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Datasheet for the decision of 15 November 2022

Case Number: T 0411/19 - 3.3.04

Application Number: 07005182.6

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Language of the proceedings: EN

Title of invention:
Peptides inhibiting plasma kallikrein for use in the treatment of ophthalmic disorders.

Patent Proprietor:
Dyax Corp.

Opponents:
Bicycle Therapeutics Limited
Oxurion NV

Headword:
Plasma kallikrein inhibitors/DYAX

Relevant legal provisions:
EPC Art. 54, 56, 87

Keyword:
Main and auxiliary request 1 - Novelty - (no)
Auxiliary request 2 - Inventive step - (no)

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Case Number: T 0411/19 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 15 November 2022

Appellant I: (Patent Proprietor)	Dyax Corp. 55 Network Drive Burlington, MA 01803 (US)
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Appellant II : (Opponent 2)	Oxurion NV Gaston Geenslaan 1 3001 Leuven (BE)
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Party as of right: (Opponent 1)	Bicycle Therapeutics Limited Meditrina Building Babraham Research Campus Cambridge CB22 3AT (GB)
Representative:	Gibson, Mark Sagittarius IP Marlow International Parkway Marlow SL7 1YL (GB)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 14 December 2018 concerning maintenance of the European Patent No. 1854477 in amended form.**

Composition of the Board:

Chair	M. Pregetter
Members:	A. Chakravarty
	P. de Heij

Summary of Facts and Submissions

I. Both the patent proprietor (appellant I) and opponent 2 (appellant II) filed appeals against the interlocutory decision of the opposition division that the European patent No. 1 854 477, as amended according to auxiliary request 2, met the requirements of the EPC. Opponent 1, party as of right, did not make any substantive submissions in the appeal proceedings.

II. The opposition division considered grounds for opposition under Article 100 (a) (b) and (c) EPC in conjunction with Articles 54, 56, 83 and 123 (2) EPC.

III. In its decision, the opposition division held that claim 14 of the main request (filed 28 December 2017) did not meet the requirements of Article 123(2) EPC and that auxiliary request 1 did not meet the requirements of Article 54 EPC in view of peptide DX-88, disclosed in document D2. The first priority date was held not to be valid for any subject-matter concerning SEQ ID Nos: 23-44.

IV. With its statement of grounds of appeal, appellant I maintained the main request considered by the opposition division and also auxiliary requests 1 to 8, all filed in the proceedings before the opposition division and re-filed with the statement of grounds of appeal. Sets of claims of auxiliary requests 9 to 15 were filed with letter dated 29 September 2022.

V. Oral proceedings before the board were attended by both appellants. During the oral proceedings, appellant I withdrew previously pending auxiliary request 2 (filed with letter dated 29 September 2022) and replaced it

with a set of claims of a new auxiliary request 2 (filed as auxiliary request 9 with letter dated 29 September 2022). It also withdrew all lower ranking claim requests. At the end of the oral proceedings, the Chair announced the board's decision.

VI. Claims 1 to 3 of the main request read:

"1. A composition comprising at least one peptide that inhibits plasma kallikrein for the use in the treatment of ophthalmic disorders in a patient in need thereof, wherein said ophthalmic disorder is related to impaired retinal vessel permeability or integrity, wherein said peptide includes the amino acid sequence: Xaal Xaa2 Xaa3 Xaa4 Cys Xaa6 Xaa7 Xaa8 Xaa9 Xaa10 Xaa11 Gly Xaa13 Cys Xaa15 Xaa16 Xaa17 Xaa18 Xaa19 Xaa20 Xaa21 Xaa22 Xaa23 Xaa24 Xaa25 Xaa26 Xaa27 Xaa28 Xaa29 Cys Xaa31 Xaa32 Phe Xaa34 Xaa35 Gly Gly Cys Xaa39 Xaa40 Xaa41 Xaa42 Xaa43 Xaa44 Xaa45 Xaa46 Xaa47 Xaa48 Xaa49 Xaa50 Cys Xaa52 Xaa53 Xaa54 Cys Xaa56 Xaa57 Xaa58 (SEQ ID NO: 1) in which:
Xaal, Xaa2, Xaa3, Xaa4, Xaa56, Xaa57 or Xaa58 are, independently from one another, any amino acid or absent;
Xaa10 is an amino acid selected from the group consisting of Asp and Glu;
Xaa11 is an amino acid selected from the group consisting of Asp, Gly, Ser, Val, Asn, Ile, Ala and Thr;
Xaa13 is an amino acid selected from the group consisting of Arg, His, Pro, Asn, Ser, Thr, Ala, Gly, Lys and Gln;
Xaa15 is an amino acid selected from the group consisting of Arg, Lys, Ala, Ser, Gly, Met, Asn and Gln;

