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**Datasheet for the decision  
of 12 April 2018**

**Case Number:** T 2070/13 - 3.2.06

**Application Number:** 05815210.9

**Publication Number:** 1830764

**IPC:** A61F13/15

**Language of the proceedings:** EN

**Title of invention:**

A COMPOSITION AND WIPE FOR REDUCING VISCOSITY OF VISCOELASTIC  
BODILY FLUIDS

**Patent Proprietor:**

KIMBERLY-CLARK WORLDWIDE, INC.

**Opponent:**

The Procter & Gamble Company

**Headword:**

**Relevant legal provisions:**

EPC 1973 Art. 56, 83

EPC Art. 123(2)

**Keyword:**

Sufficiency of disclosure - Main request (no), Auxiliary requests 1 to 7 (no), undue burden  
Auxiliary request 8 - late filed, not prima facie allowable, not admitted,  
Auxiliary request 9 - late filed, admitted - not allowable  
Inventive step - auxiliary request 10 (no)

**Decisions cited:**

G 0010/91



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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Case Number: T 2070/13 - 3.2.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.06**  
**of 12 April 2018**

**Appellant:** The Procter & Gamble Company  
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**Representative:** Mather, Peter Geoffrey  
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**Respondent:** KIMBERLY-CLARK WORLDWIDE, INC.  
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**Representative:** Beacham, Annabel Rose  
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**Decision under appeal:** **Interlocutory decision of the Opposition**  
**Division of the European Patent Office posted on**  
**1 August 2013 concerning maintenance of the**  
**European Patent No. 1830764 in amended form.**

**Composition of the Board:**

**Chairwoman** G. de Crignis  
**Members:** M. Hannam  
E. Kossonakou

## Summary of Facts and Submissions

I. An appeal was filed by the appellant (opponent) against the interlocutory decision of the opposition division in which it found that European patent No. 1 830 764 in an amended form met the requirements of the EPC.

II. The appellant requested that the interlocutory decision be set aside and the patent be revoked.

The respondent (patent proprietor) requested that the appeal be dismissed or that the patent be maintained according to one of auxiliary requests 1 to 7.

III. The following documents, referred to by the parties, are relevant to the present decision:

D7 US-A-6 060 636

D10 US-A-4 613 447

D16 US-A-2005/0244481

D17 Journal of Clinical Microbiology, Sept 1987,  
Pages 1601-1604

D18 Abstract of an article in Dermatology, 1997; Vol.  
195, No.3, Pages 220 to 223

D19 Abstract of an article in Acta Dermato  
Venereologica, 1990; Vol.70, Issue 6, Pages 459 to 462

IV. The Board issued a summons to oral proceedings and a subsequent communication containing its provisional opinion, in which it indicated *inter alia* that the invention according to claim 1 of the main request appeared not to meet the requirements of Article 83 EPC.

V. With letter of 29 March 2018 the respondent filed auxiliary requests 8 and 9.

VI. Oral proceedings were held before the Board on 12 April 2018, during which the appellant filed a replacement auxiliary request 9 and an auxiliary request 10.

The final requests of the parties were as follows:

The appellant requested that the decision under appeal be set aside and that the European patent No. 1 830 764 be revoked.

The respondent requested that the appeal be dismissed as its main request, subsidiarily that the patent be maintained on the basis of one of auxiliary requests 1 to 7 filed with the reply to the grounds of appeal or of auxiliary request 8 filed with the submission of 29 March 2018 or auxiliary requests 9 to 10 filed in the oral proceedings before the Board.

VII. Claim 1 of the main request reads as follows:

"A topical viscoelastic fluid modifying composition for topical application to the skin and hair in the perianal and/or labial areas comprising at least one viscoelastant material and an anti-adherent material, wherein the viscoelastant material comprises a material selected from the group consisting of enzymes, linked enzymes, alkyl polyglycosides having 8-10 carbon atoms in the alkyl chain, bovine lipid extract surfactant, dextrans and dextran derivative; and wherein the anti-adherent material comprises a material selected from the group consisting of casein, farnesol, flavones, fucans, galactolipid, kininogen, inulin, iridoid

glycosides, perlecan, poloxamer 407, sulphated exopolysaccharides, and combinations thereof."

