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D E C I S I O N
of 18 October 2005

Case Number: T 0713/99 - 3.3.02

Application Number: 91118744.1

Publication Number: 0540766

IPC: A61K 31/00

Language of the proceedings: EN

Title of invention:
Treatment of eosinophil-mediated diseases with Paf antagonists and procedure for determining their efficacy"

Applicant:
Korth, Ruth-Maria, Dr. med.

Headword:
Paf Antagonists/KORTH DR. MED.

Relevant legal provisions:
EPC Art. 52(4), 82, 96(2), 106, 107, 108, 123(2)
EPC R. 46(1), 51(2), 64

Keyword:
"Main request, first and second auxiliary requests: support in the application as filed (no) - subject-matter of the amended claims not directly and unambiguously derivable from the application as filed"

Decisions cited:
T 0201/83, T 0331/87, T 0728/98

Catchword:
-

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0713/99 - 3.3.02

D E C I S I O N
of the Technical Board of Appeal 3.3.02
of 18 October 2005

Appellant: Korth, Ruth-Maria, Dr. med
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 9 September 1998 refusing European application No. 91118744.1 pursuant to Article 97(1) EPC.**

Composition of the Board:

Chairman: U. Oswald
Members: G. Rampold
J. P. C. Seitz

Summary of Facts and Submissions

I. The **appellant** is the **applicant** of European patent application No. 91 118 744.1 ("the application"). The application was filed on 4 November 1991 and is entitled "Treatment of eosinophil-mediated diseases with Paf Antagonists and Procedure for Determining their Efficacy". The application as originally filed contained inter alia claims directed to:

"1. A method of treating eosinophil-mediated diseases comprising administering to a subject requiring said treatment with an effective amount of at least one paf antagonist.

2. The method according to claim 1, wherein the paf antagonist is a triazolo-thieno—diazepine or a homologue thereof, a ginkgolide, a ginkgolide mixture or a synthetic ginkgolide derivative or an analogue of paf.

3. The method of claim 1, wherein the eosinophil—mediated disease to be treated is *an* allergic and inflammatory disease including inflammatory, allergic, hepathic and nephrotic oedema formation.

4. The method of claim 2, wherein the triazolo-thieno— diazepine is WEB 2086 or WEB 2098 or BN 50739 and the ginkgolide BN 52020, BN 52021 or BN 52021 (as herein defined) or mixtures of/with these compounds;

5. A procedure for determining the efficacy of a paf antagonist, characterized by the following steps:

a) Paf-like compounds are measured in the blood or tissue,

b) a given quantity of purified cells is mixed with a given quantity of labelled paf and the antagonist to be determined in the presence and absence of said low concentration of paf,

c) a given quantity of the same purified cells is mixed with a given quantity of labelled paf in the presence and absence of said low concentration of paf,

d) the cells are separated from the mixtures b) and c) in each case,

e) the quantity of labelled paf bound to the cells is measured in each case, and

f) the efficacy of the paf antagonist is determined from the relationship between the quantity of labelled paf which is bound to the cells according to b) in the presence of the antagonist on the one hand, and the quantity of labelled paf which is bound to the cells according to c) in the absence of the antagonist."

Dependent claims 6 to 9 related to specific embodiments of the procedure for determining the efficacy of a paf antagonist according to claim 5.

II. The search division informed the appellant in accordance with Rule 46(1) EPC of the lack of unity of the claimed invention and invited the appellant to pay a further search fee. The two inventions were presented as follows:

- claims 1 to 4: "Method of treating eosinophil-mediated diseases":

- claims 5 to 9: "Determining the efficacy of a paf antagonist".

III. During examination of the application pursuant to Article 96 EPC, the examining division issued three communications pursuant to Article 96(2) and Rule 51(2) EPC in which an objection under Article 52(4) EPC to claims 1 to 4 and also objections of lack of unity of invention, lack of clarity of the claims and lack of novelty and inventive step of the claimed subject-matter were raised. By a decision notified on 9 September 1998, the examining division of the EPO refused the application pursuant to Article 97(1) EPC. The decision was based on an amended set of claims 1 to 5 filed on 12 August 1996. These claims read as follows:

"1. A combination of BN 50739 or at least one ginkgolide with N-3 polyunsaturated fatty acids and/or garlic oils as a pharmaceutical composition.

