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Datasheet for the decision of 26 June 2026

Case Number: T 1325/21 - 3.3.09

Application Number: 13156979.0

Publication Number: 2772245

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Language of the proceedings: EN

Title of invention:
Ginger extract for the protection of stem cells

Patent Proprietor:
Symrise AG

Opponent:
Flavex Naturextrakte GmbH

Headword:
Ginger extract/SYMRISE

Relevant legal provisions:
EPC Art. 83, 54, 56, 123(2), 123(3)

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Keyword:
Sufficiency of disclosure - (auxiliary request 1 - yes)
Novelty - (auxiliary request 1 - yes)
Inventive step - (auxiliary request 1 - yes)
Amendments - allowable (auxiliary request 1 - yes)

Decisions cited:

Catchword:

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Case Number: T 1325/21 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 26 June 2026

Appellant: (Patent Proprietor)	Symrise AG Mühlenfeldstrasse 1 37603 Holzminden (DE)
Representative:	Eisenführ Speiser Patentanwälte Rechtsanwälte PartGmbB Postfach 31 02 60 80102 München (DE)
Respondent: (Opponent)	Flavex Naturextrakte GmbH 66780 Rehlingen (DE)
Representative:	Hamel, Armin Iridium IP Friedrich-König-Strasse 3-5 68167 Mannheim (DE)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted/ electronically transmitted on 4 June 2021 concerning maintenance of the European Patent No. 2772245 in amended form.**

Composition of the Board:

Chairman	A. Haderlein
Members:	A. Zellner
	L. Basterreix

Summary of Facts and Submissions

I. The patent proprietor lodged an appeal against the opposition division's interlocutory decision to maintain the patent in amended form (Articles 101(3) and 106(2) EPC).

II. An opposition had been filed on the basis of Article 100(a) EPC for lack of novelty and lack of inventive step (Articles 54 and 56 EPC) and on the basis of Article 100(b) and (c) EPC.

III. In the appealed decision, the opposition division held that auxiliary request 2 before it met the requirements of Articles 123(2) and (3) and 84 EPC. In addition, the opposition division also held that claim 1 of this request was novel in view of document D3 (Article 54 EPC). Document D27 was not considered prior art under Article 52(2) EPC, and thus was not relevant to the request. The provision of the claimed subject-matter was not considered to be based on an inventive step starting from the disclosure of document D9 as the closest prior art (Article 56 EPC). The opposition division concluded that auxiliary request 6 before it met the requirements of the EPC.

IV. The following documents are referred to:

D1: Dirk Becke, Diplomarbeit: Vergleich von Ingwer-Hochdruckextrakten mit Ingweroien und herkömmlichen Ingwerextrakten mittels HPLC, 1995 (in part)

D6: Notice of dispatch from Flavex Naturextrakte GmbH to Symrise GmbH & Co. KG including invoice, 2005

D6': Bank statement "Kreissparkasse Saarlouis" of 12 April 2005 and "Rechnung" Nr.: 13561 to Symrise GmbH & Co. KG by Flavex

D9: Order from Kneipp Werke GmbH & Co. KG and delivery note with certificate of analysis from Flavex Naturextrakte GmbH, 2012

D9': Invoice Nr.: 58769 / 19203 by Flavex Naturextrakte GmbH (Anlage 1), bank statement Kreissparkasse Saarlouis of 04.01. (Anlage 2) and Order of "Ingwerextr 25-35:1 (CO2)" by Kneipp to Flavex Naturextrakte GmbH (Anlage 3)

D27: Flavex Nalurextrakte, "Ginger Hot Flavor CO2-to extract" CO2 Extraction, November 2019

D30: "Anlage 1" to "Anlage 5" provided by the respondent on 21 February 2022

V. The only request relevant to this decision, i.e. auxiliary request 1, has three independent claims, which read as follows.

"1. A ginger extract, comprising

(a) 25 to 30 % b.w. [6]-gingerol
(b) 5 to 10 % b.w. [8]-gingerol
(c) 5 to 10 % b.w. [10]-gingerol
(d) 1.5 to 4 % b.w. [6]-shogaol
(e) 0.3 to 1.3 % b.w. [8]-shogaol;
(f) 0.03 to 1 % b.w. [10]-shogaol;
(g) 0.001 to 1 % b.w. zingerone,

on condition that the content of gingerols sums up to 35 to 50 % b.w. and the content of shogaols sums up to 1.5 to 6 % b.w,

wherein the total content of pungent components sums up

to 42 to 50 % b.w. and the content of essential oil is less than 5 % b.w., and

wherein the extract comprises citral, linalool, citronellol and D-limonene, wherein citral, linalool, citronellol and D-limonene are limited to a concentration of 0.7 % b.w., 0.2 % b.w., 0.07 % b.w. and 0.3 % b.w., respectively."

