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Datasheet for the decision of 29 November 2022

Case Number: T 2565/19 - 3.3.04

Application Number: 13808053.6

Publication Number: 2935310

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Language of the proceedings: EN

Title of invention:
Novel TRH Binding Site in Human CNS

Applicant:
The Provost, Fellows, Foundation Scholars, and The Other Members of Board, of The College of The Holy and Undivided Trinity of Queen Elizabeth

Headword:
TRH receptor/Trinity College

Relevant legal provisions:
EPC Art. 56, 84

Keyword:
Inventive step - (no)
Claims - clarity (no)

Decisions cited:
G 0002/88

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Beschwerdekammern

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Case Number: T 2565/19 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 29 November 2022

Appellant: (Applicant)	The Provost, Fellows, Foundation Scholars, and The Other Members of Board, of The College of The Holy and Undivided Trinity of Queen Elizabeth Near Dublin Trinity College Dublin University Dublin 2 (IE)
Representative:	Tomkins & Co 5 Dartmouth Road Dublin 6 (IE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 25 March 2019 refusing European patent application No. 13808053.6 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair	M. Pregetter
Members:	A. Chakravarty
	P. de Heij

Summary of Facts and Submissions

I. The appellant (applicant) filed an appeal against the decision of the examining division to refuse European patent application No. 13 808 053.6 entitled "Novel TRH Binding Site in Human CNS".

II. In the decision under appeal, the examining division held that claims 5 and 8 of the main request lacked clarity and that the subject-matter of claims 1 to 5 of the main request lacked an inventive step in the light of the disclosure of document D2. The examining division further held that the claims of auxiliary requests 1 and 2 lacked clarity and an inventive step for the same reasons as the main request and that the claims of auxiliary request 4 lacked an inventive step for the same reasons as the main request.

III. With its statement of grounds of appeal, the appellant refiled sets of claims of auxiliary requests 1, 2 and 4 considered by the examining division. They also filed an amended set of claims of a main request and sets of claims of auxiliary requests 5 and 6 for the first time in appeal.

IV. The board appointed oral proceedings and subsequently issued a communication pursuant to Article 15(1) RPBA setting out its preliminary appreciation of the appeal case. In this communication the board informed the appellant *inter alia* that it was in preliminary agreement with the examining division that claims 5 to 8 of the main request lack "*clarity, as the [---] functional features do not convey to the skilled person the structural features that are necessary to unambiguously characterise the claimed receptor*" and

also that it was "*in preliminary agreement with the examining division's conclusions on inventive step (see decision under appeal, points 2 to 4.3)*".

V. The appellant submitted sets of claims of auxiliary requests 7 to 10 together with a letter dated 28 October 2022, filed in response to the board's communication.

VI. Claims 1 and 5 of the main request request read:

"1. A method of discriminating between a TRH receptor subtype in human central nervous system (CNS) tissue and a TRH receptor subtype in human pituitary tissue by use of a compound having the structure:-
Glp-W-Pro-X,
wherein X represents residues of from 1 to 7 amino acids, which may be in the L- or D-configuration, the C-terminal amino-acid residue optionally being substituted with an amino group or aminomethyl coumarin (AMC),
and W represents an amino acid residue in which the R group is neutral or charged,
wherein the compound having the structure Glp-W-Pro-X binds to the TRH receptor sub-type in human CNS tissues but does not bind to the TRH receptor sub-type in human pituitary tissue.

5. An isolated TRH receptor subtype from human CNS tissue, the receptor displaying selective binding to a compound having the structure:-
Glp-W-Pro-X
wherein X represents residue of from 1 to 7 amino acids, which may be in the L- or D-configuration, the C-terminal amino-acid residue optionally being substituted with an amino group or

aminomethyl coumarin,
and W represents an amino acid residue in which the R group is neutral or charged,
wherein the compound having the structure Glp-W-Pro-X binds to the TRH receptor sub-type in human CNS tissues but does not bind to the TRH receptor sub-type in human pituitary tissue".

Claim 1 of auxiliary request 1 is identical to claim 1 of the main request. Claim 1 of auxiliary request 2 is identical to claim 5 of the main request. There is no auxiliary request 3.

