
(2020) 08 IPAB CK 0002

In the Intellectual Property Appellate Board

Case No : OA/25/2015/PT/KOL

Nippon Soda Co. Ltd.

APPELLANT

Vs

Controller General Of Patents, Designs And Trademarks And
Ors.

RESPONDENT

Date of Decision : 25-08-2020

Acts Referred:

Patents Act, 1970 — Section 3, 10, 15, 16, 43(2), 59(1)

Citation : (2020) 08 IPAB CK 0002

Hon'ble Judges : Manmohan Singh, J; Dr. Onkar Nath Singh, Technical Membe

Bench : Division Bench

Advocate : D.P. Ahuja

Final Decision : Allowed

Judgement

Manmohan Singh, J

1. The present appeal has been filed against the order dated 18th March, 2015 passed by the assistant controller of Patents & designs under section 15 of the Indian Patents Act.

2. FACTS OF THE CASE:

The appellants NIPPON SODA CO., LTD., the applicants on record, for the instant patent application no. 2745/KOLNP/2009, had filed a patent application on 28th July 2009 with claims directed to "An agricultural chemical containing resin composition".

3. In the First Examination Report dated 18th April 2013 issued, following substantive objections were raised:

a) The patent application no. 2745/KOLNP/2009 dated 28.07.2009, the claims filed in the said application are similar with the claims in the mother application no. 340/KOLNP/2007 and further requested for a divisional application under section 16 of the Patents Act, 1970 (as amended). The mother application is

granted patent with similar set of claims. There is no distinction between the mother and the divisional application and are covered under single invention/inventive concept. Therefore, the application does not have the merit for a divisional application and hence divisional status is not allowable when section 16 is read with provision of sub-section 5 of section 10 of the Patents Act.

b) Claims 1 to 39 lack novelty and do not involve inventive step with respect to the documents (1) WO02/080675, (2) WO02/21913, (3) US4153682, (4) WO99/00013, (5) EP0302824, (6) US4435383, (7) US4557929, (8) US2897121 and (9) JP9249478.

3. Claims 1 to 39 fall within the scope of sub clause (e) of section 3 of the Patents Act.

4. Claim 1 does not sufficiently define the invention.

5. Claims are not supported by the description."

4. The following claims were pending on the instant application when said First Examination Report was issued:

i) An agricultural chemical-containing resin composition, comprising: a composition containing (1) an agricultural chemical active ingredient selected from the group consisting of a fungicide, an insecticide, an acaricide, a plant growth regulator, a herbicide, a synergist, an antidote, an antibacterial agent, an antifungal agent, and an antialgae agent, (2) a styrene-maleic anhydride copolymer alone or admixed with a resin, and (3) a release controller comprising silicon oxide forming a compatible state or matrix, wherein the agricultural chemical-containing resin composition allows release control even in the case of using an agricultural chemical active ingredient for which the solubility in water at 25°C is 100 ppm or more.

ii) An agricultural chemical-containing resin composition according to claim 1, wherein a resin other than the styrene-maleic anhydride copolymer is a rosin or derivative of a rosin, or a copolymer having repeating units derived from salicylic acid or derivative of salicylic acid.

iii) An agricultural chemical-containing resin composition according to claim 1 or 2, wherein the silicon oxide is hydrophobic white carbon.

iv) An agricultural chemical-containing resin composition according to any one of claims 1 to 3, wherein the agricultural chemical active ingredient is an ingredient for which the solubility in water at 25 °C is 100 ppm or more.

v) An agricultural chemical-containing resin composition according to any one of claims 1 to 4, wherein the agricultural chemical active ingredient is a neonicotinoid-based compound.

vi) An agricultural chemical-containing resin composition according to claim 5, wherein the neonicotinoid-based compound is at least one selected from the

group consisting of nitenpyram, imidacloprid, acetamiprid, thiamethoxam, clothianidin, thiacloprid and dinotefuran.

vii) An agricultural chemical-containing resin composition according to any one of claims 1, 2 and 3 to 6, wherein the mean particle size of the composition is 200 Lm or less.

