OLARTERAISBECK. OLARTE RAISBECK MOURE & CASTRO LTDA.

Seæores
SUPERINTENDENCIA DE 1NDUSTRIA Y CO’T’’ SUPERINTENDENCIA DE I
DIVISION DE NIJEVAS CREACIONES i.umimiiuiiThIUIl E. S.
Fecha: 2009-03-02 16:37:15
Tm. 2 PATENTES
Act. 412 REPOSPRESRECU
Re: Expediente No. 01-003045

Solicitud de patente titulada: "COMPOSICIONES Q
DROSPERINONA MICRONIZADA EN COMBIN. ESTROGENO PARA TERAPIA DE REEMPLAZO Solicitante: SCHER1NG AKTIENGESELLSCIIAFT.

RECURSO DE REPOSICION

;Follos:

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J. IAN RAISBECK, mayor de edad y vecino de Bogota, identificado tal como aparece al pie de mi firma, en mi catheter de apoderado de la sociedad solicitante, por medio del presente escrito, y dentro del tØrmino legal previsto por el artIculo 51 del Código Contencioso Administrativo, me permito interponer RECURSO DE REPOSICION en contra de la Resolución No. 4780, notificada por edicto desfijado el 23 de Febrero de 2009.

1. ANTECEDENTES

La solicitud de patente correspondiente a este expediente contiene un capItulo reivindicatorio con 15 reivindicaciones que fue radicado ci 16 de noviembre de 2006, en respuesta al primer estudio de fondo expedido por la Superintendencia de Industria y Comercio (SIC) ci 13 de julio de 2006. SegUn la Resolución No. 4780, dicho capItulo reivindicatorio no cumpie con el requisito de nivel inventivo.

2. OBJETO DEL RECURSO

Que se revoque la Resolución recurrida, y en su lugar se conceda el privilegio de patente de invención para las reivindicaciones pendientes de la presente solicitud, o en su defecto aquellas reivindicaciones que cumplan con los requisitos de patentabilidad.

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DEL RECURSO

Con referencia a los argumentos presentados por la SIC para desvirtuar ci nivel inventivo de
la presente solicitud en la Resolución aqul recurrida, respetuosamente difiero del anÆlisis expuesto, y procedo a dar respuesta a cada uno de dichos argumentos, exponiendo las motivaciones tØcnicas que desvirtüan completamente la posición de ese Despacho.

3.1 a- La SIC estabiece que los documentos WO 95/07081 (Dl) o WO
98/27929(D2) en combinación con ci documento Farmacia Remington (D3) afectan el nivel inventivo de presente invención. El Examinador indica que la iinica diferencia entre las composiciones divulgadas en WO 95/07081 (Dl) y WO 98/27929 (D2) y la presente

,Th invención es que las primeras no describen a la drospirenona en forma micronizada.

El Examinador sostiene que proveer composiciones de drospirenona-estrógeno con biodisponibilidad mejorada gracias a la micronización de la drospirenona es una derivación evidente del estado de la tØcnica, pues una persona medianamente versada en formulación tomarla las composiciones de Dl o D2 y procederia a disminuir ci tainaflo de partIcula del principio activo, tal como lo ensefia ci documento D3, con una alta expectativa de que la drospirenona aumentara su biodisponibilidad. En atención a ello, ci Examinador conciuye que no existe efecto mejorado o sorprendente mostrado por ci solicitante con respecto a lo enseflado en ci estado de la tØcnica, ya que era de esperarse que la drospirenona aumentara su velocidad de absorción gastrointestinal y, por ende, su biodisponibilidad, gracias a la disminución del tamaflo de partIcula.

b- i) El solicitante considera respetuosamente que ci Examinador no
ha comprendido, o bien ha hecho un anÆlisisconfuso del problema tØcnico que se propon2J ’ resolver ci presente invento. Por un lado, ci Sr. Examinador sostiene, en ci punto 1 de su Rcsolución, "que ci problema tØcnico planteado es la neccsidad de cncontrar composiciones para ci reemplazo de hormonas para mujercs en etapa pen- y post-menopÆusica.",mientras que, por ci otro lado, ci Examinador reconoce en ci punto 3 de su Resoiución (bajo ci tItulo de "Nivel Inventivo") que "el objeto de la solicitud es proveer composiciones de drospirenona-estrógcno con biodisponibilidad mejorada...".

El solicitante quiere resaltar que ci problema a resolver por los presentes inventores era ci de mejorar la biodisponibilidad oral de las composiciones farmacØuticas que contienen drospirenona.

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PLsiión ailleste problema se logra proporcionando la drospirenona en forma micronizada. \

La pregunta decisiva a responder es Si esta soiución es sorprendente y Si ci tØcnico en la
materia habrIa estado motivado a sugerir esta solución (micronización) a este probiema particular (aumentar la biodisponibilidad oral).

Tal como se demuestra a continuación, el Examinador ha cometido errores significativos en su anÆiisis del mØrito inventivo al interpretar erróneamente los datos experimentales proporcionados por el solicitante e ignorar los documentos importantes y muy relevantes del arte previo que ci solicitante adjuntó a sus respuestas anteriores.

ii) En cuanto al anÆlisis de patentabilidad, ci Solicitante coincide con ci
Examinador en que tanto ci documento Dl (WO 9507081) como ci documento D2 (WO 9827929) constituyen ci arte previo mÆs cercano. El solicitantetambiØn comparte la opinión del Examinador respecto de que la diferencia entre ci preSente invento y las composiciones de los documentos Dl y D2 se basa en que ninguno de los documentos Dl y D2 divuiga la drospienona en forma micronizada.

Sin embargo, ci solicitante no comparte en absoluto la opinion del Examinador/especto de si hubiera sido obvio o no micronizar la drospirenona con la expectativa de obtener una biodisponibilidad aumentada del fÆrmaco.

Es correcto que ci documento Remington Farmacia (D3, citado en la resoiuciOn de negaciOn) ensefia que la disminuciOn del tamaflo de partIcula conduce a un aumento de la disoiuciOn (es decir, la velocidad a la que se disuelve ci fÆrmaco),y que para ciertos fÆrrnacos esto ha producido un incremento en la biodisponibilidad.

Sin embargo, ci Examinador ignorO completamente las ensefianzas de Bauer y Auiton k,

(documentos que ci solicitante adjuntó a sus rcspuestas de fecha 26 de diciembre de 2007 y2 de diciembre 2008, respcctivamente). Estos dos libros de texto cnsefian que deberia evitarse
la reducción del tamaufo de partIcula (y, por consiguiente, una disoiución rÆpida) de los fÆrmacos inestables(o lÆbiles) en medio Æcido, puesesto conducirla a una disminución de la biodisponibilidad. Desde ci punto de vista del solicitante, ci Sr. Examinador reaiizó un anÆlisis errOneo debido aque ignorO compietamente estas dos referencias del arte previo.

