

PATENT COOPERATION TREATY

PCT

INTERNATIONAL SEARCH REPORT

(PCT Article 18 and Rules 43 and 44)

Applicant's or agent's file reference MONS:464WO		FOR FURTHER ACTION see Form PCT/ISA/220 as well as, where applicable, item 5 below.	
International application No. PCT/US 19/44845	International filing date (day/month/year) 02 August 2019 (02.08.2019)	(Earliest) Priority Date (day/month/year) 03 August 2018 (03.08.2018)	
Applicant MONSANTO TECHNOLOGY LLC			

This international search report has been prepared by this International Searching Authority and is transmitted to the applicant according to Article 18. A copy is being transmitted to the International Bureau.

This international search report consists of a total of 5 sheets.

☐ It is also accompanied by a copy of each prior art document cited in this report.

1. Basis of the report

a. With regard to the **language**, the international search was carried out 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)).

b. ☐ This international search report has been established taking into account the **rectification of an obvious mistake** authorized by or notified to this Authority under Rule 91 (Rule 43.6bis(a)).

c. ☒ With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, see Box No. I.

2. ☐ Certain claims were found **unsearchable** (see Box No. II).

3. ☒ **Unity of invention is lacking** (see Box No. III).

4. With regard to the **title**,

- ☒ the text is approved as submitted by the applicant.
☐ the text has been established by this Authority to read as follows:

5. With regard to the **abstract**,

- ☒ the text is approved as submitted by the applicant.
☐ the text has been established, according to Rule 38.2, by this Authority as it appears in Box No. IV. The applicant may, within one month from the date of mailing of this international search report, submit comments to this Authority.

6. With regard to the **drawings**,

- a. the figure of the **drawings** to be published with the abstract is Figure No. _____
☐ as suggested by the applicant.
☐ as selected by this Authority, because the applicant failed to suggest a figure.
☐ as selected by this Authority, because this figure better characterizes the invention.
- b. ☐ none of the figures is to be published with the abstract.

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Box No. I Nucleotide and/or amino acid sequence(s) (Continuation of item I.c of the first sheet)

1. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international search was carried out 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. I(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. I(a)).

☐ on paper or in the form of an image file (Rule 13ter. I(b) and Administrative Instructions, Section 713).

2. ☐ 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.

3. Additional comments:

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Box No. II Observations where certain claims were found unsearchable (Continuation of item 2 of first sheet)

This international search report has not been established in respect of certain claims under Article 17(2)(a) for the following reasons:

1. ☐ Claims Nos.:
because they relate to subject matter not required to be searched by this Authority, namely:

2. ☐ Claims Nos.:
because they relate to parts of the international application that do not comply with the prescribed requirements to such an extent that no meaningful international search can be carried out, specifically:

3. ☐ Claims Nos.:
because they are dependent claims and are not drafted in accordance with the second and third sentences of Rule 6.4(a).

Box No. III Observations where unity of invention is lacking (Continuation of item 3 of first sheet)

This International Searching Authority found multiple inventions in this international application, as follows:

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1. In order for all inventions to be searched, the appropriate additional search fees must be paid.

-----Please see Supplemental Box-----

1. ☐ As all required additional search fees were timely paid by the applicant, this international search report covers all searchable claims.
2. ☐ As all searchable claims could be searched without effort justifying additional fees, this Authority did not invite payment of additional fees.
3. ☐ As only some of the required additional search fees were timely paid by the applicant, this international search report covers only those claims for which fees were paid, specifically claims Nos.:
4. ☒ No required additional search fees were timely paid by the applicant. Consequently, this international search report is restricted to the invention first mentioned in the claims; it is covered by claims Nos.:
1-17 limited to SEQ ID NO: 1

Remark on Protest

- ☐ The additional search fees were accompanied by the applicant's protest and, where applicable, the payment of a protest fee.
- ☐ The additional search fees were accompanied by the applicant's protest but the applicable protest fee was not paid within the time limit specified in the invitation.
- ☐ No protest accompanied the payment of additional search fees.

