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**Datasheet for the decision  
of 4 October 2022**

**Case Number:** T 0696/20 - 3.2.06

**Application Number:** 12710278.8

**Publication Number:** 2688535

**IPC:** A61F13/08

**Language of the proceedings:** EN

**Title of invention:**  
GRADUATED COMPRESSION GARMENTS

**Patent Proprietors:**

Sigvaris Inc.  
SIGVARIS AG

**Opponent:**

medi GmbH & Co. KG

**Headword:**

**Relevant legal provisions:**

EPC Art. 54, 56, 100(a)

**Keyword:**

Inventive step - (no)

**Decisions cited:**

**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 0696/20 - 3.2.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.06**  
**of 4 October 2022**

**Appellant:** Sigvaris Inc.  
(Patent Proprietor 1) 1119 Highway 74  
Peachtree City GA 30269 (US)

**Appellant:** SIGVARIS AG  
(Patent Proprietor 2) Gröblistrasse 8  
9014 St. Gallen (CH)

**Representative:** Weickmann & Weickmann PartmbB  
Postfach 860 820  
81635 München (DE)

**Respondent:** medi GmbH & Co. KG  
(Opponent) Medicusstrasse 1  
95448 Bayreuth (DE)

**Representative:** Lindner Blaumeier  
Patent- und Rechtsanwälte  
Partnerschaftsgesellschaft mbB  
Dr. Kurt-Schumacher-Str. 23  
90402 Nürnberg (DE)

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 27 February  
2020 revoking European patent No. 2688535  
pursuant to Article 101(3) (b) EPC.**

**Composition of the Board:**

<b>Chairman</b>	M. Harrison
<b>Members:</b>	M. Hannam
	E. Kossonakou
	P. Cipriano
	C. Almberg

## Summary of Facts and Submissions

- I. An appeal was filed by the appellants (patent proprietors) against the decision of the opposition division revoking European Patent No. 2 688 535. The appellants (hereafter, simply 'appellant') requested that the decision under appeal be set aside and the patent be maintained as granted or, in the alternative that the patent be maintained according to one of auxiliary requests I to VII. It also requested reimbursement of the appeal fee.
- II. The respondent (opponent) requested that the appeal be dismissed.
- III. The following documents are relevant to the present decision:
- D1 US-B1-7 441 419  
D12 DIN 58133, Medical compression hosiery  
D32 Article from "Today's Wound Clinic" - An Overview of Compression Therapy
- IV. The Board issued a summons to oral proceedings and a subsequent communication containing its provisional opinion, in which it indicated *inter alia* that, starting from D1, the subject-matter of claim 1 of the main request seemed not to involve an inventive step. It furthermore indicated that the subject-matter of claim 1 of each of auxiliary requests I to VII seemed also not to involve an inventive step.
- V. With letter of 4 July 2022 the appellant filed an auxiliary request VIII. It further argued for the first time in the appeal proceedings that, in addition to

features M5 and M6, feature M2 was not known from D1.

VI. Oral proceedings were held before the Board on 4 October 2022, during which the appellant withdrew its request for reimbursement of the appeal fee.

VII. At the close of the oral proceedings, the parties requests were as follows:

The appellant requested that the decision under appeal be set aside and the patent be maintained as granted (main request), or on the basis of one of auxiliary requests I to VII, originally filed on 4 September 2019 and resubmitted with the statement setting out the grounds of appeal, or on the basis of auxiliary request VIII, filed with their letter of 4 July 2022.

The respondent requested that the appeal be dismissed.

VIII. Claim 1 of the main request, with feature annotation as used by the respondent, reads as follows:

M1 Graduated compression garment for legs  
M2 having flat toe seams and  
M3 at least an achilles section, heel section, toe section and/or a foot sole section,  
M4 which is cushioned on the internal side of the garment,  
M5 wherein the pressure value at the ankle zone (1) is of 13.3-36.0 hPa (10-27 mmHg) and  
M6 at the calf zone (2) 8.0-21.3 hPa (6-16 mmHg).

Claim 1 of auxiliary request I reads as for claim 1 of the main request except for feature M1 which reads as follows:

M1 Continuously graduated compression garment for

legs.

