IPAB Allowed Appeal and Granted Patent Related to The Pharmaceutical Composition of Coenzyme Q10

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The IPAB grant of Coenzyme Q10 patent to the University of Miami after allowing its appeal against the Controller's refusal.

The application claims were directed to pharmaceutical composition comprising coenzyme Q10 and the method of using coenzyme Q10 for treatment of cancer. A composition of coenzyme Q10 comprising a lipid has also been exemplified in the specification. During prosecution of the application, the claims were revised and the method of treatment claims were deleted in response to the objection of the Controller, the composition claims were revised and limited to be directed to liposomal composition for the treatment of cancer comprising 0.01 to 30% w/w co-enzyme Q10 and a liposome for topical and intravenous administration. The applicant also relied upon post published data confirming and further supporting results provided in specification. The application was refused on various grounds including that the use of liposomes is known, and that post filing data cannot be considered. The application was also considered to be a method of treatment.

The IPAB allowed the appeal, granted the patent and held that:-

- Controller failed to consider the facts and evidence produced by the appellant, merely vague order has been passed.
- Controller is wrong in rejecting the application as the same is a breakthrough invention for treatment of cancer, an embodiment of which is being studied at the clinical stage for treatment of cancer.
- The claims are novel and also inventive in view of the cited documents and completely supported by the specification as originally filed.
- Filing of additional documents, data and evidence in support of the invention, to overcome the objection raised and to attack a specific objection is something which is allowed under the Patent Law of not only India but also other foreign jurisdictions.

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