

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

**Description, Pages**

1-9 as originally filed

**Claims, Numbers**

1-11 received on 21-11-2008 with letter of 21-11-2008

**Art. 123**

The amendments filed with letter of 21.11.2008 meet the requirements of Art. 123(2) EPC. The basis for the amended **claims 1-11** can be found in the claims as originally filed.

The amended claims now fulfill the requirements of Art. 53(c) and 84 EPC.

**Art. 115**

The Examining Division notes that third party observations have been filed with letter of 30.03.2010, received on 06.04.2010.

The Examining Division has taken the translated references and the corresponding comments into consideration. However none of these exhibits discloses a composition comprising a combination of the four extracts as claimed in the present application. It is also noted that the "useful parts" of the plants are not further specified in these exhibits.

It can therefore only be concluded from these documents that the use of the single ingredients ginger, radish, celery and black seed as aphrodisiac and/or spermatogenic is well-known in the prior art.

**Art. 54**

The subject-matter of **claims 1-11** of the present application is therefore still novel over the prior art.

## Art. 56

The objection under Art. 56 EPC made in the EESR is maintained. In his letter of 21.11.2008 the Applicant stressed the fact that the claimed composition is used for enhancing fertility by increasing number and motility of spermatozoa and not for strengthening sexual function or as aphrodisiac (see Applicants letter on page 4, second paragraph). The Applicant notes on page 5, last paragraph that D3 discloses the positive effects of ginger rhizome on spermatozoa numbers and motility.

Starting from D3 as the closest prior art document, the present application differs in using a composition comprising ginger rhizome in combination with radish, celery and black seed. The problem to be solved therefore has to be formulated as to provide an improved formulation for enhancing male fertility.

The Applicant has however failed to show an improvement or a surprising effect when compared with the closest prior art. The present application does not contain any comparative data or tests.

The problem to be solved therefore has to be reformulated as to provide an alternative solution only (see also Applicants letter on page 4, paragraph 4).

This alternative solution is considered obvious for a skilled person in the light of the prior art.

The subject-matter of **claims 1-11** is therefore not inventive.

The applicant is requested to use the problem-solution-approach.

When filing amended claims, the applicant is requested to clearly identify the amendments carried out, irrespective of whether they concern amendments by addition, replacement or deletion, and to indicate the passages of the application as filed on which these amendments are based.

If the applicant regards it as appropriate these indications could be submitted in handwritten form on a copy of the relevant parts of the application as filed.