"3. A process for obtaining a ginger extract, comprising

(a) 25 to 30 % b.w. [6]-gingerol
(b) 5 to 10 % b.w. [8]-gingerol
(c) 5 to 10 % b.w. [10]-gingerol
(d) 1.5 to 4 % b.w. [6]-shogaol
(e) 0.3 to 1.3 % b.w. [8]-shogaol;
(f) 0.03 to 1 % b.w. [10]-shogaol;
(g) 0.001 to 1 % b.w. zingerone,

on condition that the content of gingerols sums up to 35 to 50 % b.w. and the content of shogaols sums up to 1.5 to 6 % b.w.,

wherein

(a) ginger roots are frozen at -10 to -25 °C;
(b) the frozen roots are shredded, cut and dried at 20 to 50 °C for 10 to 30 hours;
(c) the dried roots are subjected to supercritical extraction with carbon dioxide at 25 to 90 °C and 220 to 370 bar for up to 10 hours; and
(d) the extraction product obtained after 3 hours is collected while the forerun taken from the first three hours is dismissed."

"4. A medicament comprising the ginger extract as defined in Claim 3 for use in a 15 method for protecting stem cells."

VI. The appellant's arguments can be summarised as follows.

- The opposition division's decision to acknowledge document D9 and the public prior use based on it as being state of the art under Article 54(2) EPC and destroying the novelty of the ginger extract according to claim 1 was not correct.

- A person skilled in the art could not reproduce a ginger extract mixture as disclosed in D9.

- The provision of a claimed ginger extract and a claimed process also involved an inventive step.

- The request met the requirements of Articles 123(2) and (3) and 83 EPC.

- Documents D6', D9', D29 and D30 were not to be admitted into the proceedings.

VII. The respondent's arguments can be summarised as follows.

- The provision of the claimed ginger extracts was not inventive. No particular technical effects had been demonstrated for the distinguishing features compared with document D9. The technical problem of providing an alternative composition was obvious in the light of D27 or D30.

- The claimed process was not based on the application as filed.

- The claimed subject-matter was not disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

VIII. The appellant (patent proprietor) requested that the decision under appeal be set aside and that the patent be maintained on the basis of auxiliary request 1, filed with the statement setting out the grounds of appeal.

IX. The respondent (opponent) requested that the appeal be dismissed.

Reasons for the Decision

Auxiliary request 1

1. Auxiliary request 1 is identical to auxiliary request 2 filed during the opposition proceedings on 22 May 2020. The opposition division held that this request met the requirements of Articles 123(2) and (3) and 84 EPC and that the ginger extract in claim 1 of this request was novel in view of document D3 (Article 54 EPC). The opposition division also held that claim 1 was not based on an inventive step considering the disclosure of document D9 as the closest prior art (Article 56 EPC).

2. During the course of the appeal proceedings, the respondent argued that the patent as granted, which was the appellant's initial main request on appeal, did not meet the requirements of Article 123(2) and (3) and Article 83 EPC, *inter alia*. The arguments put forward

by the respondent also apply to auxiliary request 1.

Amendments (Article 123(2) and (3) EPC)

3. The respondent argued that the claimed process did not have a basis in the application as filed. The respondent also argued that the definition of the claimed ginger extract was broader than in the patent as granted. The respondent concluded that the request did not meet the requirements of Article 123(2) and (3) EPC due to an inadmissible intermediate generalisation and extension of the scope of protection. According to the respondent, paragraph [0141] of the patent only contained a single example of a process as claimed. Furthermore, only a single extract was disclosed in paragraph [0142] of the patent.

4. The board is not convinced by the respondent's arguments.

4.1 Claim 1 of auxiliary request 1 is based on claim 1 as filed, which is identical to claim 1 as granted. It differs from this claim in that it contains the additional features:

"... wherein the total content of pungent components sums up to 42 to 50 % b.w. and the content of essential oil is less than 5 % b.w., and

wherein the extract comprises citral, linalool, citronellol and D-limonene, wherein citral, linalool, citronellol and D-limonene are limited to a concentration of 0.7 % b.w., 0.2 % b.w., 0.07 % b.w. and 0.3 % b.w., respectively."

