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**Datasheet for the decision  
of 29 July 2025**

**Case Number:** T 1408/23 - 3.3.07

**Application Number:** 16709803.7

**Publication Number:** 3267981

**IPC:** A61K9/70, A61K31/4748

**Language of the proceedings:** EN

**Title of invention:**

TRANSDERMAL THERAPEUTIC SYSTEM WITH AN OVERTAPE COMPRISING TWO  
ADHESIVE LAYERS

**Patent Proprietor:**

Luye Pharma AG

**Opponent:**

LTS LOHMANN Therapie-Systeme AG

**Headword:**

Transdermal patch/LUYE

**Relevant legal provisions:**

EPC Art. 56

**Keyword:**

Inventive step - (no)



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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Case Number: T 1408/23 - 3.3.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.07**  
**of 29 July 2025**

**Appellant:** LTS LOHMANN Therapie-Systeme AG  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 22 May 2023  
rejecting the opposition filed against European  
patent No. 3267981 pursuant to Article 101(2)  
EPC**

**Composition of the Board:**

**Chairman** A. Uselli  
**Members:** J. Molina de Alba  
Y. Podbielski

## Summary of Facts and Submissions

I. The decision under appeal is the opposition division's decision rejecting the opposition filed against the European patent.

II. The patent had been granted with 15 claims. Claim 1 as granted read as follows:

*"1. A transdermal therapeutic system comprising*

*a) a release liner (1),*

*b) a core comprising*

*b1) a polymer matrix layer (2) containing an active ingredient and*

*b2) a separating layer (3)*

*and*

*c) an overtape comprising*

*c1) a pressure-sensitive adhesive layer (4)*

*and*

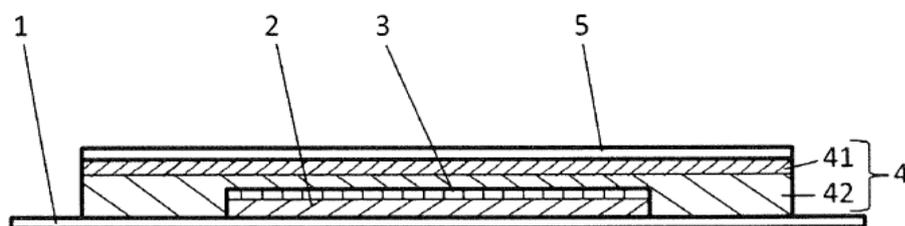
*c2) a backing layer (5)*

*wherein the overtape c) and the release liner (1) extend beyond the core at all sides of the core characterized in that the pressure-sensitive adhesive layer comprises a first layer (41) which is in contact with the backing layer (5) and comprises a first pressure-sensitive adhesive polymer and a second layer (42) which is in contact with the release liner (1) and comprises a second pressure-sensitive adhesive polymer, wherein the second pressure-sensitive adhesive polymer is a silicone polymer or a non-crosslinked polyacrylate and the first pressure-sensitive adhesive polymer has a*

*lower adhesiveness than the second pressure-sensitive adhesive polymer."*

The transdermal therapeutic system of claim 1 as granted can be represented by Figure 1 of the patent, reproduced here below:

Figure 1



III. In the present decision, "transdermal therapeutic system" is abbreviated as TTS and "pressure-sensitive adhesive" as PSA.

IV. The present decision refers to the following documents cited by the parties during the opposition and appeal proceedings:

D1 US 2010/0178323 A1

D5 US 6,436,433 B1

D12 DURO-TAK and GELVA Transdermal Pressure Sensitive Adhesives - Product Selection Guide, Henkel, revised on 3 September 2013

V. In the decision, the opposition division concluded, among other things, that:

- the subject-matter of claim 1 was novel over the disclosure of D1,
- Example 1 of D1 was the closest prior art,

- the objective technical problem was the provision of an alternative TTS, and
- the solution proposed in claim 1 was not rendered obvious by the common general knowledge disclosed in D12, and the skilled person would not combine Example 1 of D1 with D5.

- VI. The opponent (appellant) filed an appeal against the opposition division's decision. It requested that the decision be set aside and that the patent be revoked.
- VII. With its reply to the statement of grounds of appeal, the patent proprietor (respondent) requested that the appeal be dismissed and that the patent be maintained as granted (main request). In addition, the respondent filed ten sets of claims as auxiliary requests 1 to 10. Auxiliary requests 1 to 4 were identical to those filed in the opposition proceedings on 25 April 2022. Auxiliary requests 5 to 10 were new.
- VIII. The Board scheduled oral proceedings, in line with the parties' requests, and gave its preliminary opinion on the case.
- IX. Oral proceedings were held before the Board. At the beginning, the respondent withdrew its main request and auxiliary requests 1 and 2. At the end of the oral proceedings, the Board announced its decision.
- X. The present decision is based on the claims of auxiliary requests 3 to 10 filed by the respondent with its reply to the statement of grounds of appeal.