Xaa16 is an amino acid selected from the group consisting of Ala, Gly, Ser, Asp and Asn;
Xaa17 is an amino acid selected from the group consisting of Ala, Asn, Ser, Ile, Gly, Val, Gln and Thr,
Xaa18 is an amino acid selected from the group consisting of His, Leu, Gln and Ala;
Xaa19 is an amino acid selected from the group consisting of Pro, Gln, Leu, Asn and Ile;
Xaa21 is an amino acid selected from the group consisting of Trp, Phe, Tyr, His and Ile;
Xaa22 is an amino acid selected from the group consisting of Tyr and Phe;
Xaa23 is an amino acid selected from the group consisting of Tyr and Phe;
Xaa31 is an amino acid selected from the group consisting of Glu, Asp, Gln, Asn, Ser, Ala, Val, Leu, Ile and Thr,
Xaa32 is an amino acid selected from the group consisting of Glu, Gln, Asp, Asn, Pro, Thr, Leu, Ser, Ala, Gly and Val;
Xaa34 is an amino acid selected from the group consisting of Thr, Ile, Ser, Val, Ala, Asn, Gly and Leu;
Xaa35 is an amino acid selected from the group consisting of Tyr, Trp and Phe;
Xaa39 is an amino acid selected from the group consisting of Glu, Gly, Ala, Ser and Asp;
Xaa40 is an amino acid selected from the group consisting of Gly and Ala;
Xaa43 is an amino acid selected from the group consisting of Asn and Gly;
Xaa45 is an amino acid selected from the group consisting of Phe and Tyr;
Xaa6, Xaa7, Xaa8, Xaa9, Xaa20, Xaa24, Xaa25, Xaa26, Xaa27, Xaa28, Xaa29, Xaa41, Xaa42,

Xaa44, Xaa46, Xaa47, Xaa48, Xaa49, Xaa50, Xaa52, Xaas53 [sic] and Xaa54 are, independently from one another, any amino acid.

2. The composition for use of claim 1, wherein said peptide is a Kunitz domain polypeptide.

3. The composition for use of claim 1 or 2, wherein said peptide is selected from the group consisting of: [SEQ ID Nos: 2 to 43]".

Note: the board has for the sake conciseness, not included the amino acid sequences of the SEQ ID Nos here. They are however, included in the claims as filed.

Claim 1 of auxiliary request 1 is identical to claim 1 of the main request.

Claim 1 of auxiliary request 2, filed in the oral proceedings before the board, differs from claim 1 of the main request in that the ophthalmic disorder is specified as being either macular oedema or retinal vein occlusion.

VII. The following documents are referred to in this decision.

P1: EP 06360008 (1st priority of the patent in suit)
P2: EP 06291516 (2nd priority document of the patent in suit)
D2: WO 2006/091459
D13: US 6 989 369

VIII. The arguments of appellant I relevant to the decision are summarised as follows:

Main request and auxiliary request 1 - claim 1
Novelty (Article 54 EPC)

The opposition division had been mistaken to consider that the subject matter of this claim was anticipated by the disclosure in document D2. There were three main reasons why this was the case.

i) document D2 was not enabling for the medical treatment as defined in claim 1, because the experiments reported therein did not constitute an actual treatment of any ophthalmic disorder. Rather, the experiment on page 40 determined the fluorescein permeability in the retina of healthy rats co-injected with CA-1 (carbonic anhydrase 1) and different test compounds in order to determine to which degree these test compounds were able to prevent the effects of CA-1 exposure. This could not be considered as a direct and unambiguous disclosure of a medical treatment. In document D2 the medical treatment was hypothetical and not reproducible.

ii) The opposition division had concluded that the peptide represented by the term "DX-88", anticipated the claimed subject-matter. However, the term "DX-88" was just an internal designation, whereas the actual compound designated by it was unknown. The skilled person needed to refer to other documents to identify what was meant by the term "DX-88". According to the decision under appeal, it could be determined from document D13 that DX-88 was a peptide with a sequence identical to SEQ ID NO:23 of the patent. This approach failed because document D13 was not even cited in the list of documents mentioned in document D2. If the person skilled in the art searched for the sequence of DX-88 in the references actually cited in document D2,

they would not have been able to find any conclusive, clear and direct disclosure. It was not permissible under the case law of the boards of appeal, in the assessment of novelty, to combine the disclosure in two separate documents, such as document D2 and document D13. The burden of proof was on appellant II to show that the term DX-88 had not changed over time.

