

Decision on Opposition

Opposition No. 2020-700440

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The case of opposition against the patented invention in Japanese Patent No. 6625982, entitled "Compositions and Methods for Increasing the Palatability of Dry Pet Food" has resulted in the following decision.

Conclusion

The correction of the scope of claims of Japanese Patent No. 6625982 shall be approved as Corrected Claims [1-5], [6-9], 10, and [11-14] according to the corrected scope of claims attached to the written correction request.

The patent for Claims 1, 3 to 6, and 8 to 14 of Japanese Patent No. 6625982 shall be maintained.

An opposition to the patent for claims 2 and 7 of Japanese Patent No. 6625982 shall be dismissed.

Reason

No. 1 History of the procedures

The application of the patent for Japanese Patent No. 6625982 (hereinafter, referred to as "the Patent") was filed on December 16, 2014 as an international filing date (priority claim: December 19, 2013), the establishment of patent right was registered on December 6, 2019, and its patent gazette was published on December 25, 2019. Then, history of the opposition to the patent thereafter is as follows:

June 24, 2020 Opposition to a granted patent for inventions recited in Claims 1 to 14 by the Patent Opponent, Takanobu Kamiya (hereinafter, referred to as "the Opponent")

Dated September 25, 2020 Notice of reasons for revocation

December 23, 2020 Submission of written opinion and request for correction by the Patentee (hereinafter, referred to as "the Correction Request", and the correction by the Correction Request is referred to as "the Correction").

Regarding the request for correction submitted on December 23, 2020, the Opponent was given the opportunity to submit a written opinion for a specified period of time. However, no written opinion was filed within the specified period.

No. 2 Suitability of correction

1. Contents of correction

The details of the Correction as follows (underlines are added by the body, and the same shall apply hereinafter).

(1) Correction 1

As for Claim 1 of the scope of claims,

"A dry pet food product ... having a water activity of less than 0.65" is corrected to

"A dry pet food product ...

having a water activity of less than 0.65, wherein the total amount of the salt of sorbic acid in the product is between 0.4 and 1.0% of the dry food product by weight."

(2) Correction 2

Claim 2 is deleted from the scope of claims.

(3) Correction 3

As for Claim 6 of the scope of claims,

"A method ... comprising the steps of: ... drying the kibbles to form the dry pet food" is corrected to

"A method ... comprising the steps of: ... drying the kibbles to form the dry pet food, wherein the salt of sorbic acid is between 0.4 and 1.0% of the ingredients by weight."

(4) Correction 4

Claim 7 of the scope of claims is deleted.

(5) Correction 5

As for Claim 10 of the scope of claims,

"A method ... comprising the step of: ... incorporating ... a salt of sorbic acid ... into a basal body of the dry pet food" is corrected to

"A method ... comprising the steps of: ... incorporating ... a salt of sorbic acid ... into a basal body of the dry pet food, wherein the salt of sorbic acid is incorporated in amount between 0.4 and 1.0% of the dry food product by weight."

(6) Correction 6

As for Claim 11 of the scope of claims,

"A method ... has a water activity of less than 0.65" is corrected to

"A method ... has a water activity of less than 0.65, and the salt of sorbic acid is between 0.4 and 1.0% of the dry pet food product by weight."

2. Suitability of correction the purpose of correction, presence or absence of new matter, enlargement or alteration of the scope of claims, and group of claims

(1) Regarding Correction 1

A. Regarding purpose of correction

The above correction for Claim 1 regarding Correction 1 limits the numerical range of the ratio of the total amount of "a salt of sorbic acid" in the "dry pet food product" specified as "comprising a salt of sorbic acid" in Claim 1 before the correction, and thus aims at the restriction of the scope of claims stipulated in Article 120-5(2)(i) of the Patent Act.

B. Regarding addition of new matter

Regarding the above Correction 1, the paragraph [0046] of the Description of the Patent describes as follows: "Accordingly, the present disclosure provides compositions and methods for increasing the palatability of dry pet food, such as dry pet food kibbles. The compositions comprise at least one of sorbic acid and a salt thereof. Non-limiting examples of suitable salts of sorbic acid include a potassium salt of sorbic acid, a calcium salt of sorbic acid, and a sodium salt of sorbic acid, which can be substituted for each other on an equivalent salt of sorbic acid basis. In an embodiment, the composition is a dry pet food, such as a kibble, comprising a total amount of sorbic acid and/or a salt

thereof between 0.3 to 1.0%; preferably 0.4 to 1%; more preferably 0.5 to 1.0% of the composition."

Thus, the correction of Correction 1 is based on the description in the above paragraph [0046] and the like. It can be said that the correction did not introduce any new technical matter in relation to the technical matters derived by totalizing all the descriptions about matters described in the Description, the Scope of the Invention, and Drawings originally attached to the application (hereinafter, referred to as "the Description, etc."), but was made within the scope of the matters described in the Description, etc.

C. Regarding enlargement or alternation of the scope of claims

The above correction of Correction 1 aims at the restriction of the scope of claims, and does not aim at altering category, target, or purpose, and therefore it does not substantially enlarge or alter the scope of claims.

(2) Regarding Corrections 2 and 4

The above correction for Claim 2 regarding Correction 2 and the above correction for Claim 7 regarding Correction 4 are respectively intended to delete the claims and thus intend for restriction of the scope of claims. Therefore, the correction does not correspond to the addition of new matter, and does not substantially enlarge or alter the scope of claims.

(3) Regarding Correction 3

A. Regarding purpose of correction

The above correction for Claim 6 regarding Correction 3 limits the numerical range of the ratio for "a salt of sorbic acid" in the "step" specified as "comprising the steps of milling ingredients comprising a salt of sorbic acid" in Claim 6 before the correction, and thus aims at the restriction of the scope of claims stipulated in Article 120-5(2)(i) of the Patent Act.