Claim 1 of auxiliary request 4 reads:

"1. An isolated TRH receptor subtype from human CNS tissue, the receptor displaying selective binding to a compound having the structure:-
Glp-Asn-Pro-D-Tyr-D-TrpNH_2
wherein the compound binds to the TRH receptor sub-type in human CNS tissues but does not bind to the TRH receptor sub-type in human pituitary tissue,
and wherein the compound displaces (^{3}H)(3-Me-His^2)TRH from hippocampal membranes with an IC_{50} value in the order of 10^{-8} M".

Claim 1 of auxiliary requests 5 and 7 to 10 differ from claim 1 of the main request in that the tissue from which the receptor was isolated is "human hippocampal tissue" instead of "human CNS tissue" and by way of the IC_{50} value with which the compound binds the TRH receptor (auxiliary requests 5, 8 and 10) and/or in that the method is an *in vitro* method and that the binding of the compound to human CNS tissue and to human pituitary tissue is determined (auxiliary requests 7 to 10).

Claim 1 of auxiliary request 6 differs from claim 1 of the main request in that the receptor is defined as "pharmacologically distinct".

Auxiliary requests 7 and 8 have amendments aimed at overcoming objections raised by the board in its communication under Article 15(1) RPBA. They are based on the main request and auxiliary request 5 respectively. Auxiliary requests 9 and 10 are the same as auxiliary requests 7 and 8 but with claims 5 to 8 deleted.

VII. The following document is mentioned in this decision.

D2: Hogan N. *et al.*: "*A novel TRH analog, Glp-Asn-Pro-D-Tyr-D-TrpNH2, binds to [^{3}H][3-Me-His^{2}]TRH-labelled sites in rat hippocampus and cortex but not pituitary or heterologous cells expressing TRHR1 or TRHR2*", Neuroscience Letters, 431 (2008), 26–30.

VIII. Oral proceedings before the board were held as scheduled. At the end of these proceedings the Chair announced the decision of the board.

IX. The arguments of the appellant, relevant to the decision are summarised as follows.

Main request and auxiliary request 1 - claim 1
Inventive Step (Article 56 EPC)

At the relevant date of the application, only one known thyrotropin releasing hormone (TRH) receptor protein and gene had been identified in humans. The inventors had identified a novel, pharmacologically distinct receptor. The claim was for a method of distinguishing between the known and novel TRH receptors in humans.

The claim should be read as including the process steps of determining binding of the ligand to the receptor. There had been a long felt need for the identification of agents which targeted CNS TRH receptors and not pituitary TRH receptors.

The closest prior art

The examining division considered that document D2 disclosed a new TRH receptor in rats. This was not correct, as document D2 merely speculated that its existence was a possible explanation for the incongruous results seen with native rat brain tissues and heterologous cells expressing the known TRH receptors, TRHR1 and TRHR2. This speculation was just one of three suggestions offered in document D2 to explain the results presented in the paper.

The difference between the claimed subject-matter and that in document D2 was that the invention related to a method to identify potential therapeutic agents that selectively target the human CNS receptor rather than the pituitary receptor. This was achieved by discriminating between the novel pharmacologically distinct TRH receptor subtypes in humans, in which there was a single TRH receptor gene and further by distinguishing receptors from human CNS from those in the human pituitary. The claimed method could be used to discriminate between TRH receptor subtypes in humans with a single TRH receptor gene. TRH receptors were part of the G protein coupled receptor (GPCR) family of receptors. The skilled person understood that orthologues of all GPCRs are not found in both rats and humans. The proportion of one-to-one GPCR orthologues was only 58% between rats and humans.

Critically, the prior art clearly taught that TRH receptors in human brain and human pituitary were pharmacologically indistinguishable. Moreover, document D2 disclosed nothing in relation to human TRH receptors.

The technical problem

The technical problem was to be able to discriminate between TRH receptors in animals which only had a single TRH gene (e.g. humans) and furthermore to distinguish between TRH receptors in the CNS and those in the pituitary tissue for animals (humans) with only one TRH gene.

Obviousness

Document D2 did not address this problem nor would its disclosure have led the skilled person to the claimed invention. It was acknowledged that it would have been obvious for the skilled person to test the theories suggested to explain the results reported in document D2, however this did not mean that the skilled person had a reasonable expectation that this would lead to a solution to the problem. The existence of a new receptor subtype was just one of three alternative explanations offered by the authors to explain their experimental results. Thus, the skilled person would have considered that there was only a one in three chance of the rat brain having a new receptor. For this reason alone the skilled person starting from document D2 would not have had a reasonable expectation of finding a novel TRH receptor in rat brain, let alone human brain.

