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SUPERINTENDENCIA Y COMERCIO
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Trámite : 011 PCT-PATENT 379 FASE NML 444 RESPUESTA
Dependencia: 0000 DIVISION DE NUEVAS CREACIONES

Trámite : 011
Evento : 379
Actuación: 444

Referencia : Expediente No. 05.111.854
Asunto : Solicitud de patente para 6- ALQUIL O
ALQUENIL-4-AMINOPICOLINATOS Y USOS DE
LOS MISMOS COMO HERBICIDAS
Solicitante : DOW AGROSCIENCES LLC
Fecha solicitud : 2 de noviembre de 2005

1. Yo, Emilio FERRERO, obrando como apoderado del solicitante en el asunto antes identificado, me refiero al Oficio N° 13629, notificado por fijación en lista de 23 de diciembre de 2005.

2. Mediante el Oficio N° 13629 se puso en conocimiento del solicitante el informe que contiene las observaciones hechas por ese Despacho sobre la presente solicitud de patente. Atiendo a las observaciones de la manera siguiente:

2.1. Traducción de los anexos del Reporte de Examen Preliminar Internacional: Informo a ese Despacho que el Reporte de Examen Preliminar Internacional expedido en el trámite de la solicitud internacional, no contiene anexos, toda vez que las reivindicaciones no

fueron modificadas en fase internacional tal y como se observa en la primera página de dicho documento. En todo caso, acompaño nuevamente con este escrito, una copia del Reporte de Examen Preliminar Internacional que ya fue presentado junto con el petitorio de la solicitud de la referencia.

3. Puesto que se han atendido a cabalidad las observaciones hechas por ese Despacho sobre la presente solicitud de patente de invención, atentamente solicito que se continúe su tramitación y se ordene la publicación en la Gaceta de la Propiedad Industrial.

Bogotá, 05 ENE. 2006
Señora Jefe,



EMILIO FERRERO

T.P.A. No. 31.929

COLO 10975-841-009-5
OCB/JJR/
ID-000252/WPC10975

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 62,381A	FOR FURTHER ACTION See Form PCT/PEAA15	
International application No. PCT/US2004/010358	International filing date (day/month/year) 02.04.2004	Priority date (day/month/year) 02.04.2003
International Patent Classification (IPC) or national classification and IPC C07D213/79, A01N43/40		
Applicant DOW AGROSCIENCES LLC et al.		
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 9 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 are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 807 of the Administrative Instructions). ☐ sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in Item 4 of Box No. I and the Supplemental Box. b. ☐ (sent to the International Bureau only) a total of (Indicate type and number of electronic carrier(s)) containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).		
4. This report contains indications relating to the following items: ☒ Box No. I Basis of the opinion ☐ 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 26.10.2004	Date of completion of this report 01.03.2005	
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 apmu d Fax: +49 89 2399 - 4485	Authorized Officer Seymour, L Telephone No. +49 89 2399-6694 	

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/US2004/010358

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, unless otherwise indicated under this item.
 - ☐ This report is based on translations from the original language into the following language, which is the language of a translation furnished for the purposes of:
 - ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
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

1-34 as originally filed

Claims, Numbers

1-6 as originally filed

- ☐ a sequence listing and/or any related table(s) - 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 they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
 - ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

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Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application,
- ☒ claims Nos. 1-6 with respect to "agriculturally acceptable derivatives"
because:
 - ☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (specify):
 - ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
 - ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
 - ☒ no international search report has been established for the said claims Nos. 1-6 with respect to "agriculturally acceptable derivatives"
 - ☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:
 - the written form ☐ has not been furnished
 - ☐ does not comply with the standard
 - the computer readable form ☐ has not been furnished
 - ☐ does not comply with the standard
 - ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.
- ☐ See separate sheet for further details

**INTERNATIONAL PRELIMINARY REPORT
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Box No. IV Lack of unity of invention

1. ☐ In response to the invitation to restrict or pay additional fees, the applicant has:
 - ☐ restricted the claims.
 - ☐ paid additional fees.
 - ☐ paid additional fees under protest.
 - ☐ neither restricted nor paid additional fees.
2. ☒ This Authority found that the requirement of unity of invention is not complied with and chose, according to Rule 68.1, not to invite the applicant to restrict or pay additional fees.
3. This Authority considers that the requirement of unity of invention in accordance with Rules 13.1, 13.2 and 13.3 is
 - ☐ complied with.
 - ☒ not complied with for the following reasons:
see separate sheet
4. Consequently, this report has been established in respect of the following parts of the international application:
 - ☒ all parts.
 - ☐ the parts relating to claims Nos. .