viii) An agricultural chemical-containing resin composition according to any one of claims 1, 2 and 3 to 7, wherein the mean particle size of the composition is within the range of 1 to 100 Lm.

ix) A production process of an agricultural chemical-containing resin composition according to any one of claims 1 to 8, comprising: a step in which (1) an agricultural chemical active ingredient selected from the group consisting of a fungicide, an insecticide, an acaricide, a plant growth regulator, a herbicide, a synergist, an antidote, an antibacterial agent, an antifungal agent, and an antialgae agent, (2) a styrene-maleic anhydride copolymer alone or admixed with a resin, and (3) a release controller comprising silicon oxide are mixed, melted by heating, kneaded and cooled.

x) A production process of an agricultural chemical-containing resin composition according to any one of claims 1 to 8, comprising: a step in which (1) an agricultural chemical active ingredient selected from the group consisting of a fungicide, an insecticide, an acaricide, a plant growth regulator, a herbicide, a synergist, an antidote, an antibacterial agent, an antifungal agent, and an antialgae agent, (2) a styrene-maleic anhydride copolymer alone or admixed with a resin, and (3) a release controller comprising silicon oxide are dissolved, dispersed or mixed in an organic solvent followed by distilling off the organic solvent.

xi) A production process of an agricultural chemical-containing resin composition according to any one of claims 1 to 8, comprising: a step in which after (2) a styrene-maleic anhydride copolymer alone or admixed with a resin is dissolved in an alkali aqueous solution, (1) agricultural chemical active ingredient selected from the group consisting of a fungicide, an insecticide, an acaricide, a plant growth regulator, a herbicide, a synergist, an antidote, an antibacterial agent, an antifungal agent, and an antialgae agent and (3) a release controller comprising silicon oxide are dissolved, dispersed or mixed to prepare an acidic solution followed by filtration and drying.

xii) An agricultural chemical formulation, comprising: an agricultural chemical-containing resin composition according to any one of claims 1, 2 and 3 to 8.

xiii) An agricultural chemical formulation, comprising: at least one of an agricultural chemical-containing resin composition containing (1) an agricultural chemical active ingredient selected from the group consisting of a fungicide, an insecticide, an acaricide, a plant growth regulator, a herbicide, a synergist, an antidote, an antibacterial agent, an antifungal agent, and an antialgae agent, (2)

a styrene-maleic anhydride copolymer alone or admixed with a resin, and (3) a release controller comprising silicon oxide, forming a compatible state or matrix, said agricultural chemical-containing resin composition having a mean particle size of 200 Lm or less, and said formulation is used as a seed treatment agent, soil treatment agent or stem and leaf treatment agent, wherein said formulation allows release control even in the case of using an agricultural chemical active ingredient for which the solubility in water at 25 °C is 100 ppm or more.

xiv) An agricultural chemical formulation according to claim 13, wherein the mean particle size of the agricultural chemical-containing resin composition is within the range of 1 to 100 Lm.

xv) An agricultural chemical formulation according to claim 13 or 14, wherein the agricultural chemical active ingredient is an ingredient for which the solubility in water at 25 °C is 100 ppm or more.

xvi) An agricultural chemical formulation according to any one of claims 13 to 15, wherein the agricultural chemical active ingredient is a neonicotinoid-based compound.

xvii) An agricultural chemical formulation according to claim 16, wherein the neonicotinoid-based compound is at least one selected from the group consisting of nitenpyram, imidacloprid, acetamiprid, thiamethoxam, clothianidin, thiacloprid and dinotefuran.

xviii) An agricultural chemical formulation according to any one of claims 13 to 17, further comprising: at least one agricultural chemical active ingredient other than the agricultural chemical-containing resin composition.

xix) An agricultural chemical formulation according to claim 18, wherein at least one of the agricultural chemical active ingredient other than the agricultural chemical-containing resin composition is a pyrethroid.

xx) An agricultural chemical-containing formulation, comprising: at least one of the agricultural chemical-containing resin composition according to any one of claims 1, 2 and 3 to 8, wherein said agricultural chemical-containing formulation being used in an application selected from the group consisting of pharmaceuticals, veterinary medicines, food preservatives and biocide agents.

