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**Datasheet for the decision
of 5 October 2023**

Case Number: T 0453/19 - 3.2.02

Application Number: 14168159.3

Publication Number: 2767305

IPC: A61M35/00, A61L15/64,
A61M27/00, A61F13/00, A61F13/02

Language of the proceedings: EN

Title of invention:
Biocompatible wound dressing

Patent Proprietor:
KCI Licensing, Inc.

Opponent:
Smith & Nephew, Inc.

Headword:

Relevant legal provisions:
EPC R. 80
EPC Art. 54(2), 54(3), 56, 123(2)
RPBA Art. 12(4), 13(2)

Keyword:

Amendment occasioned by ground for opposition - (yes)

Novelty - (yes)

Inventive step - (yes)

Amendments - added subject-matter (no)

Late-filed evidence - admitted (no)

Late-filed objection - admitted (no)

Decisions cited:

T 0223/97, T 0021/16, T 0993/07

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 0453/19 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 5 October 2023

Appellant: Smith & Nephew, Inc.
(Opponent) 1450 Brooks Road
Memphis, TN 38116 (US)

Representative: HGF
HGF Limited
1 City Walk
Leeds LS11 9DX (GB)

Respondent: KCI Licensing, Inc.
(Patent Proprietor) P.O. Box 659508
San Antonio, TX 78265 (US)

Representative: Simmons & Simmons
City Point
One Ropemaker Street
London EC2Y 9SS (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
10 December 2018 concerning maintenance of the
European Patent No. 2767305 in amended form.**

Composition of the Board:

Chairman M. Alvazzi Delfrate
Members: S. Böttcher
N. Obrovski

Summary of Facts and Submissions

- I. The opponent filed an appeal against the opposition division's interlocutory decision to maintain the patent in amended form according to the main request filed on 18 December 2017.
- II. Oral proceedings took place on 5 October 2023.
- III. The appellant requested that the decision under appeal be set aside and that the patent be revoked.
- IV. The respondent requested that the appeal be dismissed and that the patent be maintained in accordance with the opposition division's decision (main request) or, as an auxiliary measure, on the basis of one of auxiliary requests 1 to 3 filed with the reply to the statement of grounds of appeal.
- V. The following documents are relevant to this decision.
 - D1 WO 07/133618
 - D2 WO 06/048240
 - D2a US 2008/0004559
 - D3 WO 05/123170
 - D4 DE 10 2006 031 418
 - D4a English translation of D4
 - E1 William H. Eaglstein, "Experiences with biosynthetic dressings", J AM ACAD DERMATOL, Volume 12, Number 2, Part 2, pages 434-440, published February 1985

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

"A multi-layer reduced pressure delivery apparatus (213) for applying reduced pressure tissue treatment to a tissue site (221) comprising:

a first layer (223) having a scaffold (233) adapted to contact a tissue site;

a second layer (225) having a hydrogel-forming material (235) and a plurality of flow channels (236);

the hydrogel-forming material (235) contacting the scaffold (233); and

a third layer (227) having a distribution manifold (237) contacting the hydrogel-forming material (235),

wherein the hydrogel-forming material (235) is positioned between the first layer (223) and the third layer (227) and is connected to at least one of the scaffold and the distribution manifold, and

wherein the plurality of flow channels of the second layer (225) are provided by pores disposed in a sheet of the hydrogel-forming material (235)."

Claim 11 of the main request reads as follows:

"A multi-layer reduced pressure delivery apparatus (213) for applying reduced pressure tissue treatment to a tissue site (221) comprising:

a first layer (223) having a scaffold (233) adapted to contact a tissue site;

a second layer (225) having a hydrogel-forming material (235) and a plurality of flow channels (236);

the hydrogel-forming material (235) contacting the scaffold (233); and

a third layer (227) having a distribution manifold (237) contacting the hydrogel-forming material (235),

wherein the hydrogel-forming material (235) is positioned between the first layer (223) and the third layer (227) and is connected to at least one of the scaffold and the distribution manifold,

wherein:

the hydrogel-forming material (235) is arranged in a grid pattern such that strands of the hydrogel-forming material (235) are aligned in rows and columns; and

the plurality of flow channels are formed by voids disposed between the rows and columns of the hydrogel-forming material (235)."

