

# 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/EP2018/084059

International filing date (day/month/year)  
07.12.2018

Priority date (day/month/year)

International Patent Classification (IPC) or both national classification and IPC  
INV. A61N1/375

Applicant  
PIXIUM VISION SA

**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**

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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:

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**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**

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1. Statement

Novelty (N)	Yes: Claims	<u>5, 6, 8-14, 16-21, 25-39</u>
	No: Claims	<u>1-4, 7, 15, 22-24</u>
Inventive step (IS)	Yes: Claims	
	No: Claims	<u>1-39</u>
Industrial applicability (IA)	Yes: Claims	<u>1-39</u>
	No: Claims	

2. Citations and explanations

see separate sheet

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**Box No. VII Certain defects in the international application**

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The following defects in the form or contents of the international application have been noted:

see separate sheet

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**Box No. VIII Certain observations on the international application**

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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 V**

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

1 PRIOR ART

1.1 Reference is made to the following documents:

**D1** US 2013/330498 A1 (HOGG ANDREAS [CH] ET AL) 12 December 2013 (2013-12-12)

**D2** US 2011/039050 A1 (HOGG ANDREAS [CH] ET AL) 17 February 2011 (2011-02-17)

2 CLAIMS 1-4, 7, 15, 22

2.1 Notwithstanding the lack of clarity mentioned under Item VIII, the present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of **claim 1** is not new in the sense of Article 33(2) PCT, the reasons being as follows:

2.2 Document **D1** discloses (the references in parentheses applying to this document):

An implantable device comprising an electronic component (figs. 1 (8, 9, 10), 2 (2)) encapsulated by a hermetic packaging (figs. 1 (22), 2 (22a)), said packaging comprising a top encapsulation layer (fig. 2 (6)) and a bottom encapsulation layer (fig. 2 (3)), wherein top and bottom encapsulation layer at least partially overlap so as to form a double layer (figs. 2 (6, 3), 1).

2.3 Notwithstanding the lack of clarity mentioned under Item VIII, the additional features of **claims 2-4, 7, 15, 22** are also known from document **D1** (for **claim 2**: see e.g. figs. 2 (6, 3), 1; for **claims 3-4**: see e.g. pars. [0029], [0033]: "hermetic coating", "implantable", "biocompatible"; for **claim 7**: see e.g. fig. 2 (7); for **claim 15**: see e.g. figs. 1 (23), 2 (23a); for **claim 22**: see e.g. figs. 1 (20), 2 (20a)).

2.4 Notwithstanding the lack of clarity mentioned under Item VIII, the subject-matter of **claims 1-4, 7, 15, 22** is also not new in view of document **D2** (Articles 33(1) and (2) PCT) (see passages cited in the International Search Report).

- 2.5 It can thus be concluded that all features of **claims 1-4, 7, 15, 22** are known in combination from both document **D1** and document **D2**. The subject-matter of **claims 1-4, 7, 15, 22** is therefore not new (Articles 33(1) and (2) PCT).
- 3 DEPENDENT CLAIMS 5-6, 8-14, 16-21
- 3.1 Notwithstanding the lack of clarity mentioned under Item VIII, dependent **claims 5-6, 8-14, 16-21** do not appear to contain any additional features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty (Articles 33(1) and (2) PCT) and/or inventive step (Articles 33(1) and (3) PCT) (see passages cited in the International Search Report).
- 4 INDEPENDENT CLAIMS 23-24
- 4.1 Notwithstanding the lack of clarity mentioned under Item VIII, the device described in both document **D1** (as indicated in section 2.2) and document **D2** (as indicated in section 2.4) implies the methods of independent **claims 23-24**, the subject-matter of which therefore is also considered not new (Articles 33(1) and (2) PCT).
- 5 DEPENDENT CLAIMS 25-39
- 5.1 Notwithstanding the lack of clarity mentioned under Item VIII, dependent **claims 25-39** do not appear to contain any additional features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty (Articles 33(1) and (2) PCT) and/or inventive step (Articles 33(1) and (3) PCT) (see passages cited in the International Search Report).

### Re Item VII

#### **Certain defects in the international application**

- 1 The application does not meet the requirements of Rule 6 PCT, the reasons being as follows:
  - 1.1 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 (i.e. documents **D1-D2**) 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).
  - 1.2 The features of **claims 1-22** are not provided with reference signs placed in parentheses (Rule 6.2(b) PCT).
  - 1.3 Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in documents **D1-D2** is not mentioned in the description, nor are these documents identified therein.

### Re Item VIII

#### **Certain observations on the international application**

- 1 The application does not meet the requirements of Article 6 PCT, the reasons being as follows:
  - 1.1 Although **claims 23, 24** 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.
  - 1.2 The terms "preferably" and "optionally" used **throughout the claims** are vague and unclear and leave the reader in doubt as to the meaning of the technical feature to which they refer, thereby rendering the definition of the subject-matter of said claims unclear (Article 6 PCT).

It is particularly noted here, that expressions of this kind have no limiting effect on the scope of a claim; that is to say, the feature following any such expression is to be regarded as entirely optional (see PCT Guidelines 5.40).