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Datum/Date
22.10.21

Zeichen/Reference/Référence	
O007605EP	/ APPR
Anmeldung Nr./Application No./Demande n°/Patent Nr./Patent No./Brevet n°	08718910.6 / 2144618
Anmelder/Applicant/Demandeur//Patentinhaber/Proprietor/Titulaire	
AKER BIOMARINE ANTARCTIC AS	

Appeal number:

T0229/18-3.3.01

Please find enclosed a copy of the minutes of the oral proceedings
of 07.10.21.

The Registrar M. Schalow
Tel.: 089 / 2399 - 3311



Annex(es):

Registered letter



Beschwerdekammern
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Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
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Appeal number

T0229/18-3.3.01

Patent No.: 2144618
Patent Proprietor: AKER BIOMARINE ANTARCTIC AS
Opponent: RIMFROST AS

Minutes of the oral proceedings

of 7 October 2021

Composition of the Board:

Chairman: A. Lindner
Members: S. Albrecht
L. Bühler

Start of oral proceedings: 09:00 hours
End of oral proceedings: 17:45 hours

The oral proceedings were held as mixed-mode hearing

Documents presented:

- copy of the authorization for Mr I. Bruheim dated 4 October 2021

Present on behalf of the appellant (opponent):

Ms. I. Luyten and
Mr J. van Reet,
professional representatives, and
Mr I. Bruheim (vice-president R&D at Rimfrost AS),
accompanied by
Mr F. Lefèvre (patent attorney trainee).



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Present on behalf of the respondent (patent proprietor):

Mr C. Marshall and

Mr R. Woolley,

professional representatives,

accompanied by

Ms. K. Holmgren (employee of the proprietor),

Mr E. Brække (employee of the proprietor), and

Mr J. Mitchell Jones (US attorney).

The Chairman declared the oral proceedings open.

He summarised the relevant facts as appearing from the file.

Initial requests

The appellant requested that the decision under appeal be set aside and that the patent be revoked in its entirety. The appellant further requested that documents D25 to D35, A4c, and A9 to A15 be admitted into the proceedings.

The respondent requested that the appeal be dismissed, or alternatively, that the patent be remitted to the opposition division to be maintained on the basis of one of auxiliary requests 1 to 5 filed on 4 August 2016, or auxiliary request 6 filed with its reply to the statement setting out the grounds of appeal. The respondent further requested that documents D25 to D35, A4c, and A9 to A15 and appellant's written submissions based on these documents not be admitted into the proceeding.

The respondent further referred to decisions T 198/15 and T 2061/19 and requested to disregard under Article 12(2) RPBA 2007 numerous submissions in the statement of grounds of appeal which allegedly were verbatim transcripts of arguments presented in the opposition proceedings.



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Main request (patent as granted)

The parties were heard on the issue of whether the subject-matter of granted claim 21 enjoyed the second priority date of P2 (US 60/975,058). After deliberation, the Chairman informed the parties of the board's conclusion that the subject-matter of claim 21 did not enjoy the second priority date of P2. He further noted that the respondent had not argued that the subject-matter of claim 21 enjoyed any of the priority dates of P1 (US 60/920,483), P3 (US 60/983,446), and P4 (US 61/024,072).

The parties were heard on the issue of novelty of the subject-matter of claim 21 in view of document D23. After deliberation by the board, the Chairman informed the parties of the board's conclusion that the subject-matter of claim 21 was not novel over document D23. He further noted that this conclusion appeared to apply to auxiliary requests 1 and 4. Since the respondent had no further comments as regards auxiliary request 1, auxiliary request 2 was considered next.

Auxiliary request 2 filed on 4 August 2016

Admittance - objection of lack of clarity

The appellant raised an objection of lack of clarity with respect to claim 21 of auxiliary request 2. The respondent requested not to admit this objection under Article 13(1) RPBA. The parties were heard on admittance of this objection. After deliberation, the Chairman informed the parties of the board's decision not to admit the clarity objection in respect to claim 21 into the appeal proceedings.

Asked by the Chairman, the appellant stated that they had the following objections with respect to auxiliary request 2:

- lack of inventive step of the subject-matter of claim 21 starting from document D21 in combination with either document D4 or D6;



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- lack of novelty of the subject-matter of claim 1 in view of the public prior use (documents A4a/b and A5);
- lack of novelty of the subject-matter of claim 1 in view of table 22 of the contested patent;
- lack of inventive step of the subject-matter of claim 1 starting from document D11 in combination with document A5.

