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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/189,714	07/25/2011	Fotini Sampalis	NEPN-001/02US 313663-2013	1767
58249	7590	01/05/2012	EXAMINER	
COOLEY LLP ATTN: Patent Group Suite 1100 777 - 6th Street, NW WASHINGTON, DC 20001			POLANSKY, GREGG	
			ART UNIT	PAPER NUMBER
			1629	
			MAIL DATE	DELIVERY MODE
			01/05/2012	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Petition for Inter Partes Review  
Of U.S. Patent 8,278,351  
Exhibit  
**ENZYMOTEC - 1063**

<b>Office Action Summary</b>	<b>Application No.</b> 13/189,714	<b>Applicant(s)</b> SAMPALIS, FOTINI	
	<b>Examiner</b> Gregg Polansky	<b>Art Unit</b> 1629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 24 October 2011.
- 2a)  This action is **FINAL**.
- 2b)  This action is non-final.
- 3)  An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 5)  Claim(s) 1-20 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 6)  Claim(s) \_\_\_\_\_ is/are allowed.
- 7)  Claim(s) 1-20 is/are rejected.
- 8)  Claim(s) \_\_\_\_\_ is/are objected to.
- 9)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 10)  The specification is objected to by the Examiner.
- 11)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All   b)  Some \*   c)  None of:
  - 1.  Certified copies of the priority documents have been received.
  - 2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5)  Notice of Informal Patent Application
- 6)  Other: \_\_\_\_\_

## DETAILED ACTION

### Status of Claims

1. Claims 1-20 are pending and presently under consideration.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the fourth paragraph of 35 U.S.C. 112:

Subject to the [fifth paragraph of 35 U.S.C. 112], a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed. A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.

3. Claims 12-15 are rejected under 35 U.S.C. 112, 4th paragraph, as being of improper dependent form for failing to further limit the subject matter of the claim upon which it depends, or for failing to include all the limitations of the claim upon which it depends.

Claim 12 is drawn to the composition of Claim 1, wherein the phospholipid comprises phosphatidylcholine, phosphatidylethanolamine, phosphatidylinositol, phosphatidylserine, sphingomyelin or a mixture thereof. This is not further limiting of Claim 1 because Claim 1 limits the claimed phospholipid to phosphatidylethanolamine (when X is  $-\text{CH}_2\text{CH}_2\text{NH}_3$ ) or phosphatidylcholine (when X is  $-\text{CH}_2\text{CH}_2\text{N}(\text{CH}_3)_2$ ).

Claim 13 is drawn to the composition of Claim 1, wherein the phospholipid comprises saturated, monounsaturated or polyunsaturated fatty acids. This is not further limiting of Claim 1 because the phospholipid recited in Claim 1, as depicted by

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formula (I), comprises two polyunsaturated fatty acids (DHA and EPA) and the formula does not allow for any modification with regard to the attached fatty acids.

Claim 14 is drawn to the composition of Claim 13, wherein the polyunsaturated fatty acids are selected from the group consisting of omega-3 and omega-6 fatty acids. This is not further limiting of Claim 13 and Claim 1 because the phospholipid recited in Claim 1 (from which Claim 13 depends), as depicted by formula (I), comprises two omega-3 polyunsaturated fatty acids (DHA and EPA) and the formula does not allow for any modification with regard to the attached fatty acids.

Claim 15 is drawn to the composition of Claim 13, wherein the polyunsaturated fatty acids are selected from the group consisting of DHA, EPA, myristic acid, myristoleic acid, lignoceric acid, linolenic acid, alpha linolenic acid, nervonic acid, linoleic acid, oleic acid, stearic acid, palmitic acid and palmitoleic acid. This is not further limiting of Claim 13 and Claim 1 because the phospholipid recited in Claim 1 (from which Claims 13 and 15 depend), as depicted by formula (I), comprises DHA and EPA and the formula does not allow for any modification with regard to the attached fatty acids. Further, of the 13 fatty acids recited in Claim 15, only 5 are polyunsaturated (i.e., EPA, DHA, linolenic acid, alpha linolenic acid and linoleic acid). The remaining 8 fatty acids recited by the claim are either monounsaturated or saturated.

Applicant may cancel the claim(s), amend the claim(s) to place the claim(s) in proper dependent form, rewrite the claim(s) in independent form, or present a sufficient showing that the dependent claim(s) complies with the statutory requirements.

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4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

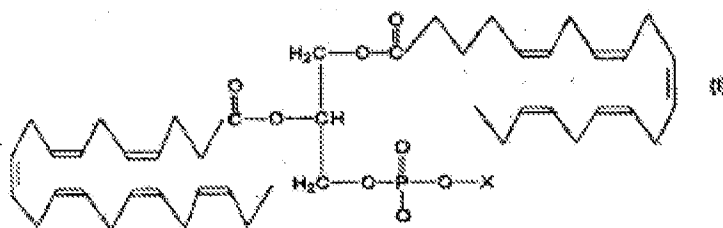
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, as presently recited, is (emphasis added):

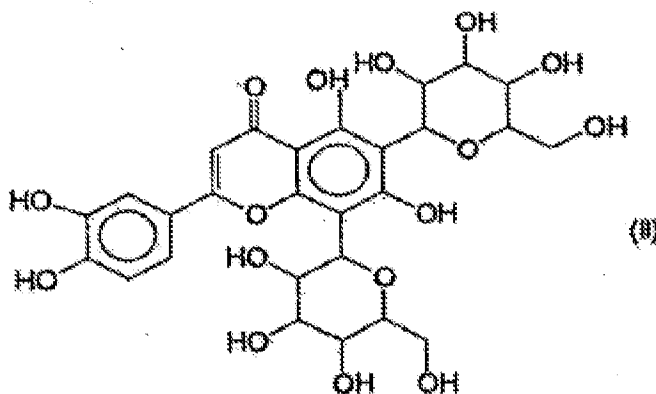
A composition, comprising:

(a) a phospholipid of the general formula (I),



wherein X is  $-\text{CH}_2\text{CH}_2\text{NH}_2$ ,  $-\text{CH}_2\text{CH}_2\text{N}(\text{CH}_3)_2$  or

(b) a flavonoid of the general formula (II),



The claim can have multiple interpretations which are incompatible with each other. For instance, the claim can reasonably be interpreted as reading on a

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