

COURTS

judicial decisions relating to industrial property cases

Copies of sentença the Intellectual Property Court - second judgment, delivered in patent lawsuit national n. ° 105407

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Intellectual Property Court

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■ COINCLUSÃO 05/02/2016

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1 -Report:

"Sapee Agro" SA. Came under provisions of Article 39 et seq

Industrial Property Code, bring the INPI order of the resource that you not

conccdcu Invenido National Patent n. ° 105 407, which was required.

Claimed in short, is your invenqão is new, inventive and tcm

aplicaqao industrial so it should have been granted. Made even request subsidiary

in the case of the patent not be granted in its entirety.

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After the court order ibi thought the file the administrative process

in cause.

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Cspccificidadc face to tía Maleria concerned was determined by conducting

Skill report which was placed in the file.

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In view of the paragraph. 3 ° Article 44 CP1 is time to be

given the respective deesiao.

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The Court has jurisdiction by reason of nationality, matter and hiernrquia.

The process itself is the c ciphers which is not vitiated by any invalident proccssado.

The parties tcm judicial personality and capacity, station regularly

represented. There are no other nonentities, exceptions or any preliminaries

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Proc.N 372 ° / 14.0YHLSB

obstcm that the knowledge of the cause merit and meeting now know.

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Fixed to the present case the value of € 30,000.01 (Articles 303 and 306 of the Civil Procedure Code).

II - Justification - The facts proven:

Agreement with the applicant's complaint and accompanying documents, result as proven the following facts relevant to the decision in question:

1. Recurring aprsentou, with the National Institute of Industrial Property, 26.11.2010 to a Portuguese patent application with the title "M RA istu ic id fu ng a "with n. ° 105407 ".

2. The patent application of the Applicant consists of two reivindicades independent (no. 1 and 6) and four dependent (no. 2 to 5 °) and refers, briefly, the urn fungicidal combination and their use to control pathogenic fungi,

3. Claim 1 protects urn fungicidal composition characterized by comprecnder three active substances: dimethomorph (compound I), azoxystrobin (Compound II) and folpet (compound III).

4. The claim 2 and characterized them following ranges for concntrações each of the active ingredients: 1 to 20% by weight dimethomorph, 1 to 20% by azoxystrobin weight and 20 to 50 wt% of folpet and claim 3 is

further comprising surfactants and / or inert.

5. The composition in Claim 4 is further characterized in that the surfactants be selected from the group comprising dispersing agents, wetting agents and defoamers.

6. In claim 5, the composition comprises 8% by weight of dimethomorph, 8% by weight of azoxystrobin and 40 wt% of folpet.

Industrial Property Bulletin No. 8 of 93 30.09.2016

Court of Intellectual Property

2 ° Judgment

Rua Marques de Fátima - Palácio da Justiça - 109W-IMU Lisbon

Telefone: 213846400 Fax: 211373576 2 May]

Proc No. 372/14 OYHLSB

7. In reference 6 claiming that the sc-composition fungicide is characterized by being used in treating the downy mildew on vines culture, and to the potato crops and tomato.

8. The purpose of the invention is to provide a mixture of fungicides active substances with synergistic qualities that introduce an elevated efficacy in the control of these fungi.

9. Compounds were already several different compositions as utilized Systemic fungicides, among which, of course, compositions (I), (II) and (III).

10. The applicant noted in patent application, there are, also, several patents refer to the use of the aforesaid active ingredients in compositions mixtures of fungicides,

11. IA indicates the European Patent EP0280348 B1 already claim

The mixture comprising compositions I and III of the patent (the dimethomorph and folpet), sold under the trademark Forum F®.

12. More revealed the Applicant in its application, the existence of a formulating the compositions II and III (azoxystrobin and folpet) commercial available under the trademark Hips Max®.

13.0 patent application W02009 / 098228A2 discloses also the existence of a formulating the compositions I and II (azoxystrobin and dimethomorph).

14. The retiring date of the patent application, were known to the state of Technical the three binary mixtures: dimethomorph + folpet, sold under the brand Forum F® folpet + azoxystrobin, marketed under the brand Hips Max®, the mixture disclosed in W02009 / 098228A2.

