

Q1

PCT

a)

- Spanish office as RO only accepts IAs filed in Spanish - R12.1(a), AG-IP annex C
- Had PCT-3 not been filed in Spanish, it would have been transmitted to IB - R19.4(a)(ii), and SPTO would not have asked for a translation. So PCT-3 was filed in Spanish
- EPO is competent ISA for applications filed with RO=ES - AG-IP annex C, Spain, A152 EPC, Epo-WIPO agreement
- EPO does not accept Spanish as ISA, so a translation to En, Fr, or De is needed for search - R12.3(a), Epo-WIPO agreement
- Time limit for filing translation: 5.1.2024 + 1mo - R12.3(a) = 5.2.2024 - R80.2, Monday
- notification of 17.1.2024 included invitation to furnish translation under R12.3(c)(i) as translation was not yet late on 17.1.2024
- Today is 5.3.2024 and the above time limit has passed
- Time limit for filing translation with late furnishing fee is by later of - R12.3(c)(ii):
  - 17.1.2024 + 1mo = 17.2.2024 - R80.2, Saturday and SPTO likely closed so extended to Monday 19.2.2024 - R80.5
  - 5.1.2024 + 2mo = 5.3.2024 - R80.2, Tuesday
  - So time limit is 5.3.2024 i.e. today
- So D has to file translation of PCT-3 to En, Fr or De, and pay late furnishing fee - R12.3(e) to SPTO today
- Because transmittal fee - R14.1, filing fee - R15 and search fee -R16 were validly paid, these are no obstacle to EPO=ISA to start the search

b)

Amended claims

- File amended claims under A19 to IB after receiving ISR - A19(1)
- Time limit for filing amended claims is later of: two months from transmittal of ISR or 16 mo from priority date, but amended claims are also considered in time if the arre received by IB before completion of technical preparations for publication - R46.1
- We don't know ISR transmittal time, but 16mo time limit and technical prep time limit can be calculated:
  - assuming no priority claimed: 5.1.2024 + 16mo = 5.5.2025 - R80.2, EPO is closed for Liberation Day so I assume IB is also closed, so period is extended to Tuesday 6.5.2025 - R80.5
- Assuming no priority claimed, technical preparations for publication will be completed:
  - Publication is after 5.1.2024 + 18mo - A21(2)(a) = 5.7.2025; so publication is on Thu 10.7.2025 - AG-IP 9.013
  - So tech. prep is done 15 days prior: Wed 25.6.2025 - AG-IP 9.013
- File amended claims directly to IB - R46.2
- PCT-3 will be published in Spanish because it was filed in Spanish and Spanish is a publication language - R48.3
- So file amended claims in Spanish - R12.2(a)
- File with claims a letter identifying the amendments and their basis - R46.5(b)(i)-(iii)
- A statement explaining the amendments - A19(1) - can be filed at the same time in Spanish - R46.4(a)

Mistake in description

- Request rectification of mistake under R91.1(a)
- Because mistake is in description and no demand has been filed, file request to ISA=EPO - R91.1(b)(ii)
- Time limit, assuming no priority claimed: 5.1.2024 + 26mo - R91.2 = 5.3.2026 - R80.2, I don't have 2026 calendar to check for R80.5 extensions
- Because a translation was required for search under R12.3(a), file rectification in both Spanish and in the language (En, De, or Fr) that PCT-3 is translated to - R12.2(b)(i)

Q2

EPC

- Yes
- 
- Request for examination - A94(1), R70(1) - has not been filed, because the examination fee has not been paid

