BESCHWERDEKAMMERN DES EUROPÄISCHEN PATENTAMTS

BOARDS OF APPEAL OF THE EUROPEAN PATENT OFFICE

CHAMBRES DE RECOURS DE L'OFFICE EUROPEEN DES BREVETS

Internal distribution code:
(A) [ ] Publication in OJ
(B) [ ] To Chairmen and Members
(C) [X] To Chairmen
(D) [ ] No distribution

Datasheet for the decision of 7 November 2007

Case Number: W 0016/06 - 3.3.02

Application Number: PCT/EP 2005/004777

Publication Number: WO 2005/105103

IPC: A61K 31/565

Language of the proceedings: EN

Title of invention:
Management of Breakthrough Bleeding in Extended Hormonal Contraceptive Regimens

Applicant:
Schering AG

Opponent:
-

Headword:
SCHERING AG/Management of Breakthrough Bleeding

Relevant legal provisions:
PCT Art. 17(3)(a)
PCT R. 13, 40.1, 40.2
EPC Art. 154(3)

Keyword:
"Lack of unity a posteriori; insufficient reasoning for the absence of a common concept for the groups of inventions 23-154"

Decisions cited:
W 0018/06, W 0020/06

Catchword:
-

Europäisches Patentamt | European Patent Office | Office européen des brevets

Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: W 0016/06 - 3.3.02

International Application No. PCT/EP 2005/004777

D E C I S I O N
of the Technical Board of Appeal 3.3.02
of 7 November 2007

Applicant: Schering AG

Decision under appeal: **Protest according to Rule 40.2(c) of the Patent Cooperation Treaty made by the applicants against the invitation (payment of additional fees) of the European Patent Office (International Searching Authority) dated 13 April 2006.**

Composition of the Board:

Chairman: H. Kellner
Members: A. Lindner
T. Bokor

Summary of Facts and Submissions

I. The applicant filed an international patent application PCT/EP 2005/004777 comprising a set of 71 claims. The independent claims read as follows:

"1. A method for female hormonal contraception which comprises the monophasic continuous administration of an active preparation of ethinyl estradiol in an amount of 5 to < 30 μg daily or another synthetic or natural estrogen in an amount equivalent to 5 to < 30 μg ethinyl estradiol daily and a progestin in a contraceptive amount to the female for a first minimum period for as long as desired by the female after which the female initiates a break in said administration of said active preparation of 1 to 6 days, and wherein said break is followed by at least one further administration cycle of at least the duration of the first minimum period.

42. A method of providing oral contraception to a woman by administering an oral contraceptive containing an oestrogen and a progestin, wherein the daily amount of estrogen is 15 to 25 μg ethinyl estradiol or estrogen equivalent to 15 to 25 μg ethinyl estradiol and the daily amount of progestin is 1 to 4 mg drospirenone or progestin equivalent to 1 to 4 mg drospirenone, characterized in taking the oral contraceptive for a first period of 14 to 35 days, not taking the oral contraceptive for a second period of 1 to 6 days, and thereafter taking the oral contraceptive for a third period chosen by the woman but being at least as long as the first period.

50. Use of a method according to anyone of claims 1 to 49 for the treatment of premenstrual symptoms.

51. Use of a method according to anyone of claims 1 to 49 for the treatment of PMDD.

52. Use of a method according to anyone of claims 1 to 49 for the treatment of endometriosis.

53. Use of a method according to anyone of claims 1 to 49 for the treatment of dysmenorrhea.

54. Use of a method according to anyone of claims 1 to 49 for the treatment of acne.

55. Use of a method according to anyone of claims 1 to 49 for the treatment of PCOS.

56. A pharmaceutical package comprising

a) a monophasic preparation of ethinyl estradiol in an amount of 5 to < 30 μg or another estrogen in an amount equivalent to 5 to < 30 μg ethinyl estradiol and a progestin in a contraceptive amount,

b) the number of individual dosage units in said preparation being selected to achieve the method of hormonal contraception of anyone of claims 1 to 49, and

c) patient instructions for how to use the said monophasic preparation in the method for female hormonal contraception according to anyone of claims 1 to 49."

II. In its communication dated 13 April 2006, the European Patent Office, acting as an International Searching Authority (ISA), invited the applicant pursuant to Article 17(3)(a) and Rule 40.1 PCT to pay 153 additional search fees.

