905, 9,072,752, 9,320,765 and 9,375,453. The ITC investigation

listed as respondents Olympic Holding AS, Rimfrost AS, Emerald Fisheries AS, Avoca Inc., Rimfrost USA, LLC, Rimfrost New Zealand Limited and Bioriginal Food & Science Corp. (Exhibit 1023). On May 23, 2017, pursuant to motions to terminate, ITC Investigation No. 337-TA-1019 was effectively terminated.

(Exhibit 1054). In addition, a Stipulation of Dismissal as to Avoca Inc. was So Ordered by the Delaware District Court on May 30, 2017. On January 27, 2017, Petitioner filed IPR2017-0745 and IPR2017-0747 seeking *inter partes* review of Claims 1-20 of U.S. Patent No. 9,078,905. On February 3, 2017, Petitioner filed IPR2017-0746 and IPR2017-0748 seeking *inter partes* review of Claims 1-19 of U.S. Patent No. 9,028,877. All IPRs were instituted on August 16, 2017. The Delaware District Court action was stayed by the Court on September 6, 2017 pending resolution of the IPRs. (Exhibit 1078).

*On December 15, 2017, Petitioner filed a petition in IPR2018-00295 requesting review of claims 1-48, i.e., all claims, of U.S. Patent No. 9,320,765 (a patent in the same patent family as the '170 Patent). IPR2018-00295 was instituted on June 14, 2018.*

*On June 26, 2018, Petitioner filed IPR2018-01178 seeking inter partes review of Claims 1-32 of U.S. Patent No. 9,375,453 (a patent in the same patent family as the '170 Patent).*

*On June 26, 2018, Petitioner filed IPR2018-01179 seeking inter partes review of Claims 33-61 of U.S. Patent No. 9,375,453 (a patent in the same patent family as the '170 Patent).*

*On August 10, 2018, the PTAB issued Final Written Decisions (FWD) in the following inter partes review proceedings of two (2) patents in the same patent family as the '170 Patent:*

*IPR2017-00745, FWD determining Claims 1-20, i.e., all claims, of U.S. Patent 9,078,905 B2 have been shown to be unpatentable on the grounds presented;*

*IPR2017-00746, FWD determining that Claims 1-19, i.e., all claims, of U.S. Patent 9,028,877 B2 have been shown to be unpatentable on the grounds presented;*

*IPR2017-00747, FWD determining that Claims 1-20 of U.S. Patent 9,078,905 B2 have not been shown to be unpatentable on the grounds presented; and*

*IPR2017-00748, FWD determining that Claims 1-19 of U.S. Patent 9,028,877 B2 have not been shown to be unpatentable on the grounds presented.*

Dated: August 21, 2018

Respectfully submitted,

By: /Michael I. Chakansky/

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*First Back-Up Counsel for Petitioner*

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