- Period for filing request for examination and paying fee was: 17.5.2023 + 6mo - R70(1) = 17.11.2023 - R131(4), Friday
- Because this was not done, EP-2 was deemed withdrawn - A94(2)
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- Because ESR's search opinion was negative, a response to search report was required - R70a(1)
- This was not done either, so EP-2 was deemed withdrawn for the lack of response as well - R70a(3)
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- Designation fee was due within the same period as the request for exam. - R39(1)
- because it was not paid, it also led to deemed withdrawal of EP-2 - R39(2)
- 
- Renewal fee for year 3 - A86(1) - was due on 30.11.2023 - R51(1)
- It can still be paid until 31.5.2024 with additional fee - R51(2), J4/91 hn1
- 
- loss of rights comm. was deemed notified on its date 12.12.2023 - R126(2)
- FP - A121, R135 was available to remedy the A94(2) and R70a(3) and R39(2) losses until: 12.12.2023 + 2mo = 12.2.2024 - R131(4), Monday
- But this period already expired
- RE - A122, R136 is available to remedy the missed FP period
- All due care can be shown because the FP period was missed due to an isolated mistake within a normally satisfactory monitoring system - J2/86
- Normally receipt of the LoR communication triggers the 2m RE period - E-VIII 3.1.3, but because C only became aware of the communication today 5.3.2024, the non-compliance was removed today and the period is calculated from today - T428/98
- Time limit for requesting RE is earlier of - R136(1):
- 5.3.2024 + 2mo = 5.5.2024 - R131(4), Sunday and EPO closed so extended to Monday 6.5.2024 - R134(1)
- 12.2.2024 + 1y = 12.2.2025 - R131(3), Wed
- So time limit is 6.5.2024
- 
- Request RE by 6.5.2024 by:
  - filing written request - R136(1) - and state grounds and facts; explain how the monitoring system fulfills all due care requirements and the missed FP period was due to an isolated mistake - R136(2)
  - also explain in request that C only became aware of LoR on 5.3.2024
  - Pay RE fee - R136(1), Rfees 2(1)13, GL E-VIII 3.1.3, for each missed act for which FP&RE is needed so a total of 3 RE fees
  - Complete omitted acts -R136(2) by requesting FP - see below
- Request FP by 6.5.2024:
  - Paying FP fees - R135(1), Rfees2(1)12, GL E-VIII 3.1.3 for the missed acts:
    - 50% of missed examination fee and flat fee for missed written request for examination
    - flat fee for missed response to search report
    - 50% of designation fee
  - Complete omitted acts - R135(1):
    - Pay exam fee and file written request if not already on file
    - File response to search report
    - Pay designation fee
- 
- Deemed withdrawal of EP-2 took effect at expiry of missed R70(1) and R70a(1) and R39(1) periods (G4/98 for designation, GL A-IV 1.1.1)
- Renewal fee for year 3 fell due after the expiry of the missed R70(1) and R70a(1) and R39(1) periods and before EP-2 was re-established, so R51(4)(a) applies
- Thus the renewal fee is due on the date re-establishment decision is notified and can still be paid within 4mo of that date without additional fee
- So pay the renewal fee for 3rd year within 4mo of notification of the re-establishment decision

Q3

EPC

- Single notice of opposition can be filed by several persons A and B acting in common - R151(1)
- A and B can file notice of opposition in Spanish because B is resident in Spain (contracting state to EPC) which has Spanish as official language, and A is national of Spain resident abroad, and because opposition has to be filed within the A99(1) time limit - A14(4)
- Time limit for filing translation of opposition is later of - R6(2):
  - 16.1.2024 + 1mo = 16.2.2024- R131(4), Friday
  - end of opposition period = yesterday 4.3.2024
  - So time limit is 4.3.2024, and translation filed yesterday was in time
  - Translation was in correct language because ENglish is an EPO official language - A14(3)
- Opposition fee was paid within opposition period - A99(1) - and only one fee is needed even for joint opponents A and B - G3/99
- Notice of opposition fulfils R76(2) (a)-(c) because it contains (a) the opponents particulars, b) identifies EP-1 correctly and c) states extent and substantiated grounds
- however A needs representation because he is resident in Mexico which is not an EPC state - A133(2)
- So R76(2)(d) is not fulfilled, and EPO invited to remedy under R77(2); GL D-IV 1.2.2.2(iv)
- If not corrected in time, opposition will be rejected as inadmissible - R77(2)
- Invitation was deemed delivered 29.1.2024 - R126(2)
- time limit for remedy is: 29.1.2024 + 2mo = 29.3.2024 - R134(1), Good friday so EPO is closed and time limit extended through weekend and Easter MOnday to Tues 2.4.2024 - R134(1)
- 
- Steps to perform by 2.4.2024:
  - A has to appoint a professional representative - A134(1) - and file a signature or approval of the notice of opposition (including the translation filed by B, because B is not a common representative (see below) and thus cannot file the translation) by the appointed representative - GL D-IV 1.2.2.2(iv)
- B does not need prof. representation because he is resident in an EPC state - A133(1)
- A and B must act through a common representative.
  - B can also appoint the same or a different professional representative as A. Still A's professional rep will be the common representative, because he was first named in the notice - R151(1), or
  - if B does not appoint a prof. rep. then A's professional representative will be deemed common representative - R151(1)