15. The applicant stated that combining dimethomorph (compound I) azoxystrobin (II compound) and folpet (compound III), and certain specific percentages produces a synergistic effect on the biological efficacy that

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Intellectual Property Court

2 ° Judgment

Rua Marques de Fátima - Palácio da Justiça - 1098-001 Lisboa

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Proc No 372/14 OYHLSB

results in an unexpected increase in efficacy as compared with the effectiveness of each of the active ingredients or binary mixtures of these active ingredients.

16.0 patent application stated that the results obtained for the biological effectiveness

More preferred embodiment of the invention? the (mixture of 8% comprising dimethomorph, azoxystrobin 8% and 40% of folpet, described in the examples set out on pages 10 to 12) show an unexpected technical effect, ie., the existence of a synergistic effect of the triple mix to combat mildew

vine and that the effectiveness obtained by the triple mixture is higher than would expected given the efficacy of any one of the two associates? the binary on the market (dimethomorph + folpet and azoxystrobin + folpet) and remaining active substance.

17. After the purpose of technical period, the patent application in question was submitted, first, the examination of the granting of an requirements Patent Portuguese by examiners INPI, ie., its novelty, activity inventive step and industrial application.

18. For this purpose, the PTO identified as forming part of the prior art following documents:

• (DI): EP 1028125 A1;

- (D2): W003041728A1;
- (D3): W02009098228 A2;
- (D4): Effect of dose rate and Mixtures of fungicides on selection for Qol Populations of resistance in *Plasmopara viticola*;
- (D5): Assessment of resistance in Qol *Plasmopara viticola* oospores;
- (D6) WO 2010069763 A2;
- (D7): Fungicides mode of action and resistance in downy mildews;
- (D8): EP 0280348 A I;
- (D9): EP 0783836 A I;

Industrial Property Bulletin No. 10, 30.09.2016 93

Court of Intellectual Propriete

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ProcN "372 / 14.OYHLSB

* (DIO): W02010092119 A I;

- (IBD): Containment of existing potato late blight (*Phytophthora infestans*) epidemics leaf fungi with CIDES;

• (1) 12): http://www.drapc.minapricu.tura.pt/drapc/servicos/fitossanidade/files/0510_bairrada.pdf circular.

19. 11.20.2013 was the Applicant notified the first report of examination, which the examination of 1NP1 concluded, first, that was inventivo new, Le., that no technical status of the document divulged urn composiçao comprising dimethomorph, azoxystrobin and folpet.

20. Rferindo to the Claimed 1, reads as follows: "They consider the Documents D1 and D2, as closest state of the art claimed

1, inasmuch as both fungicides comprising divulgalo composides dimethomorph, azoxystrobin c folpet (ID: 15 reivindicad0; D2: Reivindicad0 11), such that composides tcm min antifungal effect on downy mildew tratameuto (ID: 6 Lxemplo; D2: Dcscrido, page 45). However, the claimed constimi urn invendo of seledo face lists composios fungicides presented D1 and D2, therefore it is considered that this is claimed endowed with novelty, pursuant to. ° 1 of Article 55 ", as well as respective dependent claimed that constitute preferred modes tia done it. "

21. It held further that the invendo was susceptible of industrial aplicad0.

22. concluded, however, the non-granting of the patent application, since the urn even in its opinio, it lacked inventive activity.

23. In view of the PTO examiner to jundo of the three components contained the claimed you. "1 would last opdo obvious to an expert in cspccialidade urn time ca stability of binary mixtures have cficacia jundo were conhccidas and fungicides with a different mode to Ayao to increase the spectrum and reduce the ad ° urn resistance to EIA standard practice.

Industrial Property Bulletin No. 11, 30.09.2016 93

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Proc.N0 372 / 14.OYHLSB

24. It would also clear the existence of uni synergistic effect, since the urn the prior art already expressly divulged in U.S. Patent Application W02009 / 098228A2 above (D3).