Claim 1 of auxiliary request 1 reads as follows:

"A topical viscoelastic fluid modifying composition for topical application to the skin and hair in the perianal and/or labial areas comprising at least one viscoelastant material and an anti-adherent material, wherein the composition comprises between 0.01% to 25% by weight of the viscoelastant material and between 0.01% and 25% by weight of an anti-adherent material; wherein the viscoelastant material comprises a material selected from the group consisting of enzymes, linked enzymes, alkyl polyglycosides having 8-10 carbon atoms in the alkyl chain, bovine lipid extract surfactant, dextrans and dextran derivative; and wherein the anti-adherent material comprises a material selected from the group consisting of casein, farnesol, flavones, fucans, galactolipid, kininogen, inulin, iridoid glycosides, perlecan, poloxamer 407, sulphated exopolysaccharides, and combinations thereof."

Claim 1 of auxiliary request 2 reads as claim 1 of the main request with 'casein' and 'kininogen' being deleted from the group of anti-adherent materials.

Claim 1 of auxiliary request 3 reads as claim 1 of auxiliary request 1 with 'casein' and 'kininogen' being deleted from the group of anti-adherent materials.

Claim 1 of auxiliary request 4 reads as claim 1 of the main request with the following feature inserted at the beginning of the claim:

"A wet or dry wipe comprising a base substrate and".

Claim 1 of auxiliary request 5 reads as claim 1 of auxiliary request 1 with the following feature inserted at the beginning of the claim:

"A wet or dry wipe comprising a base substrate and".

Claim 1 of auxiliary request 6 reads as claim 1 of auxiliary request 4 with 'casein' and 'kininogen' being deleted from the group of anti-adherent materials.

Claim 1 of auxiliary request 7 reads as claim 1 of auxiliary request 5 with 'casein' and 'kininogen' being deleted from the group of anti-adherent materials.

Claims 1 and 2 of auxiliary request 8 read as follows:

"1. A topical viscoelastic fluid modifying composition for topical application to the skin and hair in the perianal and/or labial areas comprising at least one viscoelastant material and an anti-adherent material, wherein the viscoelastant material comprises a material selected from the group consisting of enzymes, linked enzymes, alkyl polyglycosides having 8-10 carbon atoms in the alkyl chain, bovine lipid extract surfactant, dextrans and dextran derivative; and wherein the anti-adherent material comprises a material selected from the group consisting of inulin.

2. The composition of claim 1, wherein the composition comprises between 0.01% to 25% by weight of the viscoelastant material and between 0.01% and 25% by weight of an anti-adherent material."

Claim 1 of auxiliary request 9 reads as claim 1 of auxiliary request 8. The request further includes *inter*

*alia* the deletion of claim 2 of auxiliary request 8.

Claim 1 of auxiliary request 10 reads as claim 1 of auxiliary request 8 except for the feature after the semi-colon reading as follows:

"and wherein the anti-adherent material is a material selected from the group consisting of inulin."

The dependent claims correspond to the dependent claims in auxiliary request 9.

VIII. The appellant's arguments may be summarised as follows:

As regards the main request, this did not meet the requirements of Article 83 EPC. The patent failed to provide a method for testing anti-adherence; the test disclosed in D10 was not relevant to the claimed invention. D16 was post-published and the test method disclosed therein was not relevant to the claimed composition. The patent also lacked a single example to guide the skilled person in specifying an anti-adherent material of the invention. The large number of optional anti-adherent materials claimed would result in the skilled person having to perform an experimental programme in order to find compositions which satisfied the invention.

The same objections also applied to auxiliary requests 1 to 7.

Auxiliary request 8 should not be admitted as the subject-matter in claims 1 and 2 *prima facie* failed to meet the requirement of Article 123(2) EPC.

Auxiliary request 9 should not be admitted. The wording 'the anti-adherent material comprises a material



selected from the group consisting of inulin' still presented the skilled person with an undue burden in that the group consisted of a variety of inulin compositions of various origins and molecular weights having distinct characteristics. There was no test method disclosed to verify an anti-adherent character for the inulin compositions in the group.

Should the request be admitted into the proceedings, further scrutiny of the wording 'the anti-adherent material comprises a material selected from the group consisting of inulin' was necessary. This wording allowed, in addition to inulin, an unspecified number and amount of further materials to be present, as it failed to specify that inulin was the anti-adherent material; it could indeed be any of the further materials comprised in the claimed anti-adherent material. Accordingly, the lack of sufficient disclosure persisted.

Auxiliary request 10 should not be admitted since the subject-matter of claim 1 *prima facie* was not clearly and unambiguously disclosed in the application as filed (Article 123(2) EPC). It lacked a direct and unambiguous basis in paragraphs [0009] and [0010].

