

Natural product producer gets serious

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Nutraceutical producers and other natural products based companies in the health area, have only begun taking advantage of the international patent system relatively recently. They have been looking to protect their investment in development of products and to generate monopoly returns much as the more traditional pharmaceutical companies have done over the years.

The inevitable result of this approach is that, at some point, action needs to be taken to enforce the patent rights obtained. Pharmaceutical companies have, of course, been willing to take enforcement action to defend a patent position, including court action. Natural products based companies have been somewhat more reticent to go that far.

However, this is starting to change as the filing of a patent infringement action in the U.S. District Court for the District of Massachusetts indicates.

Neptune Technologies & Bioresources has taken action against three companies, Aker Biomarine, Jedwards International and Virgin Antarctic, for

infringement of U.S. Patent No. 6,800,299 which covers a method of extracting oils, omega-3 phospholipids, from krill.

Neptune's President and CEO, Henri Harland has said:

"We have confidence in the patent and will continue to take all appropriate actions needed to protect our intellectual property rights in the United States and elsewhere as required".

Omega-3 phospholipids are primarily used in food supplements as they are an easily-digested form of the omega-3 fatty acid. It has been reported that phospholipid omega-3 fatty acids have greater bioavailability for cell growth and functioning in comparison to omega-3 triglycerides, ordinarily sourced from fish oil.

The Neptune US patent covers a method for extracting total lipid fractions from marine and aquatic animal material, such as krill, by acetone extraction. Neptune is seeking an injunction to stop the three companies from producing or importing the allegedly infringing products into the United States. Aker Biomarine SA sells its product, a 100 per cent pure krill oil ingredient for dietary supplements, under its SUPERBA brand. Both Jedwards International and Virgin Antarctic distribute this product.

Neptune has filed for patent protection for its extraction method in a number of countries, including various European countries, Australia, Canada, China, and South Africa, to name a few. Interestingly, Neptune has not filed for patent protection in New Zealand. Infringement here is therefore not an issue.