B. Regarding addition of new matter

Regarding the above Correction 3, paragraph [0058] of the Description describes as follows: "At least one of sorbic acid and a salt thereof is added to the dry pet food, for example, in the ingredients of the dry basal composition and/or in the coating composition. If at least one of sorbic acid and a salt thereof is added to the ingredients of the dry basal composition, the addition is preferably performed before the milling." In addition,

paragraph [0059] describes as follows: "In an embodiment, a total amount of sorbic acid and/or a salt thereof is preferably between 0.4 to 1.0%, or more preferably between 0.5 to 1.0% of the composition, and the dry pet food is a cat food. In another embodiment, a total amount of sorbic acid and/or a salt thereof is preferably between 0.4 to 1.0%, or more preferably between 0.5 to 1.0% of the composition, and the dry pet food is a dog food.

Then, the correction regarding Correction 3 is based on the descriptions in the above paragraphs [0058] and [0059], therefore, it can be said that the correction did not introduce any new technical matter in relation to the technical matters derived by totalizing all the descriptions about matters stated in the Description, etc., but was made within the scope of the matters described in the Description, etc.

C. Regarding enlargement or alternation of the scope of claims

The above correction of Correction 3 aims at the restriction of the scope of claims, but does not aim at altering category, target, or purpose, and therefore it does not substantially enlarge or alter the scope of claims.

(4) Regarding Correction 5

A. Regarding purpose of correction

The above correction for Claim 10 regarding Correction 5 limits the numerical range of the ratio for "a salt of sorbic acid" in the "step" specified as "the steps of: ... incorporating ... a salt of sorbic acid ... into a basal body of the dry pet food" in Claim 10 before the correction and thus aims at the restriction of the scope of claims stipulated in Article 120-5(2)(i) of the Patent Act.

B. Regarding addition of new matter

Regarding the above Correction 5, paragraph [0046] of the Description of the Patent describes the matter pointed out in the above "(1)B."

Then, the correction of Correction 5 is based on the statement or the like in above paragraph [0046]. Therefore, it can be said that the correction did not introduce any new technical matter in relation to the technical matters derived by totalizing all the descriptions about matters described in the Description, etc., but was made within the scope of the matters described in the Description, etc.

C. Regarding enlargement or alternation of the scope of claims

The above correction of Correction 5 aims at the restriction of the scope of claims,

but does not aim at altering category, target, or purpose, and therefore it does not substantially enlarge or alter the scope of claims.

(5) Regarding Correction 6

A. Regarding purpose of correction

The above correction for Claim 11 regarding Correction 6 limits the numerical range of the ratio for "a salt of sorbic acid" in the "dry food product" specified as "a dry food product comprising a salt of sorbic acid" in Claim 11 before the correction and thus aims at the restriction of the scope of claims stipulated in Article 120-5(2)(i) of the Patent Act.

B. Regarding addition of new matter

Regarding the above Correction 6, paragraph [0046] of the Description of the Patent describes the matter pointed out in the above "(1)B."

Then, the correction of Correction 6 is based on the description or the like in above paragraph [0046]. Therefore, it can be said that the correction did not introduce any new technical matter in relation to the technical matters derived by totalizing all the descriptions about matters described in the Description, etc., but was made within the scope of the matters described in the Description, etc.

C. Regarding enlargement or alternation of the scope of claims

The above correction of Correction 6 aims at the restriction of the scope of claims, but does not aim at altering category, target, or purpose and therefore it does not substantially enlarge or alter the scope of claims.

(5) Regarding group of claims

Claims 1 to 5 before the correction regarding Corrections 1 and 2 are a group of claims, as Claims 2 to 5 depend from Claim 1.

Claims 6 to 9 before the correction regarding Corrections 3 and 4 are a group of claims, as Claims 7 to 9 depend from Claim 6.

Claims 11 to 14 before the correction regarding Correction 6 are a group of claims, as Claims 12 to 14 depend from Claim 11.

Then, the corrections relating to Corrections 1 to 4 and 6 are each requested for a group of claims.

3. Summary

As stated above, the corrections by the Correction Request aim at the matters prescribed in Article 120-5(2)(i) of the Patent Act and comply with the provisions of Article 126(5) and (6) of the Patent Act which is applied mutatis mutandis pursuant to Article 120(9) of the Patent Act. Therefore, the correction of the scope of claims [1-5], [6-9], 10, and [11-14] shall be approved as the corrected scope of claims attached to the written correction request.

No. 3. Patent invention after correction

The inventions recited in Claims 1 to 14 corrected by the Correction Request (hereinafter, respectively referred to as "Corrected Patent Invention 1" to "Corrected Patent Invention 14" and collectively referred to as "the Corrected Invention.") are acknowledged as follows, as specified by the matters recited in Claims 1 to 14 of the corrected scope of claims attached to the written correction request.

"[Claim 1]

A dry pet food product comprising a salt of sorbic acid, and further comprising an additional ingredient selected from the group consisting of a lipid, a protein, a carbohydrate, and combinations thereof, the dry pet food product comprising:

a basal body in which at least a portion of the salt of sorbic acid is present and having a water activity of less than 0.65,

wherein a total amount of the salt of sorbic acid in the product is between 0.4 and 1.0% of the dry food product by weight.

[Claim 2] (deleted)

[Claim 3]

The dry pet food product of Claim 1, wherein a total amount of the salt of sorbic acid in the product is between 0.5 and 1.0% of the product by weight.

[Claim 4]

The dry pet food product of Claim 1, wherein the salt of sorbic acid is selected from the group consisting of sorbic acid, potassium sorbate, calcium sorbate, sodium sorbate, and combinations thereof.

[Claim 5]

The dry pet food product of Claim 1, comprising a coating in which at least a portion of the salt of sorbic acid is present.

[Claim 6]

A method of making a dry pet food having a water activity of less than 0.65, the

method comprising the steps of:

milling ingredients comprising a salt of sorbic acid;
extruding the milled ingredients to form an extrudate;
forming kibbles from the extrudate; and
drying the kibbles to form the dry pet food.

wherein the salt of sorbic acid is between 0.4 and 1.0% of the ingredients by weight.

[Claim 7] (deleted)

[Claim 8]

The method of Claim 6, wherein the salt of sorbic acid is between 0.5 and 1.0% of the ingredients by weight.