2. A pharmaceutical composition according to claim 1 wherein the ginkgolide is BN 52063.

3. The use of a combination of BN 50739 or at least one ginkgolide with N-3 polyunsaturated fatty acids and/or garlic oils for the preparation of a pharmaceutical composition for the treatment or prevention of eosinophil-mediated diseases.

4. The use of a combination according to claim 3, wherein the ginkgolide is BN 52063.

5. The use of a combination according to claim 3 or 4 for the treatment or prevention of inflammations, allergies or oedema."

IV. In its decision, the examining division considered that the amended claims 1 to 5 met the requirements of Articles 84 and 123(2)EPC.

It also considered that none of the citations available in the proceedings anticipated the use of a combination of (a) the synthetic triazolothieno-diazepine BN 50739 or at least one ginkgolide with (b) N-3 polyunsaturated fatty acids and/or garlic oils for use in a method covered by Article 52(4) EPC and acknowledged the novelty of the claimed subject-matter in the application.

As regards inventive step, it was recalled in the decision under appeal that the capability of the triazolo-thieno-diazepine BN 50739 and also ginkgolides to act as inhibitors of the paf receptor was already known from a number of documents cited in the search report, and that the capability of N-3 polyunsaturated fatty acids to decrease paf synthesis in human cells has also already been reported in the state of the art. From this the examining division concluded that the claimed combination of the two different kinds of compounds, both having the known and desired effect of decreasing the activity of paf, even if this effect was achieved in each case by a different mechanism, did not *per se* involve an inventive step. The examining

division concluded further that the applicant failed to demonstrate any unexpected advantageous effect associated with the claimed combination of active ingredients and refused the application for lack of inventive step.

V. An appeal against this decision was filed on 22 October 1998 with the appeal fee being paid at the same time. The statement of grounds of appeal, filed on 4 January 1999, contested the finding in the decision under appeal that the claims before the examining division did not comply with the requirements of Article 56 EPC. The appellant requested that a European patent be granted on the basis of the following claims:

"1. A combination of BN 50739, a triazolo-thieno-diazepine or at least one ginkgolide with N-3 polyunsaturated fatty acids and/or garlic oils as a pharmaceutical composition.

2. The pharmaceutical composition according to claim 1 wherein the ginkgolide is BN 52063.

3. The pharmaceutical composition according to claim 1 wherein the triazolo-thieno-diazepine is WEB 2086 or WEB 2098.

4. The use of a combination of BN 50739, a triazolo-thieno-diazepine or at least one ginkgolide with N-3 polyunsaturated fatty acids and/or garlic oils for the preparation of a pharmaceutical composition for the treatment or prevention of oedema with reduced serum albumin and oedema as

eosinophul-mediated disease (including hepatic and nephrotic oedema).

5. The use of a combination according to claim 4, wherein the ginkgolide is BN 52063.

6. The use of a combination according to claim 5, wherein the triazolo-thieno-diazepine is WEB 2086 or WEB 2098."

VI. By letter dated 14 November 2002 the appellant's previous professional representative withdrew from representation.

VII. Since the EPO had not been notified of the appointment of a new representative, the board, in a communication dated 30 January 2003, summoned the applicant (appellant) herself to oral proceedings, scheduled to take place on 28 March 2003. At the beginning of the hearing, the appellant, who is named in the application as the sole inventor and was not represented in these proceedings by a professional representative, informed the board that she was surprised to find herself not before the examining division but before a board of appeal. In response to a question from the chairman, the appellant confirmed that, in case of an adjournment of the proceedings, she would prefer to be represented by a professional representative during further prosecution of this case before the board of appeal. In these circumstances, the board decided to continue the proceedings in writing; the appellant was requested to review the claims then on file and, if considered necessary, to file amended claims within a time limit of four months.

VIII. By letter dated 18 August 2003, the appellants' new representative filed observations and the following set of newly amended claims 1 to 5:

"1. A composition comprising

a) at least one paf antagonist selected from the group consisting of triazolo-thieno-diazepines and ginkgolides; and

b) N-3 polyunsaturated fatty acids or garlic oils for use for the treatment or prevention of oedema, including hepatic and nephrotic oedema, and reduced serum albumin.

