

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/EP2018/067139

International filing date (day/month/year)
26.06.2018

Priority date (day/month/year)
27.06.2017

International Patent Classification (IPC) or both national classification and IPC
INV. A61K8/34 A61K8/37 A61Q1/02 A61Q19/00 A61K8/84 A61K8/89 A61K8/97 A61K8/25 A61K8/31 A61K8/85
A61K8/92

Applicant
L'OREAL

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

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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>1-15</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

Re Item V

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

1 Reference is made to the following documents:

D1 WO 2014/128680 A1 (OREAL [FR]) 28 August 2014 (2014-08-28)

D2 WO 2016/030851 A1 (OREAL [FR]) 3 March 2016 (2016-03-03)

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 a cosmetic composition for making up and/or caring for keratin materials, in particular the skin and/or the lips, comprising:

- at least one aqueous phase gelled with at least one synthetic polymeric hydrophilic gelling agent; and
- at least one oily phase gelled with at least one lipophilic gelling agent chosen from particulate gelling agents, organopolysiloxane elastomers, semi-crystalline polymers and dextrin esters, and mixtures thereof; the said phases forming therein a macroscopically homogeneous mixture.

The synthetic polymeric hydrophilic gelling agent at least one gelling agent is chosen from crosslinked acrylic homopolymers or copolymers; associative polymers, in particular associative polymers of polyurethane type; polyacrylamides and crosslinked and/or neutralized 2-acrylamido-2-methylpropanesulfonic acid polymers and copolymers; modified or unmodified carboxyvinyl polymers, modified or unmodified carboxyvinyl polymers, and mixtures thereof. (see in particular claims 3 and 4).

The lipophilic gelling agent is chosen from waxes, in particular microcrystalline apolar waxes, (cf. pages 31-36), in particular hydrogenated jojoba wax. They may be present in the oily phase in a proportion of from 0.5% to 30% by weight relative to the weight of the oily phase, for example between 5% and 20% of the oily phase and more particularly from 2% to 15% by weight relative to the weight of the oily phase.

Among the volatile hydrocarbon-based oils containing from 8 to 16 carbon atoms, mention may be made especially of branched C8-C16 alkanes, for instance C8-C16 isoalkanes (also known as isoparaffins), isododecane, isodecane, isohexadecane. (see in particular pages 56-58). The composition

according to the invention may comprise from 5% to 95% by weight, better still from 5% to 40% by weight and preferably from 7% to 35% by weight of oil(s) relative to the total weight of the said composition.

The ratio of the aqueous and oily phases in an aqueous phase/oily phase has a weight ratio of from 95/5 to 5/95, preferably from 30/70 to 80/20, especially ranging from 60/40 to 80/20, preferably ranging from 60/40 to 70/30 and more preferably 60/40 or 70/30.

Furthermore, the aqueous phase may comprise a polyol and said polyol may be chosen, for example, from ethylene glycol, pentaerythritol, trimethylolpropane, propylene glycol, 1,3 -propanediol, butylene glycol, isoprene glycol, pentylene glycol, hexylene glycol, glycerol, polyglycerols such as glycerol oligomers, for instance diglycerol, and polyethylene glycols, and mixtures thereof. (see description Pages 55-56) and active agents (glycerol - page 64).

The teaching of D1 anticipates the subject-matter of claims 1 to 15, which are not novel according to Art 33(2) PCT.

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

D2 discloses a composition, especially a cosmetic composition, comprising: at least one aqueous phase gelled by at least one hydrophilic gelling agent; and at least one oily phase gelled by at least one lipophilic gelling agent; said phases forming a macroscopically homogeneous mixture; said composition also comprising at least one anti-perspirant active agent selected from aluminium and/or zirconium salts, aluminium and/or zirconium complexes, and the mixtures thereof.

- 4 Dependent claims 2-15 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 and/or inventive step, see the documents D1 and D2.