4.2 These features are disclosed in paragraph [0016] and dependent claim 3, as well as in paragraph [0030], of the description as filed (reference is made to the application as published). The board notes that the features are also disclosed in combination with the claimed ginger extract (claim 1) and the process for obtaining a ginger extract (claim 4). The respondent's argument that the patent contains only a single example is irrelevant in this respect.

5. For these reasons, auxiliary request 1 meets the requirements of Article 123(2) EPC.

6. Claim 1 of auxiliary request 1 differs from claim 1 as granted on account of the same features as it does from claim 1 as filed, and is therefore more limited than claim 1 as granted. In this context too, the respondent's argument that the patent contains only a single example is irrelevant. Auxiliary request 1 therefore also meets the requirements of Article 123(3) EPC.

Sufficiency (Article 83 EPC)

7. The opposition division considered the claimed subject-matter of auxiliary request 1 (auxiliary request 2 during the opposition proceedings) to be disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art. It therefore held that the request met the requirements of Article 83 EPC. The respondent contested this conclusion.

8. In order to support this objection, the respondent referred to the content of its notice of opposition and its additional submission before the opposition

division on 5 March 2020. It further argued that the description of the contested patent only disclosed a single example for the preparation of a composition according to claim 1. It was thus allegedly not allowable to define a composition according to claim 1 in terms of ranges of the individual components of the mixture, rather than the respective amounts as disclosed in the example. The description did not provide any information as to how extracts covering the entire claimed ranges could be obtained. Furthermore, the contested patent did not disclose any specific method in which a medicament could be used, although its general use in a method for protecting stem cells was claimed. The patent did not disclose any information on the mechanism of the medicament or on additional components it may comprise, either.

9. The respondent's argument is not convincing.

A successful objection of lack of sufficiency of disclosure presupposes that there are serious doubts, substantiated by verifiable facts. In the present case, no verifiable facts have been provided by the respondent. Considering the information in the description of the contested patent (see in particular example 1), the board is not convinced of any doubts, let alone serious doubts, concerning the provision of a ginger extract as claimed, or serious doubts that the claimed extracts may not be suitable in a medicament for use in a method for protecting stem cells. Moreover, this is credible in view of prior art cited in the patent referring to the use of ginger extract, and also in view of example 2 of the patent.

10. The opposition division's decision with respect to sufficiency of disclosure is thus correct. Auxiliary

request 1 meets the requirements of Article 83 EPC.

Documents D6', D9', D29 and D30 - admission

11. During the course of the opposition and appeal proceedings, the respondent relied on documents D6 and D9, *inter alia*, to present arguments relating to lack of novelty and lack of inventive step based on alleged prior use. According to the respondent, document D9, in particular in combination with documents D9' and D30, as well as document D6, in particular in combination with document D6', were evidence that a composition according to claim 1 of the patent in dispute was delivered by "Flavex Naturextrakte GmbH" to "Kneipp-Werke" before the priority date of the patent.

12. The appellant requested that documents D6', D9', D29 and D30 not be admitted into the appeal proceedings, and argued that the documents did not prove that a product according to claim 1 was made available to the public.

13. As demonstrated below, the board concludes that the subject-matter of auxiliary request 1 is novel and inventive considering the disclosure of these documents, because the respondent's arguments based on them are not convincing. It is therefore not necessary to decide on the appellant's request not to admit the documents into the appeal proceedings.

Novelty (Articles 100(a) and 54 EPC)

14. The parties disagreed as to whether a product as disclosed in document D9 was state of the art; however, it was undisputed that a ginger extract according to claim 1 of auxiliary request 1 differs from a product

as disclosed in document D9 (see page 4), this being in particular the claimed extract *"... comprises citral, linalool, citronellol and D-limonene, wherein citral, linalool, citronellol and D-limonene are limited to a concentration of 0.7 % b.w., 0.2 % b.w., 0.07 % b.w. and 0.3 % b.w., respectively."* Document D9 does not disclose a ginger extract comprising these compounds, let alone in the claimed amounts.

15. The document also does not disclose a process for obtaining a ginger extract according to claim 3, or a medicament comprising the ginger extract for medical use according to claim 4 of auxiliary request 1. This was also undisputed.

16. The board also notes that document D6 also does not disclose a product according to claim 1, or the subject-matter of independent claims 3 and 4 of auxiliary request 1, for the same reasons as document D9 (see the table on page 2 of D6).

17. For these reasons, auxiliary request 1 meets the requirements of Article 54 EPC irrespective of whether D9 was state of the art.