III. The following documents were cited by the ISA:

(1) WO 02/22110
(2) US 6 500 814
(3) EP 0 911 029

IV. The ISA defined the problems to be solved by the application as follows: provision of pharmaceutical compositions for use in a method of female hormonal contraception, for use in a method for the treatment of premenstrual symptoms, for use in a method for the treatment of PMDD, for use in a method for the treatment of endometriosis, for use in a method for the treatment of dysmenorrhea, for use in a method for the treatment of acne and for use in a method for the treatment of PCOS.

The proposed solution to these problems was the administration of a combination comprising ethinyl estradiol, or another synthetic or natural estrogen, and a progestin in a contraceptive amount to the female. The ISA then concluded that the idea of using said combination to overcome one of the problems identified above constituted the single general concept which was, however, not novel over any one of documents (1), (2) and (3). As a consequence, the requirements of Rule 13 PCT were not met. The ISA then defined the following

154 groups of inventions which take into account each possible combination of:

a) the 7 indications for treatment (cf. the first paragraph of present point IV.);
b) the 2 types of estrogens; and
c) the 11 different specific progestins from original claim 6.

Invention 1: claims 1-4, 6, 7, 9-13, 19-47, 56, 57, 59, 60, 62-66 (all partially), 48, 49

A pharmaceutical composition for monophasic continuous administration of ethinyl estradiol in an amount of 5 to <30 [mu]g daily and drospirenone for use in a method of female hormonal contraception

---

Invention 2: claims 1-4, 6, 7, 9, 10, 14-16, 19-43, 45-47, 56, 57, 59, 60, 62, 63, 67-69 (all partially)

A pharmaceutical composition for monophasic continuous administration of ethinyl estradiol in an amount of 5 to <30 [mu]g daily and dienogest for use in a method of female hormonal contraception

---

Invention 3: claims 1-4, 6, 8-10, 17-43, 45-47, 56, 57, 59, 61, 62, 63, 70, 71 (all partially)

A pharmaceutical composition for monophasic continuous administration of ethinyl estradiol in an amount of 5 to <30 [mu]g daily and levonorgestrel for use in a method of female hormonal contraception

---

Invention 4: claims 1-4, 6, 9, 10, 19-43, 45-47, 56, 57, 59, 62, 63 (all partially)

A pharmaceutical composition for monophasic continuous administration of ethinyl estradiol in an amount of 5 to <30 [mu]g daily and gestodene for use in a method of female hormonal contraception

---

Invention 5: claims 1-4, 6, 9, 10, 19-43, 45-47, 56, 57, 59, 62, 63 (all partially)

A pharmaceutical composition for monophasic continuous administration of ethinyl estradiol in an amount of 5 to <30 [mu]g daily and desogestrel for use in a method of female hormonal contraception

---

Invention 6: claims 1-4, 6, 9, 10, 19-43, 45-47, 56, 57, 59, 62, 63 (all partially)

A pharmaceutical composition for monophasic continuous administration of ethinyl estradiol in an amount of 5 to <30 [mu]g daily and 3-ketogestrel for use in a method of female hormonal contraception

---

Invention 7: claims 1-4, 6, 9, 10, 19-43, 45-47, 56, 57, 59, 62, 63 (all partially)

A pharmaceutical composition for monophasic continuous administration of ethinyl estradiol in an amount of 5 to <30 [mu]g daily and norethindrone acetate for use in a method of female hormonal contraception

---

Invention 8: claims 1-4, 6, 9, 10, 19-43, 45-47, 56, 57, 59, 62, 63 (all partially)

A pharmaceutical composition for monophasic continuous administration of ethinyl estradiol in an amount of 5 to <30 [mu]g daily and norgestimate for use in a method of female hormonal contraception

---

Invention 9: claims 1-4, 6, 9, 10, 19-43, 45-47, 56, 57, 59, 62, 63 (all partially)

A pharmaceutical composition for monophasic continuous administration of ethinyl estradiol in an amount of 5 to <30 [mu]g daily and norelgestromine for use in a method of female hormonal contraception

---

Invention 10: claims 1-4, 6, 9, 10, 19-43, 45-47, 56, 57, 59, 62, 63 (all partially)

A pharmaceutical composition for monophasic continuous administration of ethinyl estradiol in an amount of 5 to <30 [mu]g daily and trimegeston for use in a method of female hormonal contraception

---

Invention 11: claims 1-4, 6, 9, 10, 19-43, 45-47, 56, 57, 59, 62, 63 (all partially)

A pharmaceutical composition for monophasic continuous administration of ethinyl estradiol in an amount of 5 to <30 [mu]g daily and cyproterone acetate for use in a method of female hormonal contraception