Claim 1 of auxiliary request II reads as for claim 1 of the main request with the following feature appended:

which is suitable for the treatment and/or prevention of oedema, particularly for diabetes.

Claim 1 of auxiliary request III reads as for claim 1 of auxiliary request II with the word 'particularly' deleted.

Claim 1 of auxiliary request IV reads as for claim 1 of the main request except for feature M5 which reads as follows:

M5 wherein the pressure value at the ankle zone (1) is of 20.0-36.0 hPa (15-27 mmHg).

Claim 1 of auxiliary request V reads as for claim 1 of the main request except for feature M6 which reads as follows:

M6 at the calf zone (2) 12.0-21.3 hPa (9-16 mmHg).

Claim 1 of auxiliary request VI reads as for claim 1 of auxiliary request IV except for feature M6 which reads as follows:

M6 at the calf zone (2) 12.0-21.3 hPa (9-16 mmHg).

Claim 1 of auxiliary request VII reads as for claim 1 of auxiliary request VI except for feature M5 which reads as follows:

M5 wherein the pressure value at the ankle zone (1)

is of 20.0-33.3 hPa (15-25 mmHg).

Claim 1 of auxiliary request VIII reads as for claim 1 of the main request with the following feature appended:

which is suitable for the treatment and/or prevention of oedema.

IX. The appellant's arguments relevant to the present decision may be summarised as follows.

Main request

The subject-matter of claim 1 was novel over D1. In addition to features M5 and M6, feature M2 was also not known. The way in which the flat toe seams were produced showed that these were different to the double toe seams of D1.

The subject-matter of claim 1 also involved an inventive step. Whilst D1 disclosed pressure being applied in the toe, foot, heel, ankle and/or leg areas (see col. 5, lines 17 to 20) and also in a plurality of pressure ranges (see lines 23 to 28), there was no link between these two lists. The indications of pressure being applied in Class I, II or III ranges did not relate to the compression classes of D12. Prior to the present patent, the skilled person held a prejudice to applying pressure in the lower leg region of a diabetes patient for fear of occluding the arteries in this region.

Based on features M5 and M6 and the advantages indicated in paragraph [0043] of the patent, the problem to be solved was the provision of a compression



garment for legs which applied appropriate pressure to reduce oedema without negative side effects such as arterial occlusion.

The term 'graduated' in claim 1 would be understood such that the pressure applied by the sock decreased towards the proximal portion.

If the problem were merely to provide suitable pressure values, D1 notably failed to disclose any pressure being applied at the calf of the sock. Differently to a stocking, a sock need not cover the calf of the wearer.

#### Auxiliary request I

The definition of the claimed compression garment being continuously graduated resulted in the claimed subject-matter involving an inventive step. This was to be interpreted as a continuous graduation from the distal to the proximal portions of the garment. If the continuous graduation were only in a portion of the garment, this would be expressed as the garment comprising a continuously graduated portion, which was not the case. Paragraph [0041] of the patent also made a distinction between incremental or continuous pressure gradient change, D1 clearly disclosing the former with zones displaying a fixed pressure and smooth pressure transitions therebetween. This paragraph of the patent also disclosed the pressure decreasing in a longitudinal direction from the ankle towards the thigh.

#### Auxiliary requests II and III

The garments according to these auxiliary requests were delimited over D1 which was silent about treatment of oedema, particularly in relation to patients suffering from diabetes. Prior to filing of the opposed patent,

diabetes was a contraindication for any type of pressure treatment of lower limbs and so, when directed to treatment of symptoms of diabetes, the skilled person would not have considered D1 which exerts pressures of up to 50 mmHg.

Auxiliary requests IV to VII

The arguments in support of an inventive step in the main request applied equally here too.

Auxiliary request VIII

The arguments in support of an inventive step in both the main request and auxiliary requests II and III applied here too.