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Tor ejemplo, e4 el libro de texto "Pharmazeutische Technologie" de Bauer y colaboradores, 1993 (las pÆgiias relevantesde este libro se adjuntaron al escrito del solicitante de fecha 26 de diciembre de 2007) se menciona lo siguiente:

"En el caso de muchos compuestos quimicamente inestabies en ci estómago, un proceso demasiado rÆpido dedisoiución puede conducir a una biodisponibilidad disminuida ".

Una ensefianza similar se desprende del libro de texto editado por Aulton que se titula "Pharmaceutics: The Science of Dosage Form Design"; 1988 (las pÆginas correspondientes se adjuntaron al escrito del solicitante de fecha 2 de diciembre 2008):

"Aigunosfarmacos tales como la penicilina G y la eritromicina son inestables en losfluidos gÆstricos. For consiguiente, si tal farmaco no se disueive rÆpidamente en los fluidos gÆstricos, se minimizarÆ sudegradación qulmica. Asi, la reducción del tamaæo de partIcula no solo produciria un aumento de la velocidad de disoiuciOn de la droga en el fluido gÆstrico, sino que tambiØn producirla un incremento en ci grado de degradaciOn del fÆrmaco. Esto resuitarIa en una disminución de la cantidad de fÆrmaco intacto que se encuentra disponibie para la absorción en ci intestino delgado."

Asimismo, y para el caso particular de la drospirenona, la publicación de Nickisch y colaboradores (esta publicación en idioma alemÆny su traducción al castellano se adjuntaron al escrito del solicitante del 26 de diciembre de 2007) describe el reordenamiento de la drospirenona para formar un isómero inactivo en condiciones Æcidas, tales como las que predominan en el estómago. Esta información tambiØn era conocida antes de la fecha de prioridad de la presente solicitud de patente. En particular, en la pÆg. 5463, ültimas dos lmneas, de la publicaciOn de Nickisch y col. se menciona lo siguiente:

"Asi, por iratamiento de]. con Æcido ciorhidrico 0.1N a temperatura ambiente y en un iapso de 3 horas se pudo transformar ci compuesto L en una mezcla 8:2 formada por 2 y j (el compuesto L se refiere a la drospirenona)"

La inestabilidad de la drospirenona en medio Æcido tambin se encuentra descrita en la, solicitud intemacional WO 98/06738 (que se adjuntO al memorial de fecha 26 de diciembre de 2007, junto con su patente equivalente US 6,121,465), en cuya pÆgina 7, linea 26, hasta su pÆgina 8, linea 6, se divulga lo siguiente (equivalente a la pÆgina 4, columna 5,tercer pÆrrafo de lapatente US 6, 121,465):

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base a ensayo propios se sabe que la drospirenona puede descomponerse por la abción de un Ædo onforme a dos caminos de reacción. For un lado, la drospirenona se trdnsforrnaf4iiimenje en condiciones Æcidasen su isolactona epImera ZK 35096."

ZK 35096

Por consiguiente, la persona versada en la materia sabfa a partir de la pubiicación WO 98/06738 que la drospirenona se transforma fÆcilmente en ci isómero (terapØuticamente inactivo) indicado mÆs arriba.

AsI, si bien la micronización era una tØcnica disponibie para ci tØcnico en la materia a la fecha de prioridad de la presente solicitud de patente, el tØcnico en la materia no habria)t considerado la micronización como una tØcnica adecuada en ci caso de la drospirenona.

Por consiguiente, existen al menos dos documentos del arte previo (Nikisch et al. y WO 98/06738) que describen la labilidad en medio Æcido dela drospirenona. AdemÆsera bien sabido a partir de los libros de texto de conocimiento general (libros de texto de Auiton y Bauer) que se deberia evitar la disoiución rÆpida (producida, por ejemplo, por micronización) de un fÆrmacoadministrado por via oral si dicho fÆrmaco no esestable en las condiciones que imperan en ci estómago. Los fÆrmacos y hormonas previamente micronizadas eran totalmente estabies en medio Æcido,por lo que la degradación por Æcidos no constitufa un probiema para estas molØculas. Queda ciaro entonces que ci arte previo no proporciona ninguna inlormación que hubiera motivado al tØcnico en la materia a proporcionar la drospirenona en forma micronizada con la esperanza de incrementar su biodisponibilidad cuando es administrada por via oral.

En lo que respecta a los datos in vitro (estos datos fueron adjuntados a la respuesta del solicitante del 16 de noviembre de 2006), ci solicitante quiere destacar, con todo respeto, que ci Examinador ha interpretado los resultados de manera muy particular y ha arribado a

una conclusion errónea.

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Etos datos dmuestran ciaramente que la drospirenona se disuelve significativamente mÆs
fikk (aI cömo era de esperar) cuando es proporcionada en forma micronizada que cuando
es proporcionada en forma no micronizada.

AdemÆs, estos datos, que simulan las condiciones de pH en el estómago y el intestino
delgado, resaltan el efecto perjudicial que ejerce la micronización en la estabilidad de La drospirenona en un medio Æcido. Tal comose muestra en la Figura 3, ci tØcnico en la materia habrIa concluido que si la drospirenona es proporcionada en forma no micronizada, la cantidad de drospirenona activa eventuahnente disponible para la absorción en el sistema intestinal es significativamente mayor (aproximadamente el doble) que si es proporcionada en forma micronizada. En base a estos datos, el tØcnico en la materia no se habria sentido motivado para desarroliar una forma de dosiflcación oral que contiene drospirenona micronizada. MÆsbien habria concluido (o bien habrIa confirmado su idea original basada en ci arte previo) que la micronización de la drospirenona conduce a una disminución de la biodisponibilidad oral de esta droga.

Asimismo, ci soiicitante quiere opinar respecto del comentario que ci Sr. Examinador hace al final del punto 4 de la resoiución de negación, en donde expresa lo siguiente: "...la solicitud no soluciona elproblema de la inestabilidad de la drospirenona en medio Æcido, puesen los datos que se adjuntan se aprecia claramente que la drospirenona sigue descomponiØndose en el isómero activo apesar de la micronización ".

El soiicitante ha quedado perplejo y confundido ante este argumento. Pareciera que ei / Exaniinador estÆbarajando los datos aportados por ci soiicitante de manera tai de austar1os(It a su argumentación.

Tal como se explicO mÆs arriba, los datos in vitro que aportO el soiicitante en su respuesta del 16 de noviembre de 2006 simuian ias condiciones de pH que imperan en ci estómago y el intestino delgado. Es correcto que en base a esta simulación, ci tØcnico en la materia habrfa esperado que la drospirenona se isomerice en ci estómago y, por consiguiente, que se pierda sustancia activa, lo cual conduce a una biodisponibiiidad disminulda. Esto es lo que ci tØcnico en la materia habrIa esperado.

