

Datum
Date 24.04.2014
Date

Blatt
Sheet 1
Feuille

Anmelde-Nr:
Application No: 06 798 469.0
Demande n°:

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

Description, Pages

1-26 as published

Claims, Numbers

1-5 received on 24-01-2013 with letter of 24-01-2013

Amendments (Art.123(2) EPC)

The present set of claims appears to fulfil the requirements of Art.123(2) EPC.

Novelty (Art.54 EPC)

The Applicant tries by the reformulation into a "pseudo-medical-use" format to overcome the novelty objection raised by the ED following the Third Party Observation. However, neither is the new claim set allowable under the provisions of Art.84 EPC nor does it overcome the novelty objection. In fact, the claims are still related to the use of kappa-casein per se. Moreover, neither the origin of the kappa-casein, whether it has been isolated and/or purified nor the precise formulation of the kappa-casein has been disclosed. To this end, the claim is directed to the use of kappa-casein only, including naturally occurring kappa-casein as e.g. comprised in buttermilk.

In a further aspect, if at all a medical application is derivable from present claims 1, 2, 4 and 5, the claims are not acceptable under Art. 84, EPC because the therapeutic application is functionally defined by a mechanism of action which does not allow any practical application in the form of a defined, real treatment of a pathological condition (disease) (C-IV, 4.8).

The Applicant's attention is further drawn to the fact that, the use of the terminology Diabetes in the presently claimed context, in particular in claim 3, is unclear. As there are at least two different forms of diabetes (Type I and II) the envisaged treatment using kappa-casein is for sure only suitable for certain, isolated forms of diabetes. It is e.g. not suitable for treatment of patients with insulin-receptor defects and the like. A general claim to the treatment of diabetes is therefore not clear (Art.84 EPC).

Conclusion

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After consultation and discussion in the ED, the members of the ED are of the unanimous opinion that a refusal of the application is to be expected.

The applicant has requested oral proceedings in the case of an unfavourable decision. Therefore, the next official action will be to summon to oral proceedings.

In order to avoid the costs associated with oral proceedings (Guidelines E-III, 4), the Applicant is reminded of the possibility to request a decision according to the state of the file (Guidelines E-X 4.4) open to appeal. The request should be submitted in written form and not contain any further amendments or arguments. If any further amendments or arguments are filed, oral proceedings will have to be held in case of the absence of the applicant.