

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY
(PCT Rule 43bis.1)**

To:

see form PCT/ISA/220

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/US2007/081461

International filing date (day/month/year)
16.10.2007

Priority date (day/month/year)
18.10.2006

International Patent Classification (IPC) or both national classification and IPC
INV. A24F47/00

Applicant
R. J. REYNOLDS TOBACCO COMPANY

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 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

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.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



European Patent Office
D-80298 Munich
Tel. +49 89 2399 - 0 Tx: 523656 epmu d
Fax: +49 89 2399 - 4465


Date of completion of this opinion

see form PCT/ISA/210

Authorized Officer

Maier, Michael

Telephone No. +49 89 2399-2477



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 and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - a sequence listing
 - table(s) related to the sequence listing
 - b. format of material:
 - on paper
 - in electronic form
 - c. time of filing/furnishing:
 - contained in the international application as filed.
 - filed together with the international application in electronic form.
 - furnished subsequently to this Authority for the purposes of search.
4. In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
5. Additional comments:

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of

the entire international application

claims Nos. 2-28

because:

the said international application, or the said claims Nos. relate to the following subject matter which does not require an international search (*specify*):

the description, claims or drawings (*indicate particular elements below*) or said claims Nos. 2-28 are so unclear that no meaningful opinion could be formed (*specify*):

see separate sheet

the claims, or said claims Nos. 2-28 are so inadequately supported by the description that no meaningful opinion could be formed (*specify*):

see separate sheet

no international search report has been established for the whole application or for said claims Nos. 2-28

a meaningful opinion could not be formed without the sequence listing; the applicant did not, within the prescribed time limit:

furnish a sequence listing on paper complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Searching Authority in a form and manner acceptable to it.

furnish a sequence listing in electronic form complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Searching Authority in a form and manner acceptable to it.

pay the required late furnishing fee for the furnishing of a sequence listing in response to an invitation under Rules 13ter.1(a) or (b).

a meaningful opinion could not be formed without the tables related to the sequence listings; the applicant did not, within the prescribed time limit, furnish such tables in electronic form complying with the technical requirements provided for in Annex C-bis of the Administrative Instructions, and such tables were not available to the International Searching Authority in a form and manner acceptable to it.

the tables related to the nucleotide and/or amino acid sequence listing, if in electronic form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.

See Supplemental Box for further details

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

2. Citations and explanations

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 III

- 1 The present claim 1 relates to an extremely large number of possible apparatus. Support and disclosure in the sense of Article 6 and 5 PCT is to be found however for only a very small proportion of the apparatus claimed, see the first embodiment described from page 25, line 22, to page 32, line 21, and depicted in Fig. 1. However, this description relies to a great part on technical features not described at all in the present application, but in a multitude of prior art documents mentioned in the description. Particularly two devices "Ruyan Atomizing Electronic Pipe" and "Ruyan Atomizing Electronic Cigarette" are repeatedly referred to, which are not described in sufficient detail in the present application. The non-compliance with the substantive provisions is to such an extent, that the search was performed taking into consideration the non-compliance in determining the extent of the search of claim 1 (PCT Guidelines 9.19 and 9.23).
- 2 The search of claim 1 was restricted to those claimed apparatus, which appear to be supported by the passages indicated hereinabove.
- 3 The present application further contains 27 dependent claims, numbered claims 2-28. Taking into account the limited comprehensibility of the independent claim, which puts an undue burden on the start of substantive examination, there are so many dependent claims, and they are drafted in such a way and are particularly not supported by the description in an extent that the claims as a whole are not in compliance with the provisions of clarity, conciseness and full support by the description of Article 6 PCT, as they erect a smoke screen in front of the skilled reader when assessing what should be the subject-matter to search. The non-compliance with the substantive provisions is to such an extent, that no meaningful search could be carried out with regard to said claims 2-28 (PCT Guidelines 9.19). As no meaningful search could be carried out for the subject-matter of dependent claims 2-28, examination as to novelty, inventive step, and industrial applicability is not possible for these claims.

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