El soiicitante adjuntó datos in vivo (estos datos fueron adjuntados al escrito del solicitante de fecha 26 de diciembre de 2006 como ApØndice III) que muestran que cuando La drospirenona micronizada es administrada a pacientes humanas, su biodisponibiiidad aumenta bn aproximadamente un 30%, en comparación con la drospirenona no micronizada.,/ I

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Porconsiguiente, a pesar de que el arte previo (Bauer, Aulton, Nickisch; WO 98/06738) y ioidaios de la simulación in vitro aportados por ci solicitante indican que la drospirenona se destruye en ci medio Æcido que impera en ci estOmago, los datos in vivo indican sorprendentemente lo contrario. Este es el invento!

AdemÆs, la solubilidad en agua de la drospirenona es solamente de aproximadamente 10 tg/m1. Si consideramos que despuØs de la ingesta de una tableta que contiene una dosis de drospirenona de 0.25 a 4 mg (como la que se reivindica en la presente solicitud de patente) y de un vaso de agua (para acompaftar la ingesta de la tableta) ci contenido de fluido estomacal es de aproximadamente 200 ml, tal tableta se desintegrarÆ rÆpidamente formando una suspension de particulas (micronizadas) de drospirorenona. Al emplear partleulas micronizadas, la drospirenona se disolverÆcasi inmediatamente a fin de formar una solución saturada del fÆrmaco que contiene 200 ml x 10 pig/ml = 2000 pig, es decir, 2 mg de drospirenona disuelta, la cual se encuentra en condiciones de comenzar a isomerizarse. AsI, una cantidad significativa de la dosis de drospirenona estarla en peligro inminente de ser destruida a travØs de la isomerización, pues ya se encuentra disuelta en ci medio Æcido del estOmago.

En resumen, antes de la fecha de prioridad de la presente solicitud existian varios obstÆculos que debian ser superados por ci tØcnico en la materia a fm de arribar al presente invento. AdemÆs, ci tØcnico en la materia tendria que haber ignorado com1etamente algunas advertencias claras del arte previo (respecto de la idea de proporcionar la drospirenona en forma micronizada) a fm de arribar al presente invento, a saber:
Ningn documento del arte previo sugerla ci uso de drospirenona en forma

micronizada.

La micronización como herramienta para mejorar la biodisponibilidad oral de hormonas esteroides sOlo habia sido descripta para hormonas estables en medio Æcido tales como, por ejemplo, la progesterona y la espironolactona.
Existen al menos dos documentos del arte previo (Nickisch et al. y WO 98/06738)
que afirman claramente que la drospirenona es lÆbil en medio Æcido y se convierte fÆcilmente en su isOmero terapØuticamente inactivo en condiciones Æcidas, tales como las que imperan en ci estOmago.
El tØcnico en la materia sabia que una forma de dosificaciOn oral no puede evitar su exposiciOn al Æcido clorhldrico, pues un fÆrmaco administrado por via oral debe pasar a travØs del estómago (y residir allI durante un perlodo determinado).
El tØcnico en la materia habrIa esperado que la drospirenona micronizada se disuelva significativamente mÆsrÆpidoque la drospirenona no micronizada.

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Ertecnico en la materia habrIa esperado que se disuelva una fracción grande de la
dosis de drospirenona micronizada (0.25-4 mg) que, por consiguiente, se encontraria expuesta al Æcido clorhfdricoen el estómago
El tØcnico en la materia habria recurrido a sus conocimientos generales (tales como
los que se indican en el libro de Bauer y colaboradores y en el libro de editado por Aulton) y habrIa entendido que la disolución rÆpida de fÆrmacosiÆbiles enmedio Æcido administrados por via oral es problemÆtica.
Si a pesar de conocer la labilidad de la drospirenona en medio Æcido y de las advertencias de Bauer y col. y Aulton respecto de incluir compuestos lÆbiles en medio Æcido en formulaciones de liberación inmediata, el tØcnico en la materia aün se hubiera sentido motivado (hecho que niega ci solicitante) a experimentar con la drospirenona, habrIa lievado a cabo experimentos pre-clinicos entre los que se incluyen los ensayos de disoluciôn in vitro (tales como los que adjuntó el solicitante).
Al llevar a cabo ensayos de disolución in vitro que simulan las condiciones de pH y
el tiempo de residencia en el estómago y ci intestino delgado, el tØcnico en la materia habrIa entendido claramente que es de esperar que el uso de drospirenona micronizacia conduzca a una biodisponibilidad mÆsbaja que el uso de drospirenona no micronizada.

4. Finalmente, ci solicitante quiere destacar nuevainente que la presente solicitud colombiana ha sido concedida en numerosos paises entre los cuales se encuentra Peru que comparte la misma Icy de patentes que Colombia. Las carÆtulas dealgunas de las patentes concedidas (inciuyendo la carÆtula de lapatente peruana) fueron adjuntadas al memorial del solicitante de fecha 26 de diciembre de 2007.

Asimismo, el solicitante subraya que La patente europea correspondiente (EP 1 257 280), la cual se encontraba en pleno proceso de oposición, fue recientemente confirmada en Europa con reivindicaciones esencialmente similares a las actualmente presentadas en Colombia. Al presente memorial se adjunta copia en ingiØs de la minuta del proceso oral de oposición en Europa, copia de la Decision Escrita recientemente emitida por la Division Europea de Oposiciones y copia del pliego confirmado por la DivisiOn Europea de Oposiciones, junto con sus correspondientes traduccioncs al casteiian’o.

5. Para terminar, de conformidad con lo establecido en el articulo 59 del COdigo Contencioso Administrativo, solcito respetuosamente que todos y cada uno de los puntos pianteados en el presente recurso sean resueltos de manera individual, completa y motivada, respecto de las razones de hecho, derecho y/o conveniencia que ileven a esa Superintendencia a adoptar la decision que estime frente a la solicitud aqul formulada.

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6. N0TIFICACION

RecibirØ notificaciones en mis oficinas ubicadas en ci World Trade Center, Calle 100 No. 8A-37, Tone A, Piso 10, de Bogota.

Atentamente,

J. IAN RAISBECK
C.C. 79’376.996 de Bogota D.C.
T.P. 135.799 del C. S. de la J.

Anexos:

minuta del proceso oral de oposición en Europa;
copia de la Decision Escrita recientemente emitida por la DivisiOn Europea de Oposiciones, junto con su correspondiente traducciOn a espafiol;
copia del pliego confirmado por la DivisiOn Europea de Oposiciones, junto
con su correspondiente traducción a espafiol.

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patentamt European Patent Office L) 4 80298 MUNICH

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Application No.: 01 900 579.2

Patent No.: EP-B-1 257280

Minutes of the oral proceedings before the OPPOSITION DIVISION

The proceedings were public.

