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Your Ref: 19259/U3526/JGC/ck

Examiner's report no. 2 on patent application no. 2009220028
by Mannatech, Inc.

Last proposed amendment no.

Dear Madam/Sir,

Thank you for the reply of 30 March 2012 to the last report. I have considered it and believe that there are lawful grounds of objection to the application. These grounds of objection are:

5. Objection number 1 is maintained from the first examination report.

Objection(s) 6 of my report is based on the same grounds objected to in the examination of patent application 2004268233. **Please note that if a response overcoming those objections is not filed within two months of the date of this report the Commissioner will consider whether to direct amendment of the application under section 107 or proceed to refuse the application under section 49(2) of the Act.** If intending to proceed under either of these provisions the Commissioner will notify you in writing and indicate the time and place you may be heard on the matter. In deciding the matter the Commissioner will consider all possible grounds of objection to the application not only those identified below.

The attorney's submission has been considered and found to be non-persuasive. The attorney has requested removal of the case management approach for this application as the same grounds were not examined in the parent application. Pursuant to the Patent Manual of Practice and Procedure 2.10.11, the same grounds were examined, it is stated that:

"An objection is raised in the first report on the divisional application for the same or substantially the same reason as an objection was raised in the report on the parent or other ancestor. In this regard it is the existence of the same grounds for objection that is significant rather than the wording or statutory basis of the objection used. (This includes an objection that there is no Notice of Entitlement even when that was the only objection raised in relation to the relevant ancestor application.)"

The manual specifically states that an objection to no Notice of Entitlement is grounds for a case management approach. Both the parent application and divisional application had an objection to no Notice of entitlement and therefore a new case management timeline of two months from the date of this report is now set.

6. Objection number 2 is maintained from the first examination report.

There is no Notice of Entitlement on file. You will need to file one because an application without a Notice of Entitlement cannot be accepted.

7. Objection number 3 is maintained from the first examination report.

The invention defined in independent claim 1 is not novel (and does not involve an inventive step) when compared with the following prior art documents¹ that disclose all the essential features of the invention claimed:

D1: US 2004/0258674 A1#

D2: US 2005/0244518 A1#

D3: US 2009/0011048 A1#

D4: WO 2003/074067 A1#

D5: Bharata Bhaisajya Ratnakara - Compiled by Naginadasa Chaganalala Saha, translated by Gopinath Gupta - Vol-IV : B. Jain Publishers, New Delhi, Edn. 2nd. Reprint, August 1999, Pg 262-263*

D6: Vangasena - Commentator Shaligram Vaisya, Edited Shankar Lalji Jain; Khemraj Shrikrishna Das Prakashan; Bombay, Edn. 1996 Pg 252*

D7: Mahendra Bhaugika; Dhavantarinighantauh - Edited by P.V. Sharma; translated by Guru Prasad Sharma; Chaukhambha Orientalia, Varanasi, Edn. 3rd, 2002, Pg 68*

¹ #As cited in an original Australian search, *As cited in S27 search results (from the traditional Knowledge Digital Library)

D8: Madhavah; Vrndamadhava; - Marathi translated by Datto vallala Borkar; Yagyewara Gopal Dixit, Bookseller, Pune; Edn. 1922, Pg 686*

D9: Yugi; Yugi karisa 1151, Ed: Rathna Mudaliar, Pub: Mangalam Shunmuga mudaliar, Chennai (1920), Pg 41*

Note: The description at page 15, lines 3-11 states that the isolated purified lipophilic and lipophobic anti-oxidants of the invention will have an anti-oxidant ORAC (fl-lipo) value greater than 7000 μMol 6-hydroxy-2,5,7,8-tetramethylchroman-2-carboxylic acid (Trolox) Equivalents (E)/gram. Therefore pursuant to claims 1 and 16, the presence of said antioxidants will inherently have an oxygen value greater than 6000 μMol 6-hydroxy-2,5,7,8-tetramethylchroman-2-carboxylic acid Equivalents (TE)/gram.

D1 discloses a nutritional supplement comprising quercetin, vitamin E and sugars including glucose (essential saccharide), lactose and sucrose (see [0038]-[0042]). Therefore independent claim 1 is not novel and does not involve an inventive step in light of the disclosures of D1.

Furthermore the features added by dependant claims 2-15 are considered to be either disclosed, or not inventive in light of D1 as it would be obvious to the person skilled in the art to arrive at the claimed invention by standard techniques and options known in the art.

A similar objection applies to each of D2-D9 as they disclose similar subject matter to D1 and are also relevant citations for the purposes of novelty and inventive step.

8. Objection number 4 is maintained from the first examination report.

The invention defined in independent claim 16 does not involve an inventive step when compared to the disclosure of prior art document¹:

D1: US 2004/0258674 A1#

Independent claim 16 is directed toward a dietary supplement comprising two or more essential saccharides an isolated and purified lipophobic and lipophilic oxygen-radical

¹ #As cited in an original Australian search, *As cited in S27 search results (from the Traditional Knowledge

quencher, with an oxygen radical quencher value greater than 6000 μMol 6-hydroxy-2,5,7,8-tetramethylchroman-2-carboxylic acid Equivalents (TE)/gram.

D1 discloses a nutritional supplement comprising quercetin, vitamin E and sugars including glucose (essential saccharide), lactose and sucrose (see [0038]-[0042]). D1 does not disclose two or more essential saccharides only glucose and other sugars in the supplement. It would be obvious to the person skilled in the art with a positive expectation of success to administer two essential saccharides and not just one given that they are administering other sugars in the supplement.

Therefore the person skilled in the art would directly and without difficulty, by routine steps, arrive at a solution which is the same as the claimed solution, and therefore the claimed invention lacks an inventive step.

Furthermore the features added by dependant claims 16-22 are considered to be not inventive in light of D1 as it would be obvious to the person skilled in the art to arrive at the claimed invention by standard techniques and options known in the art.

NOTE: There is a current postponement of acceptance in place. If you overcome all other objections before the expiration of that postponement, the Commissioner will only accept the application at that time if you have filed a clear and unambiguous statement requesting the withdrawal of that postponement. Otherwise, a further adverse report will be issued.

You have until 19 December 2013 to overcome all my objection(s) otherwise your application will lapse.

You will need to pay a monthly fee for any response you file after 12 months from the date of the first report.

You will also need to pay any annual continuation fees that apply. These will normally be first due five years from the filing date. Please note however that earlier commencement dates apply for divisional applications.

Information about fees may be obtained by phoning 1300 651 010.

Yours faithfully,

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