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File No.: T 0946/91 - 3.3.1  
Application No.: 84 105 585.8  
Publication No.: 0 125 702  
Classification: C07C 91/10  
Title of invention: Polycyclic aromatic compounds

**D E C I S I O N**  
of 17 August 1993

Applicant: THE WELLCOME FOUNDATION LIMITED

Headword: Correction/WELLCOME

**EPC:** R. 88

Keyword: "Correction of obvious mistakes; partly allowable"

**Headnote**  
**Catchwords**



Case Number: T 0946/91 - 3.3.1

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.1  
of 17 August 1993

**Applicant:**

THE WELLCOME FOUNDATION LIMITED  
Unicorn House  
160 Euston Road  
London NW1 2BP (GB)

**Representative:**

Patentanwälte  
TER MEER - MÜLLER - STEINMEISTER & PARTNER  
Mauerkircherstraße 45  
D - 81679 München (DE)

**Decision under appeal:**

Decision of the Examining Division of the European  
Patent Office dated 1 July 1991 refusing a request  
for correction of errors in decision (Rule 89 EPC).

**Composition of the Board:**

**Chairman:** K.J.A. Jahn  
**Members:** R.W. Andrews  
J.A. Stephens-Ofner

### Summary of Facts and Submissions

- I. European patent No. 0 125 702 in respect of European patent application No. 84 105 585.8, which was filed on 16 May 1984, was granted on 12 August 1987 (cf. Bulletin 87/33).
- II. In a letter filed on 10 August 1987, the Applicant requested amendments under Rule 88 EPC to Examples 32 and 47 on page 45 of the printed patent application. In a communication dated 26 August 1987, the Formalities Officer informed the Applicant that, since the request to correct obvious mistakes in the application document under Rule 88 EPC was received after the decision to grant had been taken, it was received late and could no longer be taken into account.
- III. In a letter received on 17 November 1990, the Patentee requested the correction of the obvious mistakes in the table on pages 21 and 22 of the published patent specification and pages 44 and 45 of the application as originally filed. In particular, these mistakes occurred in the definition of Compounds 21, 22, 32, 41, 42 and 47.
- IV. By decision dated 1 July 1991, the Examining Division refused the request for correction of errors in the decision since the requested corrections related to errors which were present in the text specified at grant. Therefore, correction under Rule 89 EPC was not possible and Rule 88 EPC was irrelevant.
- V. An appeal was lodged against this decision on 13 August 1991 and the prescribed fee was duly paid. The Appellant sought the reversal of the decision of the Examination Division refusing the requested amendments.

VI. In reply to the Statement of Grounds of Appeal filed on 31 October 1991, the Rapporteur expressed the provisional opinion that the mistakes occurring in compounds 41 and 42 could be corrected. However, the requested corrections to compounds 21, 22, 32 and 47 did not appear to be allowable. In his response to this letter filed on 28 December 1992, the Appellant withdrew the request to correct the mistake in Compound 32.

VII. Oral proceedings were held on 17 August 1993. In the course of his written and oral submissions, the Appellant contended that the list of compounds on pages 5 and 6 of the printed patent specification should correspond to the compounds in the table on pages 21 and 22. A simple comparison of this list with the table shows that the present compounds 21, 22 and 47 of the table do not appear in the list, whereas the corresponding compounds as corrected do.

Furthermore, the intermediate anthracenecarbaldehydes prepared in Examples P, Q and V are those required for the preparation of compounds 21, 22 and 47 as corrected, respectively, whereas there are no starting materials corresponding to the present compounds 21, 22 and 47.

Finally, the Appellant pointed out that the only compounds in the table on page 21 and in the list on page 5 with an ethylthio or hydroxyethylthio substituent attached to a polycyclic aromatic ring are compounds 21 and 22.

VIII. The Appellant requested that the decision under appeal be set aside and that the patent be amended so as to include the corrections set out in the main or auxiliary request submitted in the course of oral proceedings.

IX. At the conclusion of the oral proceedings the Board's decision that the patent be amended according to the auxiliary request was announced.

#### Reasons for the Decision

1. The appeal is admissible.
2. Rule 88 EPC allows the correction of linguistic errors, errors of transcription and other mistakes in any document filed with the European Patent Office at any time (T 200/99, OJ EPO 1992, 46, paragraph 3.1 of the Reasons). Thus, the Examining Division was wrong in finding that Rule 88 EPC was irrelevant.