Proceedings opened on 11.12.2008 at 9.00 hours

Present as members of the opposition division:

Chairman: Economou, Dimitrios
1st member: Ansaldo1 M
. 2nd member Garabatos-Perera, J

Minute writer: Garabatos-Perera, J

Present as or for the party or parties:

For the Proprietor(s): Bayer Schering Pharma Aktiengesellschaft

K. Wagner
H. Rastrup Andersen
accompagnied by:
A. Funks
A. Brösamle

C. Noeske-Jungblut as proprietors

For the Opponent 1: LABORATORIOS LEON FARMA S.A.

P. Markvardsen
accompagnied
M. Salas
N. Toledo

The identity of the person/ (as well as, if applicable, that of the witness or witnesses) and, where necessary, the authorisation to represent,uthority to act were checked.

Essentials of the discussion and possible relevant statements of the parties:

EPO Form 2309.1 12.O7CSX

Datum Blatt Anmelde-Nr.:

Date * *CODINGDAVI’E * * Sheet 1 Appflcatlon No.: 01 90091’ AV

Date FeulUe Demande n°:

1. The Oral Proceedings before the Opposition Division on European Patent
1257280 wre opened at 9.05 am.

2. The chairman introduced the members of the opposition division and asked the
parties to submit their requests.

The opponent requested the revocation of the patent in its entirety on the grounds of Article 100(a) and (b) (lack of inventive step and Insufficiency of disclosure).

The patentee requested the rejection of the opposition and the maintenance of the patent based on the main request, or alternatively on the auxiliary request I, both filed with letter of the 9.10.2008.

3. The chairman then announced that document D36 ("Handbook of pharmaceutical
excipients, Fourth Edition, Edited by R.0 Rowe et al., Pharmaceutical Press, London 2003") filed by the patentee with letter dated 9.10.2008 was renumbered to D37.

4. The chairman opened the discussion on the admissibility of the main request with
respect to Rule 80 EPC and asked the patentee to explain the amendments.

The patentee declared that said amendments where introduced in order to overcome
a possible novelty objection in relation to D3.

The chairman asked the opponent whether he had any comments, but he replied in the negative. The chairman then announced that the main request was allowable under Rule 80 EPC.

5. The chairman opened the discussion on Article 83 EPC (sufficiency of disclosure)
with respect to the main request.

The opponent asked permission to Introduce document W02005/087194 into the proceedings.

After a break from 9.20 - 9.25 am, the chairman announced that the opponent’s request was not accepted.

The opponent then stated that claims 2, 15 and 28 of main request described the drospirenone formulations to be used merely by a functional definition

EPA Form 2908 12.07CSX

Datum

Date * *CODINGDATE* *
Date

Blatt Anmetde-Nr.: 10

Sheet 2 Appilcatlon No.: 01 900 9.
FeuHie Demande n°:

having a rapid dissolution such that at least 70 % ofsaid drospirenone is dissolved
in 30 min when the composition is subjected to dissolution testing in 900 mL of water
at 30°C using USPXXIII Paddle Method operated at a stirring rate of50,pI7l’) which covered any possible rapid dissolution formulation. Furthermore, he stated that the opposed patent had no experimental evidence on how to prepare formulations having the claimed dissolution parameters. Accordingly, this functional definition without any guidance did not allow the person skilled in the art to obtain a drospirenone formulation having the required dissolution rate without undue effort.

The patentee replied that the person skilled In the art would have known without undue burden how to prepare drospirenone formulations having the required dissolution rate from the information disclosed in the application as filed (see application as originally filed: paragraphs 38-39 and 43) or, alternatively, from his common knowledge (see D15: page 591, right-hand column).

The chairman then asked the patentee whether claim 2 (and claims 15 and 28) covered drospirenone formulations having a rapid dissolution withput comprising micronized drospirenone and the patentee answered inthe positive.

After a break from 9.50 - 10.42 the chairman Informed the patentee that the opposition division had doubts on the compliance of the main request with Article 123(2) and asked him to indicate the basis in the application as originally filed for non-micronized drospirenone formulations;

The patentee answered that basis for such formulations could be found In the application as filed, e.g. page 7, lines 15-35; page 8, lines, 28-33; page 15, lines 7-24.

The chairman asked the opponent whether he had any comments, but he replied in the negative. The chairman then announced that the subject-matter of the claims according to the main request fulfilled the requirements of Articles 123(2) and 83 EPC.

6. The chairman opened the discussion on Article 54 EPC with respect to the main request.

The opponent had no objections.

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EPA Form 2906 12.07CSX

Datum

Date * *CODINGDATE* *
Date

Blatt AnmeIdeNr.:

Sheet 3 ApplicatIon No.: 01 900 5M9
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The chairman then announced that the subject-matter of the claims according to the
main request fulfilled the requirements of Article 54 EPC.

7. The chairman opened the discussion on Article 56 EPC with respect to the main request.

The opponent declared that the subject-matter of the presently opposed patent was obvious over Dl and D2 In combination with 032 - D35. In the same technical field
as the present patent document Dl (or alternatively 132) was considered to represent the closest prior art Document Dl (or 02) related to pharmaceutical oral formulations comprising drospirenone and an estrogen.

The only difference between Dl (or 02) and the main request was that the latter claimed the use of pharmaceutical composition comprising drospirenone in a form having a rapid dissolution. Theproblem to be solved could therefore be seen as how to improve the bloavailability of drospirenone.

From his common knowledge or alternatively from 032 the person skilled in the art would be well aware that micronization generally improves the bloavaHability of poorly soluble drugs. Accordingly the use of a micronized drospirenone formulation to solve the present problem would have been obvious for the person skilled in the art.

Furthermore 033 - D35 taught that spirorenone, a closely related drug with a similar isomerization rate In acidic media drospirenone, Is absorbed rather than isomerized in the stomach. Accordingly, In the light of D33 - D35 the skilled person would not have expected the isomerization of drospirenone In the stomach and would not therefore have been distracted from the use of micronized drospirenone from the disclosures of documents D14 and D20a-c.

Oral proceedings were interrupted from 12.00 - 13.05 pm.

The patentee answered that although the problem to be solved by the contested patent was how to increase the bloavailability of drospirenone, the person skilled in the art would not have considered to use drospirenone in a form having rapid dissolution as he would have expected, in view of the teachings of D14 and D20a-c, an Increased isomerlzatlon at the pH of the stomach and therefore a lower bioavailability of the active isomer.

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On the contrary, the inventors of the patent had surprisingly found that the bioavallability of drospirenone increased when used in a form having a rapid dissolution.

Oral proceedings were interrupted from 14.38- 15.13 pm.

The patentee asked to be allowed to introduce an auxiliary request (hereafter auxiliary request ii) and the chairman agreed (Annex 1).

After a break from 16.33 - 17.11 pm., the chairman asked the parties whether they had any further comments, but both replied In the negative. The chairman then announced that the subject-matter of the claims according to the main request fulfilled the requirements of Article 56 EPC.