xxi) An agricultural chemical-containing formulation according to claim 20, wherein the application is selected from the group consisting of soil pest extermination agents, termite extermination agents, clothing agents, pest insect extermination agents, wood pest insect extermination agents, bait agents, animal external parasite extermination agents, sanitary pest insect extermination agents, home disinfectants, marine vessel bottom coatings, fishing net and other algae prevention agents, and wood and other mildew-proofing agents.

xxii) An agricultural chemical-containing formulation according to claim 20 or 21, wherein at least one of agricultural chemical active ingredients of the agricultural

chemical-containing resin composition according to any one of claims 1, 2 and 3 to 8 is a pyrethroid.

xxiii) An agricultural chemical-containing resin composition, comprising: a composition containing (1) an agricultural chemical active ingredient selected from the group consisting of a fungicide, an insecticide, an acaricide, a plant growth regulator, a herbicide, a synergist, an antidote, an antibacterial agent, an antifungal agent, and an antialgae agent, (2) a styrene-maleic anhydride copolymer alone or admixed with a resin, and (3) a release controller selected from the group consisting of water-soluble polymers and surfactants, forming a compatible state or matrix, wherein the agricultural chemical-containing resin composition allows release control even in the case of using an agricultural chemical active ingredient for which the solubility in water at 25 °C is 100 ppm or more, wherein the agricultural chemical active ingredient is an ingredient for which the solubility in water at 25 °C is 100 ppm or more, wherein the agricultural chemical active ingredient is one other than imidacloprid.

xxiv) An agricultural chemical-containing resin composition according to claim 23, wherein a resin other than the styrene-maleic anhydride copolymer of the styrene-maleic anhydride copolymer-resin mixture is a rosin or derivative thereof, or a copolymer having repeating units derived from salicylic acid or derivative thereof.

xxv) An agricultural chemical-containing resin composition according to claim 23 or 24, wherein the agricultural chemical active ingredient is at least one selected from the group consisting of nitenpyram, acetamiprid, thiamethoxam, clothianidin, thiacloprid and dinotefuran.

xxvi) An agricultural chemical-containing resin composition according to any one of claims 23 to 25, wherein the mean particle size of the composition is 200 Lm or less.

xxvii) An agricultural chemical-containing resin composition according to any one of claims 23 to 26, wherein the mean particle size of the composition is within the range of 1 to 100 Lm.

xxviii) A production process of an agricultural chemical-containing resin composition according to any one of claims 23 to 27, comprising: a step in which (1) an agricultural chemical active ingredient, (2) styrene-maleic anhydride copolymer or styrene-maleic anhydride copolymer-resin mixture, and (3) a release controller selected from the group consisting of water-soluble polymers and surfactants are mixed, melted by heating, kneaded and cooled.

xxix) A production process of an agricultural chemical-containing resin composition according to any one of claims 23 to 27, comprising: a step in which (1) an agricultural chemical active ingredient, (2) styrene-maleic anhydride copolymer or styrene-maleic anhydride copolymer-resin mixture, and (3) a release controller selected from the group consisting of water-soluble polymers

and surfactants are dissolved, dispersed or mixed in an organic solvent followed by distilling off the organic solvent.

xxx) A production process of an agricultural chemical-containing resin composition according to any one of claims 23 to 27, comprising: a step in which after (2) a styrene-maleic anhydride copolymer or styrene-maleic anhydride copolymer-resin mixture is dissolved in an alkali aqueous solution, (1) agricultural chemical active ingredient and (3) a release controller selected from the group consisting of water-soluble polymers and surfactants are dissolved, dispersed or mixed to prepare an acidic solution followed by filtration and drying.

xxxi) An agricultural chemical formulation, comprising: an agricultural chemical-containing resin composition according to any one of claims 23 to 27.