Claim 20 of the main request reads as follows:

"A multi-layer reduced pressure delivery apparatus (213) for applying reduced pressure tissue treatment to a tissue site (221) comprising:

a first layer (223) having a scaffold (233) adapted to contact a tissue site;

a second layer (225) having a hydrogel-forming material (235) and a plurality of flow channels (236);

the hydrogel-forming material (235) contacting the scaffold (233); and

a third layer (227) having a distribution manifold (237) contacting the hydrogel-forming material (235),

wherein:

the hydrogel-forming material (235) is provided as a plurality of individual beads, each bead being;

spaced apart from adjacent beads by a void; and the plurality of flow channels are formed by the voids disposed between the beads of the hydrogel-forming material (235)."

VII. The appellant's arguments, where relevant to the decision, can be summarised as follows.

Main request - Rule 80 EPC

The insertion of a second and third independent claim together with further dependent claims was not necessary and appropriate for avoiding the revocation of the patent.

Dependent claims 12 to 19 each introduced further feature combinations due to their dependency on independent claim 11 and had no counterpart in the patent as granted. Additionally, dependent claims 22 to 30, which were dependent on the newly added independent claim 20, introduced yet further feature combinations and had no counterpart in the claims of the patent as granted. Hence, the new claims did not have an equivalent in the patent as granted. In accordance with the criteria set out in T 223/97 (point 2.1 of the

Reasons), this amendment was not allowable.

Furthermore, as stated in T 993/07 (point 1.7 of the Reasons) with reference to G 1/84, opposition proceedings were not to be understood as an opportunity for the proprietor to fix any shortcomings in the patent, such as an insufficient number of independent and/or dependent claims. In the present case, the proprietor had significantly improved their position by strengthening the patent against any subsequent revocation proceedings by introducing numerous dependent claims that were not present in the patent as granted.

It was further stated in T 21/16 (point 6.1 of the Reasons) that further amendments that were not a consequential adaptation of the dependent claims to the amendments operated in claim 1 as granted, as in the present case, were not in accordance with the requirements of Rule 80 EPC.

Therefore, the main request did not comply with Rule 80 EPC.

Main request - added subject-matter

The combination of features in claims 1, 11 and 28 could not be derived directly and unambiguously from the application as filed and from the parent application as filed.

Claim 1 of the main request could not be considered to be based on a combination of claims 1, 2 and 11 as originally filed since claim 11 was not dependent on claim 2. Correspondingly, claim 11 of the main request could not be considered to be based on a combination of

claims 1, 2 and 13 as originally filed (claims 17, 18 and 31 of the parent application).

The disclosure of the passages of the description that were referenced in the opposition division's decision could not provide a basis for the combination of features of claims 1 and 11 since these passages related to the connection or position of the layer containing the hydrogel-forming material, rather than to the connection or position of the hydrogel-forming material itself.

Furthermore, claims 1 and 11 constituted an unallowable intermediate generalisation since the second layer was not referred to as a release layer.

The features of claim 28 were originally disclosed in claim 26 of the parent application. Claim 32 of the parent application, which was cited together with claim 17 as providing a basis for independent claim 20 of the main request, was not dependent on claim 26.

In addition, the description of the application as filed did not provide any dimensions for the individual beads disposed in the second layer. It was therefore not disclosed that the individual beads formed a layer with a thickness "in a dehydrated state less than the thickness of the first layer". Furthermore, it was not apparent how such a thickness could be derived or measured when configured as a non-continuous layer comprising beads spaced apart by voids.

Consequently, claims 1, 11 and 28 did not meet the requirements of Articles 76(1) and 123(2) EPC.

