

INFORME PRELIMINAR INTERNACIONAL SOBRE LA PATENTABILIDAD

Número de solicitud internacional:
IB2020050112
Fecha de finalización del presente informe:
05 de junio de 2021

Traducido al Español desde hasta pagina 4 de la “**Notificación de Transmisión del Informe Preliminar Internacional Sobre la Patentabilidad**” - Fecha de finalización: 05 de Junio de 2021.

2. Citas y explicaciones (Regla 70.7)

-----EXPLICACIÓN-----

Las reivindicaciones 1-6, 8-9, 11-12 y 14-19 carecen de una actividad inventiva en virtud del Artículo 33.3) del PCT, ya que son evidentes en **US2010/0303940 a Enan**.

El solicitante argumenta que Enan enseña mezclas de ingredientes como el aceite de flor de lila ... citrato de trietilo, salicilato de metilo y similares e ingredientes que se pueden mezclar y que no hay motivación para ninguna combinación específica. El solicitante argumenta que cada ingrediente reivindicado se recita en una larga lista de posibles opciones y que sería necesario llevar a cabo una gran cantidad de experimentos indebidos para llegar a la invención reivindicada y que no hay orientación para siquiera comenzar a intentarlo. Con respecto al citrato de trietilo, el solicitante argumenta además que este ingrediente se enseña a ser un plastificante y que uno no miraría a un plastificante en la preparación de un activador químico. Estos argumentos no son convincentes. Una referencia en el estado de la técnica es relevante para todo lo que enseña y, lo que es más importante, las afirmaciones instantáneas no impiden la inclusión de ingredientes además de los recitados positivamente. Las afirmaciones utilizan la frase de transición abierta "que comprende" que permite la inclusión de ingredientes no recitados como el aceite de flor de lila ... citrato de trietilo, salicilato de metilo, etc. El citrato de trietilo puede ser un plastificante, pero se enumera explícitamente como un posible ingrediente en las composiciones de control de plagas en la lista corta en el resumen. El hecho de que algo sea un plastificante no impide que también haga doble función como pesticida. Además, las reclamaciones inmediatas son bastante abiertas en cuanto a la forma de la composición y no se recitan cantidades. Las afirmaciones no impedirían una composición con un plastificante de citrato de trietilo en su forma actual. El hecho es que todos los ingredientes reclamados se enseñan dentro de las cuatro esquinas de la referencia de Enan y se enseñan a ser efectivos en una formulación de pesticidas. Uno de los conocimientos ordinarios en el arte no es un autómatas. Uno sería capaz de seguir las sugerencias de la referencia Enan para llegar a la composición reclamada sin experimentación indebida. El solicitante no ha proporcionado pruebas de resultados inesperados que sean proporcionales en alcance a las afirmaciones instantáneas que sugieren que la composición reclamada funciona inesperadamente mejor que las composiciones sugeridas por Enan.

La **reivindicación 7 carece** de una actividad inventiva en virtud del Artículo 33.3) del PCT, ya que es obvio en relación con la **US2010/0303940 a Enan** en vista de "**lauril éter sulfato de sodio micelización y mejora de la solubilidad en agua hacia el naftaleno y el pireno: efecto del grado de etoxilación**" por Aoudia M. y otros.

La **reivindicación 10 carece** de una actividad inventiva en virtud del Artículo 33.3) del PCT, ya que es obvio en relación con la **US2010/0303940 a Enan** en vista de **US2005/0256005 a Reekmans** y otros.

La **reivindicación 14 carece** de una actividad inventiva en virtud del Artículo 33.3) del PCT, ya que es obvio en relación con la **US2010/0303940 a Enan** en vista de **Reekmans y en la vista posterior de Aoudia**.

En cuanto a las reivindicaciones dependientes 7, 10 y 14, el solicitante aduce que, dado que la reivindicación 1 es a la vez novedosa e inventiva, las reivindicaciones dependientes 7, 10 y 14 también lo son. Como señala el examinador anteriormente, ellos opinan que no falta a Enan. Como no se presentan argumentos sobre el fondo de la combinación con la referencia secundaria, se mantienen los rechazos.

PATENT COOPERATION TREATY

From the INTERNATIONAL PRELIMINARY EXAMINING
AUTHORITY

To:

**CHARI GUILLAUME MARAIS
ORO AGRI GROUP INTELLECTUAL
PROPERTY MANAGER AND R**

**2788 S. MAPLE AVENUE
93725 FRESNO, CA
OTHER**

PCT

NOTIFICATION OF TRANSMITTAL OF
INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY (CHAPTER II OF
THE PATENT COOPERATION TREATY)

(PCT Rule 71.1)

Applicant's or agent's file reference P17PC		Date of mailing (day/month/year) 10 June 2021 (10.06.2021)
International application No. PCT/IB2020/050112	International filing date (day/month/year) 08 January 2020 (08.01.2020)	Priority date (day/month/year) 08 January 2019 (08.01.2019)
Applicant ORO AGRI INC		

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 invention 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 IPEA/US
**COMMISSIONER FOR PATENTS MAIL STOP PCT,
ATTN: IPEA/US P.O. BOX 1450 ALEXANDRIA, VA
22313-1450, UNITED STATES OF AMERICA**