[Claim 9]

The method of Claim 6, wherein the salt of sorbic acid is selected from the group consisting of sorbic acid, potassium sorbate, calcium sorbate, sodium sorbate, and combinations thereof.

[Claim 10]

A method for increasing the palatability of dry pet food having a water activity of less than 0.65 comprising the step of:

incorporating a palatability-enhancing amount of a salt of sorbic acid selected from the group consisting of sorbic acid, potassium sorbate, calcium sorbate, sodium sorbate, and combinations thereof into a basal body of the dry pet food, wherein

the salt of sorbic acid is incorporated in amount between 0.4 and 1.0% of the dry food product by weight.

[Claim 11]

A method comprising the step of administering to a pet a dry food product comprising a palatability-enhancing amount of a salt of sorbic acid, wherein

the dry food product comprises a basal body in which at least a portion of the salt of sorbic acid is present,

the dry food product has a water activity of less than 0.65, and

the salt of sorbic acid is between 0.4 and 1.0% of the dry pet food product by weight.

[Claim 12]

The method of Claim 11, wherein the pet is a cat, and the salt of sorbic acid is between 0.4 and 1.0% of the dry food product by weight.

[Claim 13]

The method of Claim 11, wherein the pet is a dog, and the salt of sorbic acid is between 0.5 and 1.0% of the dry food product by weight.

[Claim 14]

The method of Claim 11, the dry food product comprising a coating in which at least a portion of the salt of sorbic acid is present."

No. 4 Outline of reasons for opposition to grant of patent and evidences

In the written opposition to the grant of a patent (hereinafter referred to as the "written opposition"), the Opponent principally alleges the reasons for opposition stated in "1." below, and as a means of proof, each Evidence A shown in "2." below (hereinafter, each Evidence A may be also referred to as "Evidence A No. 1", etc., and the invention related to each Evidence A may be also referred to as "Invention A-1," etc., the same shall apply hereinafter).

1. Outline of reasons for opposition to grant of patent

(1) Inventions 1,4, 6, 9, 10, and 11 are identical to the invention disclosed in Evidence A No. 1, and thus the Patentee should not be granted a patent for the Invention pursuant the provisions of Article 29(1)(iii) of the Patent Act. These inventions should be therefore revoked under the provisions of Article 113(2) of the Patent Act (the written opposition, pages 2 to 4 (A), page 30 (5) A, etc.).

(2) Inventions 1, 4, 6, 9, 10, and 11 could have been easily conceived of by a person skilled in the art from the invention disclosed in Evidence A No. 1, and thus the Patentee should not be granted a patent for the Invention pursuant the provisions of Article 29(2) of the Patent Act (see Exhibit A Nos. 2 to 9). These inventions should be therefore revoked under the provisions of Article 113(2) of the Patent Act (the written opposition, pages 2 to 4 (A), page 30 (5) A, etc.).

(3) Inventions 2, 3, 5, 7, 8, 12, and 13 could have been easily conceived of by a person skilled in the art based on the invention disclosed in Evidence A No. 1, the invention disclosed in Evidence A No. 10, and the common technical knowledge at the time of filing the application for the Patent (see Exhibit A Nos. 2 to 9), and Inventions 5 and 14 could have been easily conceived of by a person skilled in the art based on the invention disclosed in Exhibit A No. 1, the invention disclosed in Exhibit A No. 11, and the common technical knowledge at the time of filing the application for the Patent, and thus the Patentee should not be granted a patent for the Invention pursuant the provisions of Article 29(2) of the Patent Act. These inventions should be therefore revoked under the

provisions of Article 113(2) of the Patent Act (the written opposition, pages 4 to 5 (B), page 30 (5) B, etc.).

2. Means of proof submitted with the written opposition

Evidence A No. 1 Specification of U.S. Patent No. 4020187

Evidence A No. 2 R. A. TIMMONS, "Water activity as a tool for predicting and controlling the stability of pet foods", July 23, 2007, Engormix, <URL: <https://en.engormix.com/feed-machinery/articles/water-activity-controlling-stability-of-pet-foods-t33837.htm>>

Evidence A No. 3 Japanese Society of Pet Animal Nutrition, Ed., "Pet Nutrition Management Textbook Pet Food Additives," January 31, 2014, Adthree Publishing Co., Ltd., pages 272 to 280

Evidence A No. 4 Japanese Patent Laid-Open No. 2013-17470

Evidence A No. 5 National Publication of International Patent Application No. 2014-534819

Evidence A No. 6 Unicharm Co., Ltd., "AIKEN GENKI Best Balance Crunchy texture for Yorkshire Terrier," date of storage on the Internet Archive Wayback Machine: September 30, 2012, <URL: https://web.archive.org/web/20120930051743/http://pet.unicharm.co.jp/dog/detail/dog_4/>

Evidence A No. 7 MARS Japan, "Pedigree," date of storage on the Internet Archive Wayback Machine: December 7, 2011, <URL: <https://web.archive.org/web/20111207025619/http://www.pedigree.jp/products/dry/index.aspx#anc02>>

Evidence A No. 8 ROYAL CANIN JAPON, "Breed Health Nutrition," date of storage on the Internet Archive Wayback Machine: October 31, 2011, <URL: https://web.archive.org/web/20111031231210/http://www.royalcanin.co.jp/pb/dogs/breed/chiwawa_seiken>

Evidence A No. 9 MARS Japan "Cesar, Dry Food," date of storage on the Internet Archive Wayback Machine: March 26, 2012, <URL: <https://web.archive.org/web/20120326051111/https://www.cesar-club.com/jp/products/dry/index.html>>

Evidence A No. 10 Specification of U.S. patent publication No. 2009/0246320

Evidence A No. 11 National Publication of International Patent Application No. 2006-506997

No. 5 Regarding reasons for revocation stated in notice of reasons for revocation

1. Outline of reasons for revocation

The outline of the reasons for revocation notified by the body to the Patentee on September 25, 2020 is as follows:

(1) It is recognized that the inventions recited in Claims 1, 4, 6, and 9 to 11 are the inventions disclosed in Evidence A No. 1 distributed in Japan or foreign country prior to the filing of the application therefor, and thus the Patentee should not be granted a patent for the Invention pursuant the provisions of Article 29(1)(iii) of the Patent Act. Therefore, the patent for the inventions should be revoked.