In addition, since the skilled person, at the date of the invention, based on the state-of-the-art, believed that humans only had one TRH receptor, found both in the CNS and in the pituitary and that it was pharmacologically indistinguishable, finding a novel TRH receptor in humans was improbable.

The skilled person's expectation of success was even further diminished because there were further hurdles in transferring studies done in rats to humans. Human tissue had to come from post-mortem sources, as it was unethical to conduct such experimentation on living human beings. The anatomical differences between rat and human brain tissue and the technical difficulties associated with the use of autopsy derived human brain samples combined substantially reduced the reasonable expectation of success in translating findings from rat brain to human brain.

In order to arrive at the claimed subject-matter, the skilled person had to take four steps: 1) select the correct theory from document D2, 2) evaluate the chance of finding the new receptor in humans, 3) evaluate the chance of finding that receptor in the CNS only and 4) carry out the necessary tests.

In summary, the skilled person could perhaps have arrived at the claimed invention as the necessary technical means existed. However, they would not have done so because there was no pointer or motivation in the art towards the invention.

Auxiliary request 5 - claim 1

The tissue "human hippocampal" and the IC_{50} value recited in the claim, further emphasised the

inventiveness of the claimed subject-matter. The skilled person at the relevant date of the application believed that human hippocampal and pituitary tissue had a single common TRH receptor. They also knew that the rat models of document D2 had two distinct receptors in hippocampal and pituitary tissue.

In view of this, the skilled person had no incentive to attempt the method of document D2 to distinguish between rat hippocampal and pituitary in human tissue as there was no rationale that would lead them to expect human hippocampal tissue and pituitary tissue to be distinguishable in terms of TRH receptor.

Auxiliary request 6 - claim 1

The claim recited that the TRH receptor in human CNS tissue was pharmacologically distinct from the one found in human pituitary tissue. At the priority date of the application, there were no pharmacologically distinct TRH receptors in humans known and there was no teaching that this was even a possibility.

Auxiliary request 2 - Claim 1
Clarity (Article 84 EPC)

The claim was for a newly discovered subtype of TRH receptor, defined by functional features. The binding properties of the receptor for the ligand compounds defined in the claim, together with the indication of its differential expression in human CNS tissue and human pituitary tissue were sufficient to unambiguously characterise the claimed receptor.

It was not a requirement of the EPC that an applicant had to sequence a protein in order to be entitled to

claim it. Even if the amino acid sequence were given, this would not convey the secondary and tertiary structures essential to enable it to function.

Since the claimed receptor was embedded in a cell membrane, so that only part of it was available for binding to another molecule, it was a particularly onerous task to determine e.g. its sequence. It was therefore unreasonable to a require an applicant to understand the structure or sequence of a molecule embedded in a membrane in order to claim it. For this very reason, receptors were defined in relation to what they bound (their ligand). This was the physical feature which defined the receptor and nothing else was required to fully define a receptor.

Auxiliary requests 7 to 10

These claim requests were filed to address the board's concerns on clarity under Article 84 EPC and on exceptions to patentability under Article 53(c) EPC, raised in the communication under Article 15(1) RPBA.

Auxiliary request 7 had amendments to claims 1 and 2 to positively state a step of determining binding and to describe *in vitro* methods.

Auxiliary request 8 was based on auxiliary request 5, with claim 1 further modified to describe an *in vitro* method of discriminating between human hippocampal and pituitary tissue. The claim specified that the compound binds to the TRH receptor in human hippocampal tissue with an IC_{50} value of 10^{-8} M. Claims 1 and 2 were also amended to positively recite a step of determining binding and to describe *in vitro* methods.

Auxiliary request 9 was based on Auxiliary Request 7, but with claims 5 to 8 deleted. Auxiliary request 10 was based on Auxiliary Request 8, but with claims 5 to 8 deleted.

X. The appellant's requests are that the decision under appeal be set aside and that a patent be granted on the basis of the main request, as filed with the statement of grounds of appeal. Alternatively, that a patent should be granted on the basis of the set of claims of auxiliary requests 1 to 10 (there is no auxiliary request 3).