Q4

EPC

- Lack of novelty is a valid ground for opposition - A100(a), A54
- Claim 1 is not novel with respect to EP-D2 because EP-D2 discloses A.
- Claims 2 and 3 are novel with respect to EP-D2 and EP-D3 because neither discloses A+B or A+C
- Claim 4 is not novel in view of EP-D3 because EP-D3 discloses D.
- So claims 1 and 4 are not valid and must be dealt with to obtain valid patent protection
- EP-D2 and EP-D3 are A54(3) prior art so they cannot be used for inventive step - A56
- Extent of opposition according to the notice is only claim 1. Dependent claims 2-3 can also be examined but only if their validity is prima facie in doubt - G9/91, which is not the case here because claims 2 and 3 are novel with respect to the documents cited by the opponent.
- Claim 4 is independent and was not opposed in the notice, so it is not subject to opposition and cannot be examined at all - G9/91
- 
- New A54(3) documents are in support of the same ground (lack of novelty) as in the notice of opposition, so no added grounds are submitted by the opponent in preparation for the oral proceedings - G10/91 hn2, R81(1)
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- EP-D2 and EP-D3 are late filed because they were filed after expiry of opposition period - A114(2)
- EP-D2 is prima facie relevant for claim 1 because it is novelty destroying for it, so it is admitted by the opposition

division -T1002/92 hn1

- EP-D3 is not prima facie relevant for the claims under opposition (claim 4 was not opposed), so it will not be admitted by opposition division

Advise:

- File in response to the summons amended claims 1-3 - R80:

1. A+B

2. A+C

3. D

- Claims 1 and 2 are novel with respect to the cited documents as discussed above. They are also inventive because EP-D1 does not disclose or suggest their subject matter and EP-D2 and EP-D3 are not considered for inventive step - A56
- it is admissible to replace claim 1 with multiple independent claims 2 and 3 because it overcomes the ground of lack of novelty over EP-D2 - H-II 3.1
- Claim to D is not subject to opposition so it cannot be amended in the opposition proceedings under R80.
- So opp.div. will maintain EP-4 as amended with the above claims 1-3 - A101(3)(a)
- File request for limitation of EP-4 - A105a(1) after opposition proceedings have concluded - A105a(2)
- File with limitation request amended claims 1. A+B and 2. A+C, i.e. delete claim 3 to D
- And pay limitation fee - A105a(1), Rfees2(1)10a
- Thus EP-4 will be limited to the valid claims to A+B and A+C - A105b

Q5

(a)

EPC

UK

- Is in London agreement and has official language English in common with EPO, so no translation is needed for validation under A65(1) - Art. 1(1) London Agreement, nat law table IV
- So validation is automatic in UK and no steps need to be taken for it
- 2024 is patent year number 5
- Renewal fee for 2024 to UK office - A86(2), A141(1) - is due on 31.3.2024 - Nat law tab VI.A
- Because this due date is within 2mo of the mention of the grant (see 2mo period calculation below under Poland) - A141(2) and thus also within 3mo of the mention of the grant, the renewal fee may be paid up to the last day of the third whole calendar month after the date of publication of the mention of the grant - Nat law tab VI.A, i.e. 31.5.2024
- So pay renewal fee for year 5 by 31.5.2024 for continued validity in UK

Poland

- Is not in London agreement, so full translation of EP-7 into Polish accompanied by a copy of the drawings has to be provided by - Nat law table IV, A65(1): 21.2.2024 + 3mo = 21.5.2024, Tuesday - R131(4)
- Also appoint a national professional representative because H is resident in Morocco - Nat law table IV
- Also pay special fee no later than 3 months after service of the PPO's invitation - A65(2), Nat law table IV
- Renewal fee for 2024 to Polish office - A86(2), A141(1) - is due on 31.3.2024 - Nat law tab VI.A
- Because this due date is within 2mo of the mention of the grant, the renewal fee may be paid within 2mo of the mention of the grant - A141(2), i.e. 21.2.2024 + 2mo = 21.4.2024 - R131(4), Sunday so extended to Monday 22.4.2024 - R134(1), J1/81
- No additional fee provided in nat law tab VI.A 3b is charged if paid in the above period - A141(2)
- So pay renewal fee for year 5 by 22.4.2024 for continued validity in Poland

