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ABOGADOS

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Señor

SUPERINTENDENTE DE INDUSTRIA Y
DIVISION DE NUEVAS CREACIONES

E. _____ S. _____

SUPERINTENDENCIA DE INDUSTRIA Y COMERCIO



No. 12-041136- -00004-0000

Fecha: 2012-05-22 17:36:41 Dep. 2020 DIR.NUEVASCR
Tra. 11 PATENTEIYII Eve: 379 FASENACIONALI
Act. 444 RESPUESTAREQUE Folios: 8

Re: PI.-ABBOTT LABORATORIES.-Solicitud de Patente de Invención en
Fase Nacional PCT para "POLVOS NUTRICIONALES MEZCLADOS
EN SECO".-Clase A23J 7/00.-Expediente número 12-041.136-

1. Me refiero al Oficio No. 4960 dictado por ese Despacho notificado por fijación en lista de 28 de Marzo de 2012.

2. En respuesta a su comunicación arriba referida y estando dentro del término establecido para ello, atentamente me permito allegar el recibo de pago de la tasa establecida para las reivindicaciones adicionales de la solicitud arriba mencionada.

Me permito aclarar que dicho pago corresponde a las reivindicaciones 11, 19 a 21 y 25, las cuales deberán ser estudiadas junto con la presente solicitud. Por lo anterior, el capitulo a ser estudiado queda conformado por **15** reivindicaciones.

3. Por otro lado me permito presentar a ese Despacho el Reporte Preliminar Internacional sobre Patentabilidad expedido el 29 de Marzo de 2012 correspondiente a la solicitud internacional PCT/US2010/049048, actualmente en trámite de Fase Internacional bajo el número de la referencia.

4. Anexo me permito presentar recibo número 12-0039726, que acredita el pago de la tasa mencionada.

5. Ruego a usted tomar atenta nota de lo anterior y proceder de conformidad.

Señor Superintendente,

ALICIA LLOREDA RICAURTE

T.P. 53.215

SUPERINTENDENCIA DE INDUSTRIA Y COMERCIO

NIT : 800.176.089-2

- / -


Industria y Comercio
SUPERINTENDENCIA

RECIBO DE CAJA

No. 12 - 0039726

Bogotá D.C., Abril 24 de 2012 - 08:12:39

RECIBIDO DE : LLOREDA & CIA. S.A.

NI 830.022.145

*** Soporte del Pago ***

TIPO PAGO	BANCO	CUENTA	No. PAGO	FECHA PAGO	VR PAGO
CONSIGNACION	BANCO DE BOGOTA	062754387	198888432	23/04/2012	16.473.200.00

*** Conceptos Pagados ***

CANT.	RENTISTICO	CONCEPTO	Vr.UNDITARIO	Vr.CONCEPTO
1	50005-01-09 OTROS SERVICIOS DE PROPIEDAD INDUSTRIAL	99 OTROS SERVICIOS ADMINISTRATIVOS	150.000.00	150.000.00
				\$150.000.00

=====

SON: **CIENTO CINCUENTA MIL PESOS MONEDA CORRIENTE***

Responsable: _____

Recibo de Caja Aplicado al Expediente No. _____

SUPERINTENDENCIA DE INDUSTRIA Y COMERCIO



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Abril 24 de 2012 - 08:12:46

PATENT COOPERATION TREATY

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To: Abbott Laboratories Department 108140/RP3/2 3300 Stelzer Road Columbus OH 43219 ETATS-UNIS D'AMERIQUE		RECEIVED APR 04 2012 AN PATENTS PCT NOTIFICATION OF TRANSMITTAL OF THE INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (PCT Rule 71.1)	
		Date of mailing (day/month/year) 29.03.2012	
Applicant's or agent's file reference 9882WOO1		IMPORTANT NOTIFICATION	
International application No. PCT/US2010/049048	International filing date (day/month/year) 16.09.2010	Priority date (day/month/year) 16.09.2009	
Applicant Abbott Laboratories			
1. The applicant is hereby notified that this International Preliminary Examining Authority transmits herewith the International preliminary report on patentability and its annexes, if any, established on the international application. 2. A copy of the report and its annexes, if any, is being transmitted to the International Bureau for communication to all the elected Offices. 3. Where required by any of the elected Offices, the International Bureau will prepare an English translation of the report (but not of any annexes) and will transmit such translation to those Offices. 4. REMINDER The applicant must enter the national phase before each elected Office by performing certain acts (filing translations and paying national fees) within 30 months from the priority date (or later in some Offices) (Article 39(1)) (see also the reminder sent by the International Bureau with Form PCT/IB/301). Where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary report on patentability. It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned. For further details on the applicable time limits and requirements of the elected Offices, see Volume II of the PCT Applicant's Guide. The applicant's attention is drawn to Article 33(5), which provides that the criteria of novelty, inventive step and industrial applicability described in Article 33(2) to (4) merely serve the purposes of international preliminary examination and that "any Contracting State may apply additional or different criteria for the purposes of deciding whether, in that State, the claimed inventions is patentable or not" (see also Article 27(5)). Such additional criteria may relate, for example, to exemptions from patentability, requirements for enabling disclosure, clarity and support for the claims.			
Name and mailing address of the international preliminary examining authority: European Patent Office P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Fax: +31 70 340 - 3016		Authorized Officer Moretti, Vania Tel. +31 70 340-4570	

