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Blatt
Sheet 1
Feuille

Anmelde-Nr:
Application No: 09 760 382.3
Demande n°:

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

Description, Pages

1-14 as originally filed

Description, Paragraphs

28 received on 29-02-2012 with letter of 28-02-2012

Claims, Numbers

1-20 received on 29-02-2012 with letter of 28-02-2012

Drawings, Sheets

1/4-4/4 as originally filed

1 Reference is made to the following documents; the numbering will be adhered to in the rest of the procedure. Unless otherwise indicated, reference is made to the relevant passages emphasized in the European/International Search Report.

1.1 **D1-D7** have already been mentioned in the WOISA.

1.2 **D8**: US 2006/0024248 has been cited by the International Preliminary Examining Authority.

1.3 The third-party observation received on 10.05.2012 pursuant to Art. 115 EPC, in particular documents D9-D14 call into question the patentability of the subject-matter claimed for the reasons given below. Thus, documents D9-D14 will be taken into account in the proceedings (Guidelines E-V, 3).

D9: Traditional Knowledge Digital Library (TKDL) Formulation ID: RG13/29C

D10: TKDL, Formulation ID: MH5/720

D11: TKDL, Formulation ID: NA4/248A

D12: TKDL, Formulation ID: RS15/476

D13: TKDL, Formulation ID: AA27/5G1

D14: TKDL, Formulation ID: RS6/112

- 1.4 D15 and D16 are cited by the Examiner. A copy of the documents is annexed to the communication.
- D15:** TKDL, Formulation ID: ME02/167
- D16:** TKDL, Formulation ID: KS01/110
- 2 The amendment filed with the letter dated 28.02.2012 introduces subject-matter which extends beyond the content of the application as filed, contrary to Article 123(2) EPC. The amendment concerned is the following:
- The originally filed application documents as filed do not disclose "a method of causing an increase in oral moisturization" nor "a method of causing oral moisture levels to increase" nor "an oral care product to increase oral moisture levels" nor "an oral care product to increase oral moisturization". Therefore, claims 1, 10, 11, 16, 20 are not allowable.
- Further, the originally filed application documents do not disclose a composition comprising extract from citrus fruit at a concentration of equal or less than 1 wt% or 0,1 wt% of the composition. Such concentrations have only been disclosed in connection with a proanthocyanidin and/or grape seed extract, see par. 14. Therefore, claims 5, 6, 14 are not allowable.
- Finally, the originally filed application documents do not disclose a composition comprising extract from citrus fruit and grape seed extract in a weight ratio of 9:1. Originally filed paragraph 28 discloses rather the opposite weight ratio, namely lemon extract and grape seed extract in a weight ratio of 1:9. Further, this originally disclosed weight ratio refers solely to lemon extract, and not to citrus fruit extract in general. Therefore claims 7 and 15 and the amended paragraph 28 of the description are not allowable.
- 3 The subject - matter of claim 1 concerns a method of treatment of the human or animal body by surgery or therapy or a diagnostic method practised on the human or animal body, which is excluded from patentability (Article 53(c) EPC).
- It appears that claim 1 could also relate to presentation of information. Such subject-matter is also excluded from patentability according to Article 52 (2)(d) EPC.
- 4 The multiplicity of independent claims 10 and 16 in the same category contravenes Article 84 EPC in combination with Rule 43(2) EPC (see also Guidelines F-IV, 3.2-3.5). Since the number of independent claims should be

limited to one independent claim in each category, the composition should be defined by one independent claim only which is followed by dependent claims defining more specific embodiments.

The same applies, mutatis mutandis to claims 1 and 20.

- 5 The present application does not meet the requirements of Article 52(1) EPC, because the subject-matter of independent claims 1, 10, 16, 20 is not new in the sense of Article 54(1) and (2) EPC.

D15 and D16 disclose a product for oral administration (D15: a pill, D16: thick sweet semisolid preparation) comprising lemon and grape. They disclose that extracts of said fruits are used, since they indicate that decoctions or juices are used. The medicines are effective against dryness of mouth (D15), respectively tastelessness (D16), i.e they are products which are suitable for oral care.

Therefore, D15 and D16 anticipate the subject-matter of independent claims 10, 16 and 20.

Claim 1 does not appear to be novel, either: As soon as the aforementioned composition is used by a patient, the effect against dryness of mouth is obtained, which can be regarded as a test result. Providing the composition associated with this test result appears to be implicit.

- 6 Being not new, the subject-matter of independent claims 1, 10, 16, 20 cannot be considered as involving an inventive step. Nevertheless it is added that - apart from D15 and D16 - absence of an inventive step could also be shown in view of D8-D14:

D8 discloses oral compositions comprising lemon extract and/or proanthocyanidin-containing plant extracts such as cinnamon extract for treating hyposalivation (claims 1, 6-8).

D9-D11 disclose oral compositions comprising grape, resp. its extract, for treating hyposalivation and associated symptoms. D12-D14 disclose oral compositions comprising lemon, resp. its extract, for treating hyposalivation and associated symptoms.

Therefore, it is obvious for a person skilled in the art to use combinations of said plants, resp. extracts, to treat hyposalivation.

- 7 The dependent claims do not appear to contain any additional features which, in combination with the features of any claim to which they refer, meet the requirements of the EPC with respect to inventive step. The features claimed in these dependent claims represent matters of common practice to a skilled

person; as such, they represent mere known alternative embodiments to the compositions / therapy in question. In the absence of any indication as to a (further) technical effect being obtained by these features, the claims concerned lack an inventive step.

- 8 It is not at present apparent which part of the application could serve as a basis for a new, allowable claim. Should the applicant nevertheless regard some particular matter as patentable, an independent claim should be filed taking account of Rule 43(1) EPC. The applicant should also indicate how the subject-matter of the new claim differs from the state of the art and the significance thereof.