

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:

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Date of mailing
(day/month/year)

09.04.2025

Applicant's or agent's file reference
067481-00269-23-P-0059-WO

IMPORTANT NOTIFICATION

International application No.
PCT/US2024/018047

International filing date (day/month/year)
01.03.2024

Priority date (day/month/year)
03.03.2023

Applicant
Berry Global, 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 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 067481-00269-23-P-0059-WO	FOR FURTHER ACTION		See Form PCT/IPEA/416
International application No. PCT/US2024/018047	International filing date (day/month/year) 01.03.2024	Priority date (day/month/year) 03.03.2023	
International Patent Classification (IPC) or national classification and IPC INV. A61L15/24			
Applicant Berry Global, 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 <u>7</u> sheets, including this cover sheet. 3. This report is also accompanied by ANNEXES, comprising: a. ☒ a total of <u>7</u> 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 03.01.2025		Date of completion of this report 09.04.2025	
Name and mailing address of the international preliminary examining authority:  European Patent Office Gitschiner Str. 103 D-10958 Berlin Tel. +49 30 25901 - 0		Authorized officer Zalfen, Alina Telephone No. +31 70 340-9254 	

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

1-28 as originally filed

Claims, Numbers

1-18 filed with the letter of 19-03-2025

Drawings, Sheets

1/12-12/12 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/US2024/018047

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 31.03.2025 (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>1-11, 15-18</u>
	No: Claims	<u>12-14</u>
Inventive step (IS)	Yes: Claims	<u>1-11, 16-18</u>
	No: Claims	<u>12-15</u>
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

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

1. Cited documents

Reference is made to the following documents:

- D1 US 2017/360983 A1 (MALDONADO CLARISSA [US] ET AL) 21 December 2017 (2017-12-21)
- D2 US 2023/010214 A1 (MARTINEZ-SANTIAGO JOSE [GB] ET AL) 12 January 2023 (2023-01-12)
- D3 US 2016/158404 A1 (SCHNEIDER DAVID J [US] ET AL) 9 June 2016 (2016-06-09)

Notwithstanding the lack of clarity (Article 6 PCT) mentioned under **Item VIII**, the following is to be noted concerning novelty and inventive step:

2. Novelty (Article 33(2) PCT)

The present application does not meet the criteria of Article 33(2) PCT, because the subject-matter of claims 12-14 is not new.

2.1 Document D1 discloses (the references in parentheses applying to this document) an absorbent article comprising an odor absorbing material (paragraph [0001]), the absorbent article including a chassis comprising a topsheet, a backsheet, and an absorbent core disposed between the topsheet and backsheet; the backsheet may be joined to the core and/or the topsheet, and an acquisition-distribution system may be disposed between the topsheet and the absorbent core (paragraph [0031] - paragraph [0035]). The backsheet comprises a film comprising a plurality of micropores and odor absorbing material disposed in the micropores (paragraph [0006]). The films of the backsheet may be breathable polymeric films comprising internal microporosities, prepared by formulating a thermoplastic polymer such as polyethylene with a pore-forming filler to form an extrudate or film, and stretching to create pores; the film may have a thickness between 0.012 mm and 0.051 mm, and also contains odor absorbing particle additives (paragraph [0058] - paragraph [0064]). Suitable odor absorbing materials include zeolites (paragraph [0072] - paragraph [0073]), which may be provided

in the form of masterbatches, and which may be processed along with one or more polyolefin resins to form a film (paragraph [0075] - paragraph [0076]). The breathable films may be monolayer (paragraph [0088] - paragraph [0090]; table 2) or multilayer (paragraph [0093]; table 5), and may have a MVTR between 200 to 20000g/m²/24 hours (table 2).

D1 does not disclose that the odor absorbing materials comprise one or more salts of ricinoleic acid, nor that they are disposed throughout the thickness of the film.

However, in view of the fact that the breathable film of claims 1-8 is an optional feature in present claims 12-14, the subject-matter of D1 takes away the novelty these claims.

2.2 Document D2 discloses (the references in parentheses applying to this document) a deodorizing composition comprising cucurbituril and one or more first metal salts (claim 1). The metal salt may be zinc ricinoleate (claim 4). The composition may be in the form of a solid, a gel, a paste or a liquid (paragraph [0030]), and comprises 1-50, more preferably 2.5-45% w/w one or more first metal salts (paragraph [0036]). The composition may be applied as a detergent, a cleansing composition, a shampoo, a softener, a softener sheet, a conditioner, a refresher, an air freshener, a deodorizing composition, etc. (paragraph [0051]), and is preferably a deodorant product or an antiperspirant deodorant product (paragraph [0049]).