(b)

Rules relating to unitary patent protection in OJ 2022 A41 (UPR)

- Request unitary effect - UPR5(1) - from EPO by - UPR6(1): 21.2.2024 + 1mo = 21.3.2024 - R131(4) EPC mut. mut., Thursday

- R131 EPC applies mut. mut - UPR 20(2)(g)
- File request in writing in French (= language of proceedings according to A14(3) EPC which applies mut. mut. - UPR 20(1)) and containing - UPR 6(2):
  - a) particulars of H according to R41(2)(c) EPC
  - b) number of EP-7
  - c) H's representative's details according to R41(2)(d) EPC
  - d) translation of EP-7 into English because its language of proceedings was French.
- H is resident in Morocco which is not an EPC state, so he needs professional representation according to A133(2) EPC which applies mut. mut. to UP proceedings - UPR 20(1)
- H has presumably already appointed a professional representative - A134(1) - for prosecuting EP-7 to grant
- Authorisation of a prof. rep. under EPC does not carry over to UP proceedings, unless specifically indicated. If not, another authorisation for UP proceedings can be made
- Renewal fee for UP is due to EPO - UPR 13(1)
- Renewal fee for year 5 is due on 31.3.2024 - UPR 13(2)
- Depending on when UP registration is notified, pay renewal fee in the period of UPR13(4) or (5) for continued validity

Using X for Xeracno, P for Prosilk, TM for tiger mosquitoes

1.

(a) EP-P2

EP-P2 has a single claim directed to:

a method for harvesting spider silk, said method comprising raising spiders in an atmosphere containing from 3% to 13% CO<sub>2</sub>.

EP-P2 claims priority from EP-P1. EP-P1 and EP-P2 were filed by the same applicant P, EP-P2 was filed 14.1.2020 which is within 16.1.2019 + 12mo = 16.1.2020 Thu, and EP-P1 discloses raising AA spiders in 3-9% CO<sub>2</sub>, so the priority is valid for this subject matter (a) in EP-P2. For the rest of EP-P2's claim (b), i.e. spiders other than AA in the range of 3-9% CO<sub>2</sub> and any spiders in the range 9-13% CO<sub>2</sub>, the priority is not valid because this subject matter (sm) is not disclosed in EP-P1. - G1/15

The effective date for part (a) of the claim is the priority date 16.1.2019, and for part (b) the filing date of EP-P2 14.1.2020.

A54(2) prior art for both parts of the claim includes only the known harvesting method where acetylene is used because it was known before the effective dates. So the claim is novel because the known method does not use CO<sub>2</sub> and it is a completely different gas. The claim is also inventive because CO<sub>2</sub> is not inflammable and there are no safety restrictions on its use on spider farms, unlike acetylene.

EP-P2 has been granted and its first renewal fee to national offices was due in January 2024. The validation period expired 2.8.2023 + 3mo = 2.11.2023 Thu. It may still be possible to pay the renewal fee with additional fee for countries where validated (automatically or otherwise); I will check this.

EP-P2 was granted with the above claim as filed and confers protection for the claimed method and spider silk directly obtained by the claimed method in at least Switzerland and Germany.

EP-P1 is withdrawn so it cannot lead to patent protection.

(b) EP-P3

EP-P3 has a single claim directed to:

a method for harvesting spider silk, said method comprising raising spiders in an atmosphere containing from 3% to 26% CO<sub>2</sub>.

EP-P3 claims priority from EP-P2. EP-P2 and EP-P3 were filed by the same applicant P, EP-P3 was filed 15.5.2020 which is within 14.1.2020 + 12mo = 14.1.2021 Thu. EP-P2 is not the first application for (a) raising AA spiders in 3-9% CO<sub>2</sub>, EP-P1 is, so the priority is not valid for this subject matter in EP-P3. EP-P2 is the first application for (b) spiders other than AA in the range of 3-9% CO<sub>2</sub> and any spiders in the range 9-13% CO<sub>2</sub>, so the priority is valid for this part. For the rest of EP-P3's claim (c), i.e. range of 13-26 % CO<sub>2</sub>, the priority is not valid because this subject matter (sm) is not disclosed in EP-P2. Thus the effective date for parts a and c is the filing date of EP-P3 15.5.2020, and the effective date for part b is priority date 14.1.2020.