8. The patentee adapted the description (Annex 2).

The chairman asked the opponent whether he had any further comments on the amendments, but the opponent answered negatively.

The chairman announced the decision of the Opposition Division to maintain the patent on the basis of the main request and the adapted description.

The opposition proceedings were closed at 17.52 pm.

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Sheet 2/1

After deliberation of the opposition division,
the chairman announced the following decision:

Application No.: 01 900

"Account being taken of the amendments made by the patent proprietor during the opposition proceedings, the patent and the invention to which it relates are found to meet the requirements of the European Patent Convention. The currently valid documents are those according to the main request. and adapted description (Annex 2)."

Regarding the reasons for the decision, the chairman referred to:
Article 101 (3)(a)EPC: Account being taken of the amendments made by the patent proprietor during the
opposition proceedings, the patent and the invention to which it relates are found to meet the requirements of
the European Patent Convention.
the patent as amended during the proceedings fulfills Article 101 (3)(a)
the oral proceedings on 11.12.5008 at 17.52 hours.

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Annex to the minutes -Page 1 Application No.: 01 900 5

Documents for the maintenance of the patent as amended

In the text for the Contracting States:
AT BE CH CV DE OK ES Fl FR G.B GR IE IT LI LU MC NL PT SE TA

Description, Pages
10-13 of the patent specification
2, 2a-2e, 3-9 filed during Oral proceedingÆon 11.12.2008

Claims, Numbers
1-46 received on 09.10.2008 with letter of 09.10.2008

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-T Application No. /Patent No. Rel. Date

01 900 579.2 - 2123/1257280/ 24300 EP 02 26.02.2009
Proprietor

Bayer Schering Pharma Aktiengesellschaft

Interlocutory decision in Opposition proceedings (Art. 101 (3Xa) and 106(2) EPC)

The Opposition Division - at the oral proceedings dated 11.12.2008 - has decided:

Account being taken of the amendments made by the patent proprietor during the opposition proceedings, the patent and the invention to which it relates are found to meet the requirements of the

Convention.

The reasons for the decision are enclosed.

Documents for the maintenance of the patent as amended:

Description, Pages

10-13 of the patent specification
2, 2a-2e, 3-9 filed during Oral proceedings on 11.12.2008

Claims, Numbers
1-46 received on 09.10.2008 with letter of 09.10.2008

Possibility of appeal
This decision Is open to appeal according to Article 106(2) EPC. Attention is drawn to the attached text of Articles 106 to 108 and Rules 97 to 98 EPC.

Registered letter with advice of delivery

Date 26.02.2009

Opposition Division:

Chairman:
2nd Examiner:
1st Examiner:

Sheet 2

Economou, Dimitrios
Garabatos-Perera, J
Ansaldo, M

Application No.: 01 900 579.2

Lausenmeyer, J
Formalities Officer IDOP coded
Tel. No.: +4989 2399-8074

LA 23.02.113

Enclosure(s): 10 page(s) reasons for the decision (Form 2916)
Wording of Art. 106-108 and A. 97-98 EPC (Form 2019)
Documents relating to the amended text
Minutes of oral proceedings

to EPO postal service: 23.02.09

Reolstered letter with advice of delivery

Datum Blatt Anmetde.Nr.:

Data 26.02.2009 Sheet 1 Application No.: 01 900 579 Date FeuiUe Oemande n:

I. SUMMARY OF FACTS AND SUBMISSIONS

1. The European Patent Application EP01 900579.2 filed on 18.01.2001, claiming the
priority of US484026 filed on the 18.01.2000 and the priority of EP 00200183 filed on
the 18.01.2000, has resulted In the European Patent EP-131 -1257280, the publication
of grant of which took place on 05.10.2005 (Bulletin 2005/40).

The patent is entitled: PHARMACEUTICAL COMBINATION OF MICRONISED DROSPIRENONE AND AN ESTROGEN FOR HORMONE REPLACEMENT THERAPY.

2. The proprietor is: Schering AG, 13342 Berlin (DE) (hereinafter referred to as
Patentee (P)).

3. A notice of opposition was filed on 27.06.2006 by Laboratorios LeOn Farma, S.A.,
Roa de la Vega,15,24002 LeOn, Spain (hereinafter referred to as Opponent (0)).

The parties made the following requests and submissions:

4. With letter of 23.06.2006 0 requested the revocation of the patent in its entirety on
the grounds of Articles 100 a) and b) for tack of Inventiveness and insufficiency of disclosure. Furthermore oral proceedings were requested for the event that the patent was not revoked on the basis of the substantiation in writing.

4.1 Article 83 EPC

The patent description lacked any experimental description, i.e. workable examples
on how to prepare DRSP having the dissolution parameters of claims 2, 17 and 36. Paragraph [0039] of the description just disclosed a very general method not allowing
the skilled person to obtain DRSP with the required dissolution rate without undue effort.

No other method was mentioned in the patent description.
Therefore, the subject-matter of claims 2, 4-8, 10-15,17,19-34,36,38-55 did not fulfil the sufficiency of disclosure according to Article 83 EPC.

4.2 Article 56 EPC

Documents Dl and D2 represented the closest prior art and suggested in combination with D14 the subject-matter of claims 1-37.

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Sheet 2 ApplicatIon No.: 01 900 57
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5. With letter of 20.02.07 P requested the rejection of the opposition and maintenance
of the patent as granted. Furthermore oral proceedings were requested in case the
OD was unable to reject the opposition.

5.1 Article 83 EPC

The skilled person would have known (without undue burden) how to prepare the dosage forms which fulfilled the dissolution requirements of claims 2,17 and 36 from the Information disclosed in the granted patent in combination with his common general knowledge (Dl 5, 131 7).
P enclosed supplementary data (016) showing that immediate-release tablets comprising an estrogen and non-micronised DRSP could be prepared by a conventional fluidised bed granulation process.

52 Article 56 EPC

Contrary to progestins, DRSP was not stable under acidic conditions. The physical-chemical propertied of DRSP were unique and different from other steroids.
D14, D21 and D23 dissuaded the skilled person from micronizing DRSP.
Based on the data from D20 the skilled person would have not been motivated to provide DRSP in micronized form.
D26 showed that - contrary to what expected from data in vitro - a greater amount of micronized DRSP was absorbed compared to non-micronized DRSP when administered orally to patients.

6. With letter of 17.12.20070 filed following submissions:

6.1 D14 and 021 did not disclose any technical prejudice. On the contrary they
suggested to make a rapid dissolution DRSP composition to get DRSP rapidly adsorbed.

6.2 In the application as filed, there were no relevant experimental data. On the contrary
the unexpected in vivo data in support of Inventiveness were filed years after the filing date. Therefore, the problem posed (improved bloavallability) was not plausibly solved by the patent In suit.

6.3 Claim 2 covered more than micronized DRSP, i.e. any DRSP immediate-release
dosage form, since the functional definition was covering a standard immediate-release dosage form.

