

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/EP2018/055106

International filing date (day/month/year)
01.03.2018

Priority date (day/month/year)
01.03.2017

International Patent Classification (IPC) or both national classification and IPC
INV. A61B17/3205 A61B17/32 ADD. A61B17/00 A61B17/3209 A61B17/11 F16H7/08

Applicant
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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

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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:
 - in the form of an Annex C/ST.25 text file.
 - on paper or in the form of an image file.
 - b. furnished together with the international application under PCT Rule 13ter.1(a) for the purposes of international search only in the form of an Annex C/ST.25 text file.
 - c. furnished subsequent to the international filing date for the purposes of international search only:
 - in the form of an Annex C/ST.25 text file (Rule 13ter.1(a)).
 - on paper or in the form of an image file (Rule 13ter.1(b) and Administrative Instructions, Section 713).
4. In addition, in the case that more than one version or copy of a sequence listing has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that forming part of the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
5. Additional comments:

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	
	No: Claims	<u>1-17</u>
Inventive step (IS)	Yes: Claims	
	No: Claims	<u>1-17</u>
Industrial applicability (IA)	Yes: Claims	<u>1-17</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

1 **Re Item V**

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

1.1 Reference is made to the following documents:

D1 US 2011/295285 A1 (MCWEENEY JOHN [US] ET AL) 1
December 2011

D2 US 2008/188766 A1 (GERTNER MICHAEL [US]) 7 August 2008

D3 US 2007/093861 A1 (VARDI GIL [US]) 26 April 2007

1.2 The present application does not meet the criteria of Article 33(2) PCT, because the subject-matter of claim 1 is not new.

D1 discloses (with all references adhering thereto):

Device for shearing tissue in a human or animal body, comprising:
a first member (first magnet position in fig. 8) comprising a first material;
a second member (last magnet position in fig. 8) comprising a second material;
wherein the first and second materials show magnetic attraction between one another; and
a thread (suture) connected to the first member and to the second member;
characterised in that the device comprises means for pulling the thread ([0045], fig. 8).

Note: the term *means* is overly broad and comprises nearly anything, including a portion of the thread which could be grabbed by a separate instrument.

1.3 The applicant shall be advised the claim 1 is also not new in the lights of D2 and D3:

- For D2 see [0221], [0242] and figure 1L; and
- for D3 see [0029]-[0032] and figure 1.

1.4 Dependent claims 2-17 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty (Article 33(2) PCT):

- D1 discloses the subject-matter of claims 2-9, 13, 14 and 16 ([0028], [0045]-[0052] and figures 8-11);

- D2 discloses the subject-matter of claims 2-5, 7, 8, 10, 11, 13 and 17 ([0221]-[0228], [0242] and figure 1L); and
- D3 discloses the subject-matter of claims 10, 12 and 15 ([0025]-[0043] and figures 1-3).

2 Re Item VII

Certain defects in the international application

- 2.1 Although claim 1 is drafted in the two-part form, the feature of the *device compris[ing] means for pulling the thread* is incorrectly placed in the characterising portion, as it is disclosed in any of D1-D3 in combination with the features placed in the preamble (Rule 6.3(b) PCT).
- 2.2 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.

3 Re Item VIII

Certain observations on the international application

- 3.1 The application does not meet the requirements of Article 6 PCT, because claims 15 & 16 are not clear.
- 3.2 The term *thread* used in claims 15 & 16 is vague and unclear and leave the reader in doubt as to the meaning of the technical feature to which it refers (i. e., the first thread as disclosed in claim 1 or the second thread as disclosed in claim 14), thereby rendering the definition of the subject-matter of said claims unclear, Article 6 PCT.