(2) The inventions recited in Claims 1 to 4 and 6 to 13 of the Patent could have been easily made by a person having ordinary skill in the art to which the invention pertains, on the basis of the invention disclosed in Evidence A No. 1 distributed in Japan or a foreign country prior to the filing of the application of the Patent. In addition, the inventions recited in Claims 5 and 14 of the Patent could have been easily made by a person having ordinary skill in the art to which the invention pertains on the basis of the invention disclosed in Evidence A Nos. 1 and 11 distributed in Japan or a foreign country prior to the filing of the application of the Patent. Therefore, the patent for the inventions has been granted in violation of the provisions of Article 29(2) of the Patent Act and should be revoked.

2. Regarding evidences

(1) Evidence A No. 1

A. Statements in Evidence A No. 1

Evidence A No. 1 includes the following statements:

(A) "METHOD OF PRODUCING DRY PET FOOD" (Column 1, line 1)

(B) "The dry facinaceous (note by the body: "facinaceous " in the original text is recognized as a misspelling of "farinaceous") ingredients are first ground to obtain a final size of at least 30 mesh, and then the dry material is added to the heated homogenized meat mixture. The preferred proportions of the resultant mix range from at least 25% of the meat mixture to 50%, depending on the desired finished product, but more importantly, ensuring that the minimum fat content of the final product will be at least 7-^{1/2} %.

After metering the wet and dry ingredients to obtain the aforementioned proportions,

mixing is accomplished in a high-speed blender. The blended mixture is then pumped through a conventional extruder-cooker, where the product is subjected to temperatures of 225° to 325°F and a pressure of at least 50 p.s.i. The mixture is rapidly cooked and passes through an extruder die to the atmosphere in the form of a rope. At this point, the hot product is at a temperature of at least 250°F and an instantaneous flashing of the water contained in the extruded product occurs due to the substantial change in temperature and pressure. The flashing of the water into steam produces an expansion of the extruded rope of material, and at a point where the extruded rope is cooled to a level below 200°F, it is cut into small, chunklike pieces by a rotating knife. The product at this point is therefore in sterile chunks generally containing from 15% to 25% moisture. The product is then immediately passed through a conventional dryer, and the water content is removed to obtain a final moisture content of 7% to 15%.

Due to the low moisture content of the final product and to anti-mold agents, such as potassium sorbate, incorporated in the dry mix, the product is micro-biologically stable. More importantly, our tests have shown that the resulting product has surprising appetite appeal to pets." (Column 1, line 59 to Column 2, line 25)

(C) "

EXAMPLE 1	
Dry Mix	
Corn flour	24 lbs
Wheat flour	13 lbs
Soy flour	12 lbs
Meat meal	10 lbs
Yeast, brewers	3 lbs
Nonfat dried milk	2 lbs
Vitamins and minerals	¼ lb
Potassium sorbate	¼ lb
Miscellaneous	¼ lb
	65 lbs
Meat Mix	
Meat and meat by-products (chicken, liver kidneys, lungs, tripe, tongue, beef lips, etc.)	31 lbs
Animal tallow	4 lbs
	35 lbs

" (Column 2, EXAMPLE 1)

(D) Since it is clear that the "dry ingredients" in the above "(B)" refer to the "dry mix" in the above "(C)", it can be understood from the above "(B) and (C)" that the dry mix is added to the meat mixture.

(E) Since "Example 1" of the above "(C)" contains "1/4 lb." of "potassium sorbate" for a total of 100 lbs. of "dry mix" and "meat mixture," it can be said that the potassium sorbate represents 0.25% of the dry mix and the meat mixture by weight.

B. In summary of the statements in the above A, Evidence A No. 1 states the following Invention A-1 and Process Invention A-1-1.

(Invention A-1)

"A dry pet food prepared wherein

a dry mix containing corn flour, wheat flour, soy flour, meat meal, non-fat milk powder, and potassium sorbate

is added to a meat mixture containing meat and meat by-products, and animal tallow,

a final moisture content is from 7% to 15%, and

the potassium sorbate represents 0.25% of the dry mix and the meat mixture by weight."

(Process Invention A-1-1)

"A process of manufacturing a dry pet food of Invention A-1, comprising:

grinding dried starch ingredients, followed by adding the dry ingredients to a meat mixture,

sending the mixture through a die of an extruder to the atmosphere,

cutting into small blocks, and

removing moisture by passing through a conventional dryer."

(2) Evidence A No. 11

A. Statements in Evidence A No. 11

Evidence A No. 11 includes the following statements:

(A)"[0009]

According to one aspect of the invention, there is provided a sprayable flavor-enhancing agent for packeted pet mammal foods that incorporates cook water from commercial fish processing operations that has been concentrated by evaporation. It has surprisingly been found that this material is highly palatable to pet mammals and significantly enhances the overall palatability of commercial packeted pet foods."

(B) "[0024]

EXAMPLE 2 - Commercial packeted food for cats

The tuna cook water as described above was again blended to form a spray according to the formulation in Table 4.

[Table 4]

表 4

成分	重量 %
濃縮マグロ調理水 (約 65 重量 % の固形分)	43.3
水	43.3
リン酸	12.0
Termox (市販の酸化防止剤)	1.10
還元糖	0.9
ソルビン酸カリウム	0.28

表 4 Table 4

成分 Ingredient

重量% % by weight

濃縮マグロ調理水 Concentrated Tuna Cook Water
(約 65 重量%の固形分) (approx. 65 % by weight solids)

水 Water

リン酸 Phosphoric Acid
(市販の酸化防止剤) Commercially available antioxidant

還元糖 Reducing sugar

ソルビン酸カリウム potassium sorbate

[0025]

This liquid spray was then applied to a commercial dry cat food kibble at a rate of 7% by weight." (The remainder omitted)

(C) From [Table 4] of the above "(B)," it can be read that the liquid spray contains 0.28% of potassium sorbate.

