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Anmelde-Nr
Application No. 06 771 198.6
Demande n°

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

Description, Pages

1-75 as published

Claims, Numbers

1-11 filed in electronic form on 02-12-2012

Drawings, Sheets

1/5-5/5 as published

Basis of the opinion

subject-matter

Claim 1 An **allium related compound for use in a method of treatment of a skin condition**, wherein the **compound is bound to a dermatologically acceptable carrier** suitable for **topical** application to the skin, and the treatment comprises topical application of said compound to the skin, *and wherein the allium related compound is di-n-propyl disulfide, allyl mercaptan, diallyl disulfide or n-propyl allyl disulfide*

d2 of claim 1 or claim 2, wherein said skin condition is an **inflammatory condition**

d3 of any one of the preceding claims, wherein said skin condition is an **insect bite, dermatitis from poison oak or poison ivy, or sunburn**

d4 of claim 1, wherein said skin condition is **arsenicosis**

d5 of claim 1, wherein said **treatment is for reducing free radical damage** to the skin and said allium related compound and carrier are applied to the skin **for use as an anti-oxidant agent**

d6 of claim 1, wherein said treatment is for a **microbial condition**

d7 of claim 7, wherein said microbial condition is a **bacterial infection, a fungal infection, onychomycosis, or a viral infection**

Claim 8 An allium related compound for use as a deodorant agent, wherein the compound is bound to a dermatologically acceptable carrier suitable for topical application to the skin and the **treatment** comprises topical application of said compound to the skin, *and wherein the allium related compound is di-n-propyl disulfide, allyl mercaptan, diallyl disulfide or n-propyl allyl disulfide*

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Claim 9 Use of an allium related compound for use as a deodorant agent, wherein the compound is bound to a dermatologically acceptable carrier suitable for topical application to the skin, *and wherein the allium related compound is **di-n-propyl disulfide, allyl mercaptan, diallyl disulfide or n-propyl allyl disulfide***

Claim 10 A **therapeutic skin composition or deodorant** comprising an **allium related compound** bound to a **dermatologically acceptable carrier** suitable for **topical** application to the skin, *and wherein the allium related compound is **di-n-propyl disulfide, allyl mercaptan, diallyl disulfide or n-propyl allyl disulfide***

Claim 11 A **method of making a therapeutic skin composition or deodorant**, comprising binding an allium related compound to a dermatologically acceptable carrier suitable for topical application to the skin, *and wherein the allium related compound is **di-n-propyl disulfide, allyl mercaptan, diallyl disulfide or n-propyl allyl disulfide***

I. Amemendments **Article 123(2) EPC**

Into independent claims 1, 8, 10 and 11 the more specific definition "*wherein the allium related compound is **di-n-propyl disulfide, allyl mercaptan, diallyl disulfide or n-propyl allyl disulfide***" of the "allium related compounds" has been introduced. Basis therefore present i.a. the previously dependent claims 2, 10, 12, and 14.

A new independent claim 9 has been added (based on previous claim 9 as well as original claim 19).

Previous claims 15-19 have been deleted as relating to another invention (cf. previous non-unity objection).

These amendments are considered to fulfil the requirements of Article 123(2) EPC.

II. Prior art **Article 54 (2) EPC**

According to the Guidelines C-IV 5.3 the following documents are introduced into the proceeding:

D7 XP027154397 Nov 2004 Demeule et al. [Y]

Diallyl disulfide, a chemopreventive agent in garlic, induces multidrug resistance-associated protein 2 expression

D8 XP027436292 1998

Fanelli et al.

[Y]

Antioxidative stress properties of some **garlic components** diallylsulfide;
diallyldisulfide; allyl mercaptan and allylmethyl sulfide

III. Third Party Observation Article 115 EPC

A Third Party observation has been received on 27th December 2011 (letter of 15th Dec 2011) which makes reference to five documents, whereby Exhibits 3-5 appear to relate to the presently claimed subject-matter. The Third Party considers these documents novelty and inventive step destroying.

IV. Novelty Article 54 EPC

Although the claims have been limited to the specific allium-related compounds di-n-propyl disulfide, allyl mercaptan, diallyl disulfide or n-propyl allyl disulfide the previously cited documents are still considered novelty destroying, since it is evident that natural vegetables from the allium family, like garlic and onion, comprise the claimed agents (cf. apart from D6 as further examples D7 and D8). Thus by using the crushed vegetables or extracts thereof in the claimed conditions, these documents anticipate novelty. This is even more valid for product claims and/or the method of preparation claim.

V. Inventive Step Article 56 EPC

Equally, as stated above, since the agents now claimed are known components of the more generally used vegetable forms, the only possibility to prove an inventive step in the form of a selection invention of more specific agents is by showing an unexpected, surprising effect.

VI. Clarity Article 84 EPC

The wording of independent claim 8 appears to be inconsistent. It seems to refer to a product claim (of a deodorant) but at the same time to a "treatment", cf. "*wherein the treatment comprises*".

In any way it is pointed out that claims with a wording directed to a "method of treatment" fall under the exclusion of Article 53 c) EPC in combination with Article 54 (4) EPC. Claims directed to a (further) medical use are only acceptable if they are in accordance with the wording set out in the Article 54(5) EPC, viz. "composition **for use** in the treatment of ...". Thus, **claim 8** should be amended in order to satisfy the provisions for patentability.

VII. Other Matter

In the further prosecution of the application, failure to file an amended set of claims which complies with the EPC, or to submit convincing arguments as to why the current set of claims does in fact comply with these provisions, may lead to oral proceedings and in its course to the refusal of the application under Article 97(2) EPC.

When filing amended claims the applicant should at the same time bring the description into conformity with the amended claims. Care should be taken during revision, especially of the introductory portion and any statements of problem or advantage, not to add subject-matter which extends beyond the content of the application as originally filed (Article 123(2) EPC).

In order to facilitate the examination, the Applicant should 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 (Guidelines H-III, 2.2). Preferably, these indications should be submitted in handwritten form on a copy of the relevant parts of the application as filed.