

INFORME PRELIMINAR INTERNACIONAL SOBRE LA PATENTABILIDAD

Número de solicitud internacional:
IB2020050125
Fecha de finalización del presente informe:
04 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: 04 de Junio de 2021.

2. Citas y explicaciones (Regla 70.7)

----- NUEVAS CITAS -----

WO 2016/202572 A1 (ACHARYA, KOUISHIK) 22 de diciembre de 2016 (22.12.2016), pág. 3, ln.

----- EXPLICACIÓN -----

Las enmiendas del solicitante a las reivindicaciones requerían los nuevos motivos de rechazo presentados en el presente documento.

Las presentes reivindicaciones se refieren a composiciones líquidas que comprenden ésteres de alquilo graso de la fórmula del solicitante, específicamente miristato de isopropilo y/o mezclas de los mismos, un surfactante aniónico y un surfactante no iónico, en el que el miristato de isopropilo tiene una capacidad de disolución de cera parafínica de 2-20% en peso a 25°C, y en el que la composición tiene un punto de inflamación superior a 100°C. La composición debe ser antipatógena y adecuada para su uso en la agricultura.

Se informa al solicitante de que el uso previsto no tiene ningún peso patentable más allá de que la composición debe ser antipatógena y adecuada para su uso en algún tipo de entorno agrícola. Cualquier composición líquida que comprenda los ingredientes definidos y que pueda considerarse adecuada para uso agrícola se lea en la composición alegada por el solicitante. Además, corresponde al solicitante demostrar que los parámetros utilizados para definir o caracterizar los componentes no se logran mediante una composición del estado de la técnica. En el presente caso, el solicitante tendrá que demostrar que las composiciones del estado de la técnica no poseen un punto de inflamación superior a 100°C y que el miristato de isopropilo y/o los ésteres de alquilo (C₁-C₈) del ácido alquilo (C₁₂-C₁₆) de la composición del estado de la técnica no poseen una capacidad de disolución de cera parafínica de entre el 2-20% en peso a 25°C reivindicados en las reivindicaciones modificadas 1 y 10.

La presente solicitud no cumple los criterios del Artículo 33.1) del PCT, porque el objeto de las reivindicaciones 1-5 y 10-12 no es nuevo en el sentido del Artículo 33.2) del PCT.

Con respecto a las reivindicaciones 1-5, y 10-12, Acharya (WO2016202572) revela una composición líquida que comprende 0,5% en peso a 15% en peso% de un surfactante que es un surfactante no iónico, un surfactante aniónico etoxilado, o mezclas de los mismos, y en el que el surfactante no iónico es preferiblemente un alcohol graso etoxilado de C₁₀-C₁₅ y que tiene un grado de etoxilación de 5 a 12 (pág. 3 ln. 21-28; pág. 4, última línea - pg.5, ln. 4; pág. 5, ln. 14 - pg. 5, ln. 33), y en el que el surfactante aniónico etoxilado es preferiblemente un sulfato de éter etoxilado alquilo C₁₂-C₁₆ que tiene un grado de etoxilación de 1 a 15 (véase pg. 6, ln. 20-31; pg.5, ln. 2-4), y en donde cuando se usan en combinación estos surfactantes se utilizan en cantidades de 0,5% en peso a 15% en peso%. Acharya además enseña /revela en donde su composición comprende 0,5-10 % en peso de un éster de ácidos grasos insoluble en agua, preferiblemente miristato de isopropilo, laurato de metilo, oleato de metilo, laurato de butilo o mezclas de los mismos (por ejemplo, se prefieren mezclas de miristato de isopropilo y laurato de metilo, así como el miristato de isopropilo solo) (véase pg. 8, ln. 21-22, ln. 27-28; pág. 3, ln. 21-28), y Acharya revela además en qué consiste además el agua en cantidades de 60-95% en peso (ver pg. 4, ln. 24-27).

Acharya anticipa las reivindicaciones.

PATENT COOPERATION TREATY

From the INTERNATIONAL PRELIMINARY EXAMINING
AUTHORITY

To:

CHARI GUILLAUME MARAIS
ORO AGRI GROUP INTELLECTUAL
PROPERTY MANAGER AND

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PCT

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

(PCT Rule 71.1)

Date of mailing
(day/month/year)

22 June 2021 (22.06.2021)

Applicant's or agent's file reference
P19PC

IMPORTANT NOTIFICATION

International application No.
PCT/IB2020/050125

International filing date
(day/month/year) **08 January 2020**
(08.01.2020)

Priority date
(day/month/year) **08 January 2019**
(08.01.2019)

Applicant

Berg, Paulo Sergio

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

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Authorized officer

SUE X LIU

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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 P19PC	FOR FURTHER ACTION	See Form PCT/IPEA/416
International application No. PCT/IB2020/050125	International filing date (day/month/year) 08 January 2020 (08.01.2020)	Priority date (day/month/year) 08 January 2019 (08.01.2019)
International Patent Classification (IPC) or both national classification and IPC IPC: A01N 37/02, 25/30 CPC: A01N 37/02; A01N 25/30		
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 6 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 21 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 04 June 2021 (04.06.2021)
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 SUE X LIU
Facsimile No. (571)273-8300	Telephone No. 571-272-5539

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 1-55 as originally filed/furnished.
 pages* _____ received by this Authority on _____
 pages* _____ received by this Authority on _____
- ☒ the claims:
 Nos. _____ as originally filed/furnished.
 Nos.* _____ as amended (together with any statement) under Article 19
 Nos.* 1-17 received by this Authority on 02 December 2020 (02.12.2020)
- ☒ the drawings:
 pages 1-8 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. 18-20
- ☐ 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 05 June 2021 (05.06.2021)
- ☒ 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. 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. 6-9, 13, 14-17

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. 6-9, 13, 14-17 are so unclear that no meaningful opinion could be formed (*specify*):

See Supplemental Sheet

- ☐ 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 said claims Nos. _____

- ☐ 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 Preliminary Examining 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 Preliminary Examining 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 Rules 13ter.1(a) or (b) and 13ter.2.