25. In the words of the examination lady: "Given the above, it is considered that the Binding of fungicides with a different mode of action to increase the spectrum action and reduce Resistenza constitute urn usual practice for an expert in specialty. Moreover, not only the expert knowledge in especialidadc tcm that mixtures of the three components, two by two, are stable and effective (Disclosures D3, D10-D12), as the existence of a synergistic effect is already known from the D3 disclosure, the presently observed that the effect It may simply be a reflection of the synergistic effect of the combination of dimethomorph, azoxystrobin, and (D3: Claim 6.). Thus, it is considered that The joining of the three components claimed in Claim 1 constitute urn OPTION obvious to one skilled in the art given the disclosure of D1 or D2, whereby this claim is devoid of activity inventive under paragraph 2 of art. 55 of the CPI.

No. claims 2-5

It is considered that the proportion of each of the fungicides in the composition as well as the addition of other agents, including surfactants, agents dispersants, surfactants and anti-foam are mere design options in formulation of such compositions, and which constitutes a common practice for one skilled in the art, without any additional technical effect associated. Thus, it is considered that the present claims are also devoid of inventiveness ...".

26. The Applicant showed, the 12/18/2013, urn response to the notification of the PTO.

27. noted that Rccorrentc response that when comparing the value of effectiveness of the ternary composition with the expected value obtained from the knowledge of the efficacy of the mixture azoxystrobin + dimethomorph and

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effectiveness of folpet, continued to verify the existence of lini effect

Synergistic, "is, therefore excluding the previous hipótese that the synergistic effect observed were solely due to combinalo dimethomorph / azoxisrobina. ".

OK OK

28. new notice, dated 18.02.2014, the examiner lady INPI

considcrou not been exceeded before the notified objegões

Unia time tinliam been "aprcschlados comparative data demonstran!

a synergistic effect relative to the known effect of the mixtures

dimethomorph / azoxisrobina and folpet "but" data not shown

demonstrating that this effect does not result from the combined

dimethomorph / foipetc or azoxystrobin / folpet, combinagñes those who

cncontram already disclosed in the prior art. "

29. In response to this notice, filed 28/02/2014, the Applicant stated

that "taking into account the results of the experiments presented in

notified in response to the reference DMP / 01/20! 3/429113 and results

I note that the tables A and B on page 16 of patent application dcscrido,

wherein the compound (I) is dimelomorfc, compound (11) is azoxystrobin, and

Compound (111) is folpet, as defined on pages 2 and 3 of the disbelieved

patent application, it is possible to build seguiate comparative table, wherein

All assays were performed in experimental mesinas condigoes such

as described on pages 13 to 15 of the patent application:

curative effectiveness sheets

inoculated with Plasmopara viticola

Treatments applied one day

after inoculation

Focused

of

active substances

in suspension, ppm

Efficiency (%)

observed Expected

Dimctomorfe / Azoxystrobin 100 + 100 74.39

RELEASE PROPERTY OF INDUSTRIALN ° 13 93 30.09.2016

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Proc-N@ 372 / 14.0YHLSB

Folpet 500 9.76

Dimctomorfc / azoxystrobin /

folpet 100 + 100 + 500 93.65 76.89

Azoxystrobin / folpet 100 + 500 26.5

Dimethomorph 100 60.6

Dimctomorfc / azoxystrobin /

folpet 100 + 100 + 500 81.8 71.0

Di metomorfe / fol Pete 100 + 500 78.9

Azoxystrobin 100 17.1
Dimethomorph / azoxystrobin /
folpet 100 + 100 + 500 90.9 82.5

30. He also mentioned that these results justify the conclusion that there is an unexpected technical result of the triple combination of dimethomorph / azoxystrobin / folpet, since this association of the substance active presents a higher efficiency will be expected to get a result of any one of the possible binary mixtures with the third component "thus excluding the" possibility that the observed effect is synergistic due to any one of binary combinations disclosed in the state of the art. "

31. In order given on 04/15/2014 was refused application, the essential, it was considered by the lack of experimental support for inventive step of the application.