xxxii) An agricultural chemical formulation, comprising: at least one of an agricultural chemical-containing resin composition containing (1) an agricultural chemical active ingredient selected from the group consisting of a fungicide, an insecticide, an acaricide, a plant growth regulator, a herbicide, a synergist, an antidote, an antibacterial agent, an antifungal agent, and an antialgae agent, (2) a styrene-maleic anhydride copolymer alone or admixed with a resin, and (3) a release controller selected from the group consisting of water-soluble polymers and surfactants, forming a compatible state or matrix, said agricultural chemical-containing resin composition having a mean particle size of 200 Lm or less, and said formulation is used as a seed treatment agent, soil treatment agent or stem and leaf treatment agent, wherein said formulation allows release control even in the case of using an agricultural chemical active ingredient for which the solubility in water at 25 °C is 100 ppm or more, wherein the agricultural chemical active ingredient is an ingredient for which the solubility in water at 25 °C is 100 ppm or more, wherein the agricultural chemical active ingredient is one other than imidacloprid.

xxxiii) An agricultural chemical formulation according to claim 32, wherein the mean particle size of the agricultural chemical-containing resin composition is within the range of 1 to 100 Lm.

xxxiv) An agricultural chemical formulation according to claim 32 or 33, wherein the agricultural chemical active ingredient is at least one selected from the group consisting of nitenpyram, acetamiprid, thiamethoxam, clothianidin, thiacloprid and dinotefuran.

xxxv) An agricultural chemical formulation according to any one of claims 32 to 34, further comprising: at least one agricultural chemical active ingredient other than the agricultural chemical-containing resin composition.

xxxvi) An agricultural chemical formulation according to claim 35, wherein at least one of the agricultural chemical active ingredient other than the agricultural chemical-containing resin composition is a pyrethroid.

xxxvii) An agricultural chemical-containing formulation, comprising: at least one

of the agricultural chemical-containing resin composition according to any one of claims 23 to 27, wherein said agricultural chemical-containing formulation being used in an application selected from the group consisting of pharmaceuticals, veterinary medicines, food preservatives and biocide agents.

xxxviii) An agricultural chemical-containing formulation according to claim 37, wherein the application is selected from the group consisting of soil pest extermination agents, termite extermination agents, clothing agents, pest insect extermination agents, wood pest insect extermination agents, bait agents, animal external parasite extermination agents, sanitary pest insect extermination agents, home disinfectants, marine vessel bottom coatings, fishing net and other algae prevention agents, and wood and other mildew-proofing agents.

xxxix) An agricultural chemical-containing formulation according to claim 37 or 38, wherein at least one of agricultural chemical active ingredients of the agricultural chemical-containing resin composition according to any one of claims 23 to 27 is a pyrethroid."

5. A response to the First Examination Report was filed by the applicant on 15th July 2013 with an amended set of claims 1-17 as reproduced below:

a) An agricultural chemical-containing resin composition, comprising:

a composition containing (I) an agricultural chemical active ingredient selected from the group consisting of a fungicide, an insecticide, an acaricide, a plant growth regulator, a herbicide, a synergist, an antidote, an antibacterial agent, an antifungal agent, and an antialgae agent, (2) a styrene-maleic anhydride copolymer alone or admixed with a resin, and (3) a release controller selected from the group consisting of water-soluble polymers and surfactants, forming a compatible state or matrix, wherein the agricultural chemical-containing resin composition allows release control even in the case of using an agricultural chemical active ingredient for which the solubility in water at 25°C is 100 ppm or more, wherein the agricultural chemical active ingredient is an ingredient for which the solubility in water at 25°C is 100 ppm or more, wherein the agricultural chemical active ingredient is a neonicotinoid-based compound, and wherein the agricultural chemical active ingredient is one other than imidacloprid.

b) An agricultural chemical-containing resin composition as claimed in claim 1, wherein a resin other than the styrene-maleic anhydride copolymer of the styrene-maleic anhydride copolymer-resin mixture is a rosin or derivative thereof, or a copolymer having repeating units derived from salicylic acid or derivative thereof.

c) An agricultural chemical-containing resin composition as claimed in claim 1 or 2, wherein the agricultural chemical active ingredient is at least one selected from the group consisting of nitenpyram, acetamiprid, thiamethoxam, clothianidin, thiacloprid and dinotefuran.

d) An agricultural chemical-containing resin composition as claimed in anyone of

claims 1 to 3, wherein the mean particle size of the composition is 200 μm or less.