---

Invention 12: claims 1-3, 5, 6, 7, 11-13, 19-42, 44-47, 56, 58-60, 64-66 (all partially)

A pharmaceutical composition for monophasic continuous administration of another synthetic or natural estrogen in an amount equivalent to 5 to <30 [mu]g ethinyl estradiol daily and drospirenone for use in a method of female hormonal contraception

---

Invention 13: claims 1-3, 5, 6, 7, 14-16, 19-42, 45-47, 56, 58-60, 67-69 (all partially)

A pharmaceutical composition for monophasic continuous administration of another synthetic or natural estrogen in an amount equivalent to 5 to <30 [mu]g ethinyl estradiol daily and dienogest for use in a method of female hormonal contraception

---

Invention 14: claims 1-3, 5, 6, 8, 17, 18-42, 45-47, 56, 58, 59, 61, 70, 71 (all partially)

A pharmaceutical composition for monophasic continuous administration of another synthetic or natural estrogen in an amount equivalent to 5 to <30 [mu]g ethinyl estradiol daily and levonorgestrel for use in a method of female hormonal contraception

---

Invention 15: claims 1-3, 5, 6, 19-42, 45-47, 56, 58, 59 (all partially)

A pharmaceutical composition for monophasic continuous administration of another synthetic or natural estrogen in an amount equivalent to 5 to <30 [mu]g ethinyl estradiol daily and gestodene for use in a method of female hormonal contraception

---

Invention 16: claims 1-3, 5, 6, 19-42, 45-47, 56, 58, 59 (all partially)

A pharmaceutical composition for monophasic continuous administration of another synthetic or natural estrogen in an amount equivalent to 5 to <30 [mu]g ethinyl estradiol daily and desogestrel for use in a method of female hormonal contraception

---

Invention 17: claims 1-3, 5, 6, 19-42, 45-47, 56, 58, 59 (all partially)

A pharmaceutical composition for monophasic continuous administration of another synthetic or natural estrogen in an amount equivalent to 5 to <30 [mu]g ethinyl estradiol daily and 3-ketogestrel for use in a method of female hormonal contraception

Invention 18: claims 1-3, 5, 6, 19-42, 45-47, 56, 58, 59 (all partially)

A pharmaceutical composition for monophasic continuous administration of another synthetic or natural estrogen in an amount equivalent to 5 to <30 [mu]g ethinyl estradiol daily and norethindrone acetate for use in a method of female hormonal contraception

---

Invention 19: claims 1-3, 5, 6, 19-42, 45-47, 56, 58, 59 (all partially)

A pharmaceutical composition for monophasic continuous administration of another synthetic or natural estrogen in an amount equivalent to 5 to <30 [mu]g ethinyl estradiol daily and norgestimate for use in a method of female hormonal contraception

---

Invention 20: claims 1-3, 5, 6, 19-42, 45-47, 56, 58, 59 (all partially)

A pharmaceutical composition for monophasic continuous administration of another synthetic or natural estrogen in an amount equivalent to 5 to <30 [mu]g ethinyl estradiol daily and norelgestromin for use in a method of female hormonal contraception

---

Invention 21: claims 1-3, 5, 6, 19-42, 45-47, 56, 58, 59 (all partially)

A pharmaceutical composition for monophasic continuous administration of another synthetic or natural estrogen in an amount equivalent to 5 to <30 [mu]g ethinyl estradiol daily and trimegeston for use in a method of female hormonal contraception

---

Invention 22: claims 1-3, 5, 6, 19-42, 45-47, 56, 58, 59 (all partially)

A pharmaceutical composition for monophasic continuous administration of another synthetic or natural estrogen in an amount equivalent to 5 to <30 [mu]g ethinyl estradiol daily and cyproterone acetate for use in a method of female hormonal contraception

---

Inventions 23-33: claims 1-4, 6,9, 10, 19-43, 45-47, 50; for invention 23 also 7, 11-13 and 44; for invention 24 also 7 and 14-16; for invention 25 also 8,17 and 18 (all claims partially

A pharmaceutical composition for monophasic continuous administration of ethinyl estradiol in an amount of 5 to <30 [mu]g daily and a progestin selected from the one of invention 1 for invention 23, the one of invention 2 for invention 24, and so on to the one of invention 11 for invention 33, for use in a method for the treatment of premenstrual symptoms

---

Inventions 34-44: claims 1-3, 5, 6, 19-42, 45-47, 50; for invention 23 also 7, 11-13 and 44; for invention 24 also 7 and 14-16; for
invention 25 also 8,17 and 18 (all claims partially)