As regards the objections under Article 83 EPC, these were still applicable and relevant. A test method for reliably establishing anti-adherence was missing as was a single example of how to carry out the invention. Inulin was - as already set out for the preceding request - a family of compounds such that the skilled person was still faced with an undue burden in defining a suitable anti-adherent material and its applicable range.

As regards Article 56 EPC, D7 disclosed all features of claim 1 except for inulin. Lacking any technical data to indicate the properties of inulin, or any evidence

that it had any influence on anti-adherence of the composition, no plausible effect could be attributed to its selection and the problem of providing less fecal matter attached to the skin as set out in paragraph [0034] of the patent in suit could not be taken into account. Accordingly, the objective technical problem could be seen as providing an alternative composition to that of D7. In the absence of a proven effect based on inulin, the claimed composition should be considered as an arbitrary modification of D7 which did not represent a basis for acknowledging an inventive step.

IX. The respondent's arguments may be summarised as follows:

As regards the main request, the invention according to claim 1 met the requirements of Article 83 EPC. A specific degree of anti-adherence was not claimed, rather just a qualitative condition; this was met if at least some anti-adherent behaviour was present. A standard test was thus not required, the visual inspection sufficing such as e.g. indicated in D10. Despite a large number of potential anti-adherent compounds, present in any weight percentage, being claimed, the skilled person could carry out the invention by way of routine optimisation using standard procedures. No evidence had been provided by the appellant that the skilled person could not carry out the invention.

The same arguments applied to auxiliary requests 1 to 7.

Regarding auxiliary request 8, this was a combination of claims as granted, which had notably not met with Article 100(c) EPC objections, and so could not now be objected to under Article 123(2) EPC. Paragraphs [0010]

and [0034] also provided an unambiguous basis for the claimed subject-matter.

Auxiliary request 9 should be admitted. It met the requirement of Article 123(2) EPC. The anti-adherent material defined in claim 1 was limited to inulin such that there was *prima facie* no undue burden for the skilled person (Article 83 EPC). Even if the anti-adherent material could comprise more than just inulin, any other material than inulin was not important for the claimed anti-adherence.

Auxiliary request 10 should be admitted. The subject-matter of claim 1 had *prima facie* basis in paragraph [0010]. As regards compliance with Article 83 EPC, with the anti-adherent material being limited to just inulin, the skilled person was no longer presented with an undue burden to carry out the invention. The subject-matter of claim 1 also involved an inventive step. Starting from D7 and inulin being the differentiating feature, the objective technical problem could be seen as to provide an improved alternative composition. It was plausible from paragraph [0034] that inulin behaved as an anti-adherent such that D16 could be used to confirm this technical effect; the subject-matter of claim 1 thus involved an inventive step.

## **Reasons for the Decision**

1. *Main request - Article 83 EPC 1973*
- 1.1 The invention according to claim 1 is not disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.
- 1.2 It is firstly noted that materials known to exhibit adherent rather than anti-adherent properties are included within the listed anti-adherent materials in claim 1 (e.g. casein is used as a binder in paints).
- 1.3 The skilled person is thus in the position of having to establish, without any guidance from the patent, which composition(s) in the defined group of the listed materials exhibit(s) anti-adherence. Not only are 12 materials listed as members of the group, but combinations of these are claimed and, moreover, many of the materials (in particular flavones, fucans, galactolipid, iridoid glycosides, sulphated exopolysaccharides) describe large families of compounds which still further extends the potential materials for inclusion in the claimed composition. In the absence of a test method in the patent for determining the anti-adherence of a material, the skilled person is unable to establish, even qualitatively, suitable materials from the extensive group of materials listed in claim 1 which will meet the claimed anti-adherence.
- 1.4 Still further, claim 1 does not limit the amount of anti-adherent material to be included in the composition such that this can range from a fraction of 1% to approaching 100%, this adding another level of complexity to the skilled person identifying a suitable

anti-adherent material. The skilled person would thus be faced with an experimental programme of unreasonable proportion in order to establish which materials of the claimed group satisfied the claimed anti-adherence.

1.5 The respondent's argument that solely a qualitative, rather than a quantitative, measure of anti-adherence was being claimed could not change the Board's finding. The patent in suit fails to indicate how (qualitatively or quantitatively) or in relation to which test materials and test conditions (humidity, temperature, support structure, test fluid etc.) any degree of anti-adherence can be established. No standard procedure is disclosed in the patent in suit and none was referred to during the whole proceedings.