Admittance of the clarity objection

Claim 28 lacked clarity since a layer having a uniform thickness could not be created by a plurality of beads and voids. This objection followed from the objection of added subject-matter against claim 28.

Admittance of documents E1 and D4/D4a

D4 was to be admitted into proceedings as it was *prima facie* relevant to the maintenance of the patent.

D4 was filed in response to the reasoning presented in point 5.6.1 of the decision, which specified that the feature "one layer is connected to another layer" necessitated a physical connection between the layers, and not a fluidic connection. It had not been foreseeable at the time of filing of the notice of opposition or from the comments reflecting the opposition division's preliminary opinion that such a narrow interpretation of this term would be made.

Furthermore, D4 was filed in response to the late admittance of independent claim 20 by the opposition division during the oral proceedings.

For these reasons, D4/D4a was to be admitted into proceedings.

E1 was included as evidence of common general knowledge on the priority date of the patent and to support the disclosure in D1 that the housing materials referenced in this document included polyurethane films with an adhesive backing. It was also filed in response to the reasoning presented in 5.6.1 of the decision regarding the term "connected" for claim 1 of the main request.

Main request - novelty in view of D1

Claim 1 did not specify the type of connection between the hydrogel-forming material and the scaffold and/or the distribution manifold. Hence, a broad interpretation was to be applied to the term "connected" as set out in claim 2 as granted.

Figure 15 of D1 disclosed an embodiment of claim 1. In particular, a "fluidic connection" was formed between the liquid collection layer 1240 and either the moisture dispenser 1280 (acting as a scaffold) or the vacuum manifold layer 1282.

A second embodiment that fell within the ambit of claim 1 was provided by the fluidic connection between the wound interface 1241, the liquid collector and vacuum manifold layers 1282.

D1 disclosed that the housing might have been fixed to the underlying components by adhesive materials and thereby might have physically connected layers of the dressing (paragraphs [0032], [0058], [0059], [0093] and [0099]).

Therefore, claim 1 of the main request lacked novelty over D1.

Main request - novelty in view of D2/D2a

D2a disclosed a hydrogel-forming material that was connected to the upper or lower layer of the textile envelope.

Claim 1 did not specify the nature of the connection the hydrogel-forming material and therefore was broad

enough to cover a "fluidic connection" within its scope. Hence, D2a disclosed a hydrogel-forming material that was connected to the upper or lower layer of the textile envelope 11.

Furthermore, the term "manifold" implied the capability of distributing pressure and/or fluid. Hence, the upper layer of the textile envelope 11 in D2a could be regarded as a manifold since it necessarily allowed gas to pass through it and comprised material intended to distribute fluid.

Consequently, the subject-matter of independent claim 1 lacked novelty over D2a.

Inventive step starting from D2/D2a

The subject-matter of claims 1 and 20 lacked an inventive step in view of D2/D2a in combination with D4/D4a.

The subject-matter of claim 20 lacked an inventive step in view of D2/D2a in combination with the common general knowledge and/or D3.

Claim 20 required that individual beads, i.e. at least some particle populations, were spaced apart from each other by voids.

D2a disclosed an absorption body consisting of a layer of a nonwoven textile material which was interspersed with super-absorbing particles (paragraph [0014]). The use of the term "interspersed" provided a direct and unambiguous disclosure that at least some particle populations were spaced apart from each other. Voids between particles in the textile layer provided flow

channels.

Hence, the only conceivable difference between D2a and the features recited by independent claim 20 was that the hydrogel-forming particle was specified as a "bead".

The person skilled in the art would naturally expect an absorbent, swellable "particle" like sodium polyacrylate to exist or be provided in a spherical form. Furthermore, structures and substances in the form of beads for absorbing wound exudate were known from D1 (see paragraph [0041], third sentence) and D3 (see page 20, lines 12 to 17). Providing a hydrogel-forming particle in the form of a bead would be the most obvious option for allowing easy dispersal of the super-absorbing particles throughout the enveloped region of the wound dressing in D2a.

