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**Datasheet for the decision
of 15 December 2016**

Case Number: T 2351/14 - 3.3.07

Application Number: 10186221.7

Publication Number: 2269590

IPC: A61K9/32, A61K47/32, A61K9/16,
A61K9/50, A61P3/12, A61K45/06,
A61K31/74, A61K33/00

Language of the proceedings: EN

Title of invention:
Ion binding polymers and uses thereof

Applicant:
Relypsa, Inc.

Relevant legal provisions:
EPC Art. 84

Keyword:
Claims - unclear characterization by parameters



Beschwerdekammern
Boards of Appeal
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Case Number: T 2351/14 - 3.3.07

D E C I S I O N
of Technical Board of Appeal 3.3.07
of 15 December 2016

Appellant: Relypsa, Inc.
(Applicant) 700 Saginaw Drive
Redwood City CA 94063 (US)

Representative: Eisenführ Speiser
Patentanwälte Rechtsanwälte PartGmbB
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 25 July 2014 refusing European patent application No. 10186221.7 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman J. Riolo
Members: R. Hauss
I. Beckedorf

Summary of Facts and Submissions

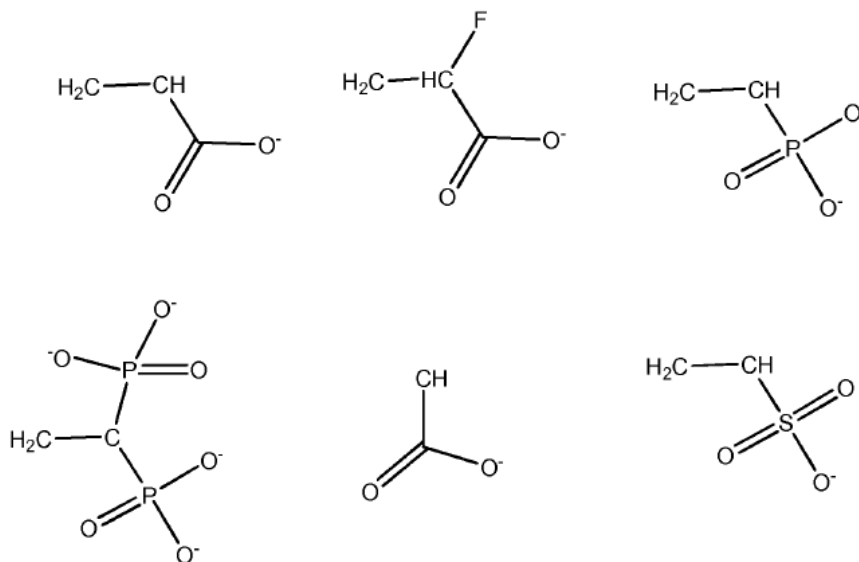
I. The appeal lies from the decision of the examining division, pronounced on 10 July 2014 and posted on 25 July 2014, refusing European patent application No 10 186 221.7.

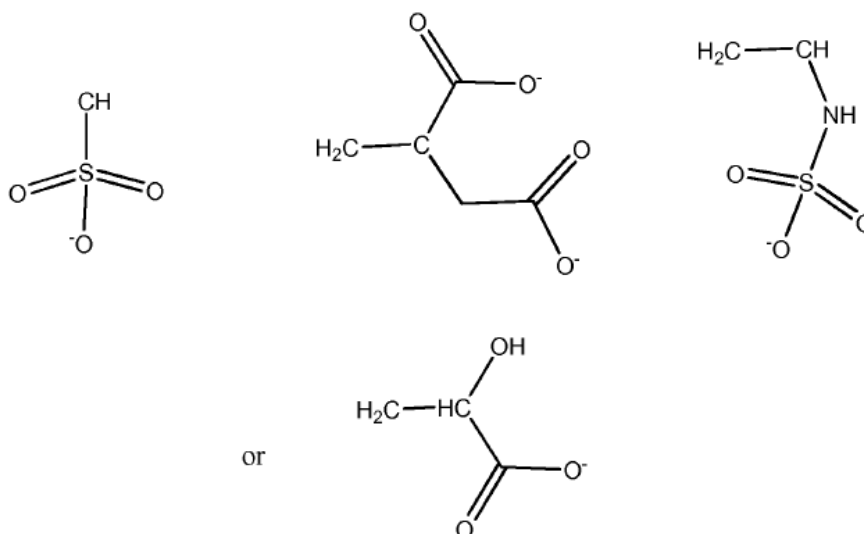
II. The decision under appeal was based on an amended main request and an auxiliary request.

Claim 1 of the main request reads as follows:

"1. A composition for use in treating and/or preventing hyperkalemia comprising:

a polymer comprising at least one monomeric unit having at least one cation exchange moiety selected from





wherein said polymer is in the form of mostly monodisperse particles yielding from a suspension polymerization; and one or more pharmaceutically acceptable excipients."

III. In the decision under appeal, the examining division held that the subject-matter of claim 1 of the main request did not involve an inventive step within the meaning of Article 56 EPC, having regard to the state of the art.

The amendments which had been carried out in the auxiliary request introduced subject-matter going beyond the content of the parent application and of the application as filed (Articles 76(1) and 123(2) EPC).

IV. The applicant (appellant) lodged an appeal against that decision.

V. In the statement setting out the grounds of appeal, the appellant maintained, as its sole request, the main request examined in the decision under appeal and submitted arguments in support of inventive step.

The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the main request filed on 4 July 2014, combined with description pages 1, 3-8, 10, 12-13, 15-17, 19-25, 27-50, 52-53 as originally filed, pages 2, 2a, 9, 11, 11a, 14, 14a, 18, 18a, 26, 26a, 51, 54 as filed on 10 June 2014 and drawing pages 1/17-17/17 as originally filed.

- VI. In a communication issued in preparation for oral proceedings and advising the appellant of the board's preliminary opinion, the board observed that the intended scope of the claims in respect of the expression "mostly monodisperse" could not be established (Article 84 EPC, see point 1.2 of the board's communication). The board also gave a negative opinion on the issue of inventive step.
- VII. With letter of 13 December 2016, the appellant informed the board that it would not attend the oral proceedings scheduled for 15 December and requested a decision according to the state of the file. The appellant did not provide any further arguments in reply to the board's communication.
- VIII. Oral proceedings were held on 15 December 2016 in the absence of the appellant.

Reasons for the Decision

1. Clarity (Article 84 EPC)
 - 1.1 After due reassessment of the case by deliberation of the board, the board confirms its conclusions on the issue of clarity as previously expressed in its preliminary opinion (see point VI above):
 - 1.2 The polymer particles according to claim 1 are defined as being "mostly monodisperse".
 - 1.3 In its usual meaning, the term "monodisperse" relates to particles of uniform or similar size. No criteria for particle uniformity are however specified, and the term is rendered even more vague by the expression "mostly".
 - 1.4 Hence the intended scope of the claim cannot be established, contrary to the requirement of Article 84 EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



S. Fabiani

J. Riolo

Decision electronically authenticated