

EUROPEAN QUALIFYING EXAMINATION 2009

PAPER D - PART II

This paper comprises:

- * Client's letter including five (5) questions 2009/DII/e/1 - 5

- * Annex: Calendars for 2007, 2008 and 2009 with indication of the days on which at least one of the EPO filing offices is not open for the receipt of documents 2009/DII/e/6 - 8

40% of the marks available for paper D are awarded for part I,
60% for part II.

You receive today, 3rd March 2009 a fax from Angelica Gigas, owner of Silybum Horticultural Limited, a British supplier of gardening products.

“My firm is in need of urgent advice and wishes to appoint you as our patent attorney. I would like to meet you next week to discuss my firm’s patent portfolio but in the meantime ask you to consider the following situation.

Damage to plants by snails, and their shell free allies, slugs, is a significant problem and is particularly annoying to the amateur gardener. For many years it has been known that slugs and snails do not like contact with copper metal, and strips of copper are conventionally placed around plants or fixed to the rim of plant pots so as to prevent slugs and snails from crossing the strips.

Iris Stylosa, our technical director, and I realised that a similar effect to use of copper metal might be achieved by applying long lasting compounds containing copper to the surface of a plant pot. In trials we found that escargines [a well known class of organo-copper compounds (organic compounds containing copper)], and slugbanite [a known inorganic copper mineral] do not merely deter slugs and snails but kill them. I suggested the use of escargines, and Iris suggested the use of slugbanite, but to both our surprise the combination of escargines and slugbanite was found to provide a stronger effect than either alone, killing slugs and snails almost instantly.

We also found that the best position for applying these materials to the plant pot is not the rim, but in one or more bands, which may be only millimetres wide, but situated above the base of the plant pot at between about one quarter to three quarters the height of the plant pot. We found that mixing escargines and/or slugbanite with known slug and snail attractants (e.g. beer) and an adhesive provided a composition that was suitable for coating plant pots.

We filed a British patent application 07 99999.9 (GB1) in which we described our results and all of the above mentioned results in full. No claims were included with this filing, which was given a date of filing of 6th January 2007.

Iris handled our patent filings, and she filed a European patent application 07 77777.7 (EP1) claiming priority of GB1. EP1 has a date of filing of 20th December 2007 and was filed with a single claim to compositions comprising known slug and snail attractants, an adhesive, and a copper compound selected from either escargines, slugbanite or both. GB1 was subsequently abandoned without publication.

After filing EP1 Iris realised that she had not claimed the method of coating plant pots or the coated plant pots themselves and so filed two further applications 08 00001.1 (EP2) and 08 00002.2 (EP3) which both have a date of filing of 7th January 2008.

- EP2 was filed with a single claim to a method of coating at least a part of the surface of plant pots with compositions comprising compounds containing copper selected from either escargines, slugbanite or both.
- EP3 was filed with two claims, an independent claim claiming plant pots coated at least in part with compositions comprising compounds containing copper selected from either escargines, slugbanite or both, and a dependent claim claiming the specific location of the coating as being a band between one quarter to three quarters the height of the plant pot.

Iris found no difficulty with preparing the claims in EP1, EP2 and EP3 since she was able to use paragraphs from the description of GB1.

The description for each application was identical to that of GB1 and the filing, search, all designation and extension fees and the examination fees were paid on all three applications. EP2 and EP3 also claim priority of GB1.

No relevant documents were found in any of the search reports and EP1 and EP3 were granted 1st March 2009 without any amendment. A communication under Rule 71(3) EPC issued on EP2 last week, accepting the application as filed.

In late 2007 we discovered a potential problem in that some of the coated plant pots we were testing failed to kill slugs and snails. We quickly found that the problem was in the slugbanite we were using. Apparently, minerals can vary in composition and it is well known that slugbanite comes in four forms, A,B,C, and D. We found that slugbanite-A and slugbanite-B can each kill slugs and snails, but slugbanite-C and slugbanite-D do not. The examples given in GB1 referred to slugbanite from the Hosta la Vista mine which was named as the source of the slugbanite. The Hosta la Vista mine produces only slugbanite-A, which is conventionally used for glazing toilet bowls, however we did not mention slugbanite-A by name. At this time we also discovered a particularly effective method of preparing finely divided slugbanite for use in the slug and snail killing compositions.

