

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

PCT

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43*bis*.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/US2015/040578

International filing date (day/month/year)
15.07.2015

Priority date (day/month/year)
16.07.2014

International Patent Classification (IPC) or both national classification and IPC
INV. B65B43/08 B29C65/02 B65B61/00 B65B61/18 B65D75/00 B65D75/28 B65D75/56 B65D75/58 B65B3/04

Applicant
DOW GLOBAL TECHNOLOGIES LLC

1. This opinion 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 Rule 43*bis*.1(a)(i) with regard to novelty, inventive step and 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

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1*bis*(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

Name and mailing address of the ISA:



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Date of completion of
this opinion

see form
PCT/ISA/210

Authorized Officer

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Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of:
 - ☒ 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 (Rules 12.3(a) and 23.1 (b)).
2. ☐ This opinion has been established taking into account the **rectification of an obvious mistake** authorized by or notified to this Authority under Rule 91 (Rule 43bis.1(a))
3. ☐ With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, this opinion has been established on the basis of a sequence listing:
 - a. ☐ forming part of the international application as filed:
 - ☐ in the form of an Annex C/ST.25 text file.
 - ☐ on paper or in the form of an image file.
 - b. ☐ furnished together with the international application under PCT Rule 13ter.1(a) for the purposes of international search only in the form of an Annex C/ST.25 text file.
 - c. ☐ furnished subsequent to the international filing date for the purposes of international search only:
 - ☐ in the form of an Annex C/ST.25 text file (Rule 13ter.1(a)).
 - ☐ on paper or in the form of an image file (Rule 13ter.1(b) and Administrative Instructions, Section 713).
4. ☐ In addition, in the case that more than one version or copy of a sequence listing has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that forming part of the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
5. Additional comments:

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

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. 5-13, 20

because:

☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international search (*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 (*specify*):

☒ no international search report has been established for the whole application or for said claims Nos. 5-13, 20

☐ a meaningful opinion could not be formed without the sequence listing; the applicant did not, within the prescribed time limit:

☐ furnish a sequence listing in the form of an Annex C/ST.25 text file, and such listing was not available to the International Searching Authority in the form and manner acceptable to it; or the sequence listing furnished did not comply with the standard provided for in Annex C of the Administrative Instructions.

☐ furnish a sequence listing on paper or in the form of an image file complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Searching Authority in the form and manner acceptable to it; or the sequence listing furnished did not comply with the standard provided for in Annex C of the Administrative Instructions.

☐ pay the required late furnishing fee for the furnishing of a sequence listing in response to an invitation under Rule 13ter.1(a) or (b).

☐ See Supplemental Box for further details

Box No. IV Lack of unity of invention

1. ☒ In response to the invitation (Form PCT/ISA/206) to pay additional fees, the applicant has, within the applicable time limit:
- ☐ paid additional fees
 - ☐ paid additional fees under protest and, where applicable, the protest fee
 - ☐ paid additional fees under protest but the applicable protest fee was not paid
 - ☒ not paid additional fees
2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose not to invite the applicant to pay additional fees.
3. This Authority considers that the requirement of unity of invention in accordance with Rule 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. 1-4, 14-19

Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	<u>3, 4, 18, 19</u>
	No: Claims	<u>1, 2, 14-17</u>
Inventive step (IS)	Yes: Claims	
	No: Claims	<u>1-4, 14-19</u>
Industrial applicability (IA)	Yes: Claims	<u>1-4, 14-19</u>
	No: Claims	

2. Citations and explanations

see separate sheet

Re Item IV

- 1 This Authority considers that the application does not meet the requirements of unity of invention and that there are three inventions covered by the claims indicated as follows:

Invention 1 - claims 1-4, 14-19 : Container having a flare portion

Invention 2 - claims 5-13 : Container having a fitment

Invention 3 - claim 20 : Container having a seal comprising a microcapillary strip

- 2 The reasons for which the inventions are not so linked as to form a single general inventive concept, as required by Rule 13.1 PCT, are as follows:

- 2.1 The only features specifically common to inventions 1, 2 and 3 are at most the features of independent claim 1. These features are well known from the prior art, as disclosed by document WO01/85560A1 and thus cannot be considered as special technical features.

- 2.2 The three inventions solve three different problems by means of different potentially special technical features.

The problem to be solved by the first invention (claims 1-4, 14-19) is to facilitate filling or emptying of the container. The feature which solves this problem is a flare portion creating a funnel-like structure.

The problem to be solved by the second invention (claims 5-13) is to guarantee the presence of an outlet orifice. The feature which solves this problem is a fitment.

The problem to be solved by the third invention (claim 20) is to provide means for controlled spray delivery of the container contents. The feature which solves this problem is microcapillary strip.

- 2.3 Since the problems to be solved by the three inventions and the potentially special technical features which solve these problems are different, the different technical features cannot be considered to be corresponding special technical features as required by Rule 13.2 PCT.

Re Item V

- 3 Reference is made to the following documents:

- D1 WO 01/85560 A1 (DANISCO [DK]; SCHULZ WERNER [DK]) 15 November 2001 (2001-11-15)
- D2 US 3 003 681 A (RENE ORSINI) 10 October 1961 (1961-10-10)
- D3 EP 0 893 358 A1 (HOSOKAWA YOKO KK [JP]; MITSUBISHI SHOJI PACKAGING KAB [JP]) 27 January 1999 (1999-01-27)
- D4 DE 39 25 871 A1 (HOECHST AG [DE]) 7 February 1991 (1991-02-07)
- D5 US 3 112 047 A (WEINREICH CHARLES F ET AL) 26 November 1963 (1963-11-26)
- D6 GB 1 463 579 A (AMERICAN CAN CO) 2 February 1977 (1977-02-02)

- 4 The present application does not meet the criteria of Article 33(2) PCT, because the subject-matter of claim 1 is not new.

- 4.1 Document D1 discloses [references applying to this document] :

"A flexible container (cf. fig. 1) comprising:

four panels (1,2,3,4), the four panels forming

(i) a body portion (cf. portion between lines 13 and 14 in fig. 2);

(ii) a neck portion (cf. the zone indicated by "b" in fig. 5), and a flare portion (60) that extends from the neck portion;

(iii) a tapered transition portion (cf. in fig. 1 the portion created by the "triangle-like" structures of the top panel 3 due to its attachment to lateral seals 15 and 16) between the body portion and the neck portion;

(iv) the neck portion having a reduced width, the flare portion having an expanded end (cf. fig. 5); and

the width of the flare portion gradually increases from the neck portion to the expanded end (cf. fig. 5)."

4.2 Moreover, document D2 also anticipates the subject matter of claim 1. It is to be noticed that the term "panel" of claim 1 is broader than the term "foil sheet". Therefore, a sheet can produce a number of panels, as is the case in D2.

5 The same reasoning applies, *mutatis mutandis*, to the subject-matter of the corresponding independent claim 14, which therefore is also considered not new.

6 Dependent claims 2-4 and 15-19 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty and/or inventive step. The reasons being as follows :

i) The additional features of claims 2-4 and 15-19 are either already disclosed in documents D1-D6 or matter of normal design procedure. Therefore, they constitute obvious design possibilities for the skilled person in order to solve the problem posed.

7 Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in the documents D1 and D2 is not mentioned in the description, nor are these documents identified therein.

8 The features of the claims are not provided with reference signs placed in parentheses (Rule 6.2(b) PCT).