

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN KRILL OIL PRODUCTS AND
KRILL MEAL FOR PRODUCTION OF
KRILL OIL PRODUCTS**

Inv. No. 337-TA-1019

**ORDER NO. 4: SETTING TARGET DATE, HEARING DATES, AND
PRELIMINARY CONFERENCE**

(October 3, 2016)

On September 12, 2016, the Commission issued a Notice of Investigation in this matter upon a complaint alleging violations of section 337 of the Tariff Act of 1930, as amended, by reason of infringement of certain claims of U.S. Patent No. 9,028,877 (the “’877 patent”); U.S. Patent No. 9,078,905 (the “’905 patent”); U.S. Patent No. 9,072,752 (the “’752 patent”); U.S. Patent No. 9,320,765 (the “’765 patent”); and U.S. Patent No. 9,375,453 (the “’453 patent”). The Commission ordered that an investigation be instituted to determine:

whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain krill oil products and krill meal for production of krill oil products by reason of infringement of one or more of claims 1-4, 7-9, 11-13, and 16-18 of the ’877 patent; claims 1-4, 6-7, 9-11, 12, and 15-19 of the ’905 patent; claims 1, 7, and 11-13 of the ’752 patent; claims 1-5, 7, 9-12, 14-15, 19-21, 23, 25-29, 31, 33-36, 38-39, 43-45, and 47 of the ’765 patent; and claims 1, 5-10, 12, 14-17, 19-20, 24-26, 28, 30-32, 33-36, 39-43, 46-49, 51-52, 56-58, and 60 of the ’453 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

Notice of Investigation at 2. The Investigation was instituted upon publication of the Notice of Investigation in the *Federal Register* on Friday, September 16, 2016. 81 Fed. Reg. 63805-06

(2016); *see* 19 C.F.R. § 210.10(b). The Complainants are Aker BioMarine Antarctic AS of Norway and Aker BioMarine Manufacturing, LLC of Houston, Texas. Notice of Investigation at 2. The Respondents are Olympic Holding AS, Rimfrost AS, and Emerald Fisheries AS of Norway; Avoca Inc. and Rimfrost USA, LLC of Merry Hill, North Carolina; Rimfrost New Zealand Limited of New Zealand, and Bioriginal Food & Science Corp. of Canada. *Id.* at 2-3.

Based upon the issues identified in the Complaint and Notice of Investigation, and in consideration of the schedules for other ongoing investigations, the target date for completion of this Investigation shall be Tuesday, January 16, 2018, which is sixteen months after institution of the Investigation. *See* 19 C.F.R. § 210.51(a). Accordingly, the Initial Determination on alleged violation of section 337 shall be due by Friday, September 15, 2017. *See* 19 C.F.R. § 210.42(a)(1)(i).

The evidentiary hearing in this Investigation shall begin following a pre-hearing conference on Monday, June 26, 2017, and it will conclude by the close of business on Friday, June 30, 2017. *See* 19 C.F.R. § 210.36. Pursuant to Ground Rule 5.2, I have determined that a *Markman* hearing would be beneficial to this Investigation, and a *Markman* hearing shall be held on Thursday, March 2, 2017. The parties may also present technology tutorials on the day of the *Markman* hearing.

The parties shall submit a proposed procedural schedule no later than Friday, October 14, 2016, taking into account the target date and the above-identified dates for hearings. The contents for the procedural schedule are set forth in Ground Rule 2. The parties should make intensive good faith efforts to agree to a procedural schedule, and it is expected that in most instances the parties will submit a joint proposal. Any proposed procedural schedule should not

be filed with the Secretary but served on the Administrative Law Judge pursuant to Ground Rule 1.3 with an electronic copy in Word format pursuant to Ground Rule 1.4.

I will hold a preliminary conference on Wednesday, October 19, 2016, at 11:00 a.m. via teleconference. The parties should be prepared to discuss any issues with respect to the ground rules, the protective order, the procedural schedule, discovery, and any other matters that may have surfaced. Counsel for Complainants shall be responsible for the logistics of the teleconference, including arranging for a court reporter and circulating a dial-in number.

SO ORDERED.



Dee Lord
Administrative Law Judge

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served upon the following parties as indicated, on **October 3, 2016**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

**On Behalf of Complainants Aker BioMarine Antarctic AS and Aker BioMarine
Manufacturing LLC:**

Andrew F. Pratt, Esq.
VENABLE LLP
575 7th Street NW
Washington, D.C. 20004

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

**On Behalf of Respondents Olympic Holding AS, Rimfrost AS, Emerald Fisheries AS,
Avoca Inc., Rimfrost USA, LLC, Rimfrost New Zealand Limited, and Bioriginal Food &
Science Corp.:**

Doris Johnson Hines
**FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER LLP**
901 New York Avenue NW
Washington, D.C. 20001

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____