

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:
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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/US2016/066838	International filing date (day/month/year) 15.12.2016	Priority date (day/month/year) 21.12.2015
International Patent Classification (IPC) or both national classification and IPC INV. B65D77/20 B65D53/08 ADD. B65D75/32		
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:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Fax: +49 89 2399 - 4465	Date of completion of this opinion see form PCT/ISA/210	Authorized Officer Duc, Emmanuel Telephone No. +49 89 2399-0
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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. 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>1-15</u>
	No: Claims	
Inventive step (IS)	Yes: Claims	<u>1</u>
	No: Claims	<u>2-15</u>
Industrial applicability (IA)	Yes: Claims	<u>1-15</u>
	No: Claims	

2. Citations and explanations

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

The examination is being carried out on the **following application documents**

Description, Pages

1-12 as originally filed

Claims, Numbers

1-15 as originally filed

Drawings, Sheets

1/3-3/3 as originally filed

Reference is made to the following documents:

- D1 JP 2010 280422 A (TOPPAN PRINTING CO LTD) 16 December 2010
(2010-12-16)
- D2 US 4 960 216 A (GILES JOSEPH M [US]) 2 October 1990 (1990-10-02)
- D3 US 5 513 781 A (ULLRICH JEFFREY F [US] ET AL) 7 May 1996 (1996-05-07)
- D4 US 2015/158643 A1 (COKER HOWARD [US] ET AL) 11 June 2015
(2015-06-11)
- D5 EP 0 790 193 A1 (ALSACIENNE ALUMINIUM [FR]) 20 August 1997
(1997-08-20)
- D6 US 5 776 284 A (SYKES JOSEPH A [US] ET AL) 7 July 1998 (1998-07-07)
- D7 US 5 246 106 A (JOHNSON JIMMIE L [US]) 21 September 1993 (1993-09-21)
- D8 US 7 863 383 B2 (GIBBONS JULIE W [US] ET AL) 4 January 2011
(2011-01-04)cited in the application
- D9 JP S57 180678 U 16 November 1982 (1982-11-16)

Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1 Independent claims 1 and 2

- 1.1 The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 2 does not involve an inventive step in the sense of Article 33(3) PCT.

D1, which is regarded as being the prior art closest to the subject-matter of claim 2, discloses (abstract; figures 1, 2):

- A container (figure 2) comprising:
 - a container body having a sealing lip, the sealing lip comprising an opening end and a seal end spaced from the opening end;
 - a bottom perforated (2) film (4a) comprising a first sealant layer and a first substrate layer, the first sealant layer being adhered to the sealing lip at a first adhesion strength;
 - a top film (1a) adhered to the bottom perforated film, and comprising a second sealant layer and a second substrate layer, wherein the top film adheres to the bottom perforated film at a second adhesion strength at one or more locations not in vertical alignment with the seal end;wherein the first adhesion strength is greater than the second adhesion strength, such that, upon application of pull force, the top film is peelable relative to the bottom perforated film at the opening end (at 6) and the top film is peelable with the bottom perforated film relative to the container body at the seal end (at 5),
wherein the bottom perforated film comprises a bottom seal tab (5) extending beyond the sealing lip at the seal end.

The subject-matter of claim 2 therefore differs from this known container in that:

- the top film adheres to the bottom perforated film at a third adhesion strength at a location in vertical alignment with the seal end, and the third adhesion strength is greater than the first adhesion strength

The problem to be solved by the present invention may therefore be regarded as:

- to provide a tab with maximum leverage when removing the bottom film.

However, these features have already been employed for the same purpose in a similar container (see D2, column 1, line 45 - column 4, line 68; figures 1-5; in particular column 1, lines 46-57). It would be obvious to the person skilled in the art, namely when the same result is to be achieved, to apply these features with corresponding effect to a container according to D1, thereby arriving at a container according to claim 2.

1.2 **However**, the subject-matter of claim 1 seems to satisfy the requirements of the PCT with regards to novelty and inventive step. Indeed, D1, which is considered the closest prior art, discloses a container from which the subject-matter of claim 1 differs in that it includes the following distinguishing features:

- the top film adheres to the bottom perforated film at a third adhesion strength at a location in vertical alignment with the seal end, and the third adhesion strength is greater than the first adhesion strength; and
- the top film adheres to the bottom perforated film at a second adhesion strength only at locations in vertical alignment with the sealing lip

The problem being to provide a tab with maximum leverage when removing the bottom film while optimizing the use of sealant between the top and the bottom film. None of the cited documents would suggest the man skilled in the art to include any of the above mentioned distinguishing features (A) or (B) in the container known from D1.

2 Dependent claims 3-15

2.1 Claims 6-15, if considered dependent on claim 2, do not appear to contain any additional features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of inventive step, because the additional features of these claims come within the scope of the customary practice followed by persons skilled in the art.

- 2.2 **However**, claims 3-5 and claims 6-15, if considered dependent on claim 1, are dependent on independent claim 1 whose subject-matter is considered as being new and inventive, as discussed above. As such said dependent claims also meet the requirements of the PCT with respect to novelty and inventive step.

Re Item VII

Certain defects in the international application

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

- 2 Independent claim 1 is not in the two-part form in accordance with Rule 6.3(b) PCT, which in the present case would be appropriate, with those features known in combination from the prior art (e.g. D1) being placed in the preamble (Rule 6.3(b)(i) PCT) and the remaining features being included in the characterising part (Rule 6.3(b)(ii) PCT).

- 3 Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in D1-D4 is not mentioned in the description, nor are these documents identified therein.