

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, DC**

In the Matter of

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

**Investigation No. 337-TA-1019**

**NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW  
AN INITIAL DETERMINATION GRANTING A MOTION FOR  
PARTIAL TERMINATION OF THE INVESTIGATION  
BASED ON WITHDRAWAL OF AN ASSERTED PATENT**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) (Order No. 5) granting a motion for partial termination of the investigation based on withdrawal of the allegations as to U.S. Patent No. 9,078,905.

**FOR FURTHER INFORMATION CONTACT:** Lucy Grace D. Noyola, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202-205-3438. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<https://www.usitc.gov>). The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on 202-205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on September 16, 2016, based on a complaint filed by Aker BioMarine Antarctic AS of Lysaker, Norway and Aker BioMarine Manufacturing, LLC of Houston, Texas (“Complainants”). 81 FR 63805 (Sept. 16, 2016). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and 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 certain claims of U.S. Patent No. 9,078,905 (“the ’905 patent”), as well as U.S. Patent Nos. 9,028,877; 9,072,752; 9,320,765; and 9,375,453. *Id.* The notice of investigation names as respondents Olympic

Holding AS of Fosnavåg, Norway; Rimfrost AS of Fosnavåg, Norway; Emerald Fisheries AS of Fosnavåg, Norway; Avoca Inc. of Merry Hill, North Carolina; Rimfrost USA, LLC of Merry Hill, North Carolina; Rimfrost New Zealand Limited of Nelson, New Zealand; and Bioriginal Food & Science Corp. of Saskatoon, Saskatchewan, Canada (“Respondents”). *Id.* The Office of Unfair Import Investigations was not named as a party to the investigation. *Id.*

On October 5, 2016, Complainants filed a motion for partial termination of the investigation based on withdrawal of their allegations as to the '905 patent. On October 6, 2016, Respondents filed a response, agreeing with the partial termination as to the '905 patent but arguing that the patent is unenforceable. On October 12, 2016, Complainants filed a reply, arguing that Respondents' unenforceability contentions are moot in view of the withdrawal of the '905 patent.

On October 17, 2016, the presiding administrative law judge (“ALJ”) issued an ID (Order No. 5) granting the motion. The ALJ found that the motion meets the requirements of Commission Rule 210.21(a) and that Respondents' arguments are moot. The ALJ also found that the public interest supports termination in order to conserve public and private resources. No petitions for review of the ID were filed.

The Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 C.F.R. part 210).

By order of the Commission.



Lisa R. Barton  
Secretary to the Commission

Issued: November 7, 2016