1.6 The respondent's contention that the visual inspection indicated in D10 of applying a specific fluorescence method would suffice in determining the anti-adherent properties of a material does not overcome the fundamental hindrance faced by the skilled person in having to select appropriate anti-adherent materials from the extensive list of materials in claim 1. The ability to recognise anti-adherent properties *per se* (in relation to defined conditions concerning material, humidity, temperature) is not questioned, rather it is the number of materials, including families of materials, and at weight percentages of less than 1% to approaching 100% that provides the skilled person with an unacceptable burden when trying to carry out the invention.

1.7 The respondent's further argument that the skilled person could carry out the invention by way of routine optimisation using standard procedures is not convincing. Even if a specific model test procedure

were used to determine the anti-adherence, this does not significantly reduce the extent of the experimental programme required to identify the appropriate anti-adherent materials. As indicated above, the sheer number of materials listed in claim 1 for which anti-adherence would have to be determined would necessitate an experimental programme to be set up and performed by the skilled person, irrespective of how the anti-adherence is actually measured. Accordingly, establishing which materials would and which would not satisfy the invention is what leads to the finding that the requirements of Article 83 EPC are not met.

- 1.8 The same conclusion is reached regarding the 'model systems' of D17, D18 and D19 argued by the respondent as being able to provide an assessment of anti-adherent materials. These 'model systems' were not related to anti-adherence tests concerning the claimed environment (viscoelastic fluid modifying compositions and application to the skin and hair in the perianal and/or labial areas) but were related to the adherence of bacteria to wounds (D17) or to the adherence of yeast to porcine or human skin (D18, D19).
- 1.9 D16 also fails to provide any guidance as to how anti-adherence may be determined. Firstly, the document was post-published with respect to the patent in suit and its disclosure is thus of no relevance to the sufficiency of disclosure thereof. Even if it were prior art, D16 is only concerned with the inhibition of *Pseudomonas aeruginosa* attachment and thus discloses no general reference to anti-adherence relevant to the opposed patent.
- 1.10 Hence, the skilled person is unable to identify suitable materials displaying anti-adherence due to the

large number of potential materials listed, several of these listed materials also describing large families of compounds; the skilled person would be faced with an experimental programme in order to establish which of the listed materials satisfied the claimed criterion of anti-adherence. This is particularly the case since the patent also lacks a single example which could be regarded as guidance to the skilled person of a composition satisfying the invention.

#### 1.11 Burden of proof

The board had already indicated in its preliminary opinion that an adequate test method was lacking and that no suitable compounds were defined within the claimed families of compounds. Accordingly, serious doubts were set out concerning whether the skilled person's common general knowledge would be sufficient to enable him to carry out the invention. As a consequence, the burden of proof - which in a first attempt to attack the underlying requirement of the EPC in opposition lies with the opponent - had shifted to the patentee who could rebut these arguments by providing appropriate information and evidence. The mere assumption that anti-adherence of the claimed groups of compounds was known, and the reference to post-published D16 referring to a particular bacterial non-adhesion, is not convincing evidence that could discharge the respondent from its burden of proof with regard to the subject-matter claimed. Also the reference to D10 could not overcome this issue in that D10 - also being a patent specification - fails to disclose a standard test method but rather sets out a very specific test procedure, the relevance of which to the present measurement of anti-adherence cannot be

assessed.

1.12 In summary therefore the invention according to claim 1 is not disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art, contrary to the requirements of Article 83 EPC 1973. The main request is thus not allowable.

2. *Auxiliary requests 1 to 7 - Article 83 EPC 1973*

Regarding auxiliary requests 1 to 7, the respondent submitted no further arguments in support of sufficiency of disclosure beyond those already presented with respect to the main request. The Board thus sees no reason to find differently to its conclusion in the main request such that the invention according to claim 1 of auxiliary requests 1 to 7 is also not disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

3. *Auxiliary request 8 - Admittance (Article 13(1) RPBA)*

3.1 In appeal proceedings, the Rules of Procedure of the Boards of Appeal (RPBA) apply. Article 12(2) RPBA specifies that the statement of grounds of appeal, respectively the reply thereto must contain the party's complete case. After filing the grounds of appeal or reply, any amendment to a party's case may be admitted and considered at the Board's discretion, as set out in Article 13(1) RPBA, such discretion being exercised *inter alia* in view of the need for procedural economy. As is established case law of the Boards of Appeal, such procedural economy implies that amended requests should at least be *prima facie* allowable in order to be



admitted.

