

The examination is being carried out on the **following application documents**

Description, Pages

1-51 as published

Claims, Numbers

1-25 received on 29-10-2010 with letter of 26-10-2010

Drawings, Sheets

1/36-36/36 as published

1 The following document is mentioned for the first time

D9 CHILLA C ET AL: "Automated on-line solid-phase extraction-high-performance liquid chromatography-diode array detection of phenolic compounds in sherry wine",
JOURNAL OF CHROMATOGRAPHY, ELSEVIER SCIENCE PUBLISHERS B.V, NL,
vol. 750, no. 1-2, 25 October 1996 (1996-10-25), pages 209-214,
XP004069757,
ISSN: 0021-9673, DOI: DOI:10.1016/0021-9673(96)00557-2

2 **Amendments** - A.123(2) EPC

2.1 The claims fail to comply with the requirements of A.123(2) EPC by adding subject matter to the following extent.

2.2 The objection raised to claim 3 in the first communication is upheld. The basis provided requires that the aqueous extraction solution is acidic hence acid must always be present. This obviates the submissions of the letter dated April 26, 2010. The basis indicated only extends to the specific ranges of acid present.

- 2.3 New claim 5 is not allowable. There is no **direct and unambiguous** basis for the combination of the acid range and ethanol range in a **first eluent**. The basis provided refers only to an **extraction solvent with a different** range of ethanol in water. To expedite the procedure the division notes that original claim 9 could form the basis for an allowable claim for the first eluent.
- 2.4 The objections to claims 21 through 25 are upheld. The original claim 33 is restricted only to elderberry extracts. The present claims are not likewise limited. Furthermore the statement on page 18 is **ambiguous** as to which elements are described below. Hence the basis is not **unambiguous**. Moreover in table 11 it can be seen that only fraction 4 of elderberry has more potent ED50 and again this is limited only to the specific virus HSV2. Regarding table 13 it is evident that only certain specific plant fractions have the claimed increase in IC50. The elderberry fraction does not. Hence as previously argued the claim represents a montage of features for which there is no **direct and unambiguous** basis.
- 2.5 The applicant is requested to address these deficiencies before a detailed examination of novelty and inventive step takes place. Nevertheless the division has considered the submissions on file and its preliminary findings are communicated herein.

3 **Novelty and Inventive Step - A.54/56 EPC**

- 3.1 **In the first instance the attention of the applicant is drawn to the third party observations of 22.12.2010. The observations concern the disclosure of traditional knowledge formulations falling within the terms of the claimed subject matter, particularly claims 16 through 25.**
- 3.2 The prior art D1 through D5 and D9 discloses phenolic compositions which can not be distinguished from the compositions of claims 16 through 25. The means of producing the compounds does not confer novelty (A.54 EPC) on the compositions as formulated in the present claims.

3.3 The prior art D5 is novelty (A.54 EPC) destroying for claim 1. It discloses the sequential elution of polyphenolic compounds from plant extracts applied to brominated polystyrene resin (SP207) with increasing methanol concentrations.

3.4 Claims 1 through 15 also lack an inventive step (A.56 EPC) based on either D1 or D2 taken in combination with D5. All documents may be taken as closest prior art. The missing features of D1 or D2 are provided and suggested by D5 and vice versa (sequential solvent elution/acid extraction). For the sake of completeness sequential elution of phenolics in increasing solvent eluents is also suggested from D9.

4 **Conclusion**

4.1 The present claim set does not comply with requirements of the EPC in view of the above-mentioned deficiencies. Failure to rectify these deficiencies will ultimately lead to refusal of the application pursuant to A.97(2) EPC. Any amendments made in response to this communication must comply with the requirements of A.123(2) EPC.