- ☒ See Supplemental Box for further details.

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

1. Statement

Novelty (N)	Claims	<u>none</u>	YES
	Claims	<u>1-5, 10-12</u>	NO
Inventive step (IS)	Claims	<u>none</u>	YES
	Claims	<u>1-5, 10-12</u>	NO
Industrial applicability (IA)	Claims	<u>1-5, 10-12</u>	YES
	Claims	<u>none</u>	NO

2. Citations and explanations (Rule 70.7)

----- NEW CITATIONS -----

WO 2016/202572 A1 (ACHARYA, KOUSHIK) 22 December 2016 (22.12.2016), pg. 3, ln.

----- EXPLANATION -----

Applicant's amendments to the claims necessitated the new grounds of rejection presented herein.

The present claims are directed to liquid compositions comprising fatty alkyl esters of applicant's formula, specifically isopropyl myristate and/or mixtures thereof, an anionic surfactant, and a non-ionic surfactant, wherein the isopropyl myristate has a paraffinic wax dissolution capability of 2-20 wt% at 25 °C, and wherein the composition has a flash point higher than 100 °C. The composition should be anti-pathogenic and suitable for use in agriculture.

The applicant is advised that intended use is not given any patentable weight beyond that the composition should be anti-pathogenic and suitable for use in some type of agricultural setting. Any liquid composition comprising the defined ingredients and that can be regarded as suitable for agricultural use reads on applicant's claimed composition. Further, it is the onus of an applicant to demonstrate that the parameters used to define or characterise the components are not achieved by a prior art composition. In the present case, the applicant will have to demonstrate that the prior art compositions do not possess a flash point of higher than 100 °C and that the isopropyl myristate and/or the alkyl (C₁-C₈) esters of alkyl (C₁₂-C₁₆) acid of the prior art composition does not possess a paraffinic wax dissolution capability of between 2-20 wt.-% at 25 °C claimed in amended claims 1 and 10.

The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claims 1-5 and 10-12 is not new in the sense of Article 33(2) PCT.

Regarding claims 1-5, and 10-12, Acharya (WO2016202572) discloses a liquid composition which comprises 0.5 wt% to 15% wt% of a surfactant that is a non-ionic surfactant, an ethoxylated anionic surfactant, or mixtures thereof, and wherein the non-ionic surfactant is preferably an ethoxylated fatty alcohol of C₁₀-C₁₅ and which has a degree of ethoxylation of 5 to 12 (pg. 3, ln. 21-28; pg. 4, last line-pg. 5, ln. 4; pg. 5, ln. 14-pg. 5, ln. 33), and wherein the ethoxylated anionic surfactant is preferably a C₁₂-C₁₆ alkyl ethoxylated ether sulfate that has a degree of ethoxylation of 1 to 15 (see pg. 6, ln. 20-31; pg. 5, ln. 2-4), and wherein when used in combination these surfactants are used in amounts of 0.5 wt% to 15% wt%. Acharya further teaches/discloses wherein their composition comprises 0.5-10 wt% of a water insoluble fatty acid ester, preferably isopropyl myristate, methyl laurate, methyl oleate, butyl laurate, or mixtures thereof (e.g. mixtures of isopropyl myristate and methyl laurate are preferred as is isopropyl myristate alone) (see pg. 8, ln. 21-22, ln. 27-28; pg. 3, ln. 21-28), and Acharya further discloses wherein the composition further comprises water in amounts of 60-95 wt% (see pg. 4, ln. 24-27).

Acharya anticipates the claims.

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:

Applicant's amendments to the claims necessitated the new grounds of rejection presented herein.

Claim 1, lacks antecedent basis for "the at least one alkyl (C₁-C₈)esters of alkyl (C₁₂-C₁₆)acid" that is discussed in the last 2 lines of the claim. A lack of clarity in the sense of Article 6 PCT is thus caused.

The examiner has interpreted claims 2-4 to further add an additional "at least one alkyl (C₁-C₈)esters of alkyl (C₁₂-C₁₆)acid" to the isopropyl myristate that is required by claim 1.

Claim 10, states a range of an amount of the alkyl ester of the fatty acid that is present (between 0.1-30 wt%), and then this range is followed by preferably and the narrower range of between 2-15 wt%. This renders the claim indefinite as it is unclear whether or not the range after the preferably is actually part of the claim or not. A lack of clarity in the sense of Article 6 PCT is thus caused

Claim 12 has been drafted to depend from claim 10 or claim 11 and it defines the weight ranges of the surfactants in the composition. However, the amounts claimed in claim 12 are outside of the ranges defined in claim 10, e.g. the ranges of the dependent claim 12 are broader than those claimed in the independent claim 10. A lack of clarity in the sense of Article 6 PCT is thus caused by claim 12.

Supplemental Box

In case the space in any of the preceding boxes is not sufficient.

Continuation of **Box No. III**:

Section III. Non-establishment of opinion (description/claims/drawings unclear)

Because they are multiple dependent claims which depend from multiple dependent claims and/or are claims incorporate by reference the limitations of multiple dependent claims which depend from multiple dependent claims, and as such are not drafted in accordance with the second and third sentences of Rule 6.4(a).