32.0 examination report accompanying the refusal of office fundamental lack of experimental support for the technical effect that supported the activity inventive (synergistic effect resulting from the combination of the compounds I, II and III) throughout the scope claimed in the application, namely, the following argument: "it is noted that, although it is shown that there is an effect associated to synergistic mixture triple claimed, which would not be expected" Industrial Property Bulletin No. 14, 30.09.2016 93
Court of Intellectual Property

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compared with the effect of each single compounds or the empirical range of concentrations the effect was demonstrated is 0.01% / 0.05%, not existing therefore support the technical effect of the invention in all scope. Thus, there is not a synergistic mixing effect associated with the proportions claimed, it is considered that to June ^ to the three components claimed in reivindicaban. constitute 1 urn ^ obvious to ...".

33. The decision of refusal was published in the Bulletin of Industrial Property (BPI) of 21/04/2014.

34. 19.5.2014, now recently the applicant submitted under Article 23 of the CPI, a request for modification of the decision claiming that "it is not correct comparison of the ranges found in the examination report and is based as the cause of the lack of experimental support for existence of inventive step, since as these refer to concentrations of different physical entities, the fungicide claimed in composition 1 to 5 and drop "resulting from their water dilution"

35. More noted that, in the said concentrations 1, 2 and 5 are the "Concentrations of active substances in composition fungicidal" and "concentrations of "() 1% / 0.05%" referred to in the examination report are, as can be seen in Tables A and B of the application PT105407, the "concentrations of active ingredient in suspension" that is, are the concentrations of substances active in the resulting aqueous suspension of dilution in water composition 1 to 5 urn time was that this suspension was applied on foliar during biological effectiveness test".

36. Most requested that the case remained the refusal of the application for Patent, realization of an oral interview with INP1 before making final decision, the oral never happened.

37. notification 25/08/2014 the Directing Council of INP1 decided finally, following: to replace and revoke the order for refusal given on 04/15/2014
Industrial Property Bulletin No. 15, 09.30.2016 93
Intellectual Property Court

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the other covering the examination report conducted on 06.23.2014, which constitutes part of the decision; reject the request for the modification of the sense of seeing granted the national invention Patent No. 105407 "Mixture fungicide".

38. The decision was published in Property Bulletin industrial on 08/28/2014.

39.0 new examination report relates, among other things, that "there was effectively no synergistic effect demonstrated" and what was "effectively talking about the same range of percentages, the contrary in the foregoing examination report that accompanied the opinion of refusal".

40, maintains, however, its proposal to refuse the application.

41. Refers STILL ncsse report: "Nevertheless, objection 95 remains to patent was granted in accordance with the reivindications which were subject to refusal. Thus it appears that although the proportions of the components of the mixture, as claimed in reivindicacion 2 then falls within the range of ^ s proposed for preparation of the fungicidal mixture, was only demonstrated the existence of synergistic effect when using composition specific (8% w / w dimethomorph, 8% w / w and 40% Azoxystrobin folpet). As such, there is no experimental support for supporting the synergistic effect existence of inventive step in the full scope intended to either the When proposes claimed in reivindicacion 2 (s concentration and dimethomorph azoxystrobin in the range of 1 to 20% by weight and folpet in the range of 20 to 50% by weight), but mainly with regard to the main reivindicacion that When claims generically composition with dimethomorph, azoxystrobin and folpet, without any regard to limit to proposed components.

Moreover, in the case of a synergistic effect on the A9 to the fungicide, observable After the application and product has been effectively to the interests verification said end face of s concentration active ingredients in suspension, which Industrial Property Bulletin No. 16, 30.09.2016 93

Court of Intellectual Property

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correspondence will do same applied rates sheets because it can not effect check if all application rates of the mixture. Independently of proposed components in the mixture, consisting of ingredients for which the existence of synergy was demonstrated as ppm cm table represented in the response to the annexed it appears in 13/03/2014. As such, in the absence of limit rates of applications application that possibility of fungicidal effective observation and said synergistic effect, again it can be seen that there is no support for that purpose synergistic across the scope of the protection intended. Even considering the reivindicacion No. 5, claiming "composition fungicide (...) characterized by comprising 8 wt% dimethomorph, 8% by weight and 40% azoxystrobin by weight of folpet" not existence of synergy is demonstrated in throughout its scope, since as mentioned above lacks application concentrations used to demonstration of fungicide and effect synergistic. "

42. B even "independently proposed ingredients of components in the mixture, intended consisting of ingredients for which has been demonstrated existence of synergism. "

43. As crop protection products placed on the market following a homologation process that is authorized Unia determined composition characterized by concentrations of active substances that compose. percentage expressed in mass, and the dose that application composition, expressed as mass per unit area.