A pharmaceutical composition for monophasic continuous administration of another synthetic or natural estrogen in an amount equivalent to 5 to <30 [mu]g ethinyl estradiol daily and a progestin selected from the one of invention 1 for invention 34, the one of invention 2 for invention 35, and so on to the one of invention 11 for invention 44, for use in a method for the treatment of premenstrual symptoms

---

Inventions 45-55: claims 1-4, 6, 9, 10, 19-43, 45-47, 51; for invention 45 also 7, 11-13 and 44; for invention 46 also 7 and 14-16; for invention 47 also 8,17 and 18 (all claims partially)

A pharmaceutical composition for monophasic continuous administration of ethinyl estradiol in an amount of 5 to <30 [mu]g daily and a progestin selected from the one of invention 1 for invention 45, the one of invention 2 for invention 46, and so on to the one of invention 11 for invention 55, for use in a method for the treatment of PMDD

Inventions 56-66: claims 1-3, 5, 6, 19-42, 45-47, 51; for invention 56 also 7, 11-13 and 44; for invention 57 also 7 and 14-16; for
invention 58 also 8,17 and 18 (all claims partially)

A pharmaceutical composition for monophasic continuous administration of another synthetic or natural estrogen in an amount equivalent to 5 to <30 [mu]g ethinyl estradiol daily and a progestin selected from the one of invention 1 for invention 56, the one of invention 2 for invention 57, and so on to the one of invention 11 for invention 66, for use in a method for the treatment of PMDD

Inventions 67-77: claims 1-4, 6,9, 10, 19-43, 45-47, 52; for invention 67 also 7, 11-13 and 44; for invention 68 also 7 and 14-16; for invention 69 also 8,17 and 18 (all claims partially

A pharmaceutical composition for monophasic continuous administration of ethinyl estradiol in an amount equivalent to 5 to <30 [mu]g daily and a progestin selected from the one of invention 1 for invention 67, the one of invention 2 for invention 68, and so on to the one of invention 11 for invention 77, for use in a method for the treatment of endometriosis

---

Inventions 78-88: claims 1-3, 5, 6, 19-42, 45-47, 52; for invention 78 also 7, 11-13 and 44; for invention 79 also 7 and 14-16; for
invention 80 also 8,17 and 18 (all claims partially)

A pharmaceutical composition for monophasic continuous administration of another synthetic or natural estrogen in an amount equivalent to 5 to <30 [mu]g ethinyl estradiol daily and a progestin selected from the one of invention 1 for invention 78, the one of invention 2 for invention 79, and so on to the one of invention 11 for invention 88, for use in a method for the treatment of endometriosis

---

Inventions 89-99: claims 1-4, 6,9, 10, 19-43, 45-47, 53; for invention 89 also 7, 11-13 and 44; for invention 90 also 7 and 14-16; for invention 91 also 8,17 and 18 (all claims partially

A pharmaceutical composition for monophasic continuous administration of ethinyl estradiol in an amount of 5 to <30 [mu]g daily and a progestin selected from the one of invention 1 for invention 89, the one of invention 2 for invention 90, and so on to the one of invention 11 for invention 99, for use in a method for the treatment of dysmenorrhea

---

Inventions 100-110: claims 1-3, 5, 6, 19-42, 45-47, 53; for invention 100 also 7, 11-13 and 44; for invention 101 also 7 and
14-16; for invention 102 also 8,17 and 18 (all claims partially)

A pharmaceutical composition for monophasic continuous administration of another synthetic or natural estrogenof in an amount equivalent to 5 to <30 [mu]g ethinyl estradiol daily and a progestin selected from the one of invention 1 for invention 100, the one of invention 2 for invention 101, and so on to the one of invention 11 for invention 110, for use in a method for the treatment of dysmenorrhea

---

Inventions 111-121: claims 1-4, 6,9, 10, 19-43, 45-47, 54; for

invention 111 also 7, 11-13 and 44; for invention 112 also 7 and
14-16; for invention 113 also 8,17 and 18 (all claims partially)

A pharmaceutical composition for monophasic continuous administration of ethinyl estradiol in an amount of 5 to <30 [mu]g daily and a progestin selected from the one of invention 1 for invention 111, the one of invention 2 for invention 112, and so on to the one of invention 121 for invention 55, for use in a method for the treatment of acne