Authorized officer

KORTNEY L. KLINKEL

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 P17PC	FOR FURTHER ACTION	See Form PCT/IPEA/416
International application No. PCT/IB2020/050112	International filing date (<i>day/month/year</i>) 08 January 2020 (08.01.2020)	Priority date (<i>day/month/year</i>) 08 January 2019 (08.01.2019)
International Patent Classification (IPC) or both national classification and IPC IPC: A01N 43/653; C07D 401/06 CPC: A01N 43/653; C07D 401/06		
Applicant ORO AGRI INC		

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 3 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 the form of an Annex C/ST.25 text file, as indicated in the Supplemental Box Relating to Sequence Listing (see paragraph 3ter 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 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

Date of submission of the demand 09 November 2020 (09.11.2020)	Date of completion of this report 05 June 2021 (05.06.2021)
Name and mailing address of the IPEA/US COMMISSIONER FOR PATENTS MAIL STOP PCT, ATTN: IPEA/US P.O. BOX 1450 ALEXANDRIA, VA 22313-1450, UNITED STATES OF AMERICA	Authorized officer KORTNEY L. KLINKEL

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/IB2020/050112

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 (Rules 12.3(a) and 23.1(b))
- ☐ publication of the international application (Rule 12.4(a))
- ☐ international preliminary examination (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*):
- ☒ the international application as originally filed/furnished, or
- ☒ the description:
- pages 1-39 as originally filed/furnished.
- pages* _____ received by this Authority on _____
- pages* _____ received by this Authority on _____
- ☒ the claims:
- Nos. 1-19 as originally filed/furnished.
- Nos.* _____ as amended (together with any statement) under Article 19
- Nos.* _____ received by this Authority on _____
- ☒ the drawings:
- pages 1/12-12/12 as originally filed/furnished.
- pages* _____ received by this Authority on _____
- pages* _____ received by this Authority on _____
- ☐ 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*): _____
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. With regard to top-up searches (Rules 66.1ter and 70.2(f)):
- ☐ A top-up search was carried out by this Authority on _____
- ☐ Additional relevant documents have been discovered during the top-up search.
- ☒ No top-up search was carried out by this Authority because it would serve no useful purpose.
7. ☐ 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)).

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

Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step and industrial applicability; citations and explanations supporting such statement
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1. Statement

Novelty (N)	Claims	1-19	YES
	Claims	NONE	NO
Inventive step (IS)	Claims	NONE	YES
	Claims	1-19	NO
Industrial applicability (IA)	Claims	1-19	YES
	Claims	NONE	NO

2. Citations and explanations (Rule 70.7)

----- EXPLANATION -----

Claims 1-6, 8-9, 11-12 and 14-19 lack an inventive step under PCT Article 33(3) as being obvious over **US 2010/0303940 to Enan**.

Applicant argues that Enan teaches blends of ingredients such as lilac flower oil...triethyl citrate, methyl salicylate and the like and ingredients that can be blended and that there is no motivation for any specific combination. Applicant argues each ingredient claimed is recited in a long list of possible options and that a vast amount of undue experimentation would need to be conducted to arrive at the claimed invention and there is no guidance to even commence to try. Regarding triethyl citrate applicant further argues that this ingredient is taught to be a plasticizer and that one would not look to a plasticizer in preparing a chemical activator. These arguments are not persuasive. A prior art reference is relevant for all it teaches and importantly, the instant claims do not prevent the inclusion of ingredients in addition to those positively recited. The claims utilize the open transitional phrase "comprising" which permits the inclusion of unrecited ingredients such as lilac flower oil...triethyl citrate, methyl salicylate, etc. Triethyl citrate may be a plasticizer, but it is explicitly listed as a possible ingredient in the pest control compositions in the short list in the abstract. Just because something is a plasticizer does not preclude it from pulling double duty as a pesticide as well. Furthermore, the instant claims are rather open in terms of the form of the composition and no amounts are recited. The claims would not prevent a composition with a triethyl citrate plasticizer in their current form. The fact remains that all of the claimed ingredients are taught within the four corners of the Enan reference and taught to be effective in a pesticide formulation. One of ordinary skill in the art is not an automaton. One would be able to follow the suggestions of the Enan reference to arrive at the claimed composition without undue experimentation. Applicant has not provided evidence of unexpected results that are commensurate in scope with the instant claims suggesting that the claimed composition performs unexpectedly better than compositions suggested by Enan.

Claim 7 lacks an inventive step under PCT Article 33(3) as being obvious over **US 2010/0303940 to Enan** in view of "**sodium Lauryl Ether Sulfate Micellization and Water Solubility Enhancement Towards Naphthalene and Pyrene: Effect of the Degree of Ethoxylation**" by Aoudia M. et al.

Claim 10 lacks an inventive step under PCT Article 33(3) as being obvious over **US 2010/0303940 to Enan** in view of **US 2005/0256005 to Reekmans et al.**

Claim 14 lacks an inventive step under PCT Article 33(3) as being obvious over **US 2010/0303940 to Enan** in view of **Reekmans and in the further view of Aoudia**.

Regarding dependent claims 7, 10 and 14, Applicant argues that because claim 1 is both novel and inventive that the dependent claims 7, 10 and 14 therefore are as well. As the examiner notes above, they are of the opinion that Enan is not lacking. As no arguments regarding the merits of the combination with the secondary reference are presented, the rejections are maintained.