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A. CLASSIFICATION OF SUBJECT MATTER

IPC - C12N 15/82, C12N 5/04 (2019.01)

CPC - C12N 15/8274, C12N 15/8216, C12N 15/8261, C12N 15/8279, C12N 5/04

According to International Patent Classification (IPC) or to both national classification and IPC

B. FIELDS SEARCHED

Minimum documentation searched (classification system followed by classification symbols)

See Search History document

Documentation searched other than minimum documentation to the extent that such documents are included in the fields searched

See Search History document

Electronic data base consulted during the international search (name of data base and, where practicable, search terms used)

See Search History document

C. DOCUMENTS CONSIDERED TO BE RELEVANT

Category*	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
A	US 2016/0177326 A1 (MONSANTO TECHNOLOGY LLC.) 23 June 2016 (23.06.2016) Abstract, para [0020], [0037], [0039], [0085]; Claim 1	1-17
A	US 2011/0167514 A1 (Brover et al.) 7 July 2011 (07.07.2011) Claim 1; SEQ ID NO 10904	1-17

☐ Further documents are listed in the continuation of Box C.☐ See patent family annex.

* Special categories of cited documents:

"A" document defining the general state of the art which is not considered to be of particular relevance

"D" document cited by the applicant in the international application

"E" earlier application or patent but published on or after the international filing date

"L" document which may throw doubts on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (as specified)

"O" document referring to an oral disclosure, use, exhibition or other means

"P" document published prior to the international filing date but later than the priority date claimed

"T" later document published after the international filing date or priority date and not in conflict with the application but cited to understand the principle or theory underlying the invention

"X" document of particular relevance; the claimed invention cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone

"Y" document of particular relevance; the claimed invention cannot be considered to involve an inventive step when the document is combined with one or more other such documents, such combination being obvious to a person skilled in the art

"&" document member of the same patent family

Date of the actual completion of the international search

09 October 2019

Date of mailing of the international search report

04 DEC 2019

Name and mailing address of the ISA/US

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INTERNATIONAL SEARCH REPORT
Information on patent family members

International application No.

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Continuation of Box No. III Observations where unity of invention is lacking:

Groups I+: Claims 1-17, drawn to a recombinant DNA molecule comprising a DNA sequence having gene-regulatory activity, and a method of use thereof. The composition will be searched to the extent that the recombinant DNA molecule encompasses a DNA sequence of SEQ ID NO: 1. It is believed that claims 1-17 encompass this first named invention, and thus these claims will be searched without fee to the extent that they encompass SEQ ID NO: 1. Additional recombinant DNA molecule(s) will be searched upon the payment of additional fees. Applicants must specify the claims that encompass any additionally elected recombinant DNA molecule(s). Applicants must further indicate, if applicable, the claims which encompass the first named invention, if different than what was indicated above for this group. Failure to clearly identify how any paid additional invention fees are to be applied to the "+" group(s) will result in only the first claimed invention to be searched. An exemplary election would be a recombinant DNA molecule encompassing a DNA sequence of SEQ ID NO: 26 (Claims 1-17).

The inventions listed as Groups I+ do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

No technical features are shared between the polynucleotide sequences of Groups I+ and, accordingly, these groups lack unity a priori.

Additionally, even if Groups I+ were considered to share the technical features of including: a recombinant DNA molecule, these shared technical features are previously disclosed by US 2016/0177326 A1 to Monsanto Technology, LLC. (hereinafter "Monsanto").

Monsanto teaches (instant claim 1) a recombinant DNA molecule (Abstract - "The invention provides novel recombinant DNA molecules and constructs useful for modulating gene expression in plants") comprising a DNA sequence comprising synthetic promoter, leader, enhancer, intron or 3' UTR (para [0020] - "SEQ ID NOs: 1,... and 168 are DNA sequences of regulatory expression element groups (EXPs) comprising a promoter sequence operably linked 5' to a leader sequence which is operably linked 5' to an intron sequence."; para [0037] - "Alternately, promoters may be synthetically produced or manipulated DNA molecules."; para [0039] - "Any of the promoters presented as SEQ ID NOs: 2, 6, ... and 169 and fragments or enhancers derived therefrom can be used to make chimeric regulatory element compositions"), wherein said DNA sequence is operably linked to a heterologous transcribable DNA molecule (Claim 1 - "A recombinant DNA molecule comprising a DNA sequence selected from ... wherein said DNA sequence is operably linked to a heterologous transcribable DNA molecule.").

Monsanto teaches (instant claim 9) a transgenic plant cell comprising a recombinant DNA molecule (Abstract - "The invention provides novel recombinant DNA molecules and constructs useful for modulating gene expression in plants, plant cells"; para [0085] - "The invention also includes and provides transformed plant cells comprising a DNA molecule of the invention. The transformed or transgenic plant cells of the invention include regenerable and/or non-regenerable plant cells.").

As said technical features were known in the art at the time of the invention, these cannot be considered special technical features that would otherwise unify the groups.

Groups I+ therefore lack unity under PCT Rule 13 because they do not share a same or corresponding special technical feature.