e) An agricultural chemical-containing resin composition as claimed in anyone of claims 1 to 4, wherein the mean particle size of the composition is within the range of 1 to 100 μm .

f) A production process of an agricultural chemical-containing resin composition as claimed in anyone of claims 1 to 5, comprising: a step in which (1) an agricultural chemical active ingredient, (2) styrene-maleic anhydride copolymer or styrene-maleic anhydride copolymer-resin mixture, and (3) a release controller selected from the group consisting of water-soluble polymers and surfactants are mixed, melted by heating, kneaded and cooled.

g) A production process of an agricultural chemical-containing resin composition as claimed in anyone of claims 1 to 5, comprising: a step in which (1) an agricultural chemical active ingredient, (2) styrene-maleic anhydride copolymer or styrene-maleic anhydride copolymer-resin mixture, and (3) a release controller selected from the group consisting of water-soluble polymers and surfactants are dissolved, dispersed or mixed in an organic solvent followed by distilling off the organic solvent.

h) A production process of an agricultural chemical-containing resin composition as claimed in anyone of claims 1 to 5, comprising: a step in which after (2) a styrene-maleic anhydride copolymer or styrene-maleic anhydride copolymer-resin mixture is dissolved in an alkali aqueous solution, (1) agricultural chemical active ingredient and (3) a release controller selected from the group consisting of water soluble polymers and surfactants are dissolved, dispersed or mixed to prepare an acidic solution followed by filtration and drying.

i) An agricultural chemical formulation, comprising: an agricultural chemical-containing resin composition as claimed in anyone of claims 1 to 5.

j) An agricultural chemical formulation, comprising: at least one of an agricultural chemical containing resin composition containing (I) an agricultural chemical active ingredient selected from the group consisting of a fungicide, an insecticide, an acaricide, a plant growth regulator, a herbicide, a synergist, an antidote, an antibacterial agent, an antifungal agent, and an antialgae agent, (2) a styrenemaleic anhydride copolymer alone or admixed with a resin, and (3) a release controller selected from the group consisting of water-soluble polymers and surfactants, forming a compatible state or matrix, said agricultural chemical-containing resin composition having a mean particle size of 200 μm or less, and said formulation is used as a seed treatment agent, soil treatment agent or stem and leaf treatment agent, wherein said formulation allows release control even in the case of using an agricultural chemical active ingredient for which the solubility in water at 25°C is 100 ppm or more, wherein the agricultural chemical active ingredient is an ingredient for which the solubility in water at 25°C is 100 ppm or more, wherein the agricultural chemical active ingredient is a

neonicotinoid-based compound, and wherein the agricultural chemical active ingredient is one other than imidacloprid.

k) An agricultural chemical formulation as claimed in claim 10, wherein the mean particle size of the agricultural chemical-containing resin composition is within the range of 1 to 100µm.

l) An agricultural chemical formulation as claimed in claim 10 or 11, wherein the agricultural chemical active ingredient is at least one selected from the group consisting of nitenpyram, acetamiprid, thiamethoxam, clothianidin, thiacloprid and dinotefuran.

m) An agricultural chemical formulation as claimed in anyone of claims 10 to 12, having: at least one agricultural chemical active ingredient other than the agricultural chemical-containing resin composition.

n) An agricultural chemical formulation as claimed in claim 13, wherein at least one of the agricultural chemical active ingredient other than the agricultural chemical-containing resin composition is a pyrethroid.

o) An agricultural chemical-containing formulation, comprising: at least one of the agricultural chemical-containing resin composition as claimed in anyone of claims 1 to 5, wherein said agricultural chemical-containing formulation being used in an application selected from the group consisting of pharmaceuticals, veterinary medicines, food preservatives and biocide agents.

p) An agricultural chemical-containing formulation as claimed in claim 15, wherein the application is selected from the group consisting of soil pest extermination agents, termite extermination agents, clothing agents, pest insect extermination agents, wood pest insect extermination agents, bait agents, animal external parasite extermination agents, sanitary pest insect extermination agents, home disinfectants, marine vessel bottom coatings, fishing net and other algae prevention agents, and wood and other mildew-proofing agents.

q) An agricultural chemical-containing formulation as claimed in claim 15 or 16, wherein at least one of agricultural chemical active ingredients of the agricultural chemical-containing resin composition as claimed in anyone of claims 1 to 5 is a pyrethroid.