Therefore, the subject matter of independent claim 20 lacked an inventive step over the teaching of D2a in view of D3 and/or common general knowledge.

VIII. The respondent's arguments, where relevant to the decision, can be summarised as follows.

Main request - Rule 80 EPC

In the main request, claim 1 had been narrowed in response to a ground of opposition to claim three embodiments, which were claimed in three independent claims. In line with T 223/97 and the Guidelines for Examination (H-II, 3.1), the restriction to three narrower independent claims was allowable.

As a consequence of being separated into three

embodiments, it was necessary to present the dependent claims in a manner consistent with the new independent claims. For this reason, the dependent claims had been duplicated after each independent claim. Each dependent claim had a counterpart in the claims as granted.

T 993/07 related to a case with significantly different facts, as the main request included 20 independent claims.

The new dependencies followed from the amendment of the independent claim and therefore constituted consequential adaptations of the dependent claims to the amendments operated in claim 1 as granted.

The amendments made to the claims were therefore in accordance with Rule 80 EPC.

Main request - added subject-matter

A verbatim basis for claim 1 was found in claims 1, 2 and 11 of the application as filed. The description directly and unambiguously disclosed the features of claims 2 and 11 (position and connection of the hydrogel layer, and the specific hydrogel structure) in combination.

The description related to the connection of the second layer to the scaffold or distribution manifold. Page 14, lines 11-15 explained that the release material 235 served as a "binder and a release agent", thus making it clear that it was specifically the release material of the second layer that connected to the first or third layer. This general disclosure was applicable to the various forms of the hydrogel layer discussed after this, in particular Figure 6 (page 16, line 7), which

is the layer structure claimed in claim 1.

Furthermore, page 14, lines 5-10 explained that it was specifically the release material that prevented contact between the first and third layers, thus again making it clear that it was that release material which connected to the first and third layers as required by claim 1.

A basis for claim 11 was found in claims 1, 2 and 13 of the application as filed (claims 17, 18 and 31 of the parent application). The same reasons as set out above applied equally to claim 11.

The feature of claim 28 was disclosed in claim 32 of the parent application. As with all other claims, it was clear that this feature was disclosed in general and was applicable to all forms of the release layer. In particular, page 16, lines 25-26 disclosed this feature and comprised disclosure relevant to all examples of the release layer.

All claims therefore complied with Articles 76(1) and 123(2) EPC.

Admittance of the clarity objection

The claim request had been on file since 2017 and there had been no exceptional circumstances that could have justified the late filing of the clarity objection only at the oral proceedings before the board. The objection was therefore not to be admitted.

Admittance of documents E1 and D4/D4a

There had been no change in the claims to justify the

late filing of D4/D4a.

The document could and should have been filed earlier, and certainly at the latest at the opposition oral proceedings, and was not to be admitted now.

D4 was no more relevant than the existing documents on file and was not *prima facie* relevant. D4 did not disclose a sheet of hydrogel-forming material, and therefore it could not disclose pores in a sheet of hydrogel material. The "punched holes", referred to by the appellant, were punched in the cover layer or mat, not in the hydrogel material as required by claim 1.

E1 was not to be admitted into the proceedings as it was filed late and was not *prima facie* relevant to the disclosure of D1.

Novelty in view of D1

The feature of claim 1 whereby the hydrogel-forming material layer was "connected" to at least one of the scaffold and distribution manifold required a physical connection between the layers.

Claim 1 related to a reduced pressure delivery apparatus and hence the layers of the dressing had to be in fluid communication with each other. A requirement for these layers to be "fluidly connected" would thus not be a restriction that would make any technical contribution to the claim and was not something that the reader would consider.

All of the connections mentioned in lines 13 to 29 of page 12 were physical connections, which thus supported the view that claim 1 required a physical connection.

