

PATENTS ACT 1977

01/113/94

IN THE MATTER OF an application under
Section 72(1) by Société d'Exploitation de
Produits pour les Industries Chimiques SA
for the revocation of Patent No 2194743
in the name of Rhone-Poulenc Agrochimie

FINAL DECISION

In an interim decision dated 7 February 1994 I found, in support of the allegations of the applicants for revocation, that, under section 72(1)(d), claim 3 and the corresponding statement of invention on page 6 of the specification contained matter which extended beyond that disclosed in the application for the patent as filed, this added matter being:

- (1) the reference to "temperature monitoring means within said compact volume of seed materials"; and
- (2) the reference to "control means for ensuring that the feeding of dry gas takes place at the same time as spraying".

I also found, under section 72(1)(a), that the invention as claimed in claims 3, 5 and 7 was not a patentable invention in that, in a form (as regards claim 3) which would be allowable relative to the finding under section 72(1)(d), these claims were not new. In other respects the applicants for revocation had failed to establish their case. Consequently, although the patent was found to be unsustainable in its granted form, since only certain of the claims were found to be invalid amendment to rectify these defects was possible. I therefore gave the proprietors a period of two months in which to file amendments which would place the patent into a form in which revocation was unnecessary.

On 28 March 1994 an amended specification was filed, proposing the deletion of apparatus claims 3, 4, 5 and 7 and corresponding adjustment of the opening paragraph of the description, the statement of invention on page 6 and the second paragraph on page 8.

The applicants for revocation stated in a letter of 17 May 1994 that they did not propose to submit any comments on these amendments. They did, however, note that the amended B specification contained a redundant line at the top of page 8 and that a comma should be inserted after "materials" at line 11 of claim 1 (with corresponding amendment to the statement of invention on page 2). In a letter dated 23 May 1994 the proprietors agreed that these clerical corrections were necessary.

I am satisfied that the amendments offered, subject to correction of the clerical matters mentioned above and also to the renumbering of claim 6 as claim 3, are in accordance with the findings in the interim decision. They provide a cure for the invalidity identified therein in that they both remove the matter found to have been added subsequent to filing of the application for the patent and remove the claims found to lack novelty. Furthermore they satisfy the requirements of section 76. I am satisfied that advertisement of these amendments is not necessary. I therefore allow the specification to be amended in the manner now sought and, on the basis of the specification so amended, make no order for revocation.

The applicants for revocation have asked for costs and, since their action has resulted in the rectification of a defective patent, I award them the sum of £1000 as a contribution to their expenses in this matter, this sum to be paid by the proprietors.

Any appeal against this decision must be lodged within 6 weeks from the date of the decision.

Dated this 14 day of July 1994



Dr P FERDINANDO

Superintending Examiner, acting for the Comptroller

THE PATENT OFFICE