6. A Second Examination Report dated 26th December 2013 was issued by the concerned Assistant Controller, annexed herein and marked as "Annexure D".

In this Second Examination Report dated 26th December 2013, the concerned Controller raised and maintained the following substantive objections:

i) Form 13 filed for voluntary amendment of claims are not allowed under Section 59(1) of the Patents Act (as amended).

ii) Amended claims 1 to 17 will not be allowed as the said claims are not claimed in the mother application no. 340/KOLNP/2007. Further, the said claims fall

within the scope of the granted claims of the mother application as imidacloprid already claimed in the granted claim 1 of the mother application. Further, the voluntary amendment of the claim by adding the feature of the "neonicotinoid based compound" were not claimed earlier and also were not explicitly disclosed in the complete specification in the mother application or at the time of filing the divisional application. In view of the above, the divisional status of the application will not be allowed as raised in para-1 of the FER.

iii) Further, the amended claims are not allowable as per objections raised in para 2- 5 of the FER."

7. A response to the Second Examination Report was filed by the applicant by their letter dated 17th March 2014 annexed herein and marked as "Annexure E".

8. The hearing notice dated 5th February 2015, was issued by the concerned Controller, fixing a formal hearing on 24th February 2015. In this hearing notice, the Controller raised and maintained the following substantive objections:

"1 Amended claims 1 to 17 shall not be allowed as the said claims are not claimed in the mother application no. 340/KOLNP/2007. Further, the said claims fall within the scope of the granted claims of the mother application as imidacloprid already claimed in the granted claim 1 of the mother application. Further, the voluntary amendment of the claim by adding the feature of the "neonicotinoid based compound" were not claimed earlier and also were not explicitly disclosed in the complete specification in the mother application or at the time of filing the divisional application. In view of the above, the divisional status of the application will not be allowed as raised in para- 1 of the FER.

2. Further, the amended claims are not allowable as per objections raised in para 2- 5 of the FER.

Form 13 filed for voluntary amendment of claims are not allowed under Section 59(1) of the Patents Act (as amended)."

9. The appellant had filed the written Arguments were submitted to the Patent office, by letter dated 26th February 2015, annexed herein as "Annexure G" pursuant to the hearing held on 24th February 2015, before the Assistant Controller.

10. Issues involved in the present case are:

1. Whether the instant application merits divisional status.
2. Whether the subject matter of the claims are novel, inventive and patentable.

11. Section 16 of the Indian Patents Act:

Section 16:

"(1) A person who has made an application for a patent under this Act may, at any time before the grant of the patent, if he so desires, or with a view to

remedy the objection raised by the Controller on the ground that the claims of the complete specification relate to more than one invention, file a further application in respect of an invention disclosed in the provisional or complete specification already filed in respect of the first mentioned application.

(2) The further application under sub-section (1) shall be accompanied by a complete specification, but such complete specification shall not include any matter not in substance disclosed in the complete specification filed in pursuance of the first mentioned application.

(3) The Controller may require such amendment of the complete specification filed in pursuance of either the original or the further application as may be necessary to ensure that neither of the said complete specifications includes a claim for any matter claimed in the other."

12. It is evident from the above that a divisional application (further application) may be filed voluntarily by an applicant "if he so desires", or with a view to remedy a defect on the ground of non unity of invention, at any time while the parent application is pending, with subject matter disclosed in the parent application, but not claimed therein.

13. As per the case law in the matter, the IPAB has held in OA/18/2009/PT/DEL, ORDER (No. 243 of 2012) dated 29th day of October 2012, "the basis of a divisional application is the existence of a plurality of invention. This is a SINE QUA NON for seeking a division of an application".

14. It is also held in page 3 of paragraph 2, "the concept of divisional application is basically to protect multiple inventions disclosed in one patent and if in one parent application, the claims did not relate to a single invention, the Law provides the appellant to file a further application on his own or at the instance of the Controller".