Furthermore, there was no suggestion in D1 that the layers in the embodiment of Figure 15 were connected by the housing 1220. Paragraphs [0032], [0033], [0058] and [0059] did not relate to the embodiment in Figure 15, and neither paragraph [0093] nor paragraph [0099] contained any suggestion of using the materials mentioned in these paragraphs in the device in Figure 15.

Hence, D1 did not disclose a physical connection of the hydrogel-forming material to the scaffold and/or the distribution manifold.

Therefore, the subject-matter of claim 1 was novel in view of D1.

Novelty in view of D2/D2a

Claim 1 was also novel over D2. In this case too, there was no disclosure of a hydrogel-forming material connected to another layer. Moreover, the appealed decision correctly identified a second difference in that the envelope in D2 was not a manifold. A manifold distributed reduced pressure and fluids (i.e. allowed horizontal movement). Furthermore, claim 1 was also novel over D2 on account of the requirement for a sheet of hydrogel-forming material having pores.

Inventive step starting from D2/D2a

The objection that the subject-matter of claim 1 lacked an inventive step in view of D2/D2a in combination with D4/D4a was to be deemed inadmissible.

Claim 20 required that the hydrogel-forming material

was a plurality of beads (i.e. all hydrogel-forming material was in the forms of beads), and that each bead (i.e. all beads) was spaced apart from its adjacent beads by a void.

D2/D2a did not disclose a plurality of individual beads, each being spaced apart from adjacent beads by a void. Since D3 did not disclose beads spaced as required by claim 1 either, there was no reason for the person skilled in the art to arrive at the invention of claim 1.

Hence, the subject-matter of claim 20 was inventive over D2/D2a.

Reasons for the Decision

1. Subject-matter of the patent

1.1 The patent relates to the vacuum-induced healing of open wounds and in particular to a multi-layer wound dressing having a tissue growth medium for enhancing the growth of tissue when exposed to reduced pressure (Figures 2 and 3 of the patent).

The scaffold of the first layer, or tissue contact layer, promotes new tissue growth and accepts in-growth of tissue from the tissue site.

The hydrogel-forming material of the second layer, or release layer, minimises points of contact (or prevents any contact) between the first layer and the third layer. Hence, it serves as a barrier to tissue in-growth from the scaffold into the distribution manifold of the third layer.

The distribution manifold of the third layer, or manifold layer, assists in distributing reduced pressure received from a reduced pressure delivery tube.

After the administration of reduced pressure treatment, the scaffold (with the newly grown tissue) will remain at the tissue site. Only the second and third layers will be removed and replaced with a new dressing containing all three layers. This makes it possible to incrementally add new tissue growth to the tissue site as new scaffolds are stacked on previously inserted scaffolds that are already permeated with new tissue growth (paragraphs [0058] to [0062]).

The hydrogel-forming material, or release material, simplifies the removal of the second and third layers from the first layer. During the application of reduced pressure, the release material more or less remains in a solid state and prevents contact between the first and the third layer; however, when the reduced pressure treatment has been terminated, the release material will transform into a gel-like material as it hydrates (either by way of bodily fluids from the tissue site or by being soaked with water or other fluids). This allows for easier removal of the manifold from the scaffold.

2. Main request - Rule 80 EPC

During the opposition proceedings, claim 1 as granted has been replaced with three independent claims. Claim 1 of the main request combines claims 1, 2 and 11 as granted, claim 11 of the main request combines claims 1, 2 and 13 as granted, and claim 20 of the main

request combines claims 1 and 14 as granted.

Therefore, the three independent claims 1, 11 and 20 of the main request relate to specific embodiments previously covered by claim 1 as granted. Each of them includes all the features of claim 1.

In line with the criteria set out in T 223/97, point 2.1 of the Reasons, the board considers that they were caused to be filed by a ground of opposition, namely the lack of novelty of claim 1 as granted.