- X. The respondent's arguments relevant to the present decision may be summarised as follows:

Main request

The subject-matter of claim 1 lacked novelty, or at least lacked an inventive step in view of D1 alone. If D1 failed to disclose features M5 and M6 of claim 1 and the objective technical problem were seen as being the provision of suitable pressures at the ankle and calf zones of the garment, the skilled person would ascertain suitable pressures from simply reading D1. D1 was directed to providing a sock suitable for diabetics (see col. 1, lines 14 to 17 of D1) and, similarly to the opposed patent, aimed 'to enhance flow in the venous and lymphatic systems' (see col. 3, line 29; col. 5, lines 30 to 31). Contrary to the allegation of the appellant, D1 would thus not restrict arterial flow. D1 also disclosed applying pressure in a

medically therapeutic range at any of the toe, foot, heel, ankle and/or leg zones. The sock of D1 clearly extended at least partially over the wearer's calf, such that a suitable pressure would be chosen by the skilled person in this zone too when faced with the problem to be solved. When considering the pressure to be applied by the compression garment, the skilled person would see the pressure classes in D1 as not being directly related to those in D12 at least because, as a US document, D1 did not design to a defined medical standard, tending rather to adopt one of the European specifications for compression garments (see D32, page 3/6, 'Challenges').

#### Auxiliary request I

A continuously graduated pressure was also known from D1, at least in the smooth pressure transitions between two zones of compression such that the garment was a continuously graduated one. This amendment to claim 1 thus failed to make its subject-matter inventive.

#### Auxiliary requests II and III

D1 explicitly disclosed a compression sock suitable for use by patients with diabetes, so the subject-matter of claim 1 of these requests failed to meet the requirements of Article 56 EPC similarly to the main request.

#### Auxiliary requests IV to VIII

The subject-matter of claim 1 of each of these requests also failed to overcome the inventive step objections of the higher ranking requests.

## **Reasons for the Decision**

### *Main request*

1. *Article 100(a) EPC in combination with Article 54 EPC*
- 1.1 The subject-matter of claim 1 is novel over D1.
  - 1.1.1 The reasons for the Board finding features M5 and M6 not to be known from D1, contrary to the opinion of the respondent, are superfluous in view of the later finding in this decision that the subject-matter of claim 1 anyway lacks an inventive step.
  - 1.1.2 Feature M2 is known from D1, contrary to the appellant's opinion, even if the Board were to find the new line of argument relating to feature M2 to be admissible.
  - 1.1.3 In this regard, claim 1 does not further define what must be understood by a 'flat toe seam' but the description (see paragraph [0044]) does elucidate that such seams are designed to avoid friction against the skin thus improving wearer comfort and describes one way of making such a flat toe seam.
  - 1.1.4 The 'double toe seam' of D1 (see col. 7, lines 30 to 51) anticipates the claimed 'flat toe seam'. Not only does it 'have the same or lower profile, or height, as the knitted terry cushion layer on the inside of the sock', but also 'provides a smoother more comfortable fit of the sock'. The toe seam of D1 thus has both the physical and functional features of the claimed flat toe seam, such that this feature is known from D1. Claim 1 does not define any further limitation of such

a seam and the mere fact that the description in the patent discloses a (different) way of making a flat toe seam is thus of no consequence to the assessment of novelty.

1.1.5 In summary, therefore, D1 solely fails to disclose:

M5 wherein the pressure value at the ankle zone (1) is of 13.3-36.0 hPa (10-27 mmHg) and

M6 at the calf zone (2) 8.0-21.3 hPa (6-16 mmHg).

2. *Article 100(a) EPC in combination with Article 56 EPC*

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

2.1.1 Starting from D1, which fails to disclose features M5 and M6 of claim 1 (see point 1.1 above), the appellant formulated the technical problem to be solved as 'the provision of a compression garment for legs which applied appropriate pressure to reduce oedema without negative side effects such as arterial occlusion'.

2.1.2 This technical problem is however not objective. The Board notes that the claimed range for pressure value at the ankle zone (10-27 mmHg) overlaps with that at the calf zone (6-16 mmHg). Consequently, claim 1 includes within its scope the pressure at the calf zone being higher than that at the ankle zone. This pressure relationship is the precise opposite of that required in a garment aimed at reducing oedema in the wearer which, as indicated in paragraph [0041] of the patent, requires the pressure exerted to decrease in longitudinal direction from the ankle towards the thigh. With this pressure relationship not being achieved across the breadth of claim 1, a reduction in

oedema cannot be considered an objective aim of claim 1.