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7. With the communication dated 12.06.2008 the Opposition Division (OD) summô’ne
oral proceedings and annexed hereto a provisional opinion on the basis of the arguments submitted by the parties and on whether the claims as granted complied with the requirements of the EPC.

8. With letter of 26.08.2008 0 filed documents D31-035 together with further
arguments:
D31, a US decision, was presented and discussed.
Documents D33-D35 were presented and discussed: the three Krause documents motivated the skilled person to perform in vivo tests with a fast-dissolving (micronized) form of drospirenone, improving hereby the bioavailabiiity of said drug. D32 disclosed that it was general knowledge that micronization would Improve the dissolution of a poorly water soluble drug and that in vitro tests only had significance
if related to in vivo results. Therefore the skilled person would have made in vivo analysis and would have arrived to the expected data: that micronized DRSP had an improved bioavailability.
Documents Dl and D2 represented the closest prior art and suggested in combination with D21 or with any of D33-D35 the subject-matter of all claims.

9. With letter of 8.10.20080 filed a new document D36 and discussed it briefly.

10. With letter of 9.10.2008 P filed a new Main Request, a 1st Auxiliary Request and
document D36 (renumbered to D37 during oral proceedings), together with observations regarding 03 and the 0’s submissions, in particular D31 -035.

In the course of the proceedings the following evidence was submitted:

Dl: W095/07081 (already considered during the examination procedure);
D2: W098/27929
D3: W001/15701
04: Fotherby K. "Bloavailability of Orally Administered Sex Steroids Used in Oral
Contraception and Hormone Replacement Therapy". Contraception. 1996:54:59-69;
D5: EP0461290-A1. Publication date 22.01.1994;
06: Chaumeli J.C. ’Micronization: A Method of Improving the Bioavailabllity of Poorly
Soluble Drugs". Meth. Find. Exp. Clin. Pharmacol. 1998,20,211-215;
07: McInnes et al. "Effect of Micronization on the Bioavailability and Pharmacologic
Activity of Spironolactone". J. Clin. Pharmacol. 1982; 22:410-417;
D8: US41 96188. Publication date 01.04.1980;
09: Maxson et al. "Bioavailability of oral micronized progesterone". Fertility and Sterility

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, IP Data 26.02.2009 Sheet 4 AppflcatbnNo.: 01 900 579.

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1985,44,622-626;
D10: MedLine reference PMID: 8726605;
011: MedLine reference PMID: 2801843;
D12: Fuhrmann et al. ’The Novel Progestin Drospirenone and its Natural Counterpart
Progesterone: Biochemical Profile and Antlandrogenic Potential’. Contraception 1996, 54,243-251;
D13: MedLine reference PMID: 7750297, Muhn et al. "Drospirenone: a novel progestogen with antlmineralocorticoid and antiandrogenic activity. Pharmacological characterization In animal modelsu, Contraception 1995, 51(2), 99-110;
D14: Nlckish et al. "Saure-katalysierte umlagerungen von
15011 6-methylen- 1 7a-pregnen-2 1,1 7-carbolacton-derivaten°.Tetrahedron Letters,Vol.27, No.45, pp 5463-5466,1986;
D15: Remington’s Pharmaceutical Sciences, 18. Ed. 1990, Chapter 31, page 589-602;
Dl 6: Supplementary data; manufacture of immediate-release dosage forms;
Dl 7: Handbook of Pharmaceutical Excipients, 4. Ed. 2003, page 773;
D18: EP121407651;
D19: Written Decision from the Opposition Division (dated 17 November 2006) deciding
to reject the opposition against EP 1 214 076 Bi;
020: D20a: In vitro dissolution data (Fig. 1);
D20b: In vitro dissolution data (Fig. 2);
D20c: In vitro dissolution data (Fig. 3);
D21: W098/06738A1;
D22: Hydrolysis and isomerisation data for drospirenone at various pH values;
D23: Bauer, FrOmming and Führer; Pharmazeutische Technologle, 4. Ed. 1993, page
205;
D24: Remlngtons Pharmaceutical Sciences, 18. Ed. 1990, Chapter 75, page 1435;
D25: Henning G. Krlstensen; Almen Farmacl, 3; Ed. 2000, page 155;
D26: Comparative In vivo bioavailability data;
D27: Garret et al. J Pharm Sd, 1971;60;1801-1809;
028: Pramar et al. J Pharm Sd, 1991;80;551-553;
D29: Kind et al. J Steroid Blochem, 1978;9;83-84;
D30: Hargrove et al. Am J Obstet Gynecol, 1989;948-951;
D31: Decision, 3.3.2008, United States District Court of New Jersey, Bayer Schering
Pharma AG v. Barr Laboratories, Civil Action No. 05-cv-2308 (PGS);
032: Aulton, Pharmaceutics: The Science of Dosage Form Design (1988), chapter 1 and
chapter 9;
D33: Krause et al, Determination of Plasma Levels of Spirorenone, a New Aldosterone
Antagonist and One of its Metabolites by High Performance Liquid Chromatography, Journal of Chromatography, 230 (1982) 37-45 (Krause I).

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034: Krause et al., Isolation and Identification of Spirorenone Metabolites from tº
Monkey, Steroids, vol.40, N.1, pp. 81-90, July 1982 (Krause II);
D35: Krause, Pharmacokinetics of the New Aldosterone Antagonist, Spirorenone, in
Health Volunteers after single dose and repeated daily doses, European Journal of
Clinical Pharmacology (1983y, (Krause Ill);
036: US4291 029;
D37: Handbook of Pharmaceutical excipients, Fourth Edition, Edited by R.C. Rowe et al.,
Pharmaceutical Press, London 2003, p.108-ill.

11. Oral proceedings were held on 11.12.2008.

12. 0 maintained his request to revoke the contested patent In Its entirety based on the
grounds 83 and 56 EPC.

13. P requested the rejection of the opposition and the maintenance of the patent In
amended form based on the Main Request filed with letter of 9.10.2008 or alternatively on the basis of the First Auxiliray Request. P also filed a 2nd Auxiliary Request In the course of oral proceedings (Annex 1, see annexes to the minutes
of the oral proceedings).

14. Document W02005/0871194, which 0 asked to introduce into the proceedings, was
not accepted, since it didn’t seem prima facie more relevant than the other documents already in the procedure (Rule 116 EPC).

II. GROUNDS FOR THE DECISION

The present opposition Is admissible under Art. 99, lOOa), b) and Rule 76 EPC.

Main Request (as filed with letter of 9.10.2008)

1. Rule 80 EPC

The OD asked the P to explain the grounds that occasioned the amendment of the claims as granted.

P answered that D3 could be seen as novelty-destroying for granted claims 1-3, 16-18.