44. Plant protection products, for products intended to of an preparation syrup are applied by diluting composition in water, so as to obtain a suspension and / or aqueous emulsion which is then sprayed on the crop.

45. The Recurrent decisions perform tests laboratory level.

Industrial Property Bulletin No. 17, 09.30.2016 93

Intellectual Property Court

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Proc.N 372 ° / 14.0YHLSB

46. for tests performed using the fungicidal mixture containing 8% (I) 8% of (II) and 40% (III) and the methodology described on pages 13 to 15 of

order.

47. avallar the results and complete the existence of synergy

^ resulting from the interaction of the active substances to the mixture compocm (effect surpccendente coach who supports the existence of inventive step) recorreu- to a method well known and regularly used for sinergcticos determined effects of herbicides and fungicides: the method of Colby.

48. The Colby formula allows to evaluate the efficacy of a product that combines two or more active substances, is greater than the sum of the efficiencies of each of of active substances, when applied isoladamcnte.

49. Colby formula can xprimir equafao the following: Theoretical Efficiency (ABC) = Efic. ■ A + Efic. B + Efic. C - Efic. A x (B x Efic Efic C.): 100.

50. This formula allows to calculate the expected theoretical efficacy or efficacy of the mixture (ABC) in a particular concentrate, based on the individual efficacies each component of the mixture (A, B and C) To the same concentrado- You can use the Colby's formula from the results of an assay effectiveness, there have various arrangements in the assay, namely urn untreated control, three individual modalities to evaluate the efficacy of each component of the mixture (A, B and C) in the mixture and concentrate Further, the mixture (ABC) in the proposed dose for calculating the observed efficacy.

51. In the same method: Efficacy observed > = theoretical Efficacy Synergism; Efficacy observed = theoretical additivity =; Efficacy observed < Efficiency = Theoretical antagonism. If the blend components are very effective when used individually (eg 100% effective), it is difficult to prove the synergism of the mixture, reflecting the limited method, and neither Industrial Property Bulletin No. 18, 09.30.2016 93

Intellectual Property Court

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372/14 ° Proc.N OYHLSB

All efficacy trials carried out in the field, pcrmitem apply the formula Colby.

2 .0 5 Colby method is an effective and appropriate method for the avaliação interates synergistic between active substances of a mixture, except in situalo linai mentioned in the previous part thereof.

53. Colby's formula is not intended to demonstrate the efficacy of the products. THE biological efficacy of the fungicide is measured and demonstrated in the trials effectiveness achieved in the field, according eom the gu id and 11 Inés EPPO ("European Organizagão Proteso for plants") General specific for c Purpose of the study (culture / foe). Assays are typically it i four co rpetiqões, urn teslemunha (untreated mode), the test article in desired dose which is required for the authorized and a product reference authorized for the purpose (default mode). You can also scr included another embodiment, a bottom dose taper in order to determine the effective dose.

54. Effectiveness of the product is calculated by the formula of Abbott by simply have the value of attack intensity in the control and the modality under study.

Not all efficiency tests carried out in the field, pennitem apply Colby formula. The concentrate upon study are previously cstabelccidas plancamento upon the assay, 0 aplicafão material is previously c is calculated calibrated spray volume spent by hectarc, according to the spray rate (L / min), and velocidade working width, the volume of spent syrup is appropriate to aplicacao area is needed to achieve good urn distribuito the syrup in order to always ensure compliance with concentrato and / or desired dose.