Dependent claims 12 to 19 and 23 to 30 of the main request correspond to claims 3 to 10 as granted. Dependent claims 21 and 22 correspond to claims 15 and 16 as granted. Therefore, contrary to the appellant's view, each of dependent claims 12 to 19 and 21 to 30 has a counterpart in the granted claims. After separating claim 1 as granted into three embodiments, the claims as granted were merely duplicated after each new independent claim as a consequential adaptation.

For the assessment of compliance with the requirements of Rule 80 EPC, it is not relevant whether the dependent claims introduce further feature combinations.

None of these claims has been amended (as was the case in T 21/16) and no new dependent claims have been added (as was the case in T 993/07). Hence, these decisions are not relevant for the present case.

Hence, the requirements of Rule 80 EPC are met.

3. Main request - added subject-matter

- 3.1 The present patent originates from a patent application which is a divisional application of the PCT application WO 2008/091521 (parent application). Hence, it has to be assessed whether the claims of the main request comply with the requirements of Articles 76(1) and 123(2) EPC.
- 3.2 It is undisputed that the features of claim 1 of the main request are disclosed in claims 1, 2 and 11 as originally filed (claims 17, 18 and 29 of the parent application). It is true that the original claim 11 was dependent on claim 1 only; however, as correctly pointed out by the respondent, the description as originally filed discloses, on page 14 (lines 5-10 and 11-15), that it is specifically the release material 235 of the second layer, also called the "release layer" (page 14, lines 5-6), that connects to the first or third layer. This disclosure corresponds to that of claim 2 as originally filed ("the hydrogel-forming material ... is connected to at least one of the scaffold and the distribution manifold") and is generally applicable to the various embodiments, in particular the embodiment shown in Figure 6, which corresponds to claim 11 as originally filed ("the plurality of flow channels of the second layer are provided by pores disposed in a sheet of the hydrogel-forming material"). Hence, claim 1 of the main request complies with the requirements of Article 123(2) EPC. The same conclusion applies to dependent claims 2 to 10.
- 3.3 The features of claim 11 of the main request are disclosed in claims 1, 2 and 13 of the application as filed (claims 17, 18 and 31 of the parent application). It is true that claim 13 as filed is not dependent on claim 2 as filed; however, as mentioned above, the

description of the application as originally filed (corresponding to the description of the parent application) discloses on page 14 (lines 5-10 and 11-15) that it is specifically the release material 235 of the second layer, also called the "release layer" (page 14, lines 5-6), that connects to the first or third layer. This disclosure corresponds to that of claim 2 of the application as filed ("the hydrogel-forming material ... is connected to at least one of the scaffold and the distribution manifold") and is generally applicable to the various embodiments, in particular the embodiment shown in Figure 4, which corresponds to claim 13 of the application as filed ("the hydrogel-forming material is arranged in a grid pattern such that strands of the hydrogel-forming material are aligned in rows and columns; and the plurality of flow channels are formed by voids disposed between the rows and columns of the hydrogel-forming material"). Hence, claim 11 of the main request complies with the requirements of Articles 76(1) and 123(2) EPC.

For similar reasons, the same finding applies to dependent claims 12 to 19.

- 3.4 The features of claim 20 are disclosed in claims 1 and 14 of the application as originally filed (claims 17 and 32 of the parent application). The features added in claim 28 are disclosed in claim 8 of the application as filed (claim 26 of the parent application). It is correct that claim 14 as originally filed is not dependent on claim 8 as originally filed; however, page 16, lines 25-26 of the description discloses the general teaching that the thickness of the release material 235 is typically less than the thickness of the scaffold to save money on material costs. It is

clear to the person skilled in the art that this teaching is not limited to a specific embodiment, and that it is in particular also applicable to the arrangement in claim 14 of the application as filed.

Hence, claim 28 of the main request complies with the requirements of Articles 76(1) and 123(2) EPC.

4. Main request - admittance of the clarity objection

During the oral proceedings before the board, the appellant raised an objection of lack of clarity against claim 28. Pursuant to Article 13(2) RPBA, such a late-filed objection is only taken into account if there are exceptional circumstances, which have been justified with cogent reasons.