D2 does not disclose a breathable film, comprising a vapor-permeable and liquid impermeable film comprising a microporous film.

2.3 Document D3 discloses (the references in parentheses applying to this document) an odor-controlling article, comprising an absorbent substrate having thereon a halo active aromatic sulfonamide compound (claim 1; paragraph [0019]). The absorbent substrate can be made from an absorbent material such as a polymer, a non-woven material, cellulosic fiber, or wood fluff, could be in the form of a flat sheet, and may be used in a diaper, an adult incontinence article, a sanitary napkin, a tampon, a wound dressing, or a bandage, wipe, or a pad (paragraph [0020]).

D3 does not disclose a breathable film, comprising a vapor-permeable and liquid impermeable film comprising a microporous film.

3. Inventive step (Article 33(1),(3) PCT)

3.1 The subject-matter of claims 1-11, 16-18 can be considered as inventive for the following reasons:

Document D1, which is regarded as being the closest prior art, has been summarized above.

The subject-matter of claims 1-11, 16-18 differs from this known teaching in that the breathable film comprises as odorous compound sequestering agents salts of ricinoleic acid, dispersed throughout the thickness of the film.

The application does not show any technical effects linked to this differences.

The objective technical problem to be solved by the subject-matter of the above claims may therefore be regarded as the provision of an alternative breathable film comprising odorous compound sequestering agents.

The solution proposed in claims 1-11, 16-18 of the present application can be considered as involving an inventive step (Article 33(3) PCT). D1 suggests the use of zeolites in the micropores of the backsheet film, and do not hint at the use of other materials within the thickness of the film. Although the same salts of ricinoleic acid, in the same percentages, have been proposed as odorous compound sequestering agents in document D2: claims 1,4; paragraph [0036]; paragraph [0051], D2 is directed to personal care products, provided in the form of a solid, a gel, a paste or a liquid. The skilled person would not find in the cited documents any hints or suggestions to include compositions comprising salts of ricinoleic acid in the body of a microporous film.

3.2 Dependent claim 15 does not contain any features which, in combination with the features of claim 14, meet the requirements of the PCT in respect of inventive step.

The reasons therefore are that the additional features of the said claim - i.e. forming thermal bonds via melt-extruding - are a combination of features obvious to the man skilled in the art in consideration of the disclosure of the prior art named in the present proceedings, or they concern only minor modifications which lie within the normal practice of the man skilled in the art.

4. Industrial applicability (Article 33(4) PCT)

The subject-matter of present claims 1-18 is considered to be industrially applicable, therefore the claims satisfy the criterion set forth in Article 33(4) PCT.

Re Item VII

Certain defects in the international application

Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in D1 - D3 is not mentioned in the description, nor are these documents identified therein.

Re Item VIII

Certain observations on the international application

1. The present application relates to a breathable film, comprising: a vapor-permeable and liquid impermeable (VPLI) film comprising a microporous film. It is noted the application gives the term "microporous" a particular definition, as visible from page 5, lines 30-36, as well as to the term "film" - see page 5, lines 26-29. Such definitions should be included in claim 1, so that the meaning of the term is clear from the wording of the claim itself (Article 6 PCT).
2. The subject-matter described on page 19, lines 17-27, and examples 2-4 does not fall within the scope of the claims, since it describes non-breathable films. This inconsistency between the claims and the description leads to doubt concerning the matter for which protection is sought, thereby rendering the claims unclear, Article 6 PCT.
3. Present independent claims 12 and 14 are directed to an absorbent article comprising *inter alia* a backsheet comprising a film, respectively to a method of making the absorbent article by providing / forming a backsheet comprising a film. However, the film comprised in the backsheet is not defined as being according to the breathable film disclosed in claims 1-8, the corresponding feature being introduced by the wording "such as", indicative of an optional feature.

IN THE EUROPEAN PATENT OFFICE
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

APPLICANT:	BERRY GLOBAL, INC.
INTERNATIONAL APPLICATION NO.:	PCT/US2024/018047
INTERNATIONAL FILING DATE:	01 MARCH 2024
TITLE:	FILMS WITH MALODOR CONTROL

Authorized Officer: Alina Zalfen

European Patent Office
Gitschiner Str. 103
D-10958 Berlin

RESPONSE TO THE SECOND
WRITTEN OPINION ON PRELIMINARY EXAMINATION

Dear Officer Zalfen:

This communication is in response to the Written Opinion, dated 22 January 2025, from the International Preliminary Examining Authority (IPEA). Applicants have submitted herewith amendments under Article 34, as described more fully below, to correct certain defects in the claims and to more particularly distinguish the claimed invention from the cited references. In addition and as also described more fully below, Applicants have provided remarks explaining the patentability of the claimed invention to overcome the defects noted in the Written Opinion. Applicants respectfully request reconsideration in light of these amendments and remarks and issuance of a favorable International Preliminary Report on Patentability.

