

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/B2018/054711

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. A61B17/072

Applicant
ETHICON LLC

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:



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


Date of completion of this opinion

see form PCT/ISA/210

Authorized Officer

Franz, Volker

Telephone No. +49 89 2399-0



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. 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. 7-21

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. are so unclear that no meaningful opinion could be formed (*specify*):

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

no international search report has been established for the whole application or for said claims Nos. 7-21

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

furnish a sequence listing in the form of an Annex C/ST.25 text file, and such listing was not available to the International Searching Authority in the form and manner acceptable to it; or the sequence listing furnished did not comply with the standard provided for in Annex C of the Administrative Instructions.

furnish a sequence listing on paper or in the form of an image file 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 the form and manner acceptable to it; or the sequence listing furnished did not comply with the standard provided for in Annex C of the Administrative Instructions.

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

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>2</u>
	No: Claims	<u>1, 3-6</u>
Inventive step (IS)	Yes: Claims	
	No: Claims	<u>1-6</u>
Industrial applicability (IA)	Yes: Claims	<u>1-6</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 III**

Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

An incomplete search has been carried out for claims 1-6. The search covers only those embodiments of the claims that were found in the passages and figures indicated by the applicant in reply to the invitation to provide informal clarification pursuant to PCT Guideline 9.34.

As stipulated under PCT Guideline 9.34, the European Patent Office has therefore drawn up a partial search report that is exclusively directed to the subject matter found in the passages that were indicated as being particularly relevant to the claims.

2 **Re Item V**

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

2.1 Reference is made to the following documents:

D1 EP 3 034 012 A1 (ETHICON ENDO SURGERY LLC [PR]) 22
June 2016 (2016-06-22)

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

D1 a surgical tool assembly (§1), comprising: an end effector comprising an elongate channel (Fig. 25: closure tube segments 1123, 1130) configured to receive a fastener cartridge (Fig. 25: ref. 1230), wherein said elongate channel comprises a brace (Fig. 31: pivot pin 1172; note that the term brace encompasses all structure that may stabilize a pivoting arm); and a shaft comprising an articulation drive assembly (Fig. 25: articulation driver 1510), wherein said articulation drive assembly comprises an articulation link pivotably coupled to said elongate channel (Fig. 31: link 1524), wherein said articulation link comprises a pocket configured to receive said brace when said end effector is in a fully articulated configuration (Fig. 31: articulation link 1524 has a cut-out that is complementary to pivot pin 1172 in order to limit deflection and to stabilize the stapling arm).

- 2.3 The same document discloses the additional features of dependent claims 3-5 and 19 (see references cited in the search report; in particular Fig. 31 for claims 3, 4, 19 and §49 for claim 5).
- 2.4 The additional features of dependent claim 2 appear to refer to a trivial design option because providing flat surfaces for solving the technical problem how to better stabilize a temporary connection is well-known in the art, e.g. from bolt and wrench. Thus, the subject-matter of claim 2 lacks an inventive activity in the sense of Article 33(3) PCT.
- 2.5 Note that all documents recited as X in the search report anticipate at least the subject-matter of claim 1 (see passages cited in the search report).

3 Re Item VII

Certain defects in the international application

- 3.1 Independent claim 1 is not in the two-part form in accordance with Rule 6.3(b) PCT, which in the present case would be appropriate, with those features known in combination from the prior art D1 being placed in the preamble (Rule 6.3(b)(i) PCT) and the remaining features being included in the characterising part (Rule 6.3(b)(ii) PCT).
- 3.2 The features of claim 1 are not provided with reference signs placed in parentheses (Rule 6.2(b) PCT).
- 3.3 Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in D1 is not mentioned in the description, nor is this document identified therein.

4 Re Item VIII

Certain observations on the international application

- 4.1 The application does not meet the requirements of Article 6 PCT, because claims 1, 7, 17, 19, and 21 are not clear.

Although claims 1, 7, 17, 19, and 21 have been drafted as separate independent claims, they appear to relate effectively to the same subject-matter and to differ from each other only with regard to the definition of the subject-matter for which protection is sought and/or in respect of the

terminology used for the features of that subject-matter. The aforementioned claims therefore lack conciseness and as such do not meet the requirements of Article 6 PCT.