

IMIDAZOLE/PYRAZOLE COMPOUND Case

Tokyo High Court

Case H13 (Gyo-Ke) 219, Judgment on January 29, 2003 (H15)

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FACTS

The plaintiff is the patent owner of patent No. 2961267 (Imidazole/pyrazole derivatives), while defendant is an appellant of the invalidity appeal trial of the patent. The decision of the invalidity appeal trial (Heisei 11-35773) finds that this patent is invalid, because the invention originally filed on the priority date had not been completed. This invention relates to imidazole/pyrazole type compounds or salts thereof suitable for agricultural use, especially as herbicide. In the preparation examples, physical properties of the produced pyrazole compound are not described and the useful herbicide effect thereof is not concretely confirmed.

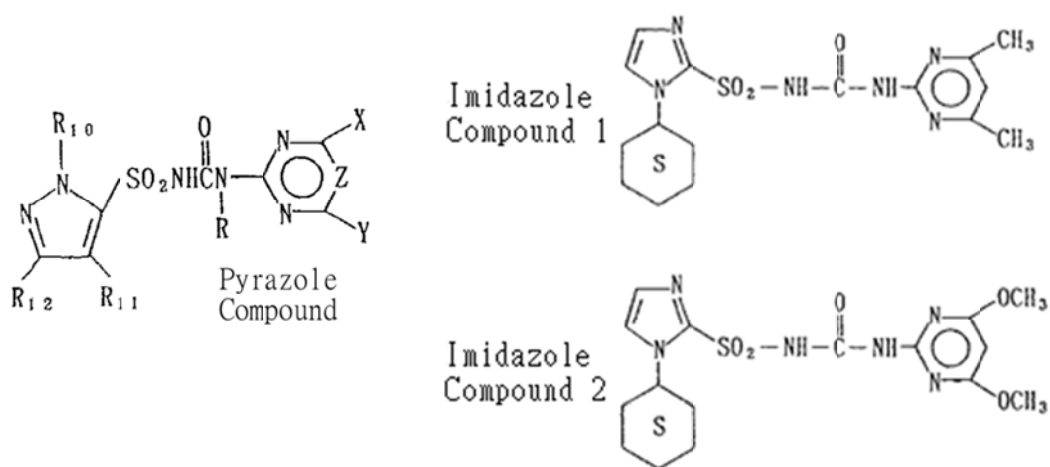
ISSUE

The plaintiff asserted that, as for an invention of a novel compound, the description level required for usefulness in "Detailed explanation of the invention" of the specification can be attained by explicitly described useful applications of the novel compound, and that the disclosure of concrete data for usefulness thereof is not required.

HOLDING

A chemical compound invention is characterized by providing novel and useful, namely industrially applicable, chemical compounds. Hence, in order to establish the chemical compound invention, it is necessary that the usefulness is disclosed in the specification, and that the chemical compound itself is specified and produced. An article which is not constituted to a level where one skilled in the art can attain the objective effect is an incomplete invention, and is not "the invention" stipulated in Article 29, item 1, main paragraph of the Patent Act. Therefore, the invalidity appeal trial decision for incomplete invention is maintained. In detail, based on the test results described in the specification, there are significant differences in herbicide effects even between the two types of the present imidazole compounds 1 and 2 (1,3 N

positions in 5 member ring) which have different kinds of substituents. Hence, the presence or absence of the effect of the present pyrazole compound (1, 2 N positions in 5 member ring) is unknown, because it has substituents whose positions and kinds are different from those of the compounds which have test results confirmed with herbicide effects. Therefore, the usefulness regarding herbicide effects of the present pyrazole compound cannot be rationally or experientially expected based on examples and test results, in which the usefulness of the actually manufactured products has been confirmed, and hence the present invention is regarded as incomplete.



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Original document (Japanese):

http://www.courts.go.jp/app/files/hanrei_jp/362/011362_hanrei.pdf

English translation:

N/A