As we did not want to confuse the prosecution of EP1, EP2 and EP3, we did not mention the lack of effect of slugbanite-C and slugbanite-D in those applications, but instead we filed British patent application number 08 01234.6 (GB2) which described slug and snail killing compositions similar to those described in GB1, and comprising slugbanite-B alone or in combination with escargines. A similar description was used to GB1, but reference to the slugbanite from the Hosta la Vista mine was replaced by reference to slugbanite-B, and the method of preparing slugbanite for use in the compositions was described. No claims or drawings were filed with this application, which was accorded a date of filing of 3rd January 2008.

GB1, GB2, EP1, EP2, and EP3 were all filed in the name of Silybum Horticultural Limited.

I instructed Iris to protect this invention in Europe, including Albania, and as US protection was wanted an international patent application was prepared with the same description as GB2, naming Silybum Horticultural Limited as applicant for all countries other than the United States, and naming Iris and me as applicants for the United States and inventors for all countries. This was signed and dated 24th December 2008, and placed in an envelope for posting to the EPO, we independently ordered payment of the fees to an EPO account and this was credited to the account in mid-January 2009.

However, on checking our post room this week we found that the envelope with the application had fallen behind a desk and was never mailed. Our secretary, Daphne Burkwood, is very upset about this as she has been with us since we founded the firm and is extremely reliable and we have never had such an incident before. I will give you the envelope and a copy of the application documents when we meet.

This is very important since last week I was contacted by Big Farma, a US agrochemical company having their European manufacturing facilities in Albania. Their letter reports that they have an international patent application PCT/US2006/99999 (PCT-BF) protecting escargines. I have checked and PCT-BF was filed 15th December 2006 without a claim to priority and published in August 2008. There appears to be no search report yet. This application describes and claims compositions containing organo-copper compounds and an adhesive for use as slug and snail killers and discloses escargines in one of the examples. PCT-BF also discloses methods of coating plant pots and coated plant pots, but only discloses coating the whole plant pot or the rim of plant pots. PCT-BF does not disclose using snail and slug attractants in the compositions.

Big Farma have asked me to meet them and I am going to see them today as they will be a big opportunity to market our invention, however I am worried in case they want to use PCT-BF to attack us. I will use this meeting to find out what Big Farma want, but for discussion on my return could you please provide a memorandum:

1. Advising as to the status of our European patents and European patent applications (as I will be travelling until the end of July, please indicate what we need to do in the next five months to keep them in good order)
2. Advising as to patentability and any problems you see with our European patents and European patent applications
3. Advising as to whether and how they can be improved
4. Advising as to whether we can recover the PCT application that Iris Stylosa failed to file covering all of the subject matter of GB2
5. Advising as to what our strategy should be concerning Big Farma [we need to know what to do if they are aggressive, or if they want to co-operate]

A confirmation copy of this fax together with copies of GB1 and GB2 was sent to you with delivery guarantee for this afternoon.

Please take this fax as being authority to take any action that you deem fit to preserve our position pending our meeting next week. Please note that any enquiries you have, or further documents that you need, will have to wait until our meeting, as our offices are closed until the end of next week, and I will not be contactable for the next three days.

Angelica Gigas”.