EP-P1 and EP-P2 were published 16.1.2019 + 18mo = July 2020. A54(2) prior art for all parts of the claim includes only the known harvesting method where acetylene is used because it was known before the effective dates. A54(3) prior art for novelty only for parts a and c includes EP-P1 because it is an EP application with an effective date before and published after the effective date of these parts of the claim. EP-P1 discloses raising AA spiders in 3-9% CO<sub>2</sub>. The claim is not novel in view of EP-P1 because raising AA spiders in 3-9% falls into the scope of part a of the claim (in fact, the disclosure is identical to the part).

Thus as it stands, EP-P3 cannot lead to valid patent protection for its claim.

(c) EP-AA+

EP-AA+ claims

in claim 1, a method for harvesting spider silk, said method comprising raising spiders AA in an atmosphere containing from 3% to 26% CO<sub>2</sub>, and from 1% to 2% N<sub>2</sub>O.

in claim 2, dependent on claim 1, said method wherein the CO<sub>2</sub> concentration is 16%.

EP-AA+ presumably claims no priority so its effective date is its filing date 15.2.2021. A54(2) prior art for the claim includes

EP-P1, EP-P2 because they were published before the effective date. EP-P3 was published in 14.1.2020 + 18mo = July 2021, and it is A54(3) prior art for novelty only because it is an EP application and has an effective date before and a publication date after the effective date of EP-AA+. None of the prior art disclose N2O so the claims of EP-AA+ are novel. The claims are also inventive because AA species surprisingly show a further improved silk production when raised in an atmosphere containing from 3% to 26% CO2 and from 1% to 2% of nitrogen protoxide (N2O).

Thus EP-AA+ can lead to protection for the claimed method and spider silk directly obtained with the method in EPC states. EP-AA+ has been published in 15.2.2021 + 18mo = August 2022 so any new applications for its subject matter would not be novel in respect of it.

(d) PCT-TM+

PCT-TM+ claims:

in claim 1, a method for harvesting spider silk, said method comprising feeding spiders with tiger mosquitos;

in independent claim 2, the spider silk obtained by the method of claim 1.

PCT-TM+ presumably claims no priority so its effective date is its filing date 14.4.2021. Prior art includes EP-P1, EP-P2 because they were published before the effective date. If PCT-TM+ enters the EP phase, A54(3) prior art for novelty only includes EP-P3 and EP-AA+ because they are EP applications with effective dates before and publication dates after the effective date of PCT-TM+. EP-P3 was normally published after filing date of PCT-TM+ because it could only be published *after* its effective date + 18mo, i.e. after 14.7.2021.

None of the prior art disclose feeding TMs, so claim 1 of PCT-TM+ is novel. The feeding surprisingly increases the spiders' lifespan, so claim 1 is inventive as well. Patents based on PCT-TM+ can thus lead to protection for the method of claim 1 and spider silk directly obtained by the method.

Claim 2 is a product by process claim and its scope includes spider silk made by methods other than that of claim 1. The method of claim 1 does not affect the properties of the spider silk; it only affects the lifetime of the spiders. Thus the spider silk of claim 1 is no different from the spider silk of e.g. EP-P1 or EP-P2. Thus claim 2 is not novel and patents based on PCT-TM+ cannot lead to protection for it.

Time limit for EP entry was 14.4.2021 + 31mo = 14.11.2023 Tues. Time limit for FP for the missed entry was 14.12.2023 + 2mo = 14.2.2024 Wed.

2.

PCT-TM+

- Enter EP using RE
- RE is available to remedy missed FP for the entry to the EP phase, because all due care can be shown
- Time limit for RE is earlier of:
  - 4.3.2024 (because this is when Mr W realised his instructions had not been carried out = cause of non-compliance was removed) + 2mo = 4.5.2024 Sat, extended to Mon 6.5.2024
  - 14.2.2024 + 1y = 14.3.2025 Friday
  - So 6.5.2024
- File RE request to EPO explaining how all due care was followed and
- pay RE fee for each of the following missed acts and request FP for each of the following missed acts of R159(1):
  - (not translation because PCT-TM+ was filed in English)
  - filing fee: pay filign fee and 50% FP fee
  - designation fee: pay des. fee and 50% Fp fee
  - (not search fee because EPO was RO so it had to be ISA as well, and thus no supplementary search is done)
  - request for examination and examination fee (unitary act): pay exam fee, file request for examination, pay 50% FP fee for exam fee and flat FP fee for request)
- So a total of 3 RE and 3 FP fees
- 
- Renewal fee for 3rd year was due on entry and its 6-mo period to pay with additional fee was running from 14.12.2023 + 6mo = 14.6.2024 Fri.