B. Summarizing the statements in the above A, Evidence A No. 11 states the following invention (hereinafter referred to as "Invention A-11").

"A dry type cat food kibble coated with a liquid spray containing 0.28% potassium sorbate."

(3) Evidence A No. 2 (Cited Document 1)

A. Statements in Evidence A No. 2 (Cited Document 1)

Evidence A No. 2, which we cited by the body as Reference Example 1 in the notice of reasons for revocation, includes the following statements:

(A) "Water activities of many common ingredients and categories of pet foods are shown in Table 2. Dry pet food and hard treats typically are in the 0.40-0.45 Aw range." (The section of "MICROBIOLOGICAL CONTROL," second paragraph)

(B) "

Table 2. Water activities of some common foods and ingredients.

	Water activity
Canned pet food	0.85 and greater
Soft moist pet food, ~22% moisture	0.83
Starch	0.65-0.80
Maple syrup	0.80
Dried whole egg, 10% moisture	0.70
Roller oats, 10% moisture	0.65
Raw cane sugar	0.65
Dry pet foods	0.40-0.45
Whole egg powder, 5% moisture	0.40

"

3. Judgment by the body

(1) Corrected Invention 1

A. Comparison

Corrected Invention 1 and Invention A-1 are compared.

(A) The "potassium sorbate" in Invention A-1 corresponds to "a salt of sorbic acid" in Corrected Invention 1,

(B) The "corn flour, wheat flour, soy flour, meat meal" and "meat and meat by-products" in Invention A-1 obviously contain lipids, proteins, and carbohydrates, and thus correspond to "an additional ingredient selected from the group consisting of a lipid, a protein, a carbohydrate, and combinations thereof" in Corrected Invention 1.

(C) Invention A-1 is one in which "a dry mix containing corn flour, wheat flour, soy flour, meat meal, non-fat milk powder, and potassium sorbate is added to a meat mixture containing meat and meat by-products, and animal tallow," and can be thus said to include "potassium sorbate." Therefore, this feature of Evidence A-1 corresponds to "comprising: a basal body in which at least a portion of the salt of sorbic acid is present"

in Corrected Invention 1.

(D) The "dry pet food" in Invention A-1 corresponds to the "dry pet food product" in Corrected Invention 1.

(E) Thus, Corrected Invention 1 and Invention A-1 are correspondence in "A dry pet food product comprising a salt of sorbic acid, and further comprising an additional ingredient selected from the group consisting of a lipid, a protein, a carbohydrate, and combinations thereof, the dry pet food product comprising:

a basal body in which at least a portion of the salt of sorbic acid is present." and differ from each other in the following points.

(Different Feature 1)

The "water activity" is "less than 0.65" in Corrected Invention 1, whereas it is unknown in Invention A-1.

(Different Feature 2)

"the salt of sorbic acid is between 0.4 and 1.0% of the ingredients by weight" in Corrected Invention 1, whereas "the potassium sorbate represents 0.25% of the dry mix and the meat mixture by weight" in Invention A-1.

B. Examination

Taking the case into consideration, first, Different Feature 2 will be examined.

(A) Corrected Invention 1 "found that potassium sorbate or sorbic acid, typically used as anti-mycotic compounds in semi-moist pet foods, increased palatability of both dry cat and dry dog foods" (paragraph [0046] of the description) and has the invention-specific matter, "a total amount of the salt of sorbic acid is between 0.4 and 1.0% of the ingredients by weight" in the "dry pet food product," relating to Different Feature 2, thereby exerting an effect of "increasing the palatability of dry pet food, such as dry pet food kibbles" (same as above) as stated in the description.

(B) On the other hand, Evidence A No. 1 states that "Due to the low moisture content of the final product and to anti-mold agents, such as potassium sorbate, incorporated in the dry mix, the product is micro-biologically stable." (the above "2. (1) A. (B).") In Invention A-1, the amount of "potassium sorbate", which is stated as "0.25% of the dry

mix and the meat mixture by weight," is recognized as a suitable amount for making the "dry pet food" "microbiologically stable." In addition, there is no statement about the addition of potassium sorbate to improve the palatability of dry pet food. Thus, there is no incentive to change the amount of potassium sorbate to improve palatability for Invention A-1.

Then, adjusting the amount of "potassium sorbate" in Invention A-1 within the scope of the invention-specific matters relating to Different Feature 2 of Corrected Invention 1 cannot be said to be a design matter that could be appropriately determined by a person skilled in the art.

C. Summary

As stated above, Different Feature 2 is a substantial difference, and Corrected Invention 1 is therefore not recognized as the invention disclosed in Evidence A No. 1 without considering other differences.

In addition, it cannot be recognized that a person skilled in the art could have easily made Corrected Invention 1 based on Invention A-1.

(2) Corrected Inventions 2 to 4

Corrected Inventions 3 and 4 are inventions further restricted by depending from Corrected Invention 1. Here, Corrected Invention 1 is as examined in the above "(1)."

Then, Corrected Invention 4 is not recognized as the invention disclosed in Evidence A No. 1.

In addition, it cannot be recognized that a person skilled in the art could have easily made Corrected Inventions 3 and 4 based on Invention A-1.

Furthermore, Claim 2 has been deleted by the Correction.

(3) Corrected Invention 5

A. Corrected Invention 5 is an invention further restricted by depending from Corrected Invention 1. Here, Corrected Invention 1 is as examined in the above "(1)."

B. The "cat food kibble" of Invention A-11 is "coated with a liquid spray containing 0.28% potassium sorbate." Thus, it is clear that the amount of "potassium sorbate" in the "cat food kibble" is "less than 0.28%,"

Then, Invention A-11 does not disclose or suggest the matters specifying the invention of Corrected Invention 1 relating to Difference 2. Thus, even if Invention A-11 is taken into consideration, the judgment in the above "(1)" remains unchanged.

Therefore, it is not recognized that Corrected Invention 5 could have been easily invented by a person skilled in the art based on Invention A-1.