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 99 EPC and is admissible.

Main request - Claim 1

Inventive step (Article 56 EPC)

Claim construction

2. The claim is for a method of discriminating between a thyrotropin releasing hormone (TRH) receptor subtype in human central nervous system (CNS) tissue (i.e. the receptor that is the subject-matter of claim 5 of the main request) and a TRH receptor subtype in human pituitary tissue. The claimed method involves "use" of a THR analogue peptide ligand ("the compound"), defined in the claim, which binds to the TRH receptor sub-type in human CNS tissues but does not bind to the TRH receptor sub-type in human pituitary tissue.

3. For the purposes of assessing inventive step, the board construes the claim as relating to a method including a process step of determining the binding of the "compound" to human CNS tissue and human pituitary tissue, where the "compound" binds to the TRH receptor subtype in human CNS tissues but does not bind to the TRH receptor sub-type in human pituitary tissue. This construction is in agreement with the appellant's, who was of the view that the claim recites process steps because it implicitly includes a step of determining binding. In claim 1 of auxiliary request 7, this step was made explicit.

4. In appeal, the appellant challenged the examining division's finding that the claimed subject-matter lacked an inventive step based on the disclosure in document D2 alone.

5. Document D2 discloses competition experiments in rats which showed that the compound Glp–Asn–Pro–D-Tyr–D-TrpNH2 (a peptide falling under general formula set out in the claim) was unable to displace the hormone TRH from rat pituitary tissue and TRHR1 expressing cells, consistent with its lack of binding to pituitary membranes and TSH-releasing activity. In contrast, it was able to displace the hormone from rat hippocampal membranes, but unable to displace it in TRHR2-expressing cells (see abstract). The authors of document D2 concluded "*this study reveals for the first time significant differences in the binding properties of native and heterologously expressed TRH receptors. Also, the results raise the possibility that Glp–Asn–Pro–D-Tyr–D-TrpNH2 is not displacing [^{3}H][3-Me-His^{2}]TRH from a known TRH receptor in rat cortex, but rather a hitherto unidentified TRH receptor*" (see abstract).

This conclusion is further explained on page 29, where several explanations for observed results are posited.

6. The first is "*that the opportunity to form receptor-receptor hetero-oligomers may be lacking in cells selectively expressing a single receptor*". The second is that "*the ligand binding specificities of a number of class B GPCRs is altered by receptor activity-modifying proteins (RAMPs), which interact directly with the receptor*". The third is "*the possibility that Glp-Asn-Pro-D-Tyr-D-TrpNH2 may not be displacing [^{3}H] [3-Me-His^{2}]TRH from a known TRH receptor in rat brain, but a hitherto unidentified TRH receptor subtype that is present both in rat brain cortex and hippocampus*". This possibility is emphasised in the document's concluding section on page 30: "*Significantly, the data presented herein open up critical issues with regard to the use of cell lines expressing a homo- or hetero-class of TRHR subtype in pharmacology and drug screening studies. It may be speculated that an additional receptor may possibly be involved in TRH behavioral responses, however this would require further investigation*".

7. In summary, document D2 postulates the existence of a new TRH receptor in rat brain cortex, differing from known receptors TRH1 and TRH2. In coming to this conclusion document D2 explicitly discloses use of *Glp-Asn-Pro-D-Tyr-D-TrpNH2* in a method that is inherently suitable for discriminating between binding to a TRH receptor subtype in the CNS and to a TRH receptor subtype in pituitary tissue (see page 27, left-hand column, final paragraph to page 29, penultimate paragraph).

8. Thus, the claimed method differs from the method disclosed in document D2 in that it is done on human tissue instead of rat tissue. The technical effect of this difference is that the claimed method can be used to discriminate between TRH receptor sub-types in human cortex and pituitary, as opposed to ones in rat cortex and rat pituitary.

9. In view of the difference between the closest prior art and the claimed subject-matter and the technical effect of this difference, the problem to be solved can be seen as the provision of a method which can be used to discriminate between a TRH receptor sub-type in human cortex from one in human pituitary.

