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**Datasheet for the decision
of 7 June 2013**

Case Number: T 2106/12 - 3.3.01
Application Number: 07823963.9
Publication Number: 2081426
IPC: A01N 25/00, A01N 43/44,
A01P 11/00
Language of the proceedings: EN

Title of invention:
Vermin poison

Applicant:
Morvus Technology Ltd.

Headword:
Vermin poison/MORVUS

Relevant legal provisions:
EPC Art. 123(2), 54, 56

Keyword:
"Main request: amended claims allowable, taking into account
data filed with statement of grounds of appeal"

Decisions cited:
-

Catchword:
-



Case Number: T 2106/12 - 3.3.01

D E C I S I O N
of the Technical Board of Appeal 3.3.01
of 7 June 2013

Appellant: Morvus Technology Ltd.
(Applicant) Ty Myddfai
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Representative: Snodin, Michael D.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 11 May 2012
refusing European patent application
No. 07823963.9 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: J.-B. Ousset
Members: L. Seymour
C.-P. Brandt

Summary of Facts and Submissions

- I. This appeal lies from the decision of the examining division refusing the European patent application No. 07 823 963.9, which was filed as the international application published as WO 2008/038023.
- II. The decision under appeal was based on a main request filed with letter dated 5 March 2012 and five auxiliary requests filed with letter of 3 April 2012. Claim 1 of the main request read as follows:
- "1. A method of poisoning a rat comprising making available to the rat an orally available formulation of Tretazicar and allowing the rat to ingest the formulation of Tretazicar, wherein the formulation of Tretazicar comprises bait."
- III. The following documents were cited during the examination procedure (cf. international search report):
- (1) GB-A-2 365 338
 - (2) L M Cobb, Toxicol. Appl. Pharm., 1970, 17, 231 - 238
 - (3) P Workman et al., Cancer Chemoth. Pharm., 1986, 16, 1 - 8
- IV. In its decision, the examining division considered that the main request complied with the requirements of Article 123(2) EPC, and the subject-matter claim 1 to be novel over the cited prior art, but to lack an inventive step.

The closest prior art was identified as being any one of the numerous known methods to kill rats with poisoned baits. The examining division found that the experimental evidence submitted by the appellant with letters of 27 October 2010 and 14 March 2012 did not render it plausible that tretazicar could serve to poison rats in their natural environment, and defined the problem to be solved as lying in the provision of an alternative method for the poisoning of rats with baits. The proposed solution of using tretazicar was found to be obvious in the light of documents (2) and (3), since the former taught the very high toxicity of tretazicar to rats independently of the route of administration, and the latter a way to protect tretazicar from the stomach acids.

The auxiliary requests were not admitted into the proceedings, since *prima facie* the same objection under Article 56 applied as for the main request.

- V. With the statement of grounds of appeal, the appellant (applicant) resubmitted the main request considered in the decision under appeal, together with six auxiliary requests. In addition, two annexes containing additional experimental evidence were filed. A conditional request was made for oral proceedings.

- VI. Following a communication by the board dated 25 February 2013, sent as an annex to the summons for oral proceedings, and a further communication dated 8 May 2013, the appellant filed a new main request with letter of 16 May 2013, consisting of seventeen claims and amended description adapted thereto. The appellant

further clarified that the main request and auxiliary requests 1, 2 and 4 to 6 submitted together with the statement of grounds of appeal were to be renumbered as auxiliary requests 1 to 6, respectively.

The main request contains two independent claims, namely, claims 1 and 12. Claim 1 only differs from claim 1 of the main request considered in the decision under appeal (cf. above point II) in the insertion in brackets of the chemical name corresponding to "tretazicar". Claim 12 reads as follows:

"12. A composition comprising Tretazicar (5-(aziridin-1-yl)-2,4-dinitrobenzamide) and a foodstuff, wherein the foodstuff is a solid foodstuff selected from cereals, meat, dairy produce, fruit, vegetable, beans, pulses and nuts."