- 2.1.3 It should be noted, however, that the breadth of the claim encompassing the possibility of the pressure at the calf being higher than that at the ankle is only used to indicate that the technical problem posed by the appellant is not objective. When considering if, starting from D1, the skilled person would reach the claimed subject-matter without exercising an inventive step, to the appellant's benefit, the Board considered only that portion of the claimed ranges where the pressure at the ankle was indeed higher than that at the calf (cf. point 2.1.8 below).
- 2.1.4 In respect of the posed technical problem in point 2.1.1 once more, the appellant's argument that the claimed garment was for 'graduated compression', which would be understood by the skilled person as displaying pressure decreasing towards the proximal portion, is not accepted. The breadth of a clearly worded claim is defined by the wording in the claim itself rather than through reference to the description. In the present case, the claim is silent as to the intended effect of the pressure values defined at the ankle and calf zones such that the skilled reader would have no reason to question the apparent deliberate intention of the pressure value ranges in the two zones overlapping.
- 2.1.5 The appellant further argued that the patent was directed to treatment of oedema in patients suffering from diabetes and that the pressure must therefore be interpreted as decreasing from the ankle towards the thigh. Again this interpretation is based on the description which should usually not be used to limit how a clearly drafted claim is to be understood.

Rather, a claim should be given its broadest, technically reasonable interpretation which, in the present case, includes the possibility of the pressure applied at the ankle being lower than that applied at the calf. Reference is made however to point 2.1.3 above.

- 2.1.6 It follows, therefore, that the technical problem starting from D1 as formulated by the appellant is not objective.
- 2.1.7 In formulating the objective technical problem to be solved, the Board notes that both D1 and the patent in suit are directed to the purpose of reducing oedema in diabetes patients (D1: see col. 1, lines 14 to 17; col. 2, lines 9 to 11; patent: see paragraph [0015]), such that this cannot form part of an objective problem. In addition D1 already suggests pressures in a medically therapeutic range which can be applied by a sock (see col. 5, lines 20 to 28). The objective technical problem to be solved is thus simply 'to provide a compression garment for legs which applies suitable pressure values'.
- 2.1.8 In the consideration of the presence of an inventive step which follows, to the appellant's advantage, the Board considered only that portion of the claimed ranges where the pressure at the ankle zone was indeed higher than that at the calf zone.  
D1 itself provides the skilled person with guidance to suitable pressure values to apply at both the ankle zone and the calf zone which fall within the claimed pressure ranges.  
Firstly, col. 5, lines 23 to 26 of D1 discloses therapeutic compressive pressures applied by an exemplary sock in the foot and/or lower leg of 20-30

mmHg. This is clearly a 'suitable' pressure value to apply in these regions.

Secondly, col. 5, lines 28 to 31 discloses that pressures should be graduated along the length of the sock from the distal portion to the proximal portion so as to enhance flow in the venous and lymphatic systems, this graduation providing decreasing pressure from a distal to a proximal portion of the sock (see col. 2, lines 22 to 27). To satisfy this requirement, the skilled person would thus select a higher pressure at the ankle zone than at the calf zone.

It is further noted that the skilled person knew from their common general knowledge of medical compression hosiery (see for example D12, the DIN standard for such products) that the pressure applied at the ankle zone is generally chosen to be greatest, the pressure at the calf zone being lower (e.g. 50 to 80% of that at the ankle being typical in D12, albeit that not being a standard which is explicitly referred to in D1).

Consequently, in search of suitable pressures to apply at the ankle and calf zones, the skilled person would select 20mmHg as a suitable pressure to apply at the ankle zone of the sock and, through their common general knowledge of pressures reducing towards the proximal portion of the sock, would select a pressure falling within the 6-16 mmHg range as suitable for the calf zone.

The skilled person would thus, starting from D1 and wishing to solve the posed objective technical problem, reach the claimed subject-matter without exercising an inventive step.

- 2.1.9 The appellant's argument that D1 failed to disclose a sock covering the wearer's calf and so could not guide the skilled person to the claimed pressure applied at the calf zone is not accepted. The sock of D1 is



indicated to apply pressure at the toe, foot, heel, ankle and/or leg areas (col. 5, lines 17 to 20), the lower leg area being particularly singled out (see lines 20 to 22). The Board can only conclude that the 'lower leg area' encompasses at least a portion of the calf muscle and thus of the calf zone. This is further supported by the figures of D1 which depict a sock, the leg portion of which would be understood by the skilled person (from relative dimensions of the depicted foot portion 15 and leg portion 18) also to cover at least the lower portion of the calf muscle.

