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3040/MUM/2010

Date : 19/12/2012

Letter No.:-BIO-TECH/2013/

To,
Dr. Rajeshkumar H. Acharya
Law Office of H. K. Acharya & Company
Advocates, Patent & Trademark Agents
HK Avenue, 19 - Swastik Society,
Navrangpura, Ahmedabad - 380 009
Gujarat, INDIA.

SUB : Examination Report

APPLICATION NUMBER : 3040/MUM/2010
DATE OF FILING : 02/11/2010
DATE OF REQUEST FOR EXAMINATION : 08/11/2010
DATE OF PUBLICATION : 21/01/2011

With reference to the RQ No. 3748/RQ-MUM/2010 Dated 08/11/2010 in the above mentioned application for Grant of Patent ,
a) Examination has been conducted under Section 12 and 13 of the Patents Act 1970 , The following objections are hereby communicated

b) Objections :

- 1 Form-13 filed on 14/03/2011 for making amendments in the complete specification is not allowed u/s 59 of the Patents Act, 1970 (as amended), as said amendments are not treated to be made by way of disclaimer, correction or explanation.
- 2 The subject-matter claimed in claims 1-9 is not a patentable subject-matter under Section 3 (p) of the Act, as ingredients or components recited therein are traditionally known for relieving pain.
- 3 The subject-matter of claims 1-9 is considered as a mere admixture of cow dung, parts of *Calotropis* plant sp. *Curcuma longa*, lime, etc. which is not a patentable subject-matter as per Section 3 (e) of the Act.
- 4 The preamble of claim 1 is inconsistent with claim 9. If claim 1 directed to a process for relieving pain then claim 1 and the claims dependent thereon may fall within the ambit of Section 3 (i) of the Act.
Claim 8 is worded as a 'product-by-process' type claim and accordingly, the subject-matter of said claim is considered as the product *per se*. Such claim is admissible only if the product itself is defined by its novel and inventive composition, structure or other parameters, which appears not to be seen in the present invention. The claimed product cannot be considered novel merely
- 5 by virtue of modification of the process, but rather novelty can only be established if technical evidences are provided showing that the modification of the process results in other product, which is distinct with regards its properties over the product known in the prior art. Thus, claim 8 is not allowable in the present form.

Claims 1-9 lack inventive step, as required u/s 2 (1) (j) of the Act, in view of teaching of the following documents:

D1: Rasayoga Sagara ? Compiled and translated by Vaidya Pandita Hariprapanna ji. Vol. II: Krishnadas Academy, Varanasi, Edn. Reprint 1998 (This book contains back reference from B. C. to 20th century). see page 139;

D2: Kasyapa-Samhita or Vrddhajivakiya Tantra ? Edited and translated by P. V. Tiwari: Chaukhamba Visvabharati, Varanasi, Edn 1st. 1996 (time of origin 600 BC), see page 646-647; and

D3: Ziya Al-Din Abdullah Ibn Al-Jaam'e-li-Mufradaat-al-Adviawal-Aghzia, Vol. ii (13th century AD), Matba Amra, Cairo, Egypt, 1874 AD. see page 79.

D1 discloses a therapeutic composition for treating inflammation/pain comprising *Curcuma longa*, *Calotropis*, cow dung, urine, etc.

D2 discloses a therapeutic composition formulated as herbal paste for treating inflammation/pain comprising *Curcuma longa*, *Calotropis*, cow urine, etc.

D3 discloses a therapeutic composition formulated as thick paste for treating inflammation/pain comprising urine and lime (choona).

In view of teaching of D1-D3, it would have been obvious to a person skilled in the art to combine the said ingredients, which are directed to the same use. It is a straight forward action for a person skilled in the relevant art and therefore, the inventive step cannot be acknowledged for the subject matter of claims 1-9. Thus, the subject-matter claimed in claims 1-9 fails to meet the requirements of Section 2 (1) (j) of the Act.

7 Claim 9 is vague and unclear, as it defines the subject-matter in terms what is described in the specification. It fails to point out what is included or excluded by the claim language of said claim. As per Section 10 (4) (c) of the Act, a claim is admissible only when it clearly defines the scope of the invention for which protection is sought. Hence, claim 9 does not fulfill the requirements of Section 10 (4) (c) of the Act.

8 Abstract should be filed based on disclosure made on 02/11/2010 in duplicate within 150 words.

9 The invention as disclosed in the specification uses biological materials and hence, necessary permission from the competent authority i.e. National Biodiversity Authority (NBA) shall be obtained (Refer section 6 of the Biological Diversity Act, 2002).

10 Applicant is asked to file a fresh Form-1 in the prescribed format, wherein all declarations in Para 9, particularly Para 9(iii), are clearly attended (either affirmed or cancelled out).

11 Original Power of Attorney in favor of agent shall be submitted.

12 If any corrections/amendments is made in any page of the specification that page should be freshly typed and filed in duplicate along with a marked copy clearly highlighting the corrections/amendments made. However, a care should be taken that no new matter is added in the specification as originally filed.

13 Kindly note that you should submit the documents only after complying with the above requirements.

14 Details regarding the search and/or examination report including claims of the application allowed, as referred to in Rule 12(3) of the Patent Rule, 2003, in respect of same or substantially the same invention filed in all the major Patent offices along with appropriate translation where applicable, should be submitted within a period of Six months from the date of receipt of this communication as provided under section 8(2) of the Indian Patents Act.

15 Details regarding application for Patents which may be filed outside India from time to time for the same or substantially the same invention should be furnished within Six months from the date of filing of the said application under clause(b) of sub section(1) of section 8 and rule 12(1) of Indian Patent Act.

c) You are requested to comply with the objections by filing your reply by way of explanation and/or amendments within 12 months from the date of issue of FER failing which your application will be treated as "Deemed to have been abandoned" under section 21(1) of the Act. The last Date is 19/12/2013.

d) You are advised to file your reply at the earliest so that the office can further proceed with application and complete the process within the prescribed period.

(Dr. Dinesh P. Patil)

Asst. Controller of Patents & Designs

NOTE : All Communications to be sent to the Controller of Patents at INTELLECTUAL PROPERTY BUILDING S. M. Road, Antop Hill Mumbai-400 037.

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