As per Section 16 of the Indian Patents Act, as well as the case law in the matter, a divisional application is permitted, as long as there is more than one invention disclosed in the parent application. The divisional application may be filed for a different combination of components, such as, composition 1: A + B;(parent application)

composition 2: A + C. (divisional application)

15. It has come on record that and it is submitted on behalf of appellant that claim 1, as granted on parent application no. 340/KOLNP/2007, recites:

"An agricultural chemical containing resin composition" containing:

(1) an agricultural chemical active ingredient selected from the group consisting of acetamiprid, imidacloprid and monuron (neonicotinoid compounds)

(2) a styrene-maleic anhydride copolymer alone or admixed with a resin,

(3) a release controller comprising silicon oxide

In contrast, claim 1, on divisional application no. 2745/KOLNP/2009 recites:

"An agricultural chemical containing resin composition comprising:

(1) an agricultural chemical active ingredient selected from the group consisting of a fungicide, an insecticide, an acaricide, a plant growth regulator, a herbicide, a synergist, an antidote, an antibacterial agent, and an antialgae agent, (neonicotinoid compounds)

(2) a styrene-maleic anhydride copolymer alone or admixed with a resin,

(3) a release controller selected from the group consisting of water soluble polymers and surfactants

wherein the agricultural chemical active ingredient is a neonicotinoid based compound and wherein the agricultural chemical active ingredient is one other than imidacloprid."

It may be noted that both components (1) and (2) are the same for the parent and the divisional applications in the instant case, that is, component (1) is a neonicotinoid compound, component (2) is a styrene-maleic anhydride copolymer alone or admixed with a resin, but the "release controller" is different for the parent and the divisional applications.

Hence, the 2 applications claim different combinations of components, that is, the parent case claims composition 1: A+B+C whereas, the divisional application no. 2745/KOLNP/2009 claims composition 2: A+B+D, wherein components "C" (silicon oxide) and "D" (selected from the group consisting of water soluble polymers and surfactants) are different release controllers for the parent and divisional applications, respectively.

Since, the parent application and the divisional application claim different combinations of components, the instant application should merit divisional status.

It was also explained by the applicant's agent that the claims of the instant divisional application are directed to an agricultural chemical containing resin composition, comprising: a composition containing (1) an agricultural chemical active ingredient, (2) a styrene-maleic anhydride copolymer alone or admixed with a resin, and (3) a release controller selected from the group consisting of water soluble polymers and surfactants, and all of the components, (1), (2) and (3) form a compatible state or matrix.

D2 does not disclose or suggest the limitation of claim 1, that is, "the agricultural chemical active ingredient is a neonicotinoid based compound" and the remaining cited prior art documents D1 and D3 to D9 do not disclose or suggest the features of claim 1, "forming a compatible state or matrix".

The subject matter of the claimed agricultural chemical containing resin composition, possess an excellent effect to inhibit the phenomenon by which a

large amount of an agricultural chemical active ingredient is released in a short period of time immediately after agricultural chemical treatment, namely the initial burst and the phenomenon by which the entire amount of the agricultural chemical active ingredient which should inherently be released remains without being released, namely dead stock. Furthermore according to the present invention, residual efficacy can be maintained, the problem of an increased amount of agricultural chemical active ingredient remaining in the crop and the problem of chemical damage can be solved and the agricultural chemical active ingredient can be prevented from remaining in the environment, as supported by the results obtained for the examples in the specification, as on file.

The cited documents do not alone or in combination disclose the features and limitations of the claims. Namely, the components of the claimed composition inhibit the release of a large amount of the agricultural chemical active ingredient in a short period of time immediately after agricultural chemical treatment, as corroborated by the results obtained and shown in the tables in the specification, such as, in Table 1, Table 2, Table 3, etc, wherein "wetable powders 1, 2 and 3" of the instant invention were compared to "Comparative Example 5" and it was shown that "the efficacy of the agricultural chemical active ingredient of wettable powders 1, 2 and 3 persisted longer than that of the wettable powder containing 70% by weight acetamiprid of Comparative Example 5."

As the claimed composition is new and provides an unexpected technical effect in inhibiting the release of a large amount of the agricultural chemical active ingredient in a short period of time immediately after agricultural chemical treatment it should be held to be patentable.

