

PATENT COOPERATION TREATY

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

PCT

WRITTEN OPINION OF THE INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

(PCT Rule 66)

To:

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ESPAGNE

Date of mailing (day/month/year)	28.08.2013
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Applicant's or agent's file reference WHEYLAYER	REPLY DUE within <u>2</u> month(s) from the above date of mailing
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International application No. PCT/IB2011/053271	International filing date (day/month/year) 22.07.2011	Priority date (day/month/year)
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International Patent Classification (IPC) or both national classification and IPC
INV. C08J704

Applicant
Pimec

1. The written opinion established by the International Searching Authority:
 is is not
considered to be a written opinion of the International Preliminary Examining Authority.
2. This second 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 66.2(a)(ii) 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
3. The applicant is hereby **invited to reply** to this opinion.

When? See the time limit indicated above. The applicant may, before the expiration of that time limit, request this Authority to grant an extension, see Rule 66.2(e).

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also: For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4bis. For an informal communication with the examiner, see Rule 66.6. For an additional opportunity to submit amendments, see Rule 66.4.

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.
4. The final date by which the international preliminary report on patentability (Chapter II of the PCT) must be established according to Rule 69.2 is:

<p>Name and mailing address of the international preliminary examining authority:</p> <div style="display: flex; align-items: center;"> <p>European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Fax: +49 89 2399 - 4465</p> </div>	<p>Authorized Officer</p> <p>Frison, Céline</p> <p>Telephone No. +49 89 2399-8519</p>
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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 (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 opinion has been established on the basis of
(*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"*):

Description, Pages

17-34	as originally filed
1-16	filed with telefax on 21-05-2013

- 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 opinion has been established as if (some of) the amendments 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 opinion has been established:
- taking into account the rectification of an obvious mistake authorized by or notified to this Authority under Rule 91 (Rule 66.1(d-bis)).
 - without taking into account the rectification of an obvious mistake authorized by or notified to this Authority under Rule 91 (Rule 66.4bis).
6. Supplementary international search report(s) from Authority(ies) have been received and taken into account in drawing up this opinion (Rule 45bis.8(b) and (c)).

Box No. V Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	No:	Claims	11, 12, 14, 15
Inventive step (IS)	No:	Claims	11-15
Industrial applicability (IA)	No:	Claims	

2. Citations and explanations:

see separate sheet

1. Art. 41(2) PCT

The subject-matter of claim 16 extends beyond what has been originally disclosed. The object as originally disclosed and claimed concerned a food, pharmaceutical or cosmetic product packaged in a packaging film, whereas the object as claimed in new claim 16 is broader since it pertains to a food, pharmaceutical or cosmetic product plus a packaging film; the product does not have to be packaged in the film anymore. This is not derivable from the application as filed.

Concerning point V

Novelty

Claim 1

None of the documents discloses a drying step at 60-160°C- The subject-matter of claim 1 is thus novel (Art. 33(2) PCT).

Claim 11

In his fax of 21.5.2013, the applicant alleges that when the water of the solution is below 30%, no complete denaturation of the protein occurs, contrary to what happens in D3. However, claim 1 does not refer to a content of water of less than 30%. This argument must therefore be dismissed.

It is also noted that the claims do not mention any concentration of whey present in the coating.

The Division would review its opinion regarding novelty of claim 11 in view of D1, D2. Since at present, it cannot be certified that no complete denaturation occurs upon drying, it has to be expected that for certain heating temperature and heating time, complete denaturation can occur when carrying out the method of claim 1 (page 26, lines 27-34). Since D1 and D2 disclose coatings comprising whey which is at 100% in its native state 100%, it is expected that D1 and D2 cover the subject-matter of claim 1 when complete denaturation has occurred.

Claim 11 is therefore not novel over D1-D3 (Art. 33(2) PCT).

**WRITTEN OPINION OF THE INTERNATIONAL
PRELIMINARY EXAMINING AUTHORITY
(SEPARATE SHEET)**

International application No.

PCT/IB2011/053271

Inventive Step

The subject-matter of claim 1 is inventive (Art. 33(3) PCT)