2.1.10 The appellant argued that the skilled person would not be guided by D1 to provide a pressure falling within the claimed range specifically at the ankle zone, since this was more generally disclosed to be applied anywhere at the toe, foot, heel, ankle or leg areas. This would not hinder the skilled person from applying a suitable pressure specifically at the ankle zone not least since they understood, through common general knowledge, that the highest pressure in compression hosiery was usually applied at the ankle zone. It would thus be obvious for the skilled person to select 20 mmHg as a suitable pressure known from D1 and apply this at the ankle zone of the sock.

2.1.11 The appellant's reference to the pressure classes denoted as Class I, II or III in D1 not relating to the compression classes of D12 is irrelevant to the question of whether the skilled person would have found suitable pressures to apply to the ankle and calf zones. D1 discloses a plurality of pressure ranges that the sock can apply to a wearer's leg. That the chosen suitable pressure of 20 mmHg is referred to as 'Class I' in D1 is irrelevant; it is a suitable pressure for the sock to apply in the ankle zone. It is thus

moreover irrelevant that what is referred to as Class I pressures in D1 (see col. 5, line 26) does not coincide with Compression Class I pressures in D12 (see Table 5). D32 offers a further insight as to why D1 and D12 pressure classes differ. Page 3/6 of D32, under the heading 'Challenges', states that the US does not use a defined standard testing system for compression garments which has led manufacturers to adopt one of the European specifications (e.g. BSI or RAL). Thus, while D1, as a US patent document, has no standard pressure class within which it operates, the skilled person would recognise D12 to represent one of several appropriate European standards which can be used to indicate the magnitude and pressure graduation of a compression garment manufactured to this standard.

2.1.12 The appellant's further reference to D1 disclosing pressures of up to 50 mmHg and this being significantly higher than that claimed even in the ankle zone of the garment does not hinder the skilled person choosing a suitable pressure from D1 from the other quoted values. In this regard, any of the pressures disclosed in D1 must be seen as 'suitable' for treatment of oedema since that is precisely what the sock of D1 is intended for (see col. 3, lines 56 to 62). D1 would thus guide the skilled person to suitable pressures to use at the ankle and calf zones meeting the claimed pressure ranges.

2.1.13 The appellant's contention that, prior to the present patent, the skilled person was prejudiced not to apply pressure to the leg of a diabetes patient is not accepted. D1 explicitly indicates diabetes to cause reduced circulation and swelling of feet and legs (col. 1, lines 14 to 17) and addresses this problem through application of therapeutic compressive pressures (see

e.g. col. 2, lines 9 to 11). The use of compressive pressure garments for diabetes patients was thus clearly documented before the priority date of the present patent.

2.1.14 In conclusion, therefore, when starting from D1 and wishing to find suitable pressures to apply at the ankle and calf zones of the sock, the skilled person would apply pressures within the claimed ranges and reach the claimed subject-matter without exercising an inventive step.

2.1.15 The ground for opposition under Article 100(a) EPC therefore prejudices maintenance of the patent as granted. The main request is thus not allowable.

### 3. *Auxiliary request I*

#### 3.1 *Article 56 EPC*

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

3.2 Relative to claim 1 of the main request, the present claim 1 defines the compression garment to be 'continuously graduated'. It is noted that the amendment made to claim 1 fails to define the entirety of the garment as being continuously graduated. Consequently D1, which displays smooth transitions of compressive pressure between each zone of compression (see col. 5, lines 52 to 54), discloses a 'continuously graduated compression garment' since at least one portion of the sock has such continuous graduation.

3.3 The appellant's contention that the continuously graduated compression garment of claim 1 would be

understood to display continuous graduation along its complete length, from distal end to proximal end, is not accepted. When considering the wording of claim 1 itself, this does not identify the extent over which the continuous graduation is displayed. Moreover, col. 5, lines 51 to 53 of the patent discloses that 'the pressure exerted to the skin decreases in longitudinal direction from the ankle towards the thigh' such that even the description of the patent itself does not support the appellant's contention that the continuous graduation extends the length of the garment or even over the entire length where a compression structure is present.

