

United States District Court,
D. Delaware.

MARTEK BIOSCIENCES CORPORATION,
Plaintiff.

v.

**NUTRINOVA INC., Nutrinova Nutrition Specialties & Food Ingredients GMBH, Twinlab,
Corporation, and Ideasphere, Inc,**
Defendants.

Civil Action No. 03-896(GMS)

Dec. 12, 2005.

John G. Day, Steven J. Balick, Tiffany Geyer Lydon, Ashby & Geddes, Wilmington, DE, Christine B. Chua, Jones Day, Palo Alto, CA, Gidon Stern, for Plaintiff.

George Pazuniak, Womble Carlyle Sandridge & Rice, Wilmington, DE, for Defendants.

ORDER CONSTRUING THE TERMS OF U.S. PATENT NOS. 5,340,594; 5,698,244; 6,410,281;
6,451,567; ***and*** 6,607,900

GREGORY M. SLEET, District Judge.

After having considered the submissions of the parties and hearing oral argument on the matter, IT IS HEREBY ORDERED, ADJUDGED, and DECREED that, as used in the asserted claims of U.S. Patent Nos. 5,340,594 (the "'594 patent"); 5,698,244 (the "'244 patent"); 6,410,281 (the "'281 patent"); 6,451,567 (the "'567 patent"); and 6,607,900 (the "'900 patent"),

1. The terms "Thraustochytrium" and "Schizochytrium" are construed as "genera of microorganisms that have specific taxonomic structures and functions that are well known in the art."
2. The term "salinity levels less [than] salinity levels found in seawater" in the '594 patent is construed to mean "the salinity level of the medium used to test the microorganisms for lipid production is less than the salinity level of seawater. The salinity level of seawater has a well-recognized technical meaning in the field which is 35 parts per thousand (ppt) at 15 (deg.)C."
3. The term "food material" in the '594 patent is construed as "a nourishing substance that is eaten, drunk, or otherwise taken into the body to sustain life, provide energy, promote growth."
4. The term "human food" in the '594 patent is construed to have its plain and ordinary meaning.
5. The term "animal" in the '244 patent is construed as "any member of the kingdom Animalia, except

humans."

6. The term "a method for reducing corrosion of a fermentor during growth of microorganisms in a saline fermentation medium, said method comprising," in the '281 patent is plain on its face and does not require construction. Additionally, the preamble does not limit the claims.

7. The term "culture medium" in the '281 patent is construed as "the material in which the microorganisms grow."

8. The term "corrosion" in the '281 patent is construed as "the culture medium causes less chemical wearing of the vessel in which the microorganisms are grown as compared to the level of chemical wearing away to a vessel caused by a culture medium comprising sodium chloride as the primary source of sodium."

9. The term "wherein said euryhaline microorganisms are capable of producing about 1.08 grams per liter of the fermentation medium per day of long chain omega-3 fatty acids per 40 grams of sugar per liter of fermentation medium at a sodium ion concentration in the fermentation medium of 60% seawater; and" in the '567 patent is construed as "the microorganisms are characterized as having the capacity to yield about 1.08 grams of long chain omega-3 fatty acids per 40 grams of sugar in a 24-hour period using a fermentation medium. To determine the capacity of the microorganism, the fermentation medium is adjusted to 40 grams of sugar per liter and a sodium ion concentration of 60% seawater, a well-known concentration. The sodium ion concentration of 100% seawater is commonly understood to be 10.5 parts per thousand (ppt)."

10. The term "wherein said euryhaline microorganisms have exponential growth rates of at least about 5 doublings per day at 25 (deg.)C" in the '567 patent is construed as "a process in which the microorganisms have exponential growth rates of at least about 5 doublings in a 24 hour period at 25 (deg.)C."

11. The term "wherein said euryhaline microorganisms have exponential growth rates of at least about 7 doublings per day at 30 (deg.)C" in the '567 patent is construed as "a process in which the microorganisms have exponential growth rates of at least about 7 doublings in a 24 hour period at 30 (deg.)C."

12. The term "adding a non-alcoholic carbon source and a nitrogen source to a fermentation medium comprising said microorganisms to increase the density of said microorganisms" in the '900 patent is construed as "the non-alcoholic carbon and nitrogen sources are added to the fermentation medium that already includes the microorganisms."

13. The term "wherein the level of dissolved oxygen present in said fermentation medium is at least about 4% of saturation in said fermentation medium" in the '900 patent is construed as "the dissolved oxygen level reaches about 4% or more of saturation in the fermentation medium when Thraustochytriales are increasing in density."

14. The term "providing conditions sufficient for said microorganisms to produce said microbial lipids, wherein said conditions comprise reducing the amount of dissolved oxygen during lipid production to about 3% of saturation or less; and" in the '900 patent is construed as "the amount of dissolved oxygen during lipid production is actively reduced to about 3% of saturation or less."

15. The term "the process of claim 34, wherein the dissolved oxygen level in said fermentation medium

during said lipid producing step is about 1% of saturation or less" in the '900 patent is construed as "the amount of dissolved oxygen in the fermentation medium during lipid production is actively reduced to about 1% of saturation or less."

16. The term "the process of claim 34, wherein said process produced said microbial lipids at a rate of at least about 0.5 g/L/hr" in the '900 patent is construed as "a process as described in claim 34, wherein the process produces lipids at a rate of at least about 0.5 g/L/hr."

17. The term "the process of claim 34, wherein said process produces docosahexaenoic acid at a rate of at least about 0.2 g/L/hr" in the '900 patent is construed as "a process as described in claim 34, wherein the process produces docosahexaenoic acid at a rate of at least about 0.2 g/L/hr."

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