Since claim 28 of the main request has been on file since 2017, the board does not see any exceptional circumstances for the late filing of this objection. It is noted that the appellant did not refer to any such exceptional circumstances.

Furthermore, the board does not consider claim 28 to be *prima facie* unclear. It is clearly possible to define the thickness of a layer and to compare it with the thickness of another layer even if it is made of beads which are separated by voids.

Consequently, the board decided not to admit this clarity objection into the appeal proceedings.

5. Admittance of D4/D4a and E1

5.1 D4, D4a (the English translation of D4) and E1 were submitted with the appellant's statement of grounds of

appeal. According to Article 12(4) RPBA, these documents may be admitted only at the discretion of the board.

- 5.2 The appellant argued that the late admittance of claim 20 and the opposition division's finding that a fluidic connection did not fall under the scope of the claim necessitated a further search, in which D4/D4a had been uncovered. Allegedly, D4/D4a anticipated at least the subject-matter of claims 1 and 20.

The board observes that the present main request was filed on 18 December 2017, i.e. almost one year before the oral proceedings before the opposition division, which took place on 14 November 2018. Hence, D4/D4a and E1 could and should have been filed earlier.

Apparently, the concept of a "fluidic connection" was discussed for the first time during the oral proceedings before the opposition division, after having being introduced by the opponent itself. Hence, the opposition division's reasoning on this interpretation of the claim given in the decision does not imply a change in the opposition division's view which could justify a new document being filed.

- 5.3 Furthermore, D4/D4a does not disclose a sheet of hydrogel-forming material as required by claim 1, but merely a plurality of superabsorbent particles incorporated into a carrier material (paragraph [0052]).

Moreover, D4/D4a does not disclose the feature of claim 20 whereby the hydrogel-forming material contacts the scaffold. It is mentioned in paragraph [0052] that the particles are anchored to the inner surfaces of the

cover layers 18.1, 18.2. Hence, they cannot contact the perforated envelope, which, in the appellant's view, could be construed as a scaffold.

Furthermore, D4/D4a does not disclose a plurality of individual beads, each being spaced from one another by a void as required by claim 20. The punched holes mentioned in paragraph [0054] do not separate each bead from adjacent beads.

Therefore, D4/D4a is not *prima facie* relevant.

5.4 The appellant referred to E1 in connection with the novelty objection in view of D1 as evidence of the type of materials referred to in paragraph [0033] of D1. Since paragraph [0033] does not relate to Figure 15, on which the appellant relied for the objection of lack of novelty in view of D1, the disclosure of E1 is not relevant.

5.5 For these reasons, the board decided not to admit D4/D4a and E1.

6. Main request - claim 1 - novelty in view of D1

6.1 The board agrees with the opposition division and the respondent that the requirement in claim 1 for a "connection" of the hydrogel-forming material to the scaffold and/or the distribution manifold requires a physical connection between the layers. In the appellant's view, a fluidic connection is present between the layers of a wound dressing to be used in a reduced pressure treatment apparatus if the layers are placed in contact with one another; however, in its usual meaning and in the context of claim 1, the term "connected" implies a physical connection. This is

confirmed by paragraph [0041] of the patent, which states that, by placing one layer in contact with another layer, the layers are not connected (column 11, lines 24 to 33). Hence, the scope of claim 1 does not cover a "fluidic connection".

6.2 It is undisputed that Figure 15 of D1, which is prior art under Article 54(3) EPC, discloses a reduced pressure delivery apparatus comprising a liquid-retention chamber 1240 having a hydrogel-forming material which is arranged between a first layer (moisture disperser 1280) and a third layer (vacuum dispenser 1282).