Finally, iii) document D2 did not disclose the feature combination of claim 1. Starting from claim 1 of document D2, at least the following selections had to be made:

1 - a selection of kallikrein/kinin signaling inhibitory peptides as the active agent from various types of inhibitors, including e.g. one or more of CA-1 or CA-2 inhibitor, a kallikrein/kinin inhibitor, VEGF inhibitors, and a C1-INH agonist. However, DX-88 was not a plasma kallikrein inhibitor but a prolylcarboxypeptidase (PRCP) inhibitor.

2 - a selection of a peptide with the specific structure defined in claim 1. The cited passage on page 16 listed many different inhibitors belonging to various different classes of compounds (e.g. inhibitory nucleic acids, e.g. antisense, RNAi, and aptamers) which could act at any point in the kallikrein/kinin pathway, only one of which is DX-88.

Even if "DX-88" amounted to a disclosure of a peptide with a specific structure a defined in claim 1, the person skilled in the art would still have had to select this specific compound from the various kallikrein/kinin signalling inhibitors listed in the passage on page 16, lines 3 to 18.

Auxiliary request 2 - claim 1
Priority (Article 87 EPC)

The opponent had alleged that the claimed subject-matter was not entitled to the first priority in view of the fact that document P1 did not comprise any examples showing that the peptides disclosed therein were suitable for treating ophthalmic disorders. However, the opponent had not provided any proof to substantiate this. The burden of proof in opposition proceedings lay with the opponent who was making the allegation.

Priority document P2 and the application underlying the patent in suit both contained data that plasma kallikrein inhibition worked for the desired second medical use indications. Moreover, document P1 on page 4, lines 27 and subsequent read: "*For example, kallikreins are serine proteases found in both tissues and plasma, and it has been shown that plasma kallikrein is involved in contact-activated coagulation, fibrinolysis, hypotension, and inflammation...*". On that basis, the authors of the first priority document clearly provided a link between in particular plasma kallikrein and the present disorders. The next paragraph then specifically related to inhibition of such proteases. Such serine proteases - and inhibition thereof - were discussed in further detail, with the end point being on page 6, where it was stated in lines 13 and subsequent that:

"*The present invention is based on the discovery that peptides that inhibit serine proteases, such as, for example, kallikrein, can successfully be employed to treat ophthalmic disorders, and more specifically exudative and/or inflammatory ophthalmic disorders.*

Similarly, it has been shown that said peptides can successfully be employed to treat back of the eye diseases, and more specifically diseases related to impaired retinal vessel permeability and/or integrity (e.g. retinal degeneration)" (emphasis added by appellant I).
This passage further supported that the invention in document P1 was indeed enabled.

Inventive step (Article 56 EPC)

Document D2 did not disclose the treatment of diabetic macular oedema (DME) or retinal vein occlusion. The starting point in the prior art was DX-88. While the patent provided a treatment for two specific diseases, document D2 only disclosed treatment of impaired retinal vessel permeability (IRVP) disorders in general. The skilled person reading it would not have found any suggestion that macular oedema and retinal vein occlusion could be successfully treated.

IX. The arguments of appellant II relevant to the decision are summarised as follows:

Main request and auxiliary request 1 - Claim 1
Novelty (Article 54 EPC)

The opposition division correctly held that document D2 disclosed a method of decreasing retinal vascular permeability (RVP) in the eye of a subject by administration of a kallikrein/kinin pathway inhibitor. In that regard, document D2 provided a list of compounds that explicitly included DX-88 (page 16, line 12).

The structure of DX-88 was known on the filing date of D2, e.g. from document D13 (Table 2). In any case, a reference to its name was a direct reference to its structure, confirmed to be the same as SEQ ID NO: 23 of the patent.

No selection was necessary to arrive at the subject-matter of claim 1 of the main request. Document D2 clearly disclosed that it was concerned with the provision of therapeutics for decreasing retinal vessel permeability in order to treat diabetic macular oedema (DME). It provided a list of suitable kallikrein inhibitors, including peptides falling in the scope of the definition in claim 1.