- due date was before the loss of rights occurred and Loss of rights occurred in 6mo period, so pay renewal fee with additional fee within 6mo of the re-establishment decision - R51(4)(b) EPC
- 
- renewal fee for 4th year will be due on 31.3.2024
  - If RE decision is issued before this, pay by 31.3.2024 extended to 2.4.2024
  - If RE decision is issued after, pay within 4mo of RE decision
- Amend claims by deleting claim 2 on entry or in response to the R161 communication. Remaining claim 1 is patentable as discussed above so it can be granted.
- After grant, validate in Germany (automatic) and in other EPC states of interest.
- Pay renewal fees to EPO before grant and to national offices after grant
- BA is an extension state to EPC, and its extension fee should have been paid on entry
- FP was available for the extension fee because the whole EP application based on PCT-TM+ was withdrawn, but RE is not available for extension fees
- The a 2-mo grace period with 50% surcharge for paying the extension fee has also expired
- So it is not possible to obtain protection in BA through the EP national phase application
- Also cannot enter BA nat. phase directly - time limit was 14.4.2021 + 34mo = 14.2.2024
- After above steps:
  - P's harvesting in Germany and Europe (AF in 19% CO<sub>2</sub>) does not fall within the scope of claim 1 because no tiger mosquitoes are fed, so X cannot stop P from doing this
  - But can stop from using the BA method in Germany and Europe if P expands it there
  - X can also stop P from importing and selling the silk made in BA to EPC states where the EP patent based on PCT-TM+ is validated because the spider silk is directly obtained by the claimed method

#### EP-AA+

- Since P is not using or planning to use N<sub>2</sub>O or AA in its processes, EP-AA+ is not useful for stopping P from working spider silk.

#### 3.

EP-P2 claims: a method for harvesting spider silk, said method comprising raising spiders in an atmosphere containing from 3% to 13% CO<sub>2</sub>.

- a) No because the CO<sub>2</sub> of 16 % used by X in Switzerland is outside the claimed range, so the patent is not infringed.
- b) It is not known whether EP-P2 was validated in Turkey - I will check. If it was, Turkey allows paying renewal fee with surcharge within a 6mo grace period from anniversary of date of filing, i.e. 14.1.2024 + 6mo = 14.7.2024 Sun --> mon 15.7.2024. If validation was done and the renewal fee is eventually timely paid the harvesting in Turkey would infringe EP-P2 with the above claim because the CO<sub>2</sub> % used (8%) falls in the claimed range and P could prevent X from doing the harvesting.
- c) No, there are no known US patents assigned to P for any subject matter.
- d) Yes because the claim of EP-P2 also covers the spider silk made with the claimed process. Because 8% CO<sub>2</sub> is used in Turkey and Colorado, the method used by X falls into the scope of the claimed method and thus the spider silk made by X is under the scope of protection of EP-P2. Because EP-P2 is in force in Switzerland, P can stop X from importing the spider silk there or selling it there.

#### 4.

As discussed in 1b) EP-P3 cannot lead to valid protection with its current claim, so P cannot validly use it to stop X from working spider silk anywhere.

P could be expected to amend the claim of EP-P3 based on the description to e.g. AF and 19-26%. The disclosure of 16% in EP-P1 would not be novelty destroying because it is for AA not AF and outside the claimed range.

Even if EP-P3 were amended as above:

- a, b, d) No because X works AA mosquitoes and CO<sub>2</sub> values of 8/16 % which would not fall within the scope of the amended claim
- c) No because there are no known US patents assigned to P for any subject matter.



In contrast, if EP-P3 were granted with its current claim (which it should not, because it is not novel):

a,b,d) P could stop X from working spider silk in these EPC states because the CO<sub>2</sub> values 8/16 used by X fall into the claimed range 3-26%.

Answer to c) would be the same as above.

X can file 3rd party observations against EP-P3 arguing lack of novelty as discussed in 1b) to prevent it from being granted. If it does get granted, X can file an opposition and argue lack of novelty - A100(a) to revoke EP-P3.