2. Use of N-3 polyunsaturated fatty acids or garlic oils for the preparation of a pharmaceutical composition for the treatment and prevention of oedema, including hepatic and nephrotic oedema, and reduced serum albumin wherein said N-3 polyunsaturated fatty acids or said garlic oils are administered in combination with at least one paf antagonist selected from the group consisting of triazolothieno-diazepines and ginkgolides.

3. Use of a paf antagonist selected from the group consisting of triazolo-thieno-diazepines and ginkgolides for the preparation of a pharmaceutical composition for the treatment or prevention of oedema, including hepatic and nephrotic oedema, and reduced serum albumin, wherein said paf antagonist is administered in combination with N-3 polyunsaturated fatty acids or garlic oils.

4. The composition of claim 1, or the use of any of claims 2 or 3, wherein the ginkgolide is BN 52020, BN 52021, or BN 52022, or mixtures thereof.

5. The composition of claim 1, or the use of any of claims 2 or 3, wherein the triazolo-thieno-diazepine is WEB 2086, WEB 2098, or BN 50739.

IX. In a communication dated 14 July 2005, the board summoned the appellant to oral proceedings on the new date of 18 October 2005 and sent enclosed with the summons a communication conveying the provisional opinion of the board concerning the non-compliance of the amended claims with Articles 84 and 123(2) EPC. In particular, the appellant's attention was drawn to the following points:

- the wording "for the treatment of reduced serum albumin" was in the board's opinion neither clear nor adequately supported by the originally filed documents;

- no adequate support could be found in the originally filed documents for a composition comprising a paf antagonist with garlic oils or N-3 polyunsaturated fatty acids; in this respect the board noted specifically that in the application as originally filed neither garlic oils nor N-3 polyunsaturated fatty acids were disclosed as having the capability of decreasing the blood level of paf.

X. In advance of the oral proceedings, the appellant's representative submitted further observations and two sets of amended claims.

XI. Oral proceedings took place on 18 October 2005. The slightly amended claims in the **main request** filed by the appellant's representative at the beginning of the hearing read as follows:

"1. A composition comprising

a) at least one paf antagonist selected from the group consisting of triazolo-thieno-diazepines and ginkgolides; and

b) N-3 polyunsaturated fatty acids for use for the treatment or prevention of oedema, including hepatic and nephrotic oedema.

2. Use of N-3 polyunsaturated fatty acids for the preparation of a pharmaceutical composition for the treatment and prevention of oedema, including hepatic and nephrotic oedema, wherein said N-3 polyunsaturated fatty acids are administered in combination with at least one paf antagonist selected from the group consisting of triazolo-thieno-diazepines and ginkgolides.

3. Use of a paf antagonist selected from the group consisting of triazolo-thieno-diazepines and ginkgolides for the preparation of a pharmaceutical composition for the treatment or prevention of oedema, and reduced serum albumin, including hepatic and nephrotic oedema, wherein said paf antagonist is administered in combination with N-3 polyunsaturated fatty acids.

4. The composition of claim 1, or the use of any of claims 2 or 3, wherein the ginkgolide is BN 52020, BN 52021, or BN 52022, or mixtures thereof.

5. The composition of claim 1, or the use of any of claims 2 or 3, wherein the triazolo-thieno-diazepine is WEB 2086, WEB 2098, or BN 50739."

The **first auxiliary request** consists of claims 2 to 5 (renumbered 1 to 4) of the above main request.

The **second auxiliary request** consists of claims 1 to 4 of the first auxiliary request with the sole exception that the independent claims 1 and 2 have been limited to the treatment and prevention of hepatic and nephrotic oedema; these claims are accordingly worded as follows:

"1. Use of N-3 polyunsaturated fatty acids for the preparation of a pharmaceutical composition for the treatment and prevention of hepatic and nephrotic oedema, wherein said N-3 polyunsaturated fatty acids are administered in combination with at least one paf antagonist selected from the group consisting of triazolo-thieno-diazepines and ginkgolides.

2. Use of a paf antagonist selected from the group consisting of triazolo-thieno-diazepines and ginkgolides for the preparation of a pharmaceutical composition for the treatment or prevention of hepatic and nephrotic oedema,

wherein said paf antagonist is administered in combination with N-3 polyunsaturated fatty acids."

XII. The essence of the reasoning in the appellant's written submissions and during oral proceedings, so far as relevant to this decision, was as follows:

All references below presented by the appellant in support of the amended claims under Article 123(2) EPC are to the application as originally filed.

