

PATENT COOPERATION TREATY

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

PCT

NOTIFICATION OF TRANSMITTAL OF THE INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (PCT Rule 71.1)

To:

D Young & Co LLP
120 Holborn
London EC1N 2DY
ROYAUME UNI

DEADLINE: no due date

REVIEW:

ACTION: Report on Patentability

ATTORNEY: WNB

Added by Matthew Hedger @ 11:39 am, Jun 26, 2023

Date of mailing
(day/month/year)

26.06.2023

Applicant's or agent's file reference
P122554PCT WNB

IMPORTANT NOTIFICATION

International application No.
PCT/GB2022/051717

International filing date (day/month/year)
04.07.2022

Priority date (day/month/year)
19.07.2021

Applicant
Nicoventures Trading Limited

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 inventions 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 international
preliminary examining authority:



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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 P122554PCT WNB	FOR FURTHER ACTION		See Form PCT/IPEA/416
International application No. PCT/GB2022/051717	International filing date (day/month/year) 04.07.2022	Priority date (day/month/year) 19.07.2021	
International Patent Classification (IPC) or national classification and IPC INV. A24F40/485			
Applicant Nicoventures Trading Limited			
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 <u>5</u> sheets, including this cover sheet. 3. This report is also accompanied by ANNEXES, comprising: a. ☐ 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. ☐ a separate electronic file containing a sequence listing (<i>sent to the International Bureau only</i>)			
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 or 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 17.05.2023		Date of completion of this report 26.06.2023	
Name and mailing address of the international preliminary examining authority:  European Patent Office P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Fax: +31 70 340 - 3016		Authorized officer Kock, Søren Telephone No. +49 89 2399-2173	



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 (under Rules 12.3(a) and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4(a))
 - ☐ international preliminary examination (under 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*):

Description, Pages

1-17 as originally filed

Claims, Numbers

1-18 as originally filed

Drawings, Sheets

1/4-4/4 as originally filed

- ☐ 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)).

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/GB2022/051717

6. ☒ With regard to top-up searches (Rules 66.1 *ter* and 70.2(f)):
- ☒ A top-up search was carried out by this Authority on 19.06.2023 (all discovered documents are listed in the Supplemental Box Relating to Top-up Search).
 - ☐ 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 or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	<u>1-18</u>
	No: Claims	
Inventive step (IS)	Yes: Claims	<u>1-18</u>
	No: Claims	
Industrial applicability (IA)	Yes: Claims	<u>1-18</u>
	No: Claims	

2. Citations and explanations (Rule 70.7):

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

Re Item V

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

1 Reference is made to the following document:

D1 US 2020/245685 A1 (BOSTOCK GEORGE [GB] ET AL) 6 August 2020 (2020-08-06)

2 D1 is regarded as being the prior art closest to the subject-matter of **independent system claim 1**, and discloses (cf. notably the disclosure of Fig. 10a, 10b and §128, §129) an aerosol provision system comprising an aerosolisable material transport element (wick 15) for receiving aerosolisable material to be vaporised, wherein the aerosol provision system further comprises a rotatable component (cf. §128: "*the first body 12 is rotatable in relation to the second body 18 around an axis A*"), wherein the rotatable component is configured to move between a first configuration of the aerosol provision system and a second configuration of the aerosol provision system, wherein the rotatable component in the second configuration is configured for restricting the formation of vaporised aerosolisable material from the aerosolisable material transport element (align/misalign openings 43a, 43b in order to control flow of liquid to wick, §129).

The subject-matter of claim 1 therefore differs from this known system by the rotatable component comprising a recess for accommodating a first portion of the aerosolisable material transport element and is therefore new (Article 33(2) PCT).

A technical effect of this differentiating feature can be seen in the provision of a means whereby a first portion of the aerosolisable material transport element (i.e. the wick) can be retained within the recess of the rotatable element, thereby allowing other portions of the aerosolisable material transport element to be constricted in use when the rotatable component is in the second configuration, in which the formation of vaporised aerosolisable material thus is restricted.

The problem to be solved by the present invention may be regarded as providing a protected securing/fixation of a first part of a wick.

The solution to this problem proposed in claim 1 of the present application is considered as involving an inventive step insofar as neither the problem nor the solution as set out in present independent claim 1 are addressed in the relevant art pertaining to adjustable aerosol provision systems (Article 33(3) PCT).

- 3 Independent **cartridge claim 16** includes the relevant subject-matter set out above and **independent method claim 17** includes the subject-matter of claim 1, merely formulated in corresponding method terms. The subject-matter of these claims is thus likewise considered to meet the requirements of the PCT with regard to novelty and inventive step.
- 4 Claims 2-15, 18 are dependent on an independent claim whose subject-matter is considered as being new and inventive, as discussed above, and 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

- 5 Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in D1 is not mentioned in the description, nor is this document identified therein.
- 6 The independent claims are 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 D1 (cf. Point 2 above) 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).
- 7 The features of the claims are not provided with reference signs placed in parentheses (Rule 6.2(b) PCT).