55.0 study presented by Rccorrcntc allows to evaluate in the laboratory the effectiveness

The mixture (100 + 100 + 500 mg / L) and the efficacy of each component ;sordamente used in concentrato used in mixture (100 mg dimethomorph RELEASE PROPERTY OF INDUSTRIALN ° 19 93 09.30.2016

Court of Intellectual Propriedadc

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Proc.N0 372/14-.0YHLSB

[G; Azoxystrobin 100 mg / L; Folpet 500 mg / L), it is not possible to conclude that this (100 + 100 + 500 mg / l) is that confers the maximum efficiency.

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These facts were proven by simply enjoyed the documents to them relate to pgs. 33/34 in this case and all the information and documents contained in the administrative process attached to the file and also the Skill performed (Pgs. 87-90v.). Although not specifically considered, as it has proven all the facts contained in authentic documents in the case, including everything from a straightforward reading of the decisions, opinions and other documents contained in the administrative process attached,

The remaining "factos" not proved, are conclusive, right or without interest for the decision. As for the purely technical facts / science could only be considered those about which there is controversy and confirmed by expertise made under the were.

It should be noted that, although we agree with the applicant that it is possible in INPI decisions to appeal the existence of a phase instruyo (which, incidentally, the Court has to determine urn Skill), we not already understand as possible to the audi ^ witnesses, and the test will have to be producing documents or expert, not is hampering to June? the studies or expert on the subject of discussion in cause.

* * *

III - Fundam entado of law:

In the present case lies in question granting the registration urn patent plant protection products.

The granting of an patent by the government has as various intenpao objectives, namely: recognizing the intellectual esforo; by the inventor reward this esforzó; encourage investigated and innovated (inventiveness); promote Industrial Property Bulletin No. 20, 30.09.2016 93

Court of Intellectual Propriictladc

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Proc.N "372 / 14.OYHLSB

disclosure and dissemination of knowledge tecnológico1. It is thus conferring patent to the respective holder, on the one hand, the exclusive right to exploit the invention cm qualqucr part of the Portuguese territory and, second, the right to prevent third parties without the scu consent, manufacture, supply, w enagem am, the introduction in trade or the utilization of a product that its contents are object, or the importation or possession of it for the purposes mentioned algutn {article 101, n °. paragraphs 2 and 3 of CPI). So can the holder Patent oppose all acts constituant its violation, even if

based on another patent with a later priority date without ncessidadc to challenge titles or ask anulaçSo patent cm that right merges (Article 101 °, n. ° 3, the Industrial Property Code), thus taking these rights urn double-strand, positive and negative, urn once it attaches to the respective holders exclusive of their joy and enjoyment and prohibits the outrent.

In order to earn cool protcção through urn patent registration should comply with various requirements of patentability, more specifically, of the novelty, inventive step of existence (originality) and of suscctibilidadc INDUSTRIAL APPLICATION. It is so estabelce Article 5 1 1 No. CPI.: 'Can be

under patent new invençõcs, implying inventive activity if forein susceptible of industrial application, even when incidano about a product compound of biological material or containing biological material, or on a process that permits the production, processing or use of biological material. " On the other hand, is materialized in Article 55 of the same code (paragraphs 1 to 3): "urn invention is considered novel when it is not known in the art. It is considered urn invention which implies inventive activity if, for a person skilled in particular i ity, not result of an obvious way from the prior art. It is considered that urn invention is susceptible of industrial application if its subject matter can be made or used in qualqucr gender industry or agriculture. " In another aspect, the state

1 Cj. Victor Hidalgo - The onus cte cyp it n ifiio tiepu you mc, R and D view and go euo lm le ttu al, No. 1/2015, p.. 61, A / iud Boier - The significance of the paient System tor technical, lconomic and Social Progress "

Industrial Property Bulletin No. 21, 30.09.2016 93

Court of Intellectual Property

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Proc.N0 372 / 14.0YHLSB

the technique consists of all the information that has already been disclosed to the public Anyway about an invention, before the date of registration requirement to patent, jeopardizing the originality of the same invention, such information can even other related patents include any publication or demonstrações public. . Article 56 paragraph 1 CPI states that: "The state of the art comprises for all that, inside or outside the country, it was made available to the public before the date the application, by description, use or any other means. For this concept is not taken must have really existed access to such information, but that it has been made accessible (judgments T444 / 88 and T381 / 87 in Technical Board EPO) 2.