Claim 1, describes the invention clearly and completely and the claims are adequately supported by the preceding description as the Examples use agricultural chemical active ingredient, such as, acetamiprid (Examples 1 to 15), monuron (Example 16), bifenthrin plus acetamiprid (Example 23), etc. in the composition of the instant invention along with a styrene-maleic anhydride copolymer alone or admixed with a resin, and a release controller selected from the group consisting of water soluble polymers and surfactants and the release of a large amount of the agricultural chemical active ingredient in a short period of time immediately after agricultural chemical treatment is controlled to low levels.

16. The amended claims fall within the scope of the claims as originally filed on the instant divisional application, and hence, satisfies Section 59(1) of the Indian Patents Act. Specifically, original claims 1 to 22, as filed on the instant divisional application have been deleted and claim 23 has been advanced as main claim 1.

In spite of the arguments presented orally in the course of the hearing and in the written submissions submitted pursuant to the hearing held, as stated herein before, the concerned Assistant Controller of Patents, Respondent no. 2, passed a Decision and Order dated 18th March 2015, marked as "Annexure H", refusing the instant application, as not meriting divisional status, while remaining silent

on the grounds of novelty, inventive step and patentability.

17. It appears to us that Respondent no. 2 has not understood that "the concept of divisional application is basically to protect multiple inventions disclosed in one patent and if in one parent application, the claims did not relate to a single invention, the Law provides the appellant to file a further application on his own or at the instance of the Controller. The divisional application may be filed for a different combination of components, such as, composition 1: A + B;(parent application) composition 2: A + C. (divisional application)

The Respondent no. 2 has not understood that claim 1, as granted on parent application no. 340/KOLNP/2007, recites:

"An agricultural chemical containing resin composition" containing:

- (1) an agricultural chemical active ingredient selected from the group consisting of acetamiprid, imidacloprid and monuron (neonicotinoid compounds)
- (2) a styrene-maleic anhydride copolymer alone or admixed with a resin,
- (3) a release controller comprising silicon oxide

In contrast, claim 1, on divisional application no. 2745/KOLNP/2009 recites:

"An agricultural chemical containing resin composition comprising:

- (1) an agricultural chemical active ingredient selected from the group consisting of a fungicide, an insecticide, an acaricide, a plant growth regulator, a herbicide, a synergist, an antidote, an antibacterial agent, and an antialgae agent, (neonicotinoid compounds)
- (2) a styrene-maleic anhydride copolymer alone or admixed with a resin,
- (3) a release controller selected from the group consisting of water soluble polymers and surfactants

wherein the agricultural chemical active ingredient is a neonicotinoid based compound and wherein the agricultural chemical active ingredient is one other than imidacloprid."

18. The Respondent no. 2 has not understood that both components (1) and (2) are the same for the parent and the divisional applications in the instant case, that is, component (1) is a neonicotinoid compound, component (2) is a styrene-maleic anhydride copolymer alone or admixed with a resin, but the "release controller" is different for the parent and the divisional applications. Since the 2 applications claim different combinations of components, that is, the parent case claims composition 1: A+B+C whereas, the divisional application no. 2745/KOLNP/2009 claims composition 2: A+B+D, [wherein components "C" (silicon oxide) and "D" (selected from the group consisting of water soluble polymers and surfactants) are different release controllers for the parent and divisional applications, respectively], the present application should merit divisional status.

19. The Assistant Controller, Respondent no. 2, has wrongly in coming to the conclusion for refusing the instant patent application of the appellant, under Section 15 of the Indian Patents Act, having regard to the instant application not meriting divisional status while remaining silent on the grounds of novelty, inventive step and patentability.

20. The subject matter of the claims should be held to be new, inventive and patentable in the light of above.

21. In the light of above, the present appeal is allowed from the impugned decision and order of the Respondent no. 2, dated 18th Mach 2015, is set-and o

22. The Respondent no. 1 be directed to grant patent in the application no. 2745/KOLNP/2009 dated 28th July 2009 and to publish such grant under Section 43(2) of the Act at the earliest.

23. No costs