Obviousness

10. The question to be answered in assessing the obviousness of the claimed method is whether the skilled person starting from the disclosure in document D2 and seeking to solve the technical problem formulated above, would have carried out the differential binding experiments disclosed in document D2 on human tissue.

11. The board considers that the answer to this question is yes. The reason for this is that it was common knowledge in the art (biomedicine) that animal models serve as a starting point for experiments using human material with the aim of ultimately addressing human health issues. This has not been disputed by the appellant. The board is therefore of the view that there existed in the art a general incentive to apply knowledge from animal models to humans. This incentive would have motivated the skilled person to determine

whether results found in document D2 in an animal model were replicable in humans.

12. It is true that document D2 offers three alternative explanations for the results obtained. However, in the board's view this would not have prevented the skilled person from repeating the experiments of document D2 using human tissue, in view of the incentive, explained above. These considerations are sufficient to lead the skilled person to repeat the differential binding experiments done in rats in document D2, in human tissue. In fact, the appellant acknowledged during the oral proceedings that it was obvious for the skilled person to test all three theories suggested in document D2 on human tissue. Since the method of document D2 corresponds to the claimed method except that it is done on rat tissues, repeating it in human tissue would result in a method as claimed being carried out.

13. The appellant argued that the skilled person had to make at least four choices as to which steps to carry out (see section IX.). In view of the uncertainty inherent in each choice, the skilled person could not have considered that there was a reasonable expectation of success in finding a human homologue of a potential rat receptor. Further uncertainty was present because at the relevant date, the skilled person assumed that in humans, in contrast to the situation in rats, only one receptor sub-type was present.

14. It is correct that, in some decisions, especially in the field of biotechnology, the boards have asked whether in the cases in point it was obvious for the skilled person to try a suggested approach, route or method with a reasonable expectation of success (see Case Law of the Boards of Appeal of the European Patent

Office 10th edition, 2022, I.D.7.1). However in the present case, the board does not consider this to be the right approach, for several reasons.

15. The importance of research on humans in a medical context would have led the skilled person to repeat the experiments done in rats in document D2 in humans, even in the face of alternative explanations for the results and even in the face of the knowledge that only one type of TRH receptor had been found in humans. This consideration is similar to the situations described in the case law where "*neither the implementation nor the testing of an approach suggested by the prior art involves any particular technical difficulties*". In such circumstances it has been held that the skilled person would have at least adopted a "try and see" attitude (see Case Law of the Boards of Appeal of the European Patent Office, 10th edition 2022, I.D.7.2).

16. The appellant also put forward that the skilled person, considering applying the methods disclosed in document D2 to human tissue, would have faced difficulties obtaining and working with human tissue due to the fact that it had to be obtained post-mortem and because many variables affected the quality of such tissue, as well as because of anatomical differences between rat and human tissue.

17. The board is not convinced by these arguments either. The board accepts it was common knowledge in the art that working with post-mortem human tissue and brain tissue in particular was associated with particular practical problems. However, given that the skilled person was seeking to replicate an animal model in humans, they had no choice but to turn to human tissue.

18. In view of the above considerations,the board concludes that the subject-matter of claim 1 lacks an inventive step.

Auxiliary request 1 - claim 1

19. Claim 1 of auxiliary request 1 is identical to claim 1 of the main request. It also lacks an inventive step.

Auxiliary request 5 - claim 1

20. This claim differs from claim 1 of the main request in that it more precisely defines the source tissue as "human hippocampal tissue" and the ligand analogue by means of an IC_{50} value.

21. The appellant argued that the amendment to specify the human tissue as hippocampal tissue and the inclusion of an IC_{50} value emphasised the non-obviousness of the claimed subject-matter because the skilled person would have expected that human hippocampal and pituitary tissue had a single common TRH receptor, whereas the rat tissue used in document D2 had two distinct receptors in hippocampal and pituitary tissue.

22. These arguments are not persuasive. The board's decision on obviousness of claim 1 of the main request already took into account that the skilled person knew that only a single type of TRH receptor type was known in humans. In relation to the inclusion of an IC_{50} value, the appellant provided no detailed reasoning as to why this should affect the evaluation of obviousness. Moreover, the appellant has never put forward that the claim relates to more than a single novel receptor sub-type, thus the IC_{50} value only serves as a further, functional definition of the

ligand and does not limit or define the receptor at all. As such, it cannot affect the reasoning on inventive step given for claim 1 of the main request.