- 3.2 The respondent filed auxiliary request 8 with letter of 29 March 2018. The request thus represents a change to the respondent's complete case.
- 3.3 Firstly it is to be noted that the subject-matter of claim 2 (the combination of the features of claims 1 and 2) is not a simple combination of claims 1 to 4 as granted since, save for inulin, all anti-adherent materials listed in claim 4 as granted have been omitted. It thus follows that, contrary to the opinion of the respondent, the claims of this request must be examined as to their compatibility with all the requirements of the EPC (see G0010/91, reasons 19), *inter alia* Article 123(2) EPC.
- 3.4 As regards compliance with Article 123(2) EPC, it has to be noted that claims 3 and 4 as originally filed were dependent on respectively claim 1 or on claims 1 or 3. Thus the combination of features in claim 2 as filed with those features of claims 3 and 4 as filed was not originally disclosed. Accordingly, the subject-matter of claim 2 (the combination of features of claims 1 and 2) in auxiliary request 8 lacks basis in the originally filed application.
- 3.5 Contrary to the respondent's opinion, paragraphs [0010] and [0034] as filed also fail to provide a *prima facie* direct and unambiguous basis for the claimed combination of features, not least since the disclosed weight percentage range in paragraph [0010] applies only 'optionally' and to anti-adherent materials generally, and not unambiguously to just inulin. Furthermore, in paragraph [0035] the desired function

is stated without any confirming data or reference to inulin in particular.

3.6 The subject-matter of claim 2 thus fails to meet the requirement of Article 123(2) EPC. The auxiliary request 8 is therefore not *prima facie* allowable, which would be necessary for fulfilling the need for procedural economy and consequently admitting the request into the proceedings. Accordingly, the Board exercised its discretion under Article 13(1) RPBA not to admit this request.

4. *Auxiliary request 9 - Admittance (Article 13(1) RPBA)*

4.1 Having been filed after the filing of the respondent's complete case, the admittance of this request is also subject to the discretion of the Board according to Article 13(1) RPBA.

4.2 This request was filed to overcome the objection under Article 123(2) EPC in the previous request, at least claim 2 therefore being deleted. The subject-matter of claim 1 was also *prima facie* limited to inulin as the group the anti-adherent material should be selected from, the respondent arguing that the skilled person would no longer be required to carry out an experimental programme in order to provide an appropriate anti-adherent material.

4.3 Contrary to the opinion of the appellant that significant experimentation would still be required, the claimed group consisting of inulin does not represent such a large number of compositions of distinct characteristics that the skilled person would be unable to establish which members of the group

should be tested in order to meet the requirement of exhibiting anti-adherent properties.

4.4 The language reading 'the group consisting of inulin' was also *prima facie* considered to meet the requirements of Article 84 EPC since the skilled person knew that inulin covered a family of compounds which could be understood as 'a group' of compounds.

4.5 The Board thus exercised its discretion in admitting this request (Article 13(1) RPBA).

4.6 *Article 83 EPC 1973*

4.6.1 For the above consideration of the admittance of this request, only a *prima facie* compliance with the requirements of the EPC had been carried out. However, when subsequently considering the request in greater detail, the discussion had to include any further objections in relation to sufficiency of disclosure.

4.6.2 Despite claim 1 explicitly listing solely the group consisting of inulin as the anti-adherent material in the claimed composition, the claim is not limited to just 'the group consisting of inulin' due to the use of the expression 'comprises' as follows:

'... wherein the anti-adherent material comprises a material selected from the group consisting of inulin.' The anti-adherent material must thus at least include inulin but may, through the use of the expression 'comprises', include an unspecified number of further materials in addition to inulin. As a consequence, as was the case for the main request, the skilled person is again presented with an extensive number of potential materials which should meet the anti-adherent material requirement for which no guidance is included

in the patent.

4.6.3 The respondent's contention in this regard that any other material to inulin was not important for the claimed anti-adherence is not convincing. Claim 1 states that 'the anti-adherent material comprises a material selected from the group consisting of inulin' i.e. any number and amount of further materials in addition to inulin may be included as the anti-adherent material. The skilled person is thus placed in the same quandary as existed in at least the main request, only still worse since no limit whatsoever is placed on which materials are included in the possible anti-adherent materials.