Admittance - document A4c

The appellant requested to admit document document A4c for the discussion of novelty of claim 1 in view of the public prior use. The parties were heard on admittance of document A4c into the appeal proceedings, namely on the issue of proper exercise of discretion by the opposition division. After deliberation, the Chairman informed the parties of the board's decision not to admit document A4c into the appeal proceedings.

Novelty - claim 1

The parties were heard on novelty of the subject-matter of claim 1 of auxiliary request 2 in view of the public prior use (documents A4a/b and A5). The appellant additionally referred to documents A7 and D13. The respondent relied on document D22. As regards statements by Mr Bruheim during the oral proceedings, the board clarified that they were understood to be made in his capacity as a authorised employee of the appellant and not as a technical expert under Article 117 EPC. After deliberation, the Chairman informed the parties that the prior use based on documents A4a/b and A5 did not anticipate the subject-matter of claim 1.

Admittance - objections of lack of novelty

Asked by the Chairman about the objection of lack of novelty of the subject-matter of claim 1 in view of table 22 of the contested patent, the appellant explained their objection more in detail. The respondent requested not to admit this new objection into the proceedings. Admittance was discussed.



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The appellant raised an objection of lack of novelty of the subject-matter of claim 25 of auxiliary request 2 in view of document D23 and presented their arguments. The respondent requested not to admit this new objection into the proceedings. Admittance was discussed.

After deliberation, the Chairman informed the parties that the objections of lack of novelty with respect to the subject-matter of claim 1 based on table 22 of the contested patent and with respect to the subject-matter of claim 25 based on document D23 were not admitted into the appeal proceedings.

Inventive step - claim 1

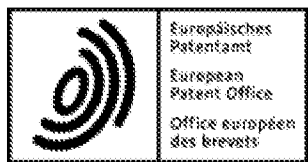
The parties were heard on the question of whether the subject-matter of claim 1 of auxiliary request 2 involved an inventive step when starting from document D11 in combination with documents A5/D13. The respondent relied inter alia on document D5. After deliberation, the Chairman informed the parties of the board's conclusion that the subject-matter of claim 1 involved an inventive step when starting from document D11 in combination with document A5.

Inventive step - claim 21

The parties were heard on the question of whether the subject-matter of claim 21 of auxiliary request 2 involved an inventive step when starting from document D21 in combination with document D6.

Asked by the Chairman about the arguments for the admittance of the objection of lack of inventive step starting from document D21 in combination with document D4, the appellant stated that they did not want to further discuss the combination.

After deliberation, the Chairman informed the parties of the board's conclusion that the subject-matter of claim 21 involved an



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inventive step when starting from document D21 in combination with document D6.

Sufficiency of disclosure

The appellant wished to discuss sufficiency of disclosure. The Chairman referred to point 7.2 of the board's communication dated 14 August 2020 where the board had given its preliminary opinion that this ground was not open for discussion. The appellant withdrew their objection under this ground for opposition.

Final requests

The respondent withdrew their main request, auxiliary request 1, and auxiliary requests 3 to 6 and maintained auxiliary request 2 filed on 4 August 2016 as their main and sole request.

The Chairman informed the parties that the board intended to remit the case for adaptation of the description. The respondent agreed.

The parties confirmed their final requests to be as follows:

The appellant requested that the decision under appeal be set aside and that the patent be revoked in its entirety.

The respondent requested that the patent be remitted to the opposition division to be maintained on the basis of the main request filed as auxiliary requests 2 on 4 August 2016 and a description to be adapted thereto.

The Chairman closed the debate.



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The following decision was given:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division with the order to maintain the patent with the following claims and a description to be adapted thereto;
Claims 1 to 25 of the main request filed as auxiliary request 2 on 4 August 2016.

The Chairman closed the oral proceedings.

The Minute Writer:

The Chairman:

L. Bühler

A. Lindner

Minutes electronically authenticated



AUTHORIZATION

Concerning : Opposition filed against European patent EP2144618 in the name of AKER BIOMARINE ANTARCTIC AS, opposition filed by RIMFROST AS

I, Anders ALMESTAD, the undersigned,

In the capacity of: CEO at RIMFROST AS

do hereby authorize **Inge BRUHEIM**, Vice President R&D at RIMFROST AS

to represent our firm

RIMFROST AS, situated at PO Box 234, 6099 Fosnavåg, Norway

In the course of the Appeal proceedings arranged in connection with European patent no. EP2144618, and to speak on behalf of our firm's interests if it is deemed necessary.

FOSNAVAG

Place of signature:

4/10 - 2021

Date of signature:

Signature:

Anders Almestad