In accordance with the Article 34 amendments, claim 18 has each been amended to recite that the liquid permeable topsheet (LPTS) is a top-apertured-film (TAF) as requested by the Examiner. A “marked-up” copy of the claims has been provided to easily identify the claim amendments. A clean copy of the amended claims is also provided with this response.

For the reasons provided below, Applicants respectfully submit that amended claims as set forth in the clean copy of the amended claims, as submitted under Article 34 on even date herewith, are patentable over the cited references.

REMARKS

At the outset, Applicant thanks the Examiner for acknowledging that claims 1-11 and 16-18 are patentable over the prior art.

The Examiner argues that claims 12-14 are anticipated by US 2017/360983 (D1) and claims 12-15 lack inventive step over D1. Applicant respectfully disagrees.

D1 is directed to an absorbent article having a chassis comprising a topsheet, a backsheet, and an absorbent core disposed between the topsheet and backsheet. The backsheet comprises a film comprising a plurality of micropores, in which an odor absorbing material disposed in one or more of the micropores. D1 teaches that the odor absorbing material may be employed to prevent odors from adhesives used to join various components of the absorbent article together. The odor absorbing material is taught by D1 to be one or more zeolites due to their open three-dimensional framework structure that acts as a molecular sieve. D1, however, does not teach or suggest the use of at least one OCSA dispersed throughout the thickness of a microporous film, in which the at least one OCSA comprises one or more salts of ricinoleic acid.

As noted above, the Examiner has found independent claim 1 (and other claims depending therefrom) as patentable over the cited art. Moreover, the Examiner acknowledges within section 3.1 of the Written Opinion that D1 does not teach or suggest the presence of one or more salts of ricinoleic acid, much less the dispersion thereof throughout the thickness of a film. Applicant also notes that claims 12-15, whether directly or indirectly, incorporate the patentable subject matter of independent claim 1. In this regard, Applicant submits that all claims are patentable over the prior art of record. That is, since the film of independent claim 1 is patentable over the prior art of record, then the article and method claims of the present application incorporating the patentable film of independent claim 1 must be patentable over the prior art of record as well.

Accordingly, D1 does not render any of the claims unpatentable.

In addition to the prior art rejections, the Examiner notes that the previously added claim 18 appears to introduce subject matter beyond the scope of the application. In

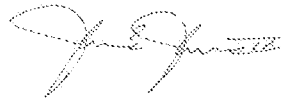
particular, the Examiner notes that the application describes liquid permeable topsheets (LPTS) having one or more salts of ricinoleic acid in instances where the LPTS is a top-apertured-film (TAF).

With regard to the objection to claim 18, Applicant has amended this claim to clarify that the LPTS, in such embodiments, is a TAF to expedite a favorable opinion.

CONCLUSION

All of the points raised by the IPEA and Written Opinion have now been addressed by clear and proper amendments to the claims of the pending application. Accordingly, Applicants respectfully request that a favorable International Preliminary Report on Patentability indicate the same.

Respectfully Submitted,



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Docket No.: 067481/00269/23-P-0059-WO

CLEAN CLAIMS

THAT WHICH IS CLAIMED:

1. A breathable film, comprising: a vapor-permeable and liquid impermeable (VPLI) film comprising a microporous film comprising a plurality of micropores, wherein the microporous film includes (a) a first outermost surface, (b) a second outermost surface, (c) a thickness extending between the first outermost surface and the second outermost surface, and (d) at least one odorous compound sequestering agent (OCSA) dispersed throughout the thickness of the film, wherein the at least one OCSA comprises one or more salts of ricinoleic acid.
2. The breathable film of claim 1, wherein the one or more salts of ricinoleic acid comprises a transition metal and/or a post-transition metal.
3. The breathable film of claim 1, wherein the one or more salts of ricinoleic acid comprises zinc ricinoleate.
4. The breathable film of claims 1-3, wherein the one or more salts of ricinoleic acid comprises from about 0.0001 wt. % to about 40 wt. % of the microporous film, such as at least about any of the following: 0.0001, 0.001, 0.01, 0.02, 0.05, 0.08, 0.1, 0.5, 0.2, 0.5, 0.8, 1, 2, 5, 8, and 10 wt. % of the microporous film, and/or at most about any of the following: 40, 30, 20, 18, 15, 12, and 10 wt. % of the microporous film.
5. The breathable film of claims 1-4, wherein the microporous film comprises a single-layer film or a multi-layer film comprising from 2 to about 10 individual microporous film layers bonded together, such as from 2, 3, 4, or 5 individual microporous film layers bonded together, and/or at most about any of the following: 10, 9, 8, 7, 6, and 5 individual microporous film layers bonded together.