In fact on p.6,1.18-20 D3 referred to multiple-phase preparations, which could have

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included estradiol, Instead of ethinylestradlol (EE). t However, D3 disclosed micronized ethinylestradlol only (which is excluded from claims 1-3), but was silent with, respect to mlcronization of other estrogens, including estradiol.
Therefore, claims 1-3 of the Main Request were limited to micronized estrogen and claims 14-16 to monophasic preparations (in contrast to the multiphasic preparations disclosed in 133) in orderto overcome possible novelty objections over
D3.

Furthermore, P explained that the reduction of the drospirenone (DRSP) dosage In claims 1,2,3,14,16,17,18,27,28,29 occurred to overcome the objection under Article 56 EPC over D35, In which much higher doses of splrorenone were used.

found that the granted claims were novel before the amendments and that Main Request fulfilled the requirements of Article 54 EPC.

The 00 Is of the opinion that the amendments are allowed, although one of the grounds of opposition (Article 54 EPC) was not invoked.
Therefore the Main Request fulfils the requirements of Rule 80 EPC.

2. Article 83 EPC

0 argued that the objection under Article 83 was mainly related to claim 2 of the Main Request, which not only micronized DRSP only, but any DRSP Immediate-release dosage form.
In fact claim 2 referred to a rapid dissolution form of DRSP according to the USP XXIII Paddle Method II. The definition of claim 2 Indeed covered a standard Immediate-release dosage form of DRSP, which did not necessarily had to be In
micronized form.

Thus, the broadness of claim 2 was not justified by the scope of the description and the examples.

P replied that the description clearly enabled the skilled person to prepare a pharmaceutical composition as described in claim 2.
The burden of proof was therefore on the 0.
D15 (p. 591, rc) and D16 (paragraph 43) clearly described how to prepare rapid
dissolution forms.

The OD is of the opinion that paragraphs [0038-00391 of the patent In suit show that

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compositions as claimed In claim 2, i.e comprising DRSP in a form having r pi
dissolution according to the USP XXIII Paddle Method II, can be prepared by the
skilled artisan.

Therefore, the subject-matter of claims 2, 15, 28 fulfils the requirements of Article
83 EPC.

3. Article 123 (2) EPC

The OD questioned the P whether claim 2 fulfils the requirements of Article 123 (2) EPC, i.e. whether the Paddle test was disclosed in the description as filed only in
the context of micronized DRSP.

P explained that the Paddle test was disclosed in general and not directly linked to micronized DRSP only. Basis for that could be found on page 7, 1.17-32; p.8, 1.28-29; p.15, 1.8-14.

The OD came to the conclusion that the Main Request fulfils the requirements of Article 123 (2) EPC.

4. Article 54 EPC

0 had no objections regarding novelty ofthe Main Request.

The 00 is of the opinion that the Main Request fulfils the requirements of Article 54
EPC.

5. Article 56 EPC

Documents Dl and 02 were considered as the closest prior art

Dl disclosed the use of estrogen such as estradiol (1-2 mg/day) and drosplrenone (0.2-3.0 mg/day) (claims 1, 6, 7) for the preparation of a medicament to treat diseases, disorders and symptoms associated with deficient endogenous levels of estrogen (i.e. for relieving the effects occurring during the menopause (p.1, 1.5-7)).
The preparation Is provided continuously (p.2, I. 8) in an oral, transdermal, parenteral and/or implantable application form (claim 10).

D2 disclosed the use of a gestagen, such as DRSP (0.5-5 mg/day), In combination with an estrogen, such as estradiol (1.0-3.0 mg/day), for treating disorders caused

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by higher testosterone levels, i.e. lower or deficient estrogen levels.

The subject-matter of claims 1,2,3 differed from Dl or D2 in that DRSP had a
surface area of more than 10,000 cm2/g, was In a rapid dissolution form or was
micronized, respectively and is combined with a micronized estrogen.

The problem underlying the contested patent could be seen as the provision of an
oral pharmaceutical composition comprising DRSP with improved bloavaflability in respect to Dl or D2.

The solution proposed by the patent In suit was to provide DRSP in a form having rapid dissolution, e.g. micronized form.

argued that It Is general knowledge of the skilled person that micronizatlon improves bioavailability (D32).
The only argument of the P was the presence of a technical prejudice (014, D21), which considered the isomerizatlon of DRSP (conversion in to the inactive Isomer) In acidic medium (stomach).

D33 (Krause I) disclosed that DRSP (1,2-dihydrospirorenone), a metabolite of spirorenone (which only differs from DRSP in the presence of a double bond), isomerizes in acidic medium like spirorenone. D33 further disclosed that on p.41, 2nd paragraph from the bottom, that the process of rearrangement of spirorenone, which occurred in acidic medium (stomach) was slow compared to the possible absorption rates In the stomach.
In fact the lactone rearrangement product of spirorenone was not detectable in the plasma, suggesting that the absorption process was much faster than the acid-catalysed isomerization of the drug.
DRSP (p.43, 2nd paragraph) could be detected in plasma, however only 1,5 h after drug administration, suggesting a relatively low rate of formation.
D33 concluded that isomerization played an irrelevant role, since spirorenone (and thus DRSP as well) were absorbed in the stomach before having the time to isomerize.

D34 (Krause II) disclosed an in vivo test on monkeys for isolating and identifying the metabolites of microcrystalline spirorenone after oral administration (dosage thereof was 20mg/kg). No inactive isomerized compounds could be found in plasma.

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D35 (Krause IV) disclosed that a dose of 40mg of spirorenone was incomplete y
absorbed due to the low solubility of the drug. A similar problem existed for spironolactone, which had been solved with micronization. Therefore, D35
concluded that spirorenone as well should be micronized to optimize the absorption
of higher doses.

further argued that the three Krause documents (033-035) in combination with D32 clearly motivated the skilled person to perform in vivo test with fast-dissolving (micronized) form of drospirenone, which was structurally almost identical with spirorenone, improving hereby its bloavailability.
Therefore the technical prejudice (1314) in the art was not justified and not acceptable, since the Krause documents clearly showed that isornenzation in the stomach was Irrelevant.

After carefully analysing all the documents submitted the OD considers the following:

- spirorenone and DRSP are two different compounds: DRSP is a progestin, spirorenone Is a mineral corticoid, an aldosterone antagonist, a diuretic and not a sexual hormone. Therefore, even if both compounds do isomerize in acidic medium In vitro, they indeed have different pharmacological properties.

- the amounts of spirorenone used in D34 and 035 are much higher. This means
that by using such big amounts, less can be destroyed. On the contrary by using smaller amounts such as those claimed in the patent in suit (0.25-4mg) not only a part of it would solubilize as in D34 or 035, but 100% would dissolve in the stomach and hereby being at risk of an isomerization, i.e. inactivation.

- Documents D14 and D21 disclosed that DRSP isomerized in acidic conditions.

- Documents D20a-D22c confirmed that In acidic medium in vitro micronized DRSP
is inactivated faster than non-micronized DRSP (Figure 3) and that micronized DRSP would lead to a lower bioavailÆbility.