(A) The appellant essentially argued that both **the composition of claim 1** of the main request as well as the use according to **claims 1 and 2 of the first and second auxiliary requests** (see XI above) were adequately supported, *inter alia*, by the disclosure in the paragraph bridging pages 2 and 3 which taught the combination of paf receptor antagonists with an additional compound which decreased the blood level of paf for the treatment of eosinophil-mediated diseases such as oedema, including hepatic and nephrotic oedemas.

(B) In the appellant's opinion, the skilled reader of the application would readily understand that a composition comprising the two components a) and b) was an intended object resulting from the combination of a paf antagonist with N-3 polyunsaturated fatty acids, as taught in the paragraph bridging pages 2 and 3. Support for the subject-matter of claim 1 could also be found at lines 7 to 9 on page 3 where it was suggested developing compounds which inhibit paf receptors and prevent synthesis of paf at the same time.

(C) Claim 4 of the application as filed, which mentioned that the paf antagonists disclosed therein might be present as "mixtures of/with these compounds", was also regarded by the appellant as lending additional support to the view that the claimed composition was already disclosed in the application as filed.

(D) That at least one paf antagonist selected from the group of triazolo-thieno-diazepines and ginkgolides may be useful as the paf antagonist in connection with the claimed composition in the application could be derived, for example, from claims 1, 2 and 4 and the disclosure in the first full paragraph on page 3.

(E) At lines 18-19 on page 2 explicit mention was made that N-3 polyunsaturated fatty acids have the capability of decreasing the paf synthesis in human cells. The skilled person reading this information would, in the appellant's opinion, immediately understand that N-3 polyunsaturated fatty acids, which had been described in the reference cited in the application as having the effect of decreasing the paf synthesis in human cells, would necessarily also exhibit the capability of decreasing the blood level of paf. This was also evident, for example, from the disclosure in lines 5-6 on page 1 where it was taught that paf is released by IgE-sensitized basophils, ie blood cells, and became even more evident from the additional references submitted in the course of the appeal proceedings.

XIII. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis

of either one of the three requests, all filed during the oral proceedings.

Reasons for the decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is, therefore, admissible.

2. In response to the lack-of-unity objection under Article 82 EPC, the subject-matter of the originally filed claims 5 to 9 relating to a procedure for determining the efficacy of a paf antagonist (see I above) has been excised from the claimed subject-matter in the current main request and both auxiliary requests. The objection under Article 82 EPC has accordingly been met.

3. *Amendments (Article 123(2) EPC)*

3.1 Article 123(2) EPC, which governs amendments before grant specifies that: "A European patent application may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed". The underlying idea of this sub-article is clearly that an applicant should not be allowed to improve his position by adding subject-matter not disclosed in the application as filed, which would give him an unwarranted advantage and could be damaging to the legal security of third parties relying on the content of the original application.

3.2 In accordance with the established jurisprudence of the EPO boards of appeal, the decision on the compliance of amendments with Article 123(2) EPC calls for an inquiry

into whether or not the application as originally filed contains sufficient information so that the person skilled in the art could derive the proposed amendments from it **directly and unambiguously**, including any features implicit therein (see eg T 201/83, OJ EPO 1984, 481; T 331/87, OJ EPO 1991, 022; T 728/98, OJ EPO 2001, 319; and in general "Case Law of the Boards of Appeal of the EPO", 4th ed. 2001, pages 197 ff).

3.3 Claim 1 as originally filed (see I above) relates to a method of treating eosinophil-mediated diseases comprising administering to a subject requiring said treatment with an effective amount of at least one paf antagonist [as the sole active principle].

Originally filed dependent claims 2 to 4 (see I above) are likewise method claims relating to specific embodiments of the method of treating eosinophil-mediated diseases according to claim 1.

4. *Main request*

4.1 In contrast to the originally filed method claims, present claim 1 is a composition claim directed to:

A **composition** comprising

(a) at least one paf antagonist selected from the group consisting of triazolo-thieno-diazepines and ginkgolides; **and**

(b) N-3 polyunsaturated fatty acids for use for the treatment or prevention of oedema, including hepatic and nephrotic oedema.