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 9882WOO1		FOR FURTHER ACTION		See Form PCT/PEA/416
International application No. PCT/US2010/049048		International filing date (day/month/year) 16.09.2010	Priority date (day/month/year) 16.09.2009	
International Patent Classification (IPC) or national classification and IPC INV. A23J7/00				
Applicant Abbott Laboratories				
1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36. 2. This REPORT consists of a total of <u>5</u> sheets, including this cover sheet. 3. This report is also accompanied by ANNEXES, comprising: a. ☐ (sent to the applicant and to the International Bureau) a total of sheets, as follows: ☐ sheets of the description, claims and/or drawings which have been amended and/or sheets containing rectifications authorized by this Authority, unless those sheets were superseded or cancelled, and any accompanying letters (see Rules 46.5, 66.8, 70.16, 91.2, and Section 607 of the Administrative Instructions). ☐ sheets containing rectifications, where the decision was made by this Authority not to take them into account because they were not authorized by or notified to this Authority at the time when this Authority began to draw up this report, and any accompanying letters (Rules 66.4bis, 70.2(e), 70.16 and 91.2). ☐ superseded sheets and any accompanying letters, where this Authority either considers that the superseding sheets contain an amendment that goes beyond the disclosure in the international application as filed, or the superseding sheets were not accompanied by a letter indicating the basis for the amendments in the application as filed, as indicated in item 4 of Box No. I and the Supplemental Box (see Rule 70.16(b)). b. ☐ (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing, in electronic form only, as indicated in the Supplemental Box Relating to Sequence Listing (see paragraph 3bis of Annex C of the Administrative Instructions).				
4. This report contains indications relating to the following items: ☒ Box No. I Basis of the report ☐ Box No. II Priority ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability ☐ Box No. IV Lack of unity of invention ☒ Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement ☐ Box No. VI Certain documents cited ☒ Box No. VII Certain defects in the international application ☒ Box No. VIII Certain observations on the international application				
Date of submission of the demand		Date of completion of this report		
15.07.2011		29.03.2012		
Name and mailing address of the international preliminary examining authority:  European Patent Office P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Fax: +31 70 340 - 3016		Authorized officer Delorenzi, Sibilla Telephone No. +31 70 340-9804 		

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.
PCT/US2010/049048

Box No. I Basis of the report

1. With regard to the **language**, this report is based on
 - ☒ the international application in the language in which it was filed
 - ☐ a translation of the international application into , which is the language of a translation furnished for the purposes of:
 - ☐ international search (under Rules 12.3(a) and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4(a))
 - ☐ international preliminary examination (under Rules 55.2(a) and/or 55.3(a) and (b))
2. With regard to the **elements*** of the international application, this report is based on *(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):*

Description, Pages

1-36 as originally filed

Claims, Numbers

1-27 as originally filed

- ☐ a sequence listing - see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
 - ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing *(specify)*:
 - ☐ any table(s) related to sequence listing *(specify)*:
 4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since either they are considered to go beyond the disclosure as filed, or they were not accompanied by a letter indicating the basis for the amendments in the application as filed, as indicated in the Supplemental Box (Rules 70.2(c) and (c-bis)):
 - ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing *(specify)*:
 5. ☐ This report has been established:
 - ☐ taking into account the rectification of an obvious mistake authorized by or notified to this Authority under Rule 91 (Rules 66.1(d-bis) and 70.2(e)).
 - ☐ without taking into account the rectification of an obvious mistake authorized by or notified to this Authority under Rule 91(Rules 66.4bis and 70.2(e)).
 6. ☐ Supplementary international search report(s) from Authority(ies) has/have been received and taken into account in establishing this report (Rule 45bis.8(b) and (c)).

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/US2010/049048

Box No. 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)	Yes: Claims	<u>1-18, 22, 23</u>
	No: Claims	<u>19-21, 24-27</u>
Inventive step (IS)	Yes: Claims	<u>1-18</u>
	No: Claims	<u>19-27</u>
Industrial applicability (IA)	Yes: Claims	<u>1-27</u>
	No: Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

see separate sheet

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

Re Item V

- 1 Reference is made to the following documents:

D1 US 2009/162521 A1 (CLINGER CHRISTINE L [US] ET AL) 25
June 2009 (2009-06-25)

D2 US 2009/162518 A1 (CLINGER CHRISTINE L [US] ET AL) 25
June 2009 (2009-06-25)

2 **NOVELTY (ARTICLE 33(2) PCT)**

The below-mentioned lack of clarity (see Item VIII) notwithstanding, the subject-matter of **claims 19-21 and 24-27** is furthermore not new in the sense of Article 33(2) PCT, and the criteria of Article 33(1) PCT are therefore not met.

- 2.1 The novelty objections raised in the previous communication in view of **D1** and **D2** are maintained; The application does not meet the requirements of the PCT with respect to novelty (Article 33(2) PCT).

3 **INVENTIVE STEP (ARTICLE 33(3) PCT)**

The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of **claims 22 and 23** does not involve an inventive step in the sense of Article 33(3) PCT.

- 3.1 The inventive step objection raised in the previous communication regarding dependent claims 22 and 23 are maintained.

Re Item VII

- 4 **Claim 12** comprises all the features of **claim 1** and should therefore appropriately be formulated as a claim dependent on the latter (Rule 6.4 PCT).

- 5 It is noted that product claim 19 is not dependent on method claim 1.
- 5.1 At a suitable stage in the procedure, to meet the requirements of Rule 5.1(a) (ii) PCT, the documents **D1 and D2** should be identified in the description and the relevant background art disclosed therein should be briefly discussed.

Re Item VIII

- 6 **Claim 19** does not meet the requirements of Article 6 PCT in that the matter for which protection is sought is not clearly defined.

In fact, the terms "the powdered infant formula" (coming after "[...] at least one carbohydrate source that has been dryblended into [...]") are not clearly defined, as their composition could be the same or could be different, compared to the initial (first mentioned) *powdered infant formula comprising a lipid source, a protein source and a carbohydrate source*, initially described in claim 19.

This clarity issue has to be overcome.