(4) Corrected Invention 6

A. Comparison

(A) Comparing Corrected Invention 6 and Process Invention A-1-1, the same can be said as the comparison in the above "2.(1). " Furthermore, the steps of "grinding dried starch ingredients," "sending the mixture through a die of an extruder to the atmosphere," cutting into small blocks," and "removing moisture by passing through a conventional dryer" in Process Invention A-1-1 correspond to the steps of "milling ingredients comprising a salt of sorbic acid," "extruding the milled ingredients to form an extrudate," "forming kibbles from the extrudate," and "drying the kibbles to form the dry pet food" in Corrected Invention 6, respectively.

(B) Then, Corrected Invention 6 and Process Invention A-1-1 differ in the following features, and the other features are the same.

(Different feature A)

The "water activity" is "less than 0.65" in Corrected Invention 6, whereas it is unknown in Process Invention A-1-1.

(Different feature B)

In Corrected Invention 6, "the salt of sorbic acid is between 0.4 and 1.0% of the ingredients by weight", whereas in Process Invention A-1-1, "the potassium sorbate represents 0.25% of the dry mix and the meat mixture by weight."

B. Examination

Taking the case into consideration, first, Different Feature B will be examined.

(A) Corrected Invention 6 "found that potassium sorbate or sorbic acid, typically used as anti-mycotic compounds in semi-moist pet foods, increased palatability of both dry cat and dry dog foods" (paragraph [0046] of the description) and has the invention-specific matter, "the salt of sorbic acid is between 0.4 and 1.0% of the ingredients by weight," relating to Different Feature B, thereby exerting an effect of "increasing the palatability of dry pet food, such as dry pet food kibbles" (same as above) as stated in the description.

(B) On the other hand, Evidence A No. 1 states that "Due to the low moisture content of the final product and to anti-mold agents, such as potassium sorbate, incorporated in the dry mix, the product is micro- biologically stable." (the above "2. (1) A. (B).") Thus, the amount of "potassium sorbate", which is stated as "0.25% of the dry mix and the meat mixture by weight," is recognized as a suitable amount for making the "dry pet food" "microbiologically stable." In addition, there is no statement about the addition of potassium sorbate to improve the palatability of dry pet food. Thus, there is no incentive to change the amount of potassium sorbate to improve palatability for Invention A-1.

Then, adjusting the amount of "potassium sorbate" in Invention A-1 within the scope of the invention-specific matters relating to Different Feature B of Corrected Invention 6 cannot be said to be a design matter that could be appropriately determined by a person skilled in the art.

C. Summary

As stated above, Difference B is a substantial difference, and Corrected Invention 6 is therefore not recognized as the invention disclosed in Evidence A No. 1 without considering other different features.

In addition, it cannot be recognized that a person skilled in the art could have easily made Corrected Invention 6 based on Invention A-1.

(5) Corrected Inventions 7 to 9

Corrected Inventions 8 and 9 are inventions further restricted by depending from Corrected Invention 6. Here, Corrected Invention 6 is as examined in the above "(4)."

Then, Corrected Invention 9 is not recognized as the invention disclosed in Evidence A No. 1.

In addition, it cannot be recognized that a person skilled in the art could have easily made Corrected Inventions 8 and 9 based on Process Invention A-1-1.

Furthermore, Claim 7 has been deleted by the Correction.

(6) Corrected Invention 10

A. Comparison

(A) Comparing Corrected Invention 10 with Process Invention A-1-1, the same can be said for the comparison in the above "2. (1)."

(B) In addition, the "dry pet food" in Process Invention A-1-1 is "a dry mix containing corn flour, wheat flour, soy flour, meat meal, non-fat milk powder, and potassium sorbate

is added to a meat mixture containing meat and meat by-products, and animal tallow," and can be thus said to include "potassium sorbate." Therefore, it is clear that Process Invention A-1-1 has the step of mixing the "potassium sorbate" into the "dry pet food".

(C) Evidence A No. 1 states that "More importantly, our tests have shown that the resulting product has surprising appetite appeal to pets." (the above "2. (1) A (B)"). Thus, the manufacturing method according to Process Invention A-1-1 for manufacturing such a product can be called "a process of manufacturing a dry pet food" that "has appetite appeal," and thus corresponds to "a method for increasing the palatability of dry pet food" in Corrected Invention 10.

(D) Then, Corrected Invention 10 and Process Invention A-1-1 differ in the following features, and the other features are the same.

(Different feature a)

The "water activity" is "less than 0.65" in Corrected Invention 10, whereas it is unknown in Process Invention A-1-1.

(Different feature b)

In Corrected Invention 10, "a salt of sorbic acid" is in "a palatability-enhancing amount" and is incorporated "in amount between 0.4 and 1.0% of the dry food product by weight." whereas in Process Invention A-1-1, "the potassium sorbate represents 0.25% of the dry mix and the meat mixture by weight."

B. Examination

Taking the case into consideration, first, Different Feature b will be examined.

(A) Corrected Invention 10 "found that potassium sorbate or sorbic acid, typically used as anti-mycotic compounds in semi-moist pet foods, increased palatability of both dry cat and dry dog foods" (paragraph [0046] of the description) and has the invention-specific matter, "the potassium sorbate represents 0.25% of the dry mix and the meat mixture by weight," relating to Different Feature b, thereby exerting an effect of "increasing the palatability of dry pet food, such as dry pet food kibbles" (same as above) as stated in the description.

(B) On the other hand, Evidence A No. 1 states that "Due to the low moisture content of

the final product and to anti-mold agents, such as potassium sorbate, incorporated in the dry mix, the product is micro-biologically stable." (the above "2. (1)A.(B).") Thus, the amount of "potassium sorbate", which is stated as "0.25% of the dry mix and the meat mixture by weight," is recognized as a suitable amount for making the "dry pet food" "microbiologically stable." In addition, there is no statement about the addition of potassium sorbate to improve the palatability of dry pet food. Thus, there is no incentive to change the amount of potassium sorbate to improve palatability for Process Invention A-1-1.

