

Datum
Date 01.08.2014
Date

Blatt
Sheet 1
Feuille

Anmelde-Nr.
Application No: 10 004 584.8
Demande n°

1. As conditionally requested by the Applicant, oral proceedings will be held (Art. 116 (1) and (3) EPC).

2. The present application is based on the following documents:

Description, Pages

1-116 as originally filed

Claims, Numbers

1-5 filed on 30-04-2013

Drawings, Sheets

1-18 filed with telefax on 04-08-2010

3. The proceedings will deal with the conformity of the present application to the EPC, especially Art. 76 (1), 123 (2) and 52 (1) EPC. More specifically, the preliminary and non-binding opinion of the Examining Division at the present stage of the proceedings is that the application presents the following deficiencies:

- **Art. 76 (1) EPC:** the only basis in the originally filed parent application, where the combination of features of claim 1 is recited, seems to be p.3-5 and "aspects" 5 on p. 111, as well as 11-12 on p.113. However, these also require the fats, carbohydrates and proteins to be "provided substantially in a 1:1:1 ratio". The passages on p.7 can not serve as a suitable basis, since the further ingredients listed under (d) and (e) of present claim 1 are not mentioned. On the other hand, the further "aspects" on p. 110-116 which also mention carbohydrates disclaim of the 30:30:40 ratio. That disclaimer is not present in any of the present claims. Lastly, the selection of a touchi extract and one of the further actives listed under (e) of the present claims can only be considered to amount to a single selection, if it is combined with a disclosure in one piece of the protein/fat/carbohydrate presence in the desired ratio. Thus, if present independent claim 1 were considered supported by the various passages on p.3-5 and p.7, it would amount to multiple selections. Thus, claims 1-5 appears to not meet the requirements of Art. 76 (1) EPC.

- **Art. 123 (2) EPC:** the current issue is identical to that of Art. 123 (2) EPC

- Art. 52 (1) EPC: Novelty (Art. 54 (1-2) EPC) and inventive step (Art. 56 EPC): since the claims do not appear to meet the requirements of both Art. 76 (1) and 123 (2) EPC, it does not appear needed to address that issue. Nevertheless, in order to help the Applicant the following opinion is provided:

- Novelty: the claimed subject-matter appears new (Art. 54 (1-2) EPC);

- Inventive step: The antihyperglycaemic effect of touchi extract are well-known (D1-D3). This is also true for the compounds listed under (e) of independent claim 1 (see D4-D17). The potential benefits of diets such as the Atkins, Zone, Weight Watchers and Ornish regimes for cardio-vascular health are also known (see D21, D22). The present application does not appear to attribute any synergistical effect to that combination, which therefore merely amounts to a juxtaposition. Thus, at this stage it is considered that the subject-matter of the present application does not involve an inventive step (Art. 56 EPC).

- Third Party's observations: the documents and arguments submitted on 16.05.2014 do not appear more relevant than those on file. In any case, they disclose neither the fat/protein ratio nor the touchi extract required by the present claims. They might however have to be considered for some of the ingredients listed under (e) of present claim 1.

4. Additional comments, information or further requests should be done in agreement with the requirements of R.116a (1) EPC, i.e. not later than the final date provided on the EPO form to which that communication is attached.