Although initially the PTO considered that the mere combination of the three known elements, dimethomorph, azoxystrobin and folpet, an operation was apparent to one skilled in the art to enhance the synergistic effect, the combination, so there was no inventive step since the effect was synergistic with known binary mixture composed of said three or is, Slavic already comprised in the "prior art" mixtures thereof resulting from the latest decision and it dismissed the application required by sometimes unofficial modificação applicant, that this understanding was arredado of grounds for refusal. Compared to result of expertise, such a change of understanding was efetivamente correct. With as referred to in effect skill "that already exist mixtures (azoxystrobin folpet and with dimethomorph with folpet) where synergism was not proved It means that the mixture dimethomorph with azoxystrobin and folpet also be synergistic ", and that this determination was therefore not obvious to an expert who not willing the tests in question, since there are several factors that influenciaram! The interaction of the active substances in a mixture, so that "The results obtained in Field trials are not obvious, "1

1 Cf. Antonio Campi in s / Goncalves - CFI Annotated, 210, p. 210.

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Proc.Nº 372 / 14.0YHLSB

In the present case encontra is thus relevant only cm DISCUSSION

At this time, if the reivindicações constituem that patent, in addition to the featured concentrações by 8%, 8% and 40%, have "inventive step". The PTO considerait that compared to that contained in the claims and, with the existence of effects synergistic "is strongly related to the proportions of used and composos corn application rates "No evidence was presented that forain permilam consider the existence of any cm sincrgisticos effects of mixtures abrangênea caractizadas by comprising dimethomorph, azoxystrobin c folpetc, but only in composition of these substances in a proportion of 8%, 8% and 40%. To achieve scu understanding the INPI, and very well, used the method adopted by the INPI guidelines for examination of the "European Patent Office" and efetivamente, this is urn method tried and executed in assessing pamentabilidade of invencões. this method consists essentially in three successive stages: "prior art dterminação closer; the technical problem to be solved establishment objective; ascertain whether the claimed invencão, starting from the closest state of the art and problem technical objective, would have been obvious to the skilled person "3. The same c methodology still defended by WIPO "World Intellectual Property Organization" where a report is made a comparative study between the measurement criterion in such world.4 many countries.

However, INP1 essentially considered that, with the exception of said coin

mixture of 8%, 8% and 40%, there is no demonstration that other

Concentrations synergistic effects would also be higher than expected

respect to binary mixtures of three compounds already known with the mixture 1

1 Free translation ours, The original text e osequint: "Problem-and-solution approach In order to assess inventive step in un Manner objective and predictable, the so-called "problem-and-solution approach" should be applied. Thus deviation from ibis approach shouldnt be exceptional. In the problem-solution and approach, there are three main stages: (i) Determining the

"Closest prior art", (ii) Establishing the "objective technical problem" to be solved, and (iii) considering whether or not the Claimed innovation invention, starting from the closest prior art and the objective technical problem, would Have Been Obvious to the

skilled person "['onto 5, Part G - Chapter VII-3 November 2015 cm disponivcl:

HTLP: // docLi monts.opo.org/projects/babylon/ep(inel-nsf,'0/A62 ECC371BE570B3CI257PFI00351 F3K / il: CR / gutdelincs_for_exa

g_.cn.pdf initiation part.

* Standing Committee on the Law of Patents, Twenty-Second Session Geneva, July 27 to 3, 2015. Disponivel em:

http://www.wipo.int/edocs/mdoc/scp/wsep_22/scp_22_3.pdf

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Court of Intellectual Property

2015/01

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Proc. No. 372/14 OYHLSB

above, knowing that the results may vary. Multo anchor of any variagao components. However, he did not allow any of reivindicacoes, attentive the terms in which they are formulated.

