

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

PCT

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.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/EP2024/055209

International filing date (day/month/year)
29.02.2024

Priority date (day/month/year)
03.03.2023

International Patent Classification (IPC) or both national classification and IPC
INV. A01N25/04 A01P7/04

Applicant
BAYER AKTIENGESELLSCHAFT

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 43bis.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 66.1bis(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

Bertrand, Franck

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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.
 - b. ☐ furnished subsequent to the international filing date for the purposes of international search (Rule 13ter.1(a)),
☐ accompanied by a statement to the effect that the sequence listing does not go beyond the disclosure in the international application as filed.
4. ☐ With regard to any nucleotide and/or amino acid sequence disclosed in the international application, this opinion has been established to the extent that a meaningful opinion could be formed without a WIPO Standard ST.26 compliant sequence listing.
5. Additional comments:
see separate sheet

Box No. II Priority

1. ☐ The validity of the priority claim has not been considered because the International Searching Authority does not have in its possession a copy of the earlier application whose priority has been claimed or, where required, a translation of that earlier application. This opinion has nevertheless been established on the assumption that the relevant date (Rules 43bis.1 and 64.1) is the claimed priority date.
2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43bis.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.
3. Additional observations, if necessary:
see separate sheet

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>3-5, 13</u>
	No: Claims	<u>1, 2, 6-12, 14, 15</u>
Inventive step (IS)	Yes: Claims	
	No: Claims	<u>1-15</u>
Industrial applicability (IA)	Yes: Claims	<u>1-15</u>
	No: Claims	

2. Citations and explanations

see separate sheet

Box No. VI Certain documents cited

1. Certain published documents (Rules 43bis.1 and 70.10)

and / or

2. Non-written disclosures (Rules 43bis.1 and 70.9)

see form 210

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 I

Basis of the report

Reference is made to the following documents; the numbering will be adhered to in the rest of the procedure.

- D1 WO 2023/114120 A1 (FMC CORP [US]) 22 June 2023 (2023-06-22)
- D2 WO 2021/067678 A1 (FMC CORP [US]; FMC AGRO SINGAPORE PTE LTD [SG]) 8 April 2021 (2021-04-08)
- D3 US 9 332 756 B2 (GUTSCHE OLIVER WALTER [US]; ANNAN ISAAC BILLY [US] ET AL.) 10 May 2016 (2016-05-10)
- D4 WO 2008/031512 A1 (BAYER CROPSCIENCE AG [DE]; VERMEER RONALD [DE] ET AL.) 20 March 2008 (2008-03-20)

Re Item II

Priority

The priority rights appear to be validly claimed as the present application was disclosed in the application the priority of which is claimed. Esp., the water content according to the present claim 1 is found in the bridging paragraph between pp.25-26 in the said priority application. Nevertheless, D1 was filed before the present priority date and published between the present priority and filing dates and can thus be relevant in some national/regional phases.

Re Item V

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

The present invention relates to a systemic insecticide formulation.

D2-D4 appear to disclose in their examples subject-matter falling under the strict wording of the present claims 1, 2, 6-12, 14 and 15, which is therefore not new in the sense of Art.33(2) PCT.

The subject-matter of the present claims 3-5 and 13 distinguishes from the anticipating matter out of D2-D4 in the choice of the active. The skilled artisan would have considered similar formulations for the similar purpose. It has neither been shown that an unexpected particular advantage is obtained by this choice nor that there is any prejudice to overcome to apply the known formulations to further known, high melting and water insoluble actives. Further, the present comparative examples are deprived of any adjuvant, contrary to the closest prior art. The subject-matter of the present claims 1-15 does thus not involve an inventive step (Art.33(3)PCT).

Presently, only ethiprole is tested with a specific methylated oil and with a specific alcohol ethoxylate and with a specific alkylarylsulfate; if the claimed invention is argued not to be derivable from the prior art, then the examples cannot be extrapolated to the full extent of the present claims either.

NB: the combination above is mentioned in the examples only, without any indication in the application of associated advantages over other embodiments.

Further, if the formulations are argued to be very sensitive to changes in ingredients, there could be legitimate doubts that any additional compounds can be added while maintaining the sought effect.

Re Item VI

Certain documents cited

Certain published documents

Application No	Publication date	Filing date	Priority date (<i>valid claim</i>)
Patent No	(<i>day/month/year</i>)	(<i>day/month/year</i>)	(<i>day/month/year</i>)
WO 2023/114120	22/06/2023	12/12/2022	13/12/2021

Re Item VIII

Certain observations on the international application

A number of examples do not fall under the claimed scope, e.g. because of a different water content, without being identified as being comparative (Art. 6 PCT).