Then, adjusting the amount of "potassium sorbate" in Process Invention A-1-1 within the scope of the invention-specific matters relating to Different Feature b of Corrected Invention 10 cannot be said to be a design matter that could be appropriately determined by a person skilled in the art.

C. Summary

As stated above, Difference b is a substantial difference, and Corrected Invention 10 is therefore not recognized as the invention disclosed in Evidence A No. 1 without considering other differences.

In addition, it cannot be recognized that a person skilled in the art could have easily made Corrected Invention 10 based on Process Invention A-1-1.

(7) Corrected Invention 11

A. Comparison

(A) Evidence A No. 1 states the "dry pet food" of Invention A-1, and it is clear that the "dry pet food" is for giving to pets. Thus, it can be said that Evidence A No. 1 substantially discloses the invention of a process for giving a pet the "dry pet food" of Invention A-1 (hereinafter referred to as "Process Invention A-1-2").

(B) Comparing Corrected Invention 11 and Process Invention A-1-2, the same can be said as the comparison in the above "2.(1)." Furthermore, the "dry pet food" of Process Invention A-1-2 corresponds to the "dry food product" and "dry pet food product" of Corrected Invention 11.

(C) Since Process Invention A-1-2 is "a process for giving a pet a 'dry pet food'," it is clear that Process Invention A-1-2 comprises a step of "giving a pet a 'dry pet food'," and thus the step of Process Invention A-1-2 corresponds to the step of "administering to a pet a dry food product."

(D) Then, Corrected Invention 11 and Process Invention A-1-2 differ in the following features, and the other features are the same.

(Different feature α)

The "water activity" is "less than 0.65" in Corrected Invention 11, whereas it is unknown in Process Invention A-1-2.

(Different Feature β)

In Corrected Invention 11, "a salt of sorbic acid" is in "a palatability-enhancing amount" and is incorporated in amount "between 0.4 and 1.0% of the dry food product by weight." whereas in Process Invention A-1-2, "the potassium sorbate represents 0.25% of the dry mix and the meat mixture by weight."

B. Examination

Taking the case into consideration, first, Different Feature β will be examined.

(A) Corrected Invention 11 "found that potassium sorbate or sorbic acid, typically used as anti-mycotic compounds in semi-moist pet foods, increased palatability of both dry cat and dry dog foods" (paragraph [0046] of the description) and has the invention-specific matter, "the potassium sorbate represents 0.25% of the dry mix and the meat mixture by weight," relating to Different Feature β , thereby exerting an effect of "increasing the palatability of dry pet food, such as dry pet food kibbles" (same as above) as stated in the description.

(B) On the other hand, Evidence A No. 1 states that "Due to the low moisture content of the final product and to anti-mold agents, such as potassium sorbate, incorporated in the dry mix, the product is micro-biologically stable." (the above "2. (1) A. (B).") In Process Invention A-1-2, the amount of "potassium sorbate", which is stated as "0.25% of the dry mix and the meat mixture by weight," is recognized as a suitable amount for making the "dry pet food" "microbiologically stable." In addition, there is no statement about the addition of potassium sorbate to improve the palatability of dry pet food. Thus, there is no incentive to change the amount of potassium sorbate to improve palatability for Process Invention A-1-2.

Then, adjusting the amount of "potassium sorbate" in Process Invention A-1-2 within the scope of the invention-specific matters relating to Different Feature β of

Corrected Invention 1 cannot be said to be a design matter that could be appropriately determined by a person skilled in the art.

C. Summary

As stated above, Different Feature β is a substantial difference, and Corrected Invention 11 is therefore not recognized as the invention disclosed in Evidence A No. 1 without considering other differences.

In addition, it cannot be recognized that a person skilled in the art could have easily made Corrected Invention 11 based on Process Invention A-1-2.

(8) Corrected Inventions 12 and 13

Corrected Inventions 12 and 13 are inventions further restricted by depending from Corrected Invention 11. Here, Corrected Invention 11 is as examined in the above "(7)."

Therefore, it is not recognized that Corrected Inventions 12 and 13 could be easily invented by a person skilled in the art based on Process Invention A-1-2.

(9) Corrected Invention 14

Corrected Invention 14 is an invention further restricted by depending from Corrected Invention 11. Corrected Invention 14 and Process Invention A-1-2 Method Invention 2 differ at least in Different Feature β .

B. Regarding Different Feature β , the same can be said for the above "(7) B."

C. Further examining the Invention A-11, the "cat food kibble" of Invention A-11 is "coated with a liquid spray containing 0.28% potassium sorbate." Therefore, it is clear that the amount of "potassium sorbate" in the "cat food kibble" is "less than 0.28%."

Then, Invention A-11 does not disclose or suggest the matters specifying the invention of Corrected Invention 14 relating to Different Feature β . Therefore, even if Invention A-11 is taken into consideration, the judgment in the above "(7)" remains unchanged.

Therefore, it is not recognized that Corrected Invention 14 could be easily invented by a person skilled in the art based on Process Invention A-1-2.

No. 6 Regarding reasons for opposition to the grant of a patent not notified by the notice of reasons for revocation

1. Regarding the reasons for opposition to grant of a patent in "No. 4 1. (2)" (inventive step of Corrected Inventions 1, 4, 6, and 9 to 11 based on Invention A-1 and common technical knowledge)

The reasons for opposition to grant of a patent in the above "4 1. (2)" above are in the light of common technical knowledge related to Evidence A Nos. 2 to 9 in addition to the reasons for revocation examined in the above "No. 5 3."

However, Evidence A Nos. 2 to 5 state the water activity of pet food, but do not mention a salt of sorbic acid.

Furthermore, Evidence A Nos. 6 to 9 are web pages of pet food products, which state that pet food products contain a salt of sorbic acid, but do not mention the amount of the salt of sorbic acid.

Then, even if Evidence A Nos. 2 to 9 are taken into consideration, it cannot be said that a person skilled in the art could have easily conceived the matters specifying the invention of Corrected Inventions 1, 4, 6, 9, and 10 relating to Different features 2, B, b, or β .