Auxiliary request 6 - claim 1

Claim 1 includes the feature that the TRH receptor is pharmacologically distinct from the TRH receptor found in human pituitary tissue. This feature also does not change the claimed receptor from the one defined in claim 1 of the main request and therefore has no effect board's considerations on obviousness.

Auxiliary requests 7 to 10 - claim 1

23. Similarly, claim 1 of auxiliary requests 7 to 10 corresponds to claim 1 of auxiliary request 1, amended with the aim of improving clarity and/or compliance with Article 53(c) EPC. However, none of these amendments overcome the problem of the lack of inventive step identified for claim 1 of the main request. They lack an inventive step for the same reasons.

Auxiliary request 2 - claim 1

Clarity (Article 84 EPC)

24. Under Article 84 EPC "The claims shall define the matter for which protection is sought. They shall be clear and concise and be supported by the description".

25. According the Enlarged Board of Appeal (EBA) in decision G 2/88 (OJ 1990, 93), "*The purpose of claims under the EPC is to enable the protection conferred by the patent (or patent application) to be determined*

(Article 69 EPC), and thus the rights of the patent owner within the designated Contracting States (Article 64 EPC), having regard to the patentability requirements of Articles 52 to 57 EPC. It follows that the technical features of the invention are the physical features which are essential to it" (see reasons 2.5). Furthermore, "*the claims of a European patent should clearly define the technical features of the subject invention and thus its technical subject-matter, in order that the protection conferred by the patent can be determined and a comparison can be made with the state of the art to ensure that the claimed invention is inter alia novel.*" (see reasons, 7)

26. The case law has further established that "*Claims lack clarity if the exact distinctions which delimit the scope of protection cannot be learnt from them*" (see Case Law of the Boards of Appeal of the European Patent Office, 10th edition, II.A.3.1 and the decisions cited there).

27. The claim is for an isolated TRH receptor, i.e. a product. The claimed receptor is defined only by locational and functional features, i.e. the tissue from which it can be isolated: "from human CNS tissue" and its ability to bind the compounds defined in the claim: "wherein the compound having the structure Glp-W-Pro-X binds to the TRH receptor sub-type in human CNS tissues but does not bind to the TRH receptor sub-type in human pituitary tissue". Neither of these features conveys any structural information about the claimed product. In other words, the language of the claim does not include or imply anything about the structure of the claimed chemical entity, for instance whether it is a protein or not, or if it were a protein, what its sequence might be.

28. In the absence of any structural features, the claim cannot be considered as clear because it fails to "*enable the protection conferred by the patent (or patent application) to be determined*" (*Id.*) and it does not define the claimed subject-matter in a manner which allows a meaningful comparison with the state of the art to be made. Indeed, in the absence of any structural information about the claimed subject-matter, it is not possible to determine if the claimed product is novel. For instance, there is no way of ruling out that the functional and locational features defined in the claim do not simply re-characterise a known molecule.

29. The appellant argued that a receptor can be defined solely by its binding properties to its ligand. It was argued that this was in line with "*the definition of a receptor from a number of online scientific dictionaries, all of which show that in the art a receptor is defined in terms of its specific binding to a ligand*". Moreover, it argued that it was not a requirement of the EPC, that an applicant had to sequence a protein in order to be entitled to claim it.

30. It is of course correct that the EPC does not set any specific requirements as to which features are required to meet the requirements of Article 84 EPC for clarity in any particular technical field. Instead, the Boards, in the case law, have developed the criteria to be used to determine whether or not a claim is clear. Applying these criteria leads to the conclusion that the claim lacks clarity, as set out in point 28. above.

31. In view of the above considerations, the board concludes that claim 1 lacks clarity and does not meet the requirements of Article 84 EPC.

Auxiliary request 4 - claim 1

32. Claim 1 of auxiliary request 4 is an amended version of claim 5 of the main request. The amendments however do not overcome the clarity issues identified for claim 5 of the main request because they only further define binding characteristics of the ligand of the claimed receptor but not the receptor itself. A further definition of the ligand cannot serve to clearly describe the claimed receptor.

33. In view of the above considerations, no claim request meets the requirements of the EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chair:

I. Aperribay M. Pregetter

Decision electronically authenticated