- VII. By communication dated 23 May 2013, the appellant was informed that the oral proceedings due to take place on 7 June 2013 were cancelled.
- VIII. The appellant (applicant) requested in writing that the decision under appeal be set aside and that a patent be granted on the basis of the main request filed with letter dated 16 May 2013, or alternatively on the basis of one of the auxiliary requests 1 to 6, filed with the statement of grounds of appeal as main request and auxiliary requests 1, 2 and 4 to 6, respectively.

Reasons for the Decision

1. The appeal is admissible.
2. *Main request*
- 2.1 *Amendements (Article 123(2) EPC)*

The method according to claim 1 is based on claims 27 and 34 as originally filed, in combination with the disclosure throughout the application as originally filed that rats are the preferred target vermin (see e.g. page 1, lines 3, 4).

The basis for remaining dependent method claims 2 to 11 is to be found in the claims as originally filed (cf. claims 28, 31, 32, 33, 35 to 40 and 23).

Independent composition claim 12 and the dependent claims 13 to 17 are based on page 7, line 13 to page 8, line 24 of the application as originally filed.

The description has been adapted accordingly.

The chemical name of "tretazicar" included in brackets in claims 1 and 12 is to be found on page 2, line 20 of the application as originally filed.

Consequently, the board is satisfied that the main request meets the requirements of Article 123(2) EPC.

2.2 *Novelty (Articles 52(1), 54 EPC)*

Since none of the cited prior art documents disclose mixtures of tretazicar and the specific solid foodstuffs listed in claim 12, or a method according to claim 1, the novelty of the subject-matter of the main request can be acknowledged.

2.3 *Inventive step (Articles 52(1), 54 EPC)*

Known rat poisons, such as the anti-coagulants warfarin and bromadiolone, can be viewed as representing the closest prior art (cf. page 1 of description of the main request, lines 22 to 28).

The problem to be solved may be defined as lying in the provision of alternative means for poisoning rats in their natural environment.

The solution proposed relates to a composition as defined in claim 12, comprising tretazicar and a specific solid foodstuff, known to act as rat bait (cf. page 7 of description of the main request, lines 5 to 24), and a corresponding method for poisoning a rat with a formulation comprising tretazicar and bait as defined in claim 1.

The experimental results reported in Annexes 1 and 2 filed with the statement of grounds of appeal render it plausible that the problem posed has been solved.

The known rat poisons as set out above are structurally unrelated to tretazicar and therefore cannot render the claimed subject-matter obvious.

Document (2) concerns a study into the toxicity of tretazicar in rats, in the context of investigation of its use as a antimitotic agent. CB 1954 (tretazicar) is administered to rats, either injected (subcutaneously, intravenously, intraperitoneally or into the bladder), or introduced intraduodenally, packed in a gelatin capsule. It is disclosed that oral administration would lead to inactivation of the drug owing to exposure to the acidity of the stomach (see pages 232 to 233, "Methods"). The toxicity of CB 1954 in the rat at the LD50 dose level is said to resemble the majority of antimitotic agents in causing enteritis (see abstract).

Therefore, no hint can be found in document (2) to utilise tretazicar as an environmental rat poison. In other words, there is no teaching that would lead the skilled person to expect that rats, when offered a choice of treated and untreated food sources, would consume sufficient quantities to induce death.

Document (1) relates to a therapeutic system for killing cancer cells, and in document (3), the pharmacokinetics of CB 1954 in mice and dogs is examined. Neither of these documents is concerned with the toxicity of tretazicar in rats, and they do not therefore provide any valuable teaching for solving the problem posed.

Hence, the subject-matter of claims 1 and 12 of the main request involves an inventive step.

Having regard to the fact that claims 2 to 11 are dependent method claims and claims 13 to 17 dependent

composition claims, it is concluded that the subject-matter of the main request meets the requirements of Articles 52(1) and 56 EPC.

3. Since the main request is considered to be allowable, it is not necessary to comment on the lower-ranking auxiliary requests.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance with the order to grant a patent on the basis of the following application documents:
 - Description pages 1 to 9 filed with letter dated 16 May 2013
 - Claims 1 to 17 filed with letter dated 16 May 2013

The Registrar:

The Chairman:

I. Aperribay

J.-B. Ousset