4.2 The appellant argued in writing and at the hearing that the **"composition"** claimed in claim 1 finds a basis, *inter alia*, in the paragraph bridging pages 2 and 3 of the application as filed. The disclosure in the application as filed presented in support of the claimed composition reads in the whole context of this paragraph as follows:

"As we have found, that the presence of submaximal concentrations of paf inhibited the binding sites of paf receptor antagonists on eosinophiles, it is suitable **to combine** *paf receptor antagonists with a compound which decrease[s] the blood level of paf. In this connection an additional compound is suitable to inhibit paf synthesis for treating and preventing eosinophil—mediated diseases such as inflammations, allergies, including asthma, oedema (including hepatic and nephrotic oedemas) and anaphylactic shock. These treatments should prevent that submaximal levels of paf induce eosinophil emigration into the tissue with eosinophil—mediated tissue damage and reduce the responsiveness of eosinophils to paf receptor antagonists. On the long term however, it is suitable to develop compounds according to the invention which inhibit paf receptors and prevent synthesis of paf at the same time. It is also suitable to increase paf degradation for example by an increase of acetylhydrolase release from platelets."*

4.2.1 The short reference in the above-mentioned paragraph to compounds having the double function of inhibiting paf receptors (ie acting as paf antagonists) and reducing paf synthesis (*"On the long term however, it is*

suitable to develop compounds according to the invention which inhibit paf receptors and prevent synthesis of paf at the same time") provided, in the appellant's opinion, further support for the **"composition"** claimed in claim 1.

4.2.2 Finally, the reference to "mixtures with these compounds" at the end of originally filed claim 4 (see I above) pointed, in the appellant's opinion, also to the disclosure in the originally filed documents of a **"composition"** as claimed in the application.

4.3 The selection of the **specific components** of the claimed composition, ie

(a) at least one paf antagonist selected from the group consisting of triazolo-thieno-diazepines and ginkgolides and

(b) N-3 polyunsaturated fatty acids,

and the formation of a composition comprising these particular components (a) and (b), was derivable, in the appellant's judgment, from the disclosure referred to in 4.2 to 4.2.2 above in conjunction with what was claimed in originally filed claims 1, 2 and 4 and the disclosure at page 3, lines 11-20, and at page 2, lines 15-22, of the application as filed.

4.3.1 As regards the wording of originally filed claims 1, 2 and 4 see I above.

4.3.2 The disclosure at page 3, lines 11-20, of the application as filed reads as follows:

"The substances that are shown to inhibit the paf binding sites in this connection can be a triazolo—thieno—diazepine or a homologous compound. In addition ginkgolides and paf analogues, such as CV 3988, have proven suitable. Triazolo-thieno—diazepines are described in Br. J. Pharmacol. 1987, 90, 139, ginkgolides in "Blood and Vessel" 1985, 16, 558. Of the triazolo-thieno—diazepine compounds WEB 2086 and WEB 2098 are especially suitable. Of the ginkgolides BN 52020, BN 52021 and a mixture of BN 52020, BN 52021 and BN 52022, which is referred to as BN 52063, achieve the best results. The synthetic compound BN 50739 can also be used."

4.3.3 The disclosure at page 2, lines 15-22, of the application as filed reads as follows:

"In this connection, we have discovered here that serum albumin competes with paf receptors for paf binding. As serum albumin is reduced in hepatic and nephrotic oedema paf antagonists seem to be suitable in these cases. Fish liver oils (N-3 polyunsaturated fatty acids) has been shown to decrease the paf synthesis in human cells (Sperling et al. 1987, 139, 4186) and is commercially available now for the treatment and prevention of allergic, inflammatory and hyperlipidemic as well as cardiovascular diseases."

4.4 The board will deal first with the question of whether or not the application as filed discloses a **"composition"** as claimed in claim 1. As generally understood, the technical term "composition" relates in the field of pharmacy to a preparation which is made up

of a certain number of separate individual components [ie in the present case of the separate components (a) and (b)] and which presents itself to the outside as a **unit,** more specifically as a pharmaceutical **unit dosage form** which is adapted for administration to a subject in need of it and is, for example, a tablet or a capsule.