2007

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Tage / Days / Jours		München Munich	Den Haag The Hague La Haye	Berlin
Neujahr – New Year’s Day – Nouvel An	01.01.2007	x	x	x
Karfreitag – Good Friday – Vendredi Saint	06.04.2007	x	x	x
Ostermontag – Easter Monday – Lundi de Pâques	09.04.2007	x	x	x
Nationalfeiertag – National Holiday – Fête nationale	30.04.2007		x	
Mai feiertag – May Day – Fête du Travail	01.05.2007	x	x	x
Christi Himmelfahrt – Ascension Day – Ascension	17.05.2007	x	x	x
Pfingstmontag – Whit Monday – Lundi de Pentecôte	28.05.2007	x	x	x
Fronleichnam – Corpus Christi – Fête-Dieu	07.06.2007	x		
Mariä Himmelfahrt – Assumption Day – Assomption	15.08.2007	x		
Tag der deutschen Einheit – Day of German Unity – Fête nationale	03.10.2007	x		x
Allerheiligen – All Saints’ Day – Toussaint	01.11.2007	x		
Heiliger Abend – Christmas Eve – Veille de Noël	24.12.2007	x	x	x
1. Weihnachtstag – Christmas Day – Noël	25.12.2007	x	x	x
2. Weihnachtstag – Boxing Day – Lendemain de Noël	26.12.2007	x	x	x
Silvester – New Year’s Eve – Saint-Sylvestre	31.12.2007	x	x	x

2008

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Tage/Days/Jours		München Munich	Den Haag The Hague La Haye	Berlin
Neujahr - New Year's Day - Nouvel An	01.01.08	x	x	x
Karfreitag - Good Friday - Vendredi Saint	21.03.08	x	x	x
Ostermontag - Easter Monday - Lundi de Pâques	24.03.08	x	x	x
Nationalfeiertag - National Holiday - Fête Nationale	30.04.08		x	
Maifeiertag - May Day - Fête du Travail	01.05.08	x	x	x
Christi Himmelfahrt - Ascension Day - Ascension	01.05.08	x	x	x
Tag der Befreiung - Liberation Day - Journée de la Liberation	05.05.08		x	
Pfingstmontag - Whit Monday - Lundi de Pentecôte	12.05.08	x	x	x
Fronleichnam - Corpus Christi - Fête-Dieu	22.05.08	x		
Mariä Himmelfahrt - Assumption Day - Assomption	15.08.08	x		
Tag der Deutschen Einheit - Day of German Unity - Fête Nationale	03.10.08	x		x
Heiliger Abend - Christmas Eve - Veille de Noël	24.12.08	x	x	x
1. Weihnachtstag - Christmas Day - Noël	25.12.08	x	x	x
2. Weihnachtstag - Boxing Day - Lendemain de Noël	26.12.08	x	x	x
Silvester - New Year's Eve - Saint-Sylvestre	31.12.08	x	x	x

2009

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Tage / Days / Jours		München Munich	Den Haag The Hague La Haye	Berlin
Neujahr - New Year's Day - Nouvel An	01.01.2009	x	x	x
Brückentag - Bridging Day - Pont	02.01.2009	x	x	x
Heilige Drei Könige - Epiphany - Epiphanie	06.01.2009	x		
Karfreitag - Good Friday - Vendredi Saint	10.04.2009	x	x	x
Ostermontag - Easter Monday - Lundi de Pâques	13.04.2009	x	x	x
Nationalfeiertag - National Holiday - Fête nationale	30.04.2009		x	
Maifeiertag - May Day - Fête du Travail	01.05.2009	x	x	x
Tag der Befreiung - Liberation Day - Journée de la Libération	05.05.2009		x	
Christi Himmelfahrt - Ascension Day - Ascension	21.05.2009	x	x	x
Brückentag - Bridging Day - Pont	22.05.2009	x	x	x
Pfingstmontag - Whit Monday - Lundi de Pentecôte	01.06.2009	x	x	x
Fronleichnam - Corpus Christi - Fête-Dieu	11.06.2009	x		
Heiliger Abend - Christmas Eve - Vieille de Noël	24.12.2009	x	x	x
1. Weihnachtstag - Christmas Day - Noël	25.12.2009	x	x	x
Silvester - New Year's Eve - Saint-Sylvestre	31.12.2009	x	x	x