However, D1 does not disclose a physical connection between the hydrogel-forming material and at least one of the first and the third layer. This is also true if the wound interface 1241, the liquid collector and the vacuum manifold layers 1282 are considered. In this regard, the board does not share the appellant's view that the hydrogel-forming material was physically connected to the other layers via the housing 1220, which was fixed to the underlying components by an adhesive material. Paragraphs 32, 33, 58 and 59, which the appellant referenced, do not relate to the embodiment in Figure 15, on which the appellant relied for the other features of the claim. Paragraphs 93 and 99 do not disclose that the materials in Figures 1 and 2 are to be used in the device in Figure 15, either.

6.3 Hence, since D1 does not disclose the feature "the hydrogel-forming material is connected to at least one of the scaffold and the distribution manifold", the subject-matter of claim 1 is novel over D1.

7. Main request - claim 1 - novelty in view of D2/D2a
- 7.1 D2/D2a discloses a dressing 100 for reduced pressure wound treatment comprising a layer 22 of a nonwoven textile material which is interspersed with super-absorbing particles. The layer 22 is surrounded by a textile envelope 11 (paragraphs [0014] and [0015] of D2a; page 11, first and second paragraphs, of D2).
- 7.2 As mentioned in point 6.1, claim 1 requires a physical connection of the hydrogel-forming layer to one of the upper or lower layers. Based on this understanding, D2/D2a does not disclose that the hydrogel-forming material is connected to the upper or lower layer of the envelope 11.
- 7.3 The board further agrees with the opposition division and the respondent that D2 does not directly and unambiguously disclose that the textile envelope 11 acts as a distribution manifold. The board holds that a distribution manifold should allow horizontal movement of fluids (i.e. along the plane of the layer). For this purpose, D2 (not D2a) mentions a pressure distributor which can, however, be arranged above the envelope (page 8, third paragraph).
- 7.4 Furthermore, D2/D2a does not disclose a sheet of hydrogel-forming material having pores. As mentioned above, D2/D2a discloses "a layer of a nonwoven textile material, which comprises cellulose fibers and is interspersed with super-absorbing particles" (paragraph [0014] of D2a; page 11, first paragraph, of D2).
- 7.5 Hence, the subject-matter of claim 1 is novel over D2.

8. Main request - claims 1 and 20 - inventive step starting from D2/D2a in combination with D4/D4a

Since the board did not admit D4/D4a into the appeal proceedings, the objection that the subject-matter of claims 1 and 20 lacked an inventive step in view of D2/D2a in combination with D4/D4a is baseless.

9. Main request - claim 20 - inventive step starting from D2/D2a in combination with the common general knowledge or either of D1 and D3

- 9.1 As mentioned in point 7.1, D2/D2a discloses a dressing 100 for reduced pressure wound treatment comprising a layer 22 of a nonwoven textile material which is interspersed with super-absorbing particles. D2/D2a does not disclose that each particle is spaced apart from adjacent particles by a void and that flow channels are formed by the voids. In this regard, the board does not agree with the appellant that it is sufficient that at least some of the particles are spaced apart from each other.

- 9.2 The appellant's line of argument started from the assumption that the only conceivable difference between D2/D2a and the subject-matter of claim 20 was that the particles were specified as beads. As mentioned in point 9.1, this view cannot be accepted. The further reasoning with regard to inventive step therefore cannot be convincing.

- 9.3 First, it is pointed out that D1, as prior art under Article 54(3) EPC, is not relevant to inventive step. It is further noted that neither D1 nor D3 discloses a plurality of individual beads each being spaced apart from adjacent beads by a void. Hence, the combination

of D2 with D1 or D3 does not result in the subject-matter of claim 20.

9.4 The subject-matter of claim 20 is therefore inventive in view of the combination of D2/D2a with D1 or D3 or the common general knowledge.

10. It follows from the above considerations that none of the appellant's objections prejudices the maintenance of the contested patent according to the respondent's main request, i.e. in the version found allowable by the opposition division.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



A. Chavinier-Tomsic

M. Alvazzi Delfrate

Decision electronically authenticated