- 035 suggested to micronize spirorenone in order increase bioavailability, but did neither referred to DRIPS nor suggested to apply the same teaching to DRSP.

- 026 disclosed a pharmacokinetic study in vivo, contrary to what expected from
the data of D20a-20c, showed that a greater amount of micronized DRSP is

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absorbed and present in the plasma following oral administration compared to administration of DRSP in non-micronized form.

In light of the above considerations, the OD is of the opinion, that the skilled person, would have been demotivated by D14, D20a-c to micronize DRSP. Furthermore, D33-1335 do not give any unambiguous hint on how to increase the bioavailability of DRSP and do not suggest to micronize DRSP, but they only clearly refer to spirorenone, which is not the same compound as DRSP and which has different pharmacological properties.
Last but not least, the data of D26 could have not been predicted and constitutes a real unexpected effect.
Thus, the subject-matter of claims 1-46 involves an inventive step (Art. 56 EPC).

In view of the above the Main Request fulfills all the requirements of the EPC.

The patent Is maintained In amended form according to Article 101 (3) (a) EPC.

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P-CO-75002

Traducción de los fundamentos de la decision de la DivisiOn de Oposiciones de la Oficina Europea de Patentes de rechazar la oposiciOn presentada nor Laboratorios Leon Farma S.A. en contra de la patente europea de Schering AG No. EP-B1 1257280

Solicitud No./Patente No.: 01 900 579.2 2123 / 1257280 I
Ref. 24300 EP 02
Fecha: 26.02.2009

Propietario: Bayer Schering Pharma Aktiengesellschaft

DecisiOn interlocutoria en procesos de oposición (Art. 101(3) (a) y 106(2) EPC)

En la audiencia del 11.12.2008, la Division de Oposiciones ha decidido:

En vista de las enmiendas realizadas por el propietario de la patente durante el - I proceso de oposiciOn, se resuelve que la patente y el invento al cual se refiere la
patente cumplen con los requisitos de la ConvenciOn.

Los fundamentos de la decisiOn se adjuntan al presente escrito.

Documentos para mantener la patente tal como ftc enmendada:

DescripciOn, pÆginas
10-13 de la solicitud de patente
2, 2a-2e, 3-9 presentadas durante la audiencia del proceso oral del 11. 12.2008

Reivindicaciones, nümero
1-46 recibidas el 09.10.2008 con el escrito del 09.10.2008

Posibilidad de apelaciOn:
Esta decision puede ser apelada conforme al ArtIculo 106(2) EPC. Se debe tener en cuenta ci texto adjunto de los ArtIculos 106 a 108 y las Normas 97 a 98 EPC.

Division de Oposiciones:
Director: Economou, Dimitrios
Segundo Examinador: Garabatos-Perera, J.

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Primer examinador: Ansaldo, M.

Lausenmeyer,J
Oficial de Formalidades
Tel. No. +49 89 2399-8074

Adjunto(s): 10 pÆginas:fundamentos de la Decision (Forma 2916)
Texto de los Art. 106-108 y Normas 97-98 EPC (Forma 2019)
Documentos relacionados con el texto enmendado
Minuta de la audiencia del proceso oral

I. RESUMEN DE LOS HECHOS Y DOCUMENTOS PRESENTADOS

La solicitud de patente europea EP01900579.2 the presentada ci 18.01.2001, reivindica La prioridad de la solicitudes US484026 y EP 00200183, presentadas el 18.01.2000, y the concedida bajo el nimero EP-B1-1257280. La concesiOn de esta patente the publicada en el Boletin Europeo de Patentes 2005/40 el 05.10.2005.

La patente se titula: COMBINACION FARMACEUTICA DE DROSPIRENONA MICRONIZADA Y UN ESTROGENO PARA LA TERAPIA DE REEMPLAZO HORMONAL

2. El propietario es Schering AG, 13342 Berlin (DE) (ilamado de aqul en adelante
Propietario de La Patente (P))

3. El escrito de oposiciOn de Laboratorios Leon Farma S.A., Roa de la Vega, 15,
24002 Leon, Espafla (liamado de aqul en adelante Oponente (0)), the presentado
(Th ci 27.06.2006

Las partes solicitaron y aportaron lo siguiente:

4. En su escrito del 23.06.2006 el oponente 0 solicitó que la patente fuera revocada
en su totalidad en virtud de los Artfculos 100 a) y b) por falta de nivel inventivo y por divulgación insuficiente. Asimismo se solicitO una audiencia (proceso oral) en caso de que la patente no fuera revocada en base a lo sustentado por escrito.

Articulo 83 EPC

La memoria descriptiva de la patente carece de descripción experimental, es decir, de ejempios que demuestren cómo preparar drospirenona (DRSP) que exhibla los parametros de disolución de las reivindicaciones 2, 17 y 36. El pÆrrafo [0039] de la memoria descriptiva solo describe un mtodo muy general que no le permite at tcnico en La materia obtener DRSP con la velocidad de disolución requerida sin un esfuerzo considerable.
En la memoria descriptiva no se menciona ningün otro mØtodo.
Por consiguiente, el objeto de las reivindicaciones 2, 4-8, 10-15, 17, 19-34, 36, 38-55 no cumple con ci requisito de suficiencia de divulgaciOn que establece el Articulo 83 EPC.

Articulo 56 EPC

Los documentos Dl y D2 representan el arte previo mÆs cercanoy sugieren, en combinaciOn con el documento D14, el objeto de las reivindicaciones 1-37.

5. En su carta del 20.02.07, ci propietario P soiicitO que se rechace la oposiciOn y que
la patente se mantenga tal como fue concedida. Asimismo se solicitO una audiencia
en caso de que la DivisiOn de Oposiciones (DO) no rechazara la oposiciOn.

5.1 Articuio 83 EPC

El tØcnjco en La materia habria sabido (sin un esfuerzo considerable) cOmo preparar las formas de dosificaciOn que cumplen con los requisitos de disoluciOn
de las reivindicaciones 2, 17 y 36 a partir de la informaciOn aportada en la patente concedida en combinaciOn con sus conocimientos generales en la materia (D15, D17)
El propietario P adjuntO datos suplementarios (1316) que demuestran que las tabletas de liberaciOn inmediata que comprende un estrOgeno y DRSP no micronizada pueden ser preparadas mediante un proceso convencional de granulaciOn sobre lecho fluidizado.

5.2 Articulo 56 EPC

A diferencia de otras progestinas, la DRSP no era estable en condiciones Æcidas. Las propiedades ffsico-qufmicas de la DRSP cran (inicas y diferentes de otros esteroides. D14, D21 y D23 disuaden al tØcnico en la materia de micronizar DRSP. En base a los datos de D20, ci tØcnico en la materia no habria estado motivado para proveer DRSP en forma micronizada.