

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/GB2020/053107

International filing date (day/month/year)
04.12.2020

Priority date (day/month/year)
06.12.2019

International Patent Classification (IPC) or both national classification and IPC
INV. C07D405/06 A61K31/4196 A61P31/10

Applicant
PULMOCIDE LIMITED

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 <i>bis</i> .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. 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>1-28</u>
	No: Claims	
Inventive step (IS)	Yes: Claims	<u>1-28</u>
	No: Claims	
Industrial applicability (IA)	Yes: Claims	<u>1-28</u>
	No: Claims	

2. Citations and explanations

see separate sheet

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:

see separate sheet

Re Item V

Reasoned statement; citations and explanations

1. Claims 23, 24 relate to subject-matter considered by this Authority to be covered by the provisions of Rule 39.1(iv) / 67.1(iv) PCT. The patentability can be dependent upon the formulation of the claims. The EPO, for example, does not recognise as patentable claims to the use of a compound in medical treatment, but may allow claims to a compound for use in a first or further medical treatment.

2. Document D1= WO 2016/087878 A, cited in the description and the search report, is considered to represent the closest prior art. This document discloses Compound I of claim 1 (PC945) in the form of a solid (see relevant passages indicated in the ISR). According to the present application, p.7 I.9 - p.8 I.25, the compound obtained in D1 is in a poor crystalline state, polymorphic Form 3.

Claims 1 and 5 concern 2 distinct crystalline states of PC945, polymorphic Forms 1 and 2 (see e.g. Figure 7). The subject-matter of claims 1-28 is therefore novel over D1 (Article 33(2) PCT).

Highly crystalline polymorphic Forms 1 and 2 unexpectedly show numerous advantages in comparison with nearly amorphous polymorphic Form 3 of PC945 (see e.g. p.4 I. 13-21, p.10 I.21-37, p.18 I.25 - p.19 I.6, p.42 I.11 - p.43 I.3). The subject-matter of claims 1-28 is thus also inventive over D1 (Article 33(3) PCT).

Re Item VIII

Certain observations; Article 6 PCT

1. The crystalline forms claimed in claims 1 and 5 are only arbitrarily defined by means of the labels "polymorphic Form 1" and "polymorphic Form 2". However, no standard nomenclature for polymorphic crystalline forms exists. It is therefore unclear which products are covered by claims 1 and 5.

2. The term "substantially" should be deleted in claims 3 and 7. It is not clear how far the XRPD patterns can deviate from Fig.1 and Fig.2.