Auxiliary request 2 - claim 1
Priority (Article 87 EPC)

The subject matter of claim 1 could not validly claim priority from document P1. Said document merely verbally stated that the peptides disclosed therein were suitable for treating the ophthalmic disorders macular oedema and renal vein occlusion without providing any evidence to this effect. Moreover, document P1 provided no rationale or mechanism to explain how the claimed peptides exerted any effect on retinal vessel permeability or integrity. In addition, there was no experimental evidence provided, either *in vitro* or *in vivo*, that supported the claimed therapeutic activity.

According to the case law the boards of appeal, a sufficient disclosure was one which demonstrated the suitability of the claimed compound for the proposed treatment (see e.g. decision T 1616/09, catchword and reasons 6).

The opposition division had referred to page 4 of document P1 as discussing "*a mechanism of action that is regarded as plausible*" However, there was nothing in this paragraph beyond the mere allegation that the claimed compounds were suitable for the proposed therapeutic use.

In view of the lack of valid claim to priority, the relevant date of the patent was the filing date. Document D2 was prior art under Article 54(2) EPC

Inventive step (Article 56 EPC) - claim 1

If the claimed subject-matter was novel over the disclosure in document D2 at all, then the distinguishing feature was the treatment of DME instead of impaired retinal vessel permeability (IRVP). However, the selection of this feature was obvious from document D2 which disclosed the treatment of IRVP disorders and also that of macular oedema, DME and retinal vein occlusion were specific examples of such disorders (see page 2, line 16 and example 4). As such, it was obvious for the skilled person to use DX-88 for the treatment of the above named diseases.

X. The requests of appellant I (patent proprietor) were

- that the decision under appeal be set aside and that the patent be maintained on the basis of the set of claims of the main request, filed in the proceedings before the opposition division and re-filed with the statement of grounds of appeal
- alternatively, that the patent be maintained on the basis of one of the sets of claims of auxiliary request 1, filed in the proceedings before the opposition division and re-filed with the statement of

grounds of appeal, or of auxiliary request 2, filed during the oral proceedings before the board.

XI. The requests of appellant II (opponent 2) as understood by the board and as far as relevant to the decision, are as follows.

- that the decision under appeal be set aside and that the patent be revoked in its entirety.

Reasons for the Decision

Main request and auxiliary request 1 - claim 1

1. Claim 1 of the main request and of auxiliary request 1 are identical. The claim is for a purpose limited product (second medical use) as provided for in Article 54(5) EPC. The product is a composition comprising at least one peptide defined as including (i.e. comprising) an amino acid sequence defined by a Markush formula (see section VI.). The therapeutic use is the treatment of ophthalmic disorders related to impaired retinal vessel permeability or integrity.

2. Document D2, published on 31 August 2006, is comprised in the state of the art under Article 54(2) EPC (see points 12. to 16. below). The opposition division's finding that the first priority is not valid for subject-matter relating to SEQ ID Nos: 23-44 (see point 17.5 of the decision under appeal) was not disputed by appellant I (see also point 15. below).

Novelty (Article 54 EPC)

3. Document D2 (claim 1) discloses "a method of decreasing retinal vascular permeability in the eye of a subject,

the method comprising administering to the subject a therapeutically effective amount of one or more of:
(i) an inhibitor of Carbonic Anhydrase-1 (CA-1) and/or Carbonic Anhydrase-2 (CA-2) signaling and optionally an inhibitor of Vascular Endothelial Growth Factor (VEGF) signalling;
(ii) an inhibitor of a kallikrein/kinin pathway; and/or
(iii) a Complement-1 Inhibitor (Cl-INH) agonist."

4. Document D2, in Fig. 6 also discloses a "*hypothetical model of carbonic anhydrase-induced permeability, illustrating pathways that can be targeted using the methods disclosed herein*." (page 15, lines 8 and 9). At page 16, lines 3 to 14, document D2 furthermore gives concrete examples of various suitable inhibitors, including a list of "*Suitable kallikrein/kinin signalling inhibitors [that] can act at any point in the kallikrein/kinin pathway*". There follows a list of inhibitors, including "*Kunitz domain Kallikrein inhibitors, e.g., as described in U.S. Patent No. 5,780,265, e.g. DX-88 (Dyax, Cambridge, MA), described in Markland et al., Biochemistry 35:8058- 8067 (1996), and one or more of U.S. Patents Nos. 6,423,498, 6,333,402, 6,103,499, 6,071,723, 6,057,287, 6,010,880, 5,994,125, 5,837,500, 5,795,865, and 5,663,143*". DX-88 is alleged (by appellant II) to be a peptide identical to SEQ ID NO: 23 of the patent in suit.

