

G. HOLLMANN RESTREPO

ABOGADOS LTDA.

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SUPERINTENDENCIA Y COMERCIO
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Dependencia: 6620 DIVISION DE NUEVAS CREACIONES

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SUPERINTENDENCIA DE INDUSTRIA Y COMERCIO

DIVISIÓN DE NUEVAS CREACIONES

E. S. D.

Re: Expediente No. 03 023842

Solicitud de patente PCT fase nacional

Titular: Bayer CropScience GmbH

Yo, GUSTAVO HOLLMANN RESTREPO, vecino de Bogotá D.C., portador de la tarjeta profesional No. 5903, obrando como apoderado en este negocio, digo a usted que acompaño al presente memorial, para que sea agregado al expediente de la referencia, copia del Examen Preliminar Internacional, con su correspondiente traducción al inglés, de la solicitud de patente internacional No. PCT/EP01/10578, el cual consta de 5 hojas incluyendo la portada.

Señor Superintendente,


GUSTAVO HOLLMANN RESTREPO

C.C.. No. 2.878.023 de Bogotá

T.P. No. 5903

Translation

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 2000/M230	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/EP01/10578	International filing date (day/month/year) 13 September 2001 (13.09.01)	Priority date (day/month/year) 26 September 2000 (26.09.00)
International Patent Classification (IPC) or national classification and IPC A01N 25/14, A01N 25/14		
Applicant BAYER CROPSCIENCE GMBH		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36. 2. This REPORT consists of a total of <u>5</u> sheets, including this cover sheet. ☐ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT). These annexes consist of a total of <u> </u> sheets.
3. This report contains indications relating to the following items: I ☒ Basis of the report II ☐ Priority III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability IV ☐ Lack of unity of invention V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement VI ☐ Certain documents cited VII ☐ Certain defects in the international application VIII ☐ Certain observations on the international application

Date of submission of the demand 04 April 2002 (04.04.02)	Date of completion of this report 27 December 2002 (27.12.2002)
Name and mailing address of the IPEA/EP Facsimile No.:	Authorized officer Telephone No.

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I. Basis of the report

1. With regard to the elements of the international application:*

- ☐ the international application as originally filed
- ☒ the description:
 pages 1-12, as originally filed
 pages _____, filed with the demand
 pages _____, filed with the letter of _____
- ☒ the claims:
 pages _____, as originally filed
 pages _____, as amended (together with any statement under Article 19
 pages _____, filed with the demand
 pages 1-7, filed with the letter of 06 December 2002 (06.12.2002)
- ☐ the drawings:
 pages _____, as originally filed
 pages _____, filed with the demand
 pages _____, filed with the letter of _____
- ☐ the sequence listing part of the description:
 pages _____, as originally filed
 pages _____, filed with the demand
 pages _____, filed with the letter of _____

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item. These elements were available or furnished to this Authority in the following language _____ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/fig. _____

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rule 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

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I. Basis of the report

1. This report has been drawn on the basis of *(Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to the report since they do not contain amendments.)*:

The documents cited in this preliminary examination report are referred to using numbering which follows the order in which they appear in the international search report.

The amendments submitted in the fax of 6 December 2002 do not contravene PCT Article 34(2)(b) and are therefore admissible, **except for** the amendment concerning the presence of **magnesia** in Claim 1, which has no basis in the original application.

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V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	1-7	YES
	Claims		NO
Inventive step (IS)	Claims	1-7	YES
	Claims		NO
Industrial applicability (IA)	Claims	1-7	YES
	Claims		NO

2. Citations and explanations

The application relates to a formulation for deltamethrin as a solvent-free water-dispersible granular material.

The main differences between the present invention and documents D1 to D4 are as follows:

- D1 and D3: the absence of a solvent.
- D4: the simultaneous presence of a surfactant and a dispersant, and their quantities; the presence of an acid which is used to regulate the pH and is therefore not mixed with bicarbonate to create effervescence.
- D2: the presence of an acid, the quantity of dispersant, and the fact that D2 relates to liquid or nearly liquid active substances.

The present application thus meets the requirement of PCT Article 33(2) because the subject matter of Claims 1-7 is novel over the prior art as defined in the Regulations (PCT Rule 64.1 - 64.3). It also meets the requirement of PCT Article 33(3) because the subject matter of Claims 1-7 involves an inventive step (PCT Rule 65.1 - 65.2), since the claimed formulation cannot be derived from D1 to D4. The application also meets the requirement of PCT Article

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33(4) because the subject matter of Claims 1-7 is considered to be industrially applicable.

Examples 2 and 8 are not covered by the claims because of the dispersant content. This gives rise to a problem of clarity (PCT Article 6) which creates doubt as to the desired scope of protection.