4.4.1 The relevant teaching in the application as filed ("it is suitable to **combine** paf receptor antagonists with a compound which decrease[s] the blood level of paf"; see 4.2 above) is considerably broader. The result of the action of combining a paf receptor antagonist with a second compound may be a composition in the sense outlined above, but may also be, for example, a kit of parts which contains the active ingredients (a) and (b) in the form of two clearly discernible and visible separate dosage forms, such as two separate tablets or capsules, or a particular mode of administration wherein the active components (a) and (b) are administered, for example, in the form of tablets or capsules separately from each other. The latter apparently concurs with the appellant's own interpretation of the content of the application as filed because the disclosure presented by the appellant in support of the composition of claim 1 of the main request was also presented as the basis in the application as filed for the independent claims 2 and 3 in the main request and claims 1 and 2 in the first and second auxiliary request which all relate to the **administration** of component (a), the paf antagonist **in combination** with (b) N-3 polyunsaturated fatty acids or *vice versa.*

4.4.2 The disclosure in the application as filed referred to in 4.2.1 above could merely be considered as an interesting view on or suggestion for the development in future of a new type of chemical **compound** endowed with both the capability of inhibiting paf receptors (paf antagonist activity) and reducing paf synthesis in one single compound, but cannot give any supplementary support for "a composition" in the sense outlined in 4.5 above.

4.4.3 The reference to "mixtures with these compounds" in originally filed claim 4 (see 4.2.2 above) offers no suggestion at all as to the nature of the component or components which said mixtures should contain in addition to the specific triazolo-thieno-diazepines or ginkgolides listed in the claim. Since such entirely undefined mixtures are not necessarily "compositions" in the sense outlined in 4.4 above, original claim 4 cannot therefore qualify as support for present claim 1.

4.5 In the light of the foregoing it follows that a **"composition"** in general, let alone a **"composition"** formed from the components (a) a paf antagonist and (b) a compound which decreases the blood level of paf, is not directly and unambiguously derivable from the content of the application as filed. Even less could a sound basis for a composition containing the **specific components (a) and (b)** in combination as claimed in claim 1 be found in the application as filed.

4.5.1 In order to arrive at the claimed composition, comprising the specific combination of components (a) and (b), the following independent choices or

selections must be made among mutually independent options disclosed in the application as filed,

(a) the choice of at least one triazolo-thieno-diazepine or ginkgolide as the component (a) is the result of a selection from the broader group of substances having the capability of inhibiting the paf binding sites, namely triazolo—thieno—diazepines and homologous compounds, ginkgolides and paf analogues which are all disclosed as suitable paf antagonists in the application as filed (see page 3, lines 11-20).

(b) the choice of N-3 polyunsaturated fatty acids as the component (b) is the result of a selection from the group of compounds which are commonly known to a person skilled in the art as having the capability of inhibiting or decreasing the paf synthesis, or decreasing the blood level of paf, or increasing paf degradation and are as such mentioned in the application as filed, namely N-3 polyunsaturated fatty acids, serum albumin, prostacyclin with analogues and garlic oils (see page 2, lines 15-25) and compounds having the ability to increase acetylhydrolase release from platelets (see page 3, lines 8-10).

4.5.2 In view of the above, it appears clear that a composition comprising a combination of the specific components (a) and (b) is certainly not directly and unambiguously derivable from the disclosure in the application as filed.

4.6 Since a decision can only be taken on a request as a whole, none of the further claims in the main request needs to be examined. In these circumstances, the appeal in so far as it relates to the main request must be dismissed, as claim 1 does not meet the requirements of Article 123(2) EPC.

5. *First and second auxiliary requests*

5.1 Independent claims 1 and 2 of both auxiliary requests are all drawn up in the conventional "second (further) medical use format". These claims relate essentially to the **administration** of component (a), the paf antagonist **in combination** with (b) N-3 polyunsaturated fatty acids or *vice* versa (see XI above).

5.2 The above objections under Article 123(2) EPC also apply *mutatis mutandis* to the independent claims of both auxiliary requests. The administration of the **specific** combination of active agents, namely at least one paf antagonist selected from the group consisting of triazolo-thieno-diazepines and ginkgolides, and (b)N-3 polyunsaturated fatty acids, for the treatment of oedema in general or hepatic and nephrotic oedema in particular is certainly not directly and unambiguously derivable from the application as filed for the reasons given in 4.5.1 above. It follows that the appellant's first and second auxiliary requests contravene Article 123(2) EPC and, therefore, must also fail.

6. To sum up, the proposed amended claims might possibly be considered as a narrow interpretation of what has originally been disclosed; nevertheless they are not directly and unambiguously derivable from the

application as filed as they are required to be in order to comply with Article 123(2) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

A. Townend U. Oswald