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Application No. 05 770 026.2 - 2103	Ref. GRA 3111-EP	Date 14.11.2007
Applicant GRUENENTHAL GMBH		

Communication pursuant to Article 96(2) EPC

The examination of the above-identified application has revealed that it does not meet the requirements of the European Patent Convention for the reasons enclosed herewith. If the deficiencies indicated are not rectified the application may be refused pursuant to Article 97(1) EPC.

You are invited to file your observations and insofar as the deficiencies are such as to be rectifiable, to correct the indicated deficiencies within a period

of 4 months

from the notification of this communication, this period being computed in accordance with Rules 78(2) and 83(2) and (4) EPC.

One set of amendments to the description, claims and drawings is to be filed within the said period on separate sheets (Rule 36(1) EPC).

Failure to comply with this invitation in due time will result in the application being deemed to be withdrawn (Article 96(3) EPC).



Götz, Gerhard
Primary Examiner
for the Examining Division

Enclosure(s): 2 page/s reasons (Form 2906)



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

Description, Pages

1-30 as published

Claims, Numbers

1-16 as published

D1: EP-B-0 693 475 (GRUENENTHAL GMBH) 24 January 1996 (1996-01-24)

- 1.1 It is at present not clear if the compounds as claimed in present claims 1 to 4 and 14 are identical ("Form A") or represent different compounds.
If all claims refer to one single compound (as it can be read from page 1 of the description) then this compound has to be characterised by all features of claims 1 to 4 (EPC Article 84)
- 1.2 It is not clear if the processes of present claim 5 and claim 11 result in the same compound ("Form A") (EPC Article 84).
- 1.3 Present claim 16 which is directed to the use of "Form A" refers back to "claims 1 to 14".
However, present claims 5 to 13 relate to a process for preparing "Form A".
Amendments are requested to overcome this deficiency (EPC Article 84).
2. There are no figures 1 to 8 on file.
Since figure 1 is missing, present claim 3 is so unclear that no examination can be done (EPC Article 84).



3. From the data presented in tables 1 to 4 it appears that "Form A" as mentioned in these tables is different from "Form B" which is known from D1.
The subject matter of present claims 1 to 2 , 4 to 16 can thus be regarded as being novel (EPC Article 54).

4. In view of D1, the underlying problem can be defined by te provision of an alternative form of the known compound (-)-(1R,2R)-3-(3-dimethylamino-1-ethyl-2-methylpropyl)-phenol hydrochloride.
The proposed solution is the provision of a "Form A" of this compound.
This solution is to be regarded as representing an obvious measure in the absence of any evidence that this new form shows any surprising or superior effect over the known form.
Such data have to be clearly shown by comparing the features of the claimed compound with the prior art compound.
Since such an effect is not shown in present application, the subject matter of present claims 1 to2, 4 to 16 is considered not to be based on an inventive step (EPC Article 56).