

The examination is being carried out on the **following application documents**

**Description, Pages**

1-22 as published

**Claims, Numbers**

1-14 as published

**Drawings, Sheets**

1/7-7/7 as published

The following documents (D) are referred to in this communication; the numbering will be adhered to in the rest of the procedure:

- D1 BR 1020 1303 0155 A2 (UNIV SÃO PAULO USP [BR]) 20 October 2015 (2015-10-20)
- D2 WO 2009/066316 A1 (KULKARNI VISHNUKUMAR MAHADEO [IN]) 28 May 2009 (2009-05-28)
- D3 WO 01/16380 A1 (HOY PRODUCTS INC [US]; GONZALES JORGE E [US]) 8 March 2001 (2001-03-08)

If not indicated otherwise, the relevant passages are those mentioned in the European and/or International search report.

**Art. 115**

The Examining Division notes that third party observations have been filed with letter of 29.08.2020.

The Applicant is hereby requested to comment on these documents.

## Art. 84

The application does not meet the requirements of Article 84 EPC, because **claims 1-14** are not clear.

**Claim 1** does not meet the requirements of Article 84 EPC in that the matter for which protection is sought is not defined. The claim attempts to define the subject-matter in terms of the result to be achieved ("to produce a policosanol-rich sugarcane based concentrate". Such a definition is only allowable under the conditions elaborated in the Guidelines F-IV, 4.10. In this instance, however, such a formulation is not allowable because it appears possible to define the subject-matter in more concrete terms, viz. in terms of how the effect is to be achieved.

The mere functional desideratum of present **claim 1** does not enable the skilled person to determine which surfactants at which concentrations are capable to provide the claimed policosanol rich extract (undue burden).

The present application therefore does not provide any guidance about how to identify the effective conditions without undue burden, resulting in the mere invitation to start a research programme.

Similar objections apply for **claim 1** ("at a desired degrees Brix value") and **claim 11** ("in a condition adequate for").

The relative term "policosanol-rich" used in **claim 1** has no well-recognized meaning and leaves the reader in doubt as to the meaning of the technical feature to which it refers, thereby rendering the definition of the subject-matter of said claim unclear (Article 84 EPC).

A similar objection applies for the term "semi-concentrated" in **claim 14**.

The term "substantially acid-free" used in **claim 3** is vague and unclear and leaves the reader in doubt as to the meaning of the technical features to which it refers, thereby rendering the definition of the subject-matter of said claims unclear.

## Art. 54

The above mentioned lack of clarity notwithstanding, the present application meets the requirements of Article 52(1) EPC, because the subject-matter of **claims 1-14** is new in the sense of Article 54(1) and (2) EPC.

The prior art does not disclose the claimed process comprising all process steps together with the claimed pH and temperature ranges.

### **Art. 56**

The above mentioned lack of clarity notwithstanding, the present application does not meet the requirements of Article 52(1) EPC, since the subject-matter of **claims 1-14** does not involve an inventive step in the sense of Article 56 EPC.

D1, which is considered to represent the most relevant state of the art, discloses a process for the preparation of an extract from sugarcane juice comprising the addition of a detergent, adjusting the pH with calcium hydroxide and a subsequent flocculation step, from which the subject-matter of **claims 1-14** differs in that slightly different pH and temperature ranges are selected.

The problem to be solved by the present invention may therefore be regarded as how to provide an improved process for the preparation of a sugarcane juice extract.

D2 discloses a process for the preparation of an extract from sugarcane juice comprising adjusting the pH with milk of lime and a subsequent flocculation step, but without the use of a surfactant.

D3 discloses a process for the preparation of an extract from sugarcane juice comprising adjusting the pH with milk of lime and a subsequent flocculation step, the same pH and temperature ranges, but without the use of a surfactant.

Taking into account the teaching of the cited prior art the following reasoning applies:

With respect to the subject-matter of **claims 1-14** the applicant's attention is drawn to the fact that there seems to be no basis for inventive step within the present application as filed since no evidence can be found that the features which are novel result in a solution of the posed problem which could not have been foreseen by the skilled person.

Being aware of the teaching of D1 the skilled person performed an arbitrary choice out of one list containing all known process steps and parameters for sugarcane extraction to select.

It is noted that the present application does not provide an example, let alone comparative data showing an improvement over the prior art, which is linked to the novel features as differing pH and temperature ranges or the use of a surfactant.

Since there is no surprising effect resulting from that choice, the solution proposed in **claims 1-14** of the present application is not considered to be inventive in the sense of Article 56 EPC.

When filing amended claims the applicant is requested to use the problem-solution-approach by defining the closest prior art, the difference to the closest prior art and to identify the technical effect which is based on this difference. It is noted that an unexpected or surprising effect should be demonstrated in comparison with the closest prior art.

The applicant should at the same time bring the description into conformity with the amended claims. Care should be taken during revision, especially of the introductory portion and any statements of problem or advantage, not to add subject-matter which extends beyond the content of the application as originally filed (Article 123(2) EPC).

In order to facilitate the examination of the conformity of the amended application with the requirements of Articles 123(2), the applicant is requested to clearly identify the amendments carried out, irrespective of whether they concern amendments by addition, replacement or deletion, and to indicate the passages of the application as filed on which these amendments are based (Rule 137(4) EPC).

If the applicant regards it as appropriate these indications could be submitted additionally in handwritten form on a copy of the relevant parts of the application as filed.