---

Inventions 122-132: claims 1-3, 5, 6, 19-42, 45-47, 54; for invention 122 also 7, 11-13 and 44; for invention 123 also 7 and
14-16; for invention 124 also 8,17 and 18 (all claims partially)

A pharmaceutical composition for monophasic continuous administration of another synthetic or natural estrogen in an amount equivalent to 5 to <30 [mu]g ethinyl estradiol daily and a progestin selected from the one of invention 1 for invention 122, the one of invention 2 for invention 123, and so on to the one of invention 11 for invention 133, for use in a method for the treatment of acne

---

Inventions 133-143: claims 1-4, 6,9, 10, 19-43, 45-47, 55; for invention 133 also 7, 11-13 and 44; for invention 134 also 7 and
14-16; for invention 135 also 8,17 and 18 (all claims partially)

A pharmaceutical composition for monophasic continuous administration of ethinyl estradiol in an amount of 5 to <30 [mu]g daily and a progestin selected from the one of invention 1 for invention 133, the one of invention 2 for invention 134, and so on to the one of invention 143 for invention 55, for use in a method for the treatment of PCOS

Inventions 144-154: claims 1-3, 5, 6, 19-42, 45-47, 55; for invention 144 also 7, 11-13 and 44;for invention 145 also 7 and
14-16; for invention 154 also 8,17 and 18 (all claims partially)

A pharmaceutical composition for monophasic continuous administration of another synthetic or natural estrogen in an amount equivalent to 5 to <30 [mu]g ethinyl estradiol daily and a progestin selected from the one of invention 1 for invention 144, the one of invention 2 for invention 145, and so on to the one of invention 11 for invention 154, for use in a method for the treatment of PCOS

V. With his reply dated 15 May 2006, the applicant paid seven additional search fees under protest pursuant to Rule 40.2(c) PCT and requested that additional searches be effected for inventions 2, 12, 13, 89, 90, 100 and 101.

In support of the protest, the applicant argued that all claims of the present application were linked by the unique common feature of a "flexible break", i.e. a break of 1 to 6 days, initiated by the administering female after a first minimum period of administration.

VI. In the review dated 12 June 2006, the review panel of the ISA came to the conclusion that the invitation to pay additional fees was justified and that, as a consequence, the seven additional search fees were not to be refunded. In its argumentation, the review panel emphasised that documents (1) and (3) disclosed "flexible breaks" of 4 to 10 days and 3 to 10 days, respectively. Moreover, the review panel argued that the "flexible break" had no technical effect on the contraception or on the product containing the active preparation and concluded that it could not be considered as a technical feature, let alone as a distinguishing feature of the claimed product.

VII. With the letter of 12 July 2006, the applicant paid the protest fee according to Rule 40.2(e) PCT.

Reasons for the Decision

1. Given that the international application under consideration has an international filing date of

29 April 2005, the protest is subject to the provisions of the PCT in force as from 1 April 2005, including amended Rule 40 PCT.

2. The amendments to the PCT, however, do not alter the fact that this board of appeal is competent under Article 154(3) EPC to decide on the protest made by the applicant in the present case. The decision on the board's competence in the present case is based on the same reasons as those set out in the decisions W 0020/06 of 3 April 2007 and W 0018/06 of 5 March 2007, (see for instance points 2 to 9 of the Reasons for the Decision in W 0020/06).

3. As far as the payment of fees is concerned, the applicant was invited with the communication of 12 June 2006 ("Form PCT/ISA/228 (April 2005)") to pay the protest fee within one month. The protest fee was paid by the applicant with his letter dated 12 July 2006. Thus, the payment was made in time, and the protest is considered to have been made (Rule 40.2(e) PCT, second sentence). Again, the board follows the arguments and conclusions of W 0020/06 of 3 April 2007 and W 0018/06 of 5 March 2007 (see for instance points 10 to 20 of the Reasons for the Decision in W 0020/06).

4. Moreover, the protest complies with the requirements of Rule 40.2(c) PCT and is therefore admissible.

5. According to the established practice of the boards of appeal, the examination in protest proceedings has to be carried out in the light of the reasons given by the ISA in its invitation to pay additional fees under

Rule 40.2 PCT and the applicant's submissions in support of the protest.

6. In the present case, the ISA's invitation to pay additional fees is based on the finding that the single general concept of the present claims is not novel over documents (1), (2) and (3).

7. The single general inventive concept linking a group of inventions is to be derived from the common features of the respective claims or embodiments together with the outcome or results associated with this subject-matter. In the present case, there are the independent claims 1, 42 and 50 to 56.