Inventive step (Articles 100(a) and 56 EPC)

18. The parties presented arguments starting from document D9 as the closest prior art. According to the respondent, the skilled person, being aware of the ginger extract disclosed in document D9, would modify its composition in order to obtain an extract with low sensitising potential due to the limited amounts of citral, linalool, citronellol and D-limonene. The respondent referred to document D30 as well as paragraph [0034] of the patent in dispute. The

appellant mainly argued that, even when attempting to provide an extract comprising low quantities of said compounds, the skilled person could not provide an extract as claimed, since an appropriate process for its preparation was not known.

19. The board concurs with the parties that, irrespective of whether D9 is state of the art, the claimed extract differs from the extract disclosed in that document in that it comprises limited amounts of citral, linalool, citronellol and D-limonene (see also point 14. of this decision).

20. There is no evidence that the distinguishing features lead to a particular technical effect. As submitted by the appellant, it is correct that experimental evidence of a technical effect is not always needed; however, in D9 the corresponding amounts are close to those claimed, as held by the opposition division.

21. As stated by the opposition division, the problem is thus that of providing an alternative ginger extract.

22. The board also concludes that the provision of an extract according to claim 1 of the main request is not obvious, for the following reasons.

22.1 Document D9 does not disclose a process for the preparation of the ginger extract having the composition according to page 4 of the document. The only reference to an extraction method can be found in the term "Ingwer Scharfstoff CO2-to Extrakt". No extraction parameters are disclosed, however.

22.2 The respondent argued that this term clearly indicated the extraction method, i.e. extraction with carbon

dioxide. Such methods were known in the art, for example from the disclosure of document D1.

22.3 Methods for extracting natural products are not straightforward, however. In particular, even if the general method, such as supercritical fluid extraction with carbon dioxide, were known in the art, modification of extraction parameters would most likely lead to extracts having different compositions. It is thus not plausible that a skilled person was in a position to provide a composition as disclosed on page 4 of D9 without exercising inventive skill. In addition, although the skilled person may be tempted to search for a ginger extract having low quantities of known skin sensitisers, such as citral, linalool, citronellol and D-limonene, they are not prompted to adapt the unknown extraction procedure used to obtain the extract according to D9 in order to lower the amount of these compounds to limits according to claim 1 of auxiliary request 1. The board notes that, as submitted by the appellant, document D1 does not disclose any details relating to the extraction process (see point 2.4.3 of the table of contents, and the missing corresponding page in the document). The board also notes the specific steps of the extraction process according to claim 3 of auxiliary request 1.

22.4 The board concludes that, starting from the disclosure of document D9, the provision of an extract according to claim 1 of auxiliary request 1, i.e. an extract *"... wherein the total content of pungent components sums up to 42 to 50 % b.w. and the content of essential oil is less than 5 % b.w., and wherein the extract comprises citral, linalool, citronellol and D-limonene, wherein citral, linalool, citronellol and D-limonene are limited to a concentration of 0.7 % b.w., 0.2 %*

b.w., 0.07 % b.w. and 0.3 % b.w., respectively ..." was not obvious for solving the technical problem of providing an alternative to the ginger extract disclosed on page 4 of document D9.

23. The provision of a method according to claim 3, and the medicament for use in protecting stem cells according to claim 4, also involve an inventive step. It was undisputed that the combination of extraction parameters allows for the preparation of an extract having properties according to claim 1 of auxiliary request 1. Accordingly, for essentially the same reasons as set out above for claim 1, the prior art does not provide specific teaching for such an extraction process and the presence of an inventive step cannot be denied.

24. For these reasons, auxiliary request 1 meets the requirements of Article 56 EPC.

Amended description

25. The appellant did not comment on the amended description filed during the oral proceedings before the board. The board notes that paragraphs [0018], [0020] and [0030] have been adapted to the amended claims and concludes that the amendments comply with the EPC, in particular with Article 123(2) EPC.

Conclusion

26. Since auxiliary request 1 meets the requirements of the EPC, the decision under appeal is to be set aside, and the patent is to be maintained on the basis of auxiliary request 1, and a description adapted to it.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the opposition division with the order to maintain the patent in the following version:

   - Claims 1 to 4 of auxiliary request 1 filed with the statement of grounds of appeal,
   - Description, pages 1 to 59, filed during the oral proceedings before the board, and
   - Figure 1 of the patent specification.

The Registrar: The Chairman:

K. Götz-Wein A. Haderlein

Decision electronically authenticated