4.6.4 Thus, the invention according to claim 1 of auxiliary request 9 is not disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (Article 83 EPC 1973). Hence, the request is not allowable.

## 5. *Auxiliary request 10*

### 5.1 *Admittance (Article 13(1) RPBA)*

5.1.1 Having been filed at the oral proceedings, the admittance of this request is also subject to the discretion of the Board according to Article 13(1) RPBA.

5.1.2 The basis for claim 1 being limited to just inulin as the anti-adherent material can at least *prima facie* be found in paragraph [0010] as filed, in which inulin is included in the list of exemplary anti-adherent materials. The appellant's argument in this regard is not accepted since paragraph [0010] includes inulin as

an explicit material in the list of 'exemplary anti-adherent materials', this paragraph clearly being a general disclosure applicable to all embodiments of the invention (Article 123(2) EPC).

- 5.1.3 Regarding Article 83 EPC 1973, with just inulin now included as the anti-adherent material, the skilled person would be able to select an appropriate inulin with anti-adherent properties in a functional amount such that the invention according to claim 1 is at least *prima facie* sufficiently disclosed.
- 5.1.4 The appellant's argument that a test method and an example of how to carry out the invention were required for the requirements of Article 83 EPC to be met is not accepted. The anti-adherent material now being limited to the group consisting of inulin results in a clearly defined, limited number of family members being included in the possible anti-adherent materials, these thus no longer presenting an undue burden for the skilled person to determine. The skilled person could also be considered capable of defining a desired degree of anti-adherence and selecting the amount of the chosen inulin accordingly, irrespective of any particular test method. The lack of a worked example of the invention in the patent thus did not hinder the invention from being carried out.
- 5.1.5 The requirements of Article 83 EPC 1973 and Article 123(2) EPC were thus *prima facie* satisfied in auxiliary request 10. The Board thus exercised its discretion in admitting this request (Article 13(1) RPBA).

5.2 *Article 83 EPC 1973*

5.2.1 The request having been admitted, the appellant objected afresh under Article 83 EPC 1973, yet submitted no arguments beyond those already presented with respect to the admittance of this request. The Board sees no reason to find differently to its *prima facie* conclusion in this regard. The invention according to claim 1 of auxiliary request 10 is thus disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

6. *Article 56 EPC 1973*

6.1 The subject-matter of claim 1 does not involve an inventive step.

6.2 Taking D7 as the most promising starting point for an inventive step attack, both parties agree that this document discloses all features of claim 1 except for the anti-adherent material being a material selected from the group consisting of inulin.

6.3 Based on this differentiating feature, the objective technical problem may be seen as to provide an alternative viscoelastic fluid modifying composition to that known from D7. The respondent's argument that the objective problem should be to provide an 'improved' viscoelastic fluid modifying composition is not persuasive since there is no indication in the patent in suit as to how the claimed composition is improved over that known from D7.

- 6.4 As regards a solution to the objective technical problem, it is noted that the patent in suit fails to demonstrate any technical effect achieved by inulin.
- 6.5 The respondent's argument that paragraph [0034] of the patent plausibly showed that inulin behaved as an anti-adherent is not accepted. Whilst paragraph [0034] indeed discusses a theory as to how anti-adherents function in prohibiting the electrical interaction of bacteria and enzymes with the skin, there is nothing which shows inulin to possess such properties, it simply being included in the list of allegedly possible anti-adherent materials in the following paragraph [0035].
- 6.6 The respondent's contention that D16 further supported the conclusion that inulin was anti-adherent is also not accepted. D16 was published after the filing date of the patent in suit. As a consequence, no conclusion regarding inulin, and its possible anti-adherent properties, can be derived from the disclosure of D16. Moreover, D16 concerns very specific inulin varieties and very specific anti-adherence concerning exclusively *Pseudomonas aeruginosa*. Even if anti-adherence could be considered an inherent property of inulin, no proof has been presented that the skilled person would have been aware of this at the filing date of the patent in suit. As a consequence, the inclusion of inulin as the anti-adherent material is an arbitrary addition of a component to the composition of D7 which cannot be credited with involving an inventive step.
- 6.7 In summary, therefore, the subject-matter of claim 1 does not involve an inventive step (Article 56 EPC 1973). Auxiliary request 10 is thus not allowable.

**Order**

**For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairwoman:



M. H. A. Patin

G. de Crignis

Decision electronically authenticated