3.4 The appellant's argument that the Board's interpretation of claim 1 was valid solely if the claim were drafted as a 'garment comprising a continuously graduated compression section' is not accepted. When drafted as a 'continuously graduated compression garment', this is a broad definition encompassing the entirety of the garment, solely a small portion of the garment, or any length of the garment in-between these two extremes, displaying continuous graduation of compression. The smooth transitions of compressive pressure between each zone of compression of D1 are thus seen to anticipate the claimed feature.

3.5 The appellant's reference to paragraph [0041] of the patent in which incremental or continuous pressure gradient change is disclosed does not change the above finding. Even if this paragraph of the description were to disclose a continuously graduated compression garment along its entire length, which it does not, this would still not limit the claim to that which the description discloses. In fact, claim 1 does not even use the same wording as in paragraph [0041], where a

difference is drawn between an incremental and a continuous gradient. Even if it had used the same wording, the description can anyway be understood to be merely a series of incremental zones without any compression transition zones therebetween rather than that in D1 which has the continuous gradient (i.e. smooth transition) between the zones. The Board can see no reason why claim 1 should not be interpreted in its broadest, technically reasonable manner which, in the present case, includes (as also argued by the respondent) just a portion of the garment displaying continuously graduated compression. D1 discloses just such a portion by way of one of the smooth transition regions.

3.6 The appellant's further argument that the skilled person knows that pressure is applied by the garment only between the ankle and calf zone also has no impact on the above finding. The smooth transitions of compressive pressure between each zone of compression disclosed in D1 anticipates the feature added to claim 1.

3.7 Consequently, the amendment made to claim 1 in the present request with respect to claim 1 of the main request has no impact on the inventive step finding. The subject-matter of claim 1 of auxiliary request I thus lacks an inventive step for the same reasons as those presented for the subject-matter of claim 1 of the main request. Auxiliary request I is thus also not allowable.

4. *Auxiliary requests II and III*

4.1 *Article 56 EPC*

The subject-matter of claim 1 of each of auxiliary requests II and III does not involve an inventive step.

4.2 Claim 1 of each of these requests differs from claim 1 of the main request in that it includes a statement as to the applicability of the garment to treat and/or prevent oedema in patients with diabetes.

4.3 As already discussed above, D1 discloses the suitability of the subject compression sock to treat oedema in patients with diabetes (see col. 1, lines 14 to 17; col. 2, lines 9 to 11; col. 5, lines 28 to 31). Consequently the amendments made to claim 1 of both auxiliary requests II and III do not change the inventive step finding for the main request as given above under point 2.1.

4.4 Auxiliary requests II and III are thus not allowable.

5. *Auxiliary requests IV to VII*

5.1 *Article 56 EPC*

The subject-matter of claim 1 of each of auxiliary requests IV to VII also does not involve an inventive step.

5.2 The amendments to claim 1 of these requests relative to claim 1 of the main request introduce more limited claimed ranges of the pressure value at the ankle zone and/or the calf zone of the garment.

5.3 The patent fails to provide a technical effect achieved by the new pressure ranges of each request, nor did the appellant provide any such evidence. No reason can thus be seen by the Board to consider these amended pressure

ranges as claiming anything beyond suitable pressures for the garment to apply. Such suitable values, as found for the main request above, are seen to have been obvious to the skilled person in view of D1. Claim 1 of each of these requests thus fails to overcome the inventive step objection found prejudicial to claim 1 of the main request.

5.4 Auxiliary requests IV to VII are thus not allowable.

6. *Auxiliary request VIII*

6.1 *Article 56 EPC*

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

6.2 Similarly to auxiliary requests II and III, claim 1 of auxiliary request VIII differs from claim 1 of the main request in that it includes a statement as to the applicability of the garment to treat and/or prevent oedema.

6.3 As already mentioned above, D1 discloses the suitability of the subject compression sock to treat oedema (see e.g. col. 1, lines 14 to 17; col. 2, lines 9 to 11). Consequently the amendments to claim 1 of auxiliary request VIII do not change the inventive step finding for the main request as given above under point 2.1.

6.4 Irrespective of its admissibility, auxiliary request VIII is thus also not allowable.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:



D. Grundner

M. Harrison

Decision electronically authenticated