5. Appellant I had several lines of argument as to why document D2 did not disclose subject matter anticipating that of claim 1. They were
i) that document D2 was not enabling for the medical treatment as defined in claim 1, because the experiments reported in document D2 did not constitute an actual treatment of any ophthalmic disorder,

ii) that the skilled person needed to refer to other documents to identify the sequence of DX-88,
iii) that document D2 did not disclose the feature combination of claim 1.

6. The board is not persuaded by any of these arguments. The appellant's first line of argument is based on the observation that "*the experiments of D2 do not constitute an actual treatment of any ophthalmic disorder at all*". This, however is not the right test for deciding whether a document discloses a medical use in such a way that it can be carried out by a person skilled in the art. Instead, the document should disclose the suitability of the product for the particular therapeutic application (see Case Law of the Boards of Appeal of the European Patent Office, 10th edition, II.C.7.2). Document D2 establishes by way of experimental results, the link between carbonic anhydrase 1 (CA-1) and RVP and shows that co-injection of C1-INH, reduced CA-1 stimulated RVP by 92 % (see Example 2, page 40 first paragraph). In view of this, document D2 establishes at least an initial plausibility that the compounds mentioned in claim 1 (of document D2), i.e inhibitors of the pathway set out in Fig. 6 of document D2, are suitable for achieving the therapeutic aim. To counter this initial plausibility, evidence in the form of verifiable facts would be required to show that serious doubts exist about the claimed peptides' suitability for achieving the therapeutic effect. No such evidence has been put forward by appellant I.

7. The second line of argument, that the skilled person would not know that DX-88 represented a peptide having SEQ ID NO: 23, is not convincing. This is because it is evident from the cited passage on page 16 of document

D2 that the compound was commercially available from Dyax, Cambridge, MA, under the name DX-88. The skilled person need not to be aware of the structure of the compound referred to as this is an inherent feature of the named molecule. That DX-88 is a peptide identical to SEQ ID NO: 23 of the patent under appeal has been demonstrated, *inter alia* in patent document D13 with a filing date 7 February 2003 (column 12, lines 19-20, column 62, Table 2). There is no reason to assume that the structure of DX-88 was changed between this date and the filing date of the patent and such change is not probable. The board also sees no grounds for the allegation that, in spite of the clear indication on page 16, lines 3 and 12 that DX-88 is a kallikrein/ kinin signalling inhibitor, DX-88 is in fact a PRCP inhibitor.

8. The third argument cannot convince either. Although in claim 1, document D2 discloses three separate categories of functionally defined inhibitors used in a method of decreasing retinal vascular permeability in the eye of a subject, the skilled person does not need to resort to any of these categories to arrive at the claimed subject-matter. Instead, a list of active agents is given starting on page 15. The skilled person can select any of these compounds to achieve the therapeutic aim. This compound will then inherently fall within one of the categories without a further selection. Compound DX-88 (present SEQ ID NO: 23) is mentioned in the category of inhibitors of the kallikrein pathway (see page 16, first full paragraph). The ability to inhibit kallikrein is therefore an inherent attribute of DX-88. Thus, only a selection from a single list of inhibitors needs to be made to arrive at subject-matter falling within the scope of claim 1.

9. In view of these considerations, the subject-matter of claim 1 of the main and auxiliary request 1 lacks novelty.

Auxiliary request 2 (filed during the oral proceedings)

10. Claim 1 of auxiliary request 2 differs from claim 1 of the main request in that the condition to be treated is limited to macular oedema and retinal vein occlusion.

Admission (Article 13(2) RPBA)

11. Auxiliary claim request 2 was filed at the hearing before the board. It was admitted into the appeal proceedings at the discretion of the board. However, in view of the board's decision on inventive step, the reasons for this need not be given here.

Priority (Article 87 EPC)

12. Appellant II was of the view that subject-matter of this claim request is not entitled to the earliest priority date, 16 February 2006 because the application from which priority is claimed (EP 06360008) does not sufficiently disclose the suitability of the claimed compounds for the claimed therapeutic use, i.e. for the treatment of macular oedema or retinal vein occlusion.

13. According the established case law of the boards, a claimed second medical use meets the requirements of Article 83 EPC if the patent discloses the suitability of the product for the claimed therapeutic application, if this was not known to the skilled person at the relevant date (see Case Law of the Boards of Appeal of the European Patent Office, 10th edition, II.C.7.2). This standard applies to priority documents equally,

because the priority document must disclose the invention claimed in the subsequent application in such a way that it can be carried out by a person skilled in the art (*Id.* II.D.3.1.6).