The Applicant contends essentially not be relevant to consider the concentrate upon the compounds I, II and III for concessao Patent but there demonstragao to a synergistic effect of the mixture of these compounds, having used the worst parameters provided by the method to demonstrate this. It is made. also argues that it would be impossible demonstragao that the synergistic effect if checks in every possible combinarios of three substances in question. Joined STILL unite opinion in which, inter alia, to Concini, that "the results for that the formula should be extrapolated to combinarios possi LEVELS of three active substances "Now, none of this has been proven. Indeed, both the coach of INPI with the skill, such refer extrapolagao is not possible. See, among other things, the result of which such expertise is clearly spaced extrapolagao: "The study SAPEC the state that allows the mixture of dimethomorph with azoxistrobinana and propogao in folpet 100 + 100 + 500 mg / L presents synergism in the condicoes laboratory. Not to conclude that the mixture dimethomorph, azoxystrobin and folpet tan, per se, synergistic effect. " (...) Because propogao / quantidade each components of the mixture is critical in the effectiveness thereof and a possible synergistic effect ". (...) "The propogao of each of the fungicide mixture is determining the effectiveness thereof. otimizagao of the ratio of each of the mixing the components involves realizagao of experimentagao, although preliminary, with different ratios of the mixture, to ensure high levels of efficiency with the smallest possible amounts of each of the ingredients of the mixture. The studies performed to demonstrate the synergism of a mixture of non ratio determinado They can be used to demonstrarem! synergism of another ratio. although the mixture of the same components SEIAM "(our subinhabido).

Industrial Property Bulletin No. 24, 30.09.2016 93

Intellectual Property Court

2015/01

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Proc. No. 372/14 OYHLSB

Thus, he scquer can afinnar different concentrate upon the substances, the focus ^ cnjos concrete were studied by efcitos applicant, even have any synergistic efeilo (" 'Because When proposing ^ / unite amount of each of the blend components is crucial in the same effectiveness and sinergico1 a possible effect "(emphasis added), and much less this (possible) efeilo has a superior effect or efficacy ace coinbinaoes already known binary mixtures of the same substances.

Not thus results demonstrated any inventive activity the Applicant regarding the various possible combinagoes of products, as the same, nothing estudou, he researched, or developed as the invented copies, than the stated 8% 8% and 40%. And not to say that this would be impossivel. It would require rather a large investment in estudos and testing without any guarantee of being alcanzada outra mixture relevant. See sc that grant the patent applicant under the required eslar would prevent any more interested in product development patent could new plant protection mixtures with the three juncao constituents concerned, which effectively prevent the development estudo c New mixtures which, hypothetically, certain concentraras cm and up condicoes may (or may not) ultimately result in large MOLITORIA of which was studied by the applicant, fieando thus sealed one possible technological development in a scientific espaco that tiuha Ricardo "open." Such concessilo so would violate all goals suprarreferidos, the existence and patenting by states.

The new joint informagao than C by recorremente to alter our understanding. Indeed, it is only the manificstacao of intencao urn

concession in the administrative procedure before the EPO. On the other hand, the Court
You know what the technical reasoning that will analysed the request. Also we do not know
what evidence or documents presented to the EPO way to sustain
reivindicares, in particular if they were submitted to the PTO. by proof
Industrial Property Bulletin No. 25, 30.09.2016 93
Court of Intellectual Propriedade

J u 2 ° IZO

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Proc. No. 372/14 0YHLSB

produced in the present case, the decision as we believe, will have to be already
We sustain.

What ileum foregoing that only the subsidiary may request the recorrcnte
proceed (which is possível grant urn as this Court deems "full jurisdição7"
(Article 39 CPI).

* * *

IV - Decisão:

For the above, and under the legal disposições mentioned, the present judge
partially well founded and therefore:

- sc-Grant Patent claimed required in respect of subsidiary:

"Joined composicao fungicidal characterized in comprecndcr 8% by weight
dimethomorph, 8% by weight of azoxystrobin and 40 wt% of folpet;

- Keep up the rest decided the order of the INPI to refuse to
contested patent application.

*

Expense by the applicant.

Register and notify.

After the transit Senten ^ e to return copies of the same in the process
attached to INPI. Follow-up also provided in n. ° 3 of Article 35 CPI

(Article 47 of the same code).

*

Lisbon, May 3, 2016