Therefore, it is not recognized that Corrected Inventions 1, 4, 6, 9, and 10 could be easily invented by a person skilled in the art based on the invention disclosed in Evidence A No, 1 and the common technical knowledge stated in Evidence A Nos. 2 and 9.

2. Regarding reasons for opposition to grant of a patent in "No. 4 1. (3)"

(1) Regarding the inventive step of Corrected Inventions 2, 3, 5, 6, 7, 8, 12, and 13 based on Invention A-1, Invention A-10, and common technical knowledge

A. Evidence A No. 10

(A) Statements in Evidence A No. 10

Evidence A No. 10 includes the following statements.

a. "[0077] A preferred semi-moist pet food product formulation, suitable for processing via the proposed technology is presented in Table 1"

b.

TABLE 1

<u>Typical Pet Food Product Formulation</u>	
Ingredient	Inclusion Level (% w/w)
Functional Protein (from Vital Wheat Gluten, Defatted Soy Flour, Soy Protein Concentrate, Soy Protein Isolate, Corn Gluten Meal, Mung Beans or Yeast By-products)	25-55
Grain Flour (from Wheat, Corn or Rice)	10-25
Meat/Poultry/Fish By-Product Meals	15-25
Sugar	5-10
Glycerol	4-8
Vegetable Oil	3-6
Potassium Sorbate	0.5-1.5
Digest (Palatability Enhancer)	2-4

(page 8, right column, TABLE 1)

Summarizing the above statements, Evidence A No. 10 states the following invention (hereinafter referred to as "Invention A-10").

"A semi-moist pet food product comprising 0.5 to 1.5%w/w of potassium sorbate as an ingredient."

B. Examination

(A) Corrected Inventions 3 and 5 and Invention A-1 are different from each other in at least Different Feature 2 as stated in the above "5. 3. (1) to (3)," Corrected Invention 7 and Process Invention A-1-1 are different from each other in at least Different feature B as stated in the above "5. 3. (4) and (5)," and Corrected Inventions 12 and 13 and Process Invention A-1-2 are different from each other in at least Different Feature β as stated in the above "5. 3. (7) and (8)." Therefore, Different Features 2, B, and β are all different features related to the numerical range of a salt of sorbic acid in dry pet food.

(B) On the other hand, Invention A-10 discloses that "potassium sorbate" is included in amount of "0.5 to 1.5% w/w" in "semi-moist pet food product." The numerical range of "potassium sorbate" includes the numerical range of "a salt of sorbic acid" related to Different features 2, B and β , if Differential Feature 2 is related to the ratio to the material.

(C) However, for example, as stated in Evidence A No. 1 that "Due to the low moisture content of the final product and to anti-mold agents, such as potassium sorbate, incorporated in the dry mix, the product is micro-biologically stable" (the above "2. (1)

A. (B)'), it is common technical knowledge in pet food that a salt of sorbic acid is used as an anti-mold agent and microbiological stability is achieved when the water content of the product is low. There is no motivation to apply the numerical range of "potassium sorbate" in the "semi-moist pet food product" of Invention A-10 to "a salt of sorbic acid" in the invention disclosed in Evidence A No. 1, which clearly has a different water content and different performance required for anti-mold, as it is.

(D) Evidence A No. 2 to Evidence A No. 9 are as examined in the above "1." Therefore, it is not recognized that a person skilled in the art could have easily invented Corrected Inventions 3, 5, 8, 12, and 13 based on the invention disclosed in Evidence A Nos. 1 and Invention A-10 as well as the common technical knowledge stated in Evidence A Nos. 2 to 9.

Furthermore, Claims 2 and 7 have been deleted by the Correction.

(2) Regarding the inventive step of Corrected Inventions 5 and 14 based on Invention A-1, Invention A-11, and common technical knowledge

A. Corrected Invention 5 and Invention A-1 are different from each other in at least Different Feature 2 as stated in the above "5. 3. (1) and (3)," and Corrected Invention 14 and Process Invention A-1-2 are different from each other in at least Different Feature β as stated in the above "5. 3. (7) and (9)."

B. On the other hand, as examined in the above "No. 5 3. (3) and (9), the "cat food kibble" of Invention A-11 is "coated with a liquid spray containing 0.28% potassium sorbate." Thus, it is clear that the amount of "potassium sorbate" in the "cat food kibble" is "less than 0.28%." Therefore, Invention A-11 does not disclose or suggest the matters specifying the invention of Corrected Invention 5 relating to Different Feature 2 and the matters specifying the invention of Corrected Invention 14 relating to Different Feature β .

C. Then, even if Invention A-11 is applied to Invention A-1, it cannot be used as a matter specifying the invention of Corrected Invention 5 relating to Different feature 2. In addition, even if Invention A-11 is applied to Process Invention A-1-2, it cannot be used as a matter specifying the invention of Corrected Invention 14 relating to Different Feature β .

D. Evidence A No. 2 to Evidence A No. 9 are as examined in the above "1."

E. As stated above, it cannot be recognized that Corrected Inventions 5 and 14 could have been easily invented by a person skilled in the art based on the invention disclosed in Evidence A No. 1 and the common technical knowledge stated in Invention A-11 and Evidence A Nos. 2 to 9.

No. 7 Closing

As stated above, therefore, the patents for Corrected Inventions 1, 3 to 6, and 8 to 14 cannot be revoked for the reasons for revocation stated in the notice of reasons for revocation and the reasons and evidences alleged by the Opponent.

Also, no other reason for revoking the patents for Corrected Inventions 1, 3 to 6, and 8 to 14 are found.

Patents for Corrected Inventions 2 and 7 are deleted by the Correction. Regarding the opposition to the patent by the Opponent, therefore, the opposition to Claims 2 and 7 has no subject for opposition and shall be dismissed under the provisions of Article 135 of the Patent Act which is applied mutatis mutandis in the provisions of Article 120-8(1) of the Patent Act.

Therefore, the decision shall be made as described in the conclusion.

April 1, 2021

Chief administrative judge: NAGAI, Shinichi

Administrative judge: MORITSUGU, Ken

Administrative judge: HAKAMATA, Tomohiro