14. The question to be answered in determining if the subject-matter of claim 1 can validly claim priority from P1 is therefore whether or not said priority document discloses that the claimed compounds are suitable for treating macular oedema and retinal vein occlusion. It was not in dispute that document P1 discloses Kunitz domain peptides according to the general formula of claim 1 of the patent in suit and states that these are useful in the treatment of ophthalmic disorders in humans and animals. Macular oedema and retinal vein occlusion are both mentioned in lists of treatable ophthalmic disorders, for instance in the paragraph bridging pages 14 and 15. There is therefore a literal disclosure of the subject-matter of claim 1.

15. However, document P1 contains no experimental data or other evidence of any kind that goes beyond a mere allegation that the peptides defined in that document are indeed suitable for treatment of any of the ophthalmic disorders listed. That the peptides mentioned are suitable is not at all self-evident because it is the essence of the contribution to the art of the invention purportedly made in document P1. In the absence of such evidence, it cannot be concluded that document P1 provides even an initial plausibility that the claimed compounds are suitable for treating the disorders in question. The passages on page 4, referred to by appellant I as providing a link between particular plasma kallikrein inhibitors and the ophthalmic disorders are no more than a summary of the

background knowledge in the art on proteases, including kallikreins and their inhibitors. These passages do not at all constitute evidence that peptides defined in document P1 are suitable for treatment of any ophthalmic disorder by inhibiting plasma kallikrein. Similarly, the passages cited by appellant I on page 6 are not evidence but mere allegations of suitability. In conclusion, document P1 does not disclose the invention of claim 1 in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.The invention claimed in claim 1 of the main request is therefore not the "same invention" in the sense of Article 87(1) EPC as the invention disclosed in document P1. Thus, the invention claimed in claim 1 of the main request cannot validly claim priority from document P1.

16. In view of the above decision on priority, document D2. which was published on 31 August 2006 is prior art under Article 54(2) EPC.

Inventive step (Article 56 EPC) - claim 1

The closest prior art

17. Document D2 represents the closest prior art for the claimed subject-matter. As discussed above, it discloses Kunitz domain kallikrein inhibitors, including DX-88 (see page 16, lines 5 to 18) for use in treating disorders associated with excessive vascular permeability in the eye in general (see claim 1). The compounds disclosed in document D2 are proposed as being suitable for treating disorders associated with excessive vascular permeability and oedema, e.g., in the retina and brain (see page 1 lines 11 to 13). Macular edema and retinal vein occlusion are mentioned

on page 5 as examples of disorders associated with excessive vascular permeability. In favour of appellant I, the board assumed that the use of compound DX88 for treatment of in particular these two diseases was not disclosed on document D2.

18. Taking the diseases as a starting point, the difference between the claimed subject-matter and the disclosure in document D2 is therefore the selection of a compound for treatment of in particular macular oedema and retinal vein occlusion from a list of compounds.

The technical problem

19. The technical effect of this difference is that the specific diseases macular oedema and retinal vein occlusion are treated instead of disorders caused by excessive retinal vascular permeability in the eye in general. In view of the closest prior art and of the difference between it and the claimed invention and taking into account the technical effect of this difference, the problem to be solved by the claimed subject-matter is formulated as the provision of a compound for use in treating macular oedema or retinal vein occlusion.

Obviousness

20. The question to be asked in assessing the obviousness of the claimed subject-matter is therefore whether or not the skilled person starting from the disclosure in document D2 and seeking a solution to the above formulated technical problem would have arrived at the presently claimed subject-matter.

21. The board considers that the skilled person knew from the disclosure of document D2 (see for example, the final paragraph of page 2) that both macular oedema and retinal vein occlusion were disorders associated with excessive vascular permeability and/or oedema in the eye and that such disorders were in general treatable with the compounds disclosed in document D2, including the compound DX-88 (corresponding to SEQ ID NO: 23 of the patent in suit). It must therefore be concluded that the skilled person would have considered that DX-88 represented an obvious solution to the above formulated technical problem.

22. The subject matter of claim 1 of auxiliary request 2 therefore does not meet the requirements for the presence of an inventive step set out in Article 56 EPC.

23. Since there are no allowable claim requests, the patent must be revoked.

Order

For these reasons it is decided that:

The patent is revoked.

The Registrar: The Chair:

I. Aperribay M. Pregetter

Decision electronically authenticated