The second sentence of this Rule stipulates that, if the request for such correction concerns the description, claims or drawings, the correction must be obvious in the sense that it is immediately evident that nothing else would have been intended than what is offered as the correction. Therefore, the requested correction to compounds 21, 22, 41, 42 and 47 which is the subject-matter of the main request, must meet this requirement laid down in the second sentence of Rule 88 EPC.

In point 4 of its decision G 11/91 of 19 November 1992 (OJ EPO 1993, 125) the Enlarged Board of Appeal found that a correction under second sentence of Rule 88 EPC is strictly declaratory in the sense that the corrected information merely expresses what the skilled person, using his common general knowledge, would derive on the date of filing from the disclosure of the European patent application taken as a whole.

In point 5 of the above-mentioned decision, the Enlarged Board also held that the error must be obvious insofar as the skilled person is in no doubt that this information is not correct and, considered objectively, cannot be meant to be read in this manner. However if it is doubtful whether the information is incorrect or if the incorrect information only becomes apparent in the light of the proposed correction, a correction under Rule 88 EPC is ruled out.

Therefore, initially the Board must decide whether the errors, the correction of which is requested, are obvious to the skilled reader.

The Board accepts the Statement of Facts put forward by the Appellant to support his submission that the corrections to compounds 21, 22 and 47 are allowable under Rule 88 EPC. However, in the Board's judgment, the fact that the compounds as corrected appear in the list on pages 5 and 6 and that the preparation of the appropriate intermediate aldehydes is described is not relevant in the present circumstances to deciding whether the errors, which the requested amendments seek to correct are obvious to the skilled reader. Thus, the introduction to the list on pages 5 and 6 reads "specific compounds within the scope of formula (I) include, for example". Therefore, the skilled person would not automatically link the list with the table bridging pages 21 and 22.

Similarly, with reference to Examples 2 to 49 it is stated that using methods analogous to that described in Example 1 and utilising the appropriate aldehyde and aminoalkanol starting materials, the following compounds of formula (I) are prepared in the form of their hydrochloride salts (all compounds analysed correctly for the assigned structure). Thus, there is no statement

specifically linking the intermediates prepared in Examples A to Z and AA to AN with Examples 2 to 49.

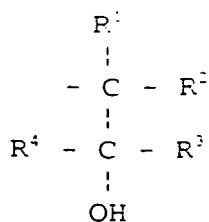
Therefore, in the Board's judgment, the decision regarding whether the errors, the corrections of which are requested, are obvious or not must be solely based on the skilled person's reading of the table on pages 21 and 22.

The skilled person would consider the information provided by this table to be correct, if, after taking note of the relevant footnotes, he is able to work out the structure of a compound falling within the terms of the general formula (I) as defined in Claim 1. On this basis he would conclude that the compounds 21, 22 and 47 all fall within the ambit of formula (I) and would, therefore, have no reason to doubt the correctness of the information presented in the table with respect to these compounds. In particular, as admitted by the Appellant, the uncorrected compounds 21, 22 and 47 fall with the scope of Claim 1.

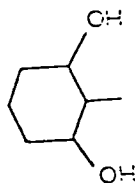
Therefore, the Board finds that the corrections to compounds 21, 22 and 47 are not allowable since the errors they seek to correct are not obvious. Thus; the Appellant's main request must be refused.

3. According to the auxiliary request, the Appellant seeks to correct errors occurring in compounds No. 41 and 42 on page 42 of the printed patent specification.

In the footnote to the table bridging pages 21 and 22 it is stated that in Examples 41 and 42



represents a cyclohexanediol ring



This statement is in conflict with the uncorrected definitions of R<sup>1</sup> and R<sup>2</sup> given for compounds 41 and 42. Therefore, in the light of this footnote, the skilled person would be in no doubt that the information in this table with respect to compounds 41 and 42 is incorrect and, moreover, it would be immediately evident to him that nothing else would have been intended than what is now proposed as the correction.

Therefore, in the Board's judgment, the corrections proposed to page 22 of the printed patent specification are allowable under the second sentence of Rule 88 EPC.

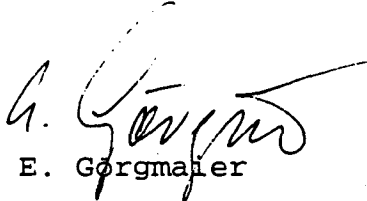


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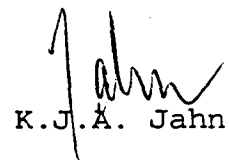
For these reasons, it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance with the order to amend the patent according to the auxiliary request.

The Registrar:

  
E. Gorgmaier

The Chairman:

  
K.J.A. Jahn