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	2-8
	No: Claims	1
Inventive step (IS)	Yes: Claims	
	No: Claims	1-6
Industrial applicability (IA)	Yes: Claims	1-6
	No: Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

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**INTERNATIONAL PRELIMINARY REPORT
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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

Item III

The present claims do not meet the requirements of Article 6 PCT. The matter for which protection is sought is not clearly defined owing to the expression "agriculturally acceptable derivatives of the carboxylic acid group or the 4-amino group", which does not enable the skilled person to determine the technical features necessary to perform the stated function. It is thus unclear which specific compounds fall within the scope of said claim.

In addition, the requirements of Article 5 PCT are not fulfilled. The definitions given in the present description (p. 4, lines 8 - 31) are so vague that the person skilled in the art would not be able to carry out the invention over the whole area claimed without undue burden.

A lack of clarity within the meaning of Article 6 PCT and disclosure within the meaning of Article 5 PCT arises to such an extent as to render a meaningful search of the claims impossible. Consequently, the search did not include "agriculturally acceptable derivatives" of the compounds of formula I.

Item IV

This Authority considers that there are two inventions covered by the claims indicated as follows:

1. Claims 1 (part), 3-6 (part): compounds of formula I wherein X is H and corresponding compositions and uses
2. Claims 1 (part), 2, 3-6 (part): compounds of formula I wherein X is F and corresponding compositions and uses

The requirement of Rule 13.2 PCT is not fulfilled in the present application since the structural feature that distinguishes the present compounds from the closest prior art compounds of D1 (cf. Item V.3) differs in the above-mentioned groups. Starting from prior art D1, the above-mentioned problem has thus been solved by different technical means, which are not so linked as to form a single general inventive concept (Rule 13.1 PCT).

Item V

1. The following documents are referred to in this communication:
D1 : BE-A-788 756 D2 : WO-A-01 51684
D3 : WO-A-03 011853 D4: WO-A-01 51468
2. The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 1 is not new in the sense of Article 33(2) PCT. According to the description (cf. Item VIII), the alkenyl group Y may be substituted. The compound disclosed in example 43 of D3 therefore falls within the scope of claim 1.

The regions of overlap with formulae I of D1 and D2 can be regarded as novel selections since picolinic acids with a hydrogen or fluorine substituent at position 5 in combination with an alkyl substituent at position 6 are not disclosed therein.

Item VIII

It appears from the description (p. 6, line 8 - p. 7, line 5) that some of the terms used in claim 1 have not been given the meaning which they normally have in the art, since they include substituted derivatives unless otherwise specified. Moreover, the definition of "alkyl", "alkenyl" and "alkynyl" to include cyclic moieties does not conform with IUPAC recommendations. These inconsistencies result in a lack of clarity of the claims (Article 6 PCT).

In view of the above-mentioned passage in the description, the definition of Y has been interpreted such that "C₁-C₄ alkyl" cannot be substituted other than as defined in claim 1 (otherwise D4 would also be novelty destroying) and such that "C₂-C₃ alkenyl" may be substituted, since it is not specifically stated otherwise.

REPUBLICA DE COLOMBIA
SUPERINTENDENCIA DE INDUSTRIA Y COMERCIO

Folio 150

2020
Bogotá D.C.,

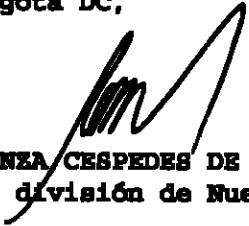
Doctor(a)
FERRERO EMILIO
Apoderado(a) y/o Representante de
DOW AGROSCIENCES LLC

REFERENCIA	Radicación No.	05 111854
	Solicitud internacional	US2004/010358
	Fecha inicio fase nacional	02/11/2005
	Trámite	11
	Evento	379
	Actuación	416
	Oficio No.	2252
	Folios	1

Teniendo en cuenta que la solicitud de privilegio de patente que se tramita bajo el expediente indicado en la referencia, reúne los requisitos de forma establecidos en la Decisión 486 de la Comisión de la Comunidad Andina, el Tratado de Cooperación en Materia de Patentes (PCT), el Reglamento y la Circular Única de la Superintendencia de Industria y Comercio, se envía el extracto de la solicitud a la Oficina de Comunicaciones para efecto de su publicación en la Gaceta de Propiedad Industrial.

Cúmplase
Dado en Bogotá DC,

20 DIC. 2006


ALIX CARMONA CESPÉDES DE VERGEL
Jefe de la división de Nuevas Creaciones

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