CLEAN CLAIMS

6. The breathable film of claims 1-5, wherein the thickness of the microporous film comprises from about 10 to about 500 microns, such as at least about any of the following: 10, 20, 30, 40, 50, 60, 80, 100, 150, 200, and 250 microns, and/or at most about any of the following: 500, 450, 400, 350, 300, and 250 microns.

7. The breathable film of claims 1-6, wherein the microporous film comprises a polymer component and an additive component, wherein the additive component comprises (i) the one or more salts of ricinoleic acid, and optionally (a) one or more cucurbituril compounds, and/or (b) one or more zeolites, and/or (c) one or more halo active aromatic sulfonamide compounds, and (ii) a pore-forming filler material comprising a plurality of filler-particles; and wherein the polymer component of the microporous film comprises a polyolefin, such as a polyethylene or copolymer thereof or a polypropylene or a copolymer thereof or a blend of a first polyolefin and a second polyolefin.

8. The breathable film of claims 1-7, wherein the microporous film has a MVTR from 200 to 20,000 g/m²/24 hours as determined according to WSP 70.4(08).

9. A method of forming a breathable film, comprising:
 - (i) forming a polymer melt;
 - (ii) adding a pore-forming filler material to the polymer melt;
 - (iii) adding a dry masterbatch to the polymer melt, wherein the dry masterbatch comprises at least one odorous compound sequestering agent (OCSA) comprising one or more salts of ricinoleic acid;
 - (iv) admixing the pore-forming filler material and the dry masterbatch into the polymer melt;
 - (v) melt extruding the polymer melt including the pore-forming filler material and at least OCSA to form an intermediate film;

CLEAN CLAIMS

(vi) incrementally stretching the intermediate film in a machine-direction and/or a cross-direction to form the breathable film.

10. The method of claim 9, wherein the dry masterbatch includes a polymer matrix component and the at least one OCSA is dispersed throughout the polymer matrix.

11. The method of claim 10, wherein the polymer matrix comprises a matrix polymer corresponding to a polymer component of the polymer melt.

12. An absorbent article, comprising:

(i) a liquid permeable topsheet (LPTS), such as a nonwoven fabric or a top-apertured-film (TAF);

(ii) a backsheet comprising a film, such as a breathable film according to any one of claims 1-8;

(iii) an absorbent core, wherein the absorbent core is located directly or indirectly between the LPTS and the backsheet.

13. The absorbent article of claim 12, further comprising an acquisition distribution layer (ADL) located directly or indirectly between the LPTS and the absorbent core.

14. A method of making an absorbent article, comprising:

(i) providing or forming a liquid permeable topsheet (LPTS), such as a nonwoven fabric or a top-apertured-film (TAF);

(ii) providing or forming a backsheet comprising a film, such as a breathable film according to any one of claims 1-8;

CLEAN CLAIMS

(iii) providing or forming an absorbent core, wherein the absorbent core is located directly or indirectly between the LPTS and the backsheet; and

(iv) bonding the backsheet directly or indirectly to the absorbent core.

15. The method of claim 14, wherein the step of directly or indirectly bonding the backsheet to the absorbent core comprises directly bonding the backsheet to the absorbent core via the formation of one or more thermal bonds between the backsheet to the absorbent core, via melt-extruding a precursor film directly onto the absorbent core either before or after incrementally stretching the precursor film to form a microporous film, or via melt-extruding the film directly onto the absorbent core.

16. The breathable film of claim 1, wherein the at least one OCSA further comprises (i) one or more cucurbituril compounds, and/or (ii) one or more zeolites, and/or (iii) one or more halo active aromatic sulfonamide compounds.

17. The method of claim 9, wherein the at least one OCSA further comprises (i) one or more cucurbituril compounds, and/or (ii) one or more zeolites, and/or (iii) one or more halo active aromatic sulfonamide compounds.

18. The absorbent article of claim 12, wherein the LPTS is a TAF and includes one or more salts of ricinoleic acid.

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