Claims 1 and 42 relate to a method for female hormonal contraception, claims 50 to 55 concern different therapeutic applications (premenstrual symptoms, PMDD, endometriosis, dysmenorrhea, acne and PCOS) and claim 56 refers to a pharmaceutical package.

8. As was indicated under point IV (Facts and Submissions) above, the ISA based the definition of the single general concept on the provision of certain pharmaceutical compositions for use in a method of female hormonal contraception or in one of the methods of treatment as defined in claims 50 to 55.

The board concludes that in doing so, the ISA did not include the concept of the "flexible break" into the definition of the single general concept which is represented in the claims by the following features:

a) claim 1:
"...administration...for a first minimum period **for as long as desired by the female**..."

b) claim 2:
"...wherein the **period of as long as desired by the female is until bleeding occurs which is unacceptable to the female**"

[emphasis added by the board]

Such a "flexible break" is also present in all the further independent claims 50-56 by means of their back reference to claims 1-49.

In spite of the fact that this feature "flexible break" is formally present in all the independent claims, the ISA was correct in not including it into the single general concept, because claim 56 is directed to a pharmaceutical package. The "flexible break" may be a limiting feature for the claims relating to an activity, but it evidently has no technical effect on the pharmaceutical package which inevitably contains a certain predetermined number of individual dosage units. In this context, it is emphasised that the patient instructions according to claim 56(c) do not represent technical features which could be taken into consideration. Thus, the ISA correctly did not take into account the "flexible break" in defining the single general concept with respect to the whole application and all its claims.

9. Moreover, the ISA was correct in deciding that this single general concept is not novel:

Document (1) is concerned with a method for female hormonal contraception with a view to reduce the number of withdrawal bleedings. A combination comprising an estrogen and a gestagen is applied in at least a first administration cycle followed by a break and at least a second administration cycle which is longer than the first cycle. The combination of active agents comprises in particular ethinyl estradiol in an amount of 20-35 mg and drospirenone, gestoden, levonorgestrel, cyproterone acetate or norgestrel (claim 1; page 2, last full paragraph; examples 1-10).

As a consequence, the single general concept is not novel and there is lack of unity (Rule 13 PCT).

10. However, the ISA did not correctly define and formulate the various groups of inventions: in the present case groups of inventions which only concern methods (inventions 23-154) are to be distinguished from the groups of inventions comprising both methods and products (inventions 1-22). In this context, the board emphasises that the products according to claim 56 only concern contraception (cf. back reference to claims 1-49), but do not relate to the treatment of the symptoms according to claims 50-55 which form the basis for the groups of inventions 23-154.

As far as the groups of inventions 1-22 are concerned, the reasoning given in paragraphs 7 to 9 above fully applies. Therefore, these groups of inventions are correctly defined by the ISA.

With regard to the groups of inventions 23-154, it is noted that their formulation as "A pharmaceutical composition ... for monophasic continuous administration of ... for use in a method of treatment of..." is not correct. These groups of inventions exclusively relate to method claims and do therefore not concern pharmaceutical compositions. As the feature "flexible break", which was to be disregarded in connection with groups of inventions comprising products, *prima facie* exerts a technical effect on subject-matter relating to an activity, it cannot be omitted from the groups of inventions 23-154 without any explanation, as was done by the ISA in the invitation to pay additional search fees. It would have been necessary to analyse whether or not this feature constituted a unifying link. Therefore, the reasoning of the ISA was insufficient in relation to the groups of inventions 23-154.

11. The consequence with respect to the additional search fees paid by the applicant is as follows: the applicant paid additional fees for the groups of inventions 2, 12, 13, 89, 90, 100 and 101. It follows from the above argumentation that the reasoning of the ISA was correct for the groups of inventions 1, 2, 12 and 13 and insufficient for the groups of inventions 89, 90, 100 and 101.

12. In view of these findings the applicant's argument that the various inventions were linked by "this unique feature of the flexible break" cannot succeed for inventions 1, 2, 12 and 13.

Since the ISA in its invitation to pay additional search fees did not give sufficient reasons for the absence of a common concept for the groups of inventions 23-154, the applicant succeeds insofar as the "flexible break" was not ruled out as a common feature linking the groups of inventions 89, 90, 100 and 101. Consequently, only one additional search fee has to be paid for them, leaving three additional search fees to be reimbursed.

Order

For these reasons it is decided that:

Three additional search fees shall be reimbursed.

The Registrar: The Chairman:

R. Schumacher H. Kellner