Claim 1 of auxiliary request 3 differs from claim 1 as granted in that:

- the first PSA polymer has been specified to be a crosslinked polyacrylate, a polyisobutylene, a styrene-butadiene-styrene block copolymer or a styrene-butadiene copolymer,
- the second PSA polymer has been limited to a non-crosslinked polyacrylate, and
- the claim specifies that for comparing the adhesiveness of the first and the second PSA polymer the same method for determining the adhesiveness is used.

Claim 1 of auxiliary request 4 differs from claim 1 of auxiliary request 3 in that the first PSA polymer has been limited to a crosslinked polyacrylate.

Claim 1 of auxiliary request 5 differs from claim 1 as granted in that the first PSA polymer has been specified to be a crosslinked polyacrylate, a polyisobutylene, a styrene-butadiene-styrene block copolymer or a styrene-butadiene copolymer.

Claim 1 of auxiliary request 6 differs from claim 1 of auxiliary request 5 in that the second PSA polymer has been limited to a non-crosslinked polyacrylate.

Claim 1 of auxiliary request 7 differs from claim 1 of auxiliary request 6 in that the first PSA polymer has been limited to a crosslinked polyacrylate.

Claim 1 of auxiliary request 8 differs from claim 1 as granted in that it specifies that adhesiveness is measured according to ASTM D3330/D3330M.

Claim 1 of auxiliary request 9 differs from claim 1 of auxiliary request 8 in that adhesiveness is measured

according to ASTM D3330/D3330M on a stainless steel plate at a 90° angle.

Claim 1 of auxiliary request 10 differs from claim 1 of auxiliary request 9 in that the first PSA polymer has been limited to a crosslinked polyacrylate and the second PSA polymer has been limited to a non-crosslinked polyacrylate.

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

The closest prior art was the TTS prepared in Example 1 of D1. The TTS in claim 1 of auxiliary request 3 differed from the closest prior art in that the second PSA polymer was a non-crosslinked polyacrylate instead of a polyisobutylene (PIB). The adhesiveness feature in claim 1 was so unclear that it could not serve to distinguish the claimed TTS from the closest prior art. Therefore, the adhesiveness feature should be ignored when assessing inventive step.

Even if the adhesiveness feature was taken into account, it was not a distinguishing feature because Example 1 of D1 implicitly disclosed it. The aim of the PSA layer containing PIB in Example 1 of D1 was to adhere to skin and therefore had to be highly adhesive. A disadvantage of the high adhesiveness of the PIB was that it experienced cold flow. However, this adverse effect could be offset by introducing a less sticky intermediate layer made of a PSA crosslinked polyacrylate that prevented PIB migration towards the backing layer. Consequently, the crosslinked acrylate in the intermediate layer of Example 1 of D1 was less adhesive than the PIB in the layer intended for skin adhesion.

The respondent had not demonstrated that the distinguishing feature was associated with a technical effect. The comparative test in Example 1 of the patent was not suitable to show any improvement over the closest prior art. Therefore, the objective technical problem was the provision of an alternative TTS.

The skilled person searching for an alternative would look for highly adhesive PSA polymers commonly used in TTS for skin adhesion. One such polymer was the polyacrylate tested in Table 2 of D1. PSA polyacrylates were well known and commercially available polymers for skin adhesion in TTS: D12 disclosed a selection thereof. All the PSA polymers disclosed in D12 except one were polyacrylates, and those with the highest adhesiveness were the non-crosslinked ones, especially Duro-Tak 87-2051. The only exception to polyacrylates in D12 was a PIB. The fact that in paragraph [0096] of D1 a PIB was considered advantageous over a polyacrylate did not teach away from the invention. The advantage of the PIB was associated with the particular situation that the active-ingredient layer contained volatile enhancers that could migrate to the adhesive layer. However, the migration of volatile enhancers was not an issue dealt with in the patent and did not form part of the objective technical problem. Nor had the respondent alleged that a non-crosslinked polyacrylate could solve the problems associated with the migration of volatile enhancers. Therefore, this particular aspect of TTS was irrelevant to the assessment of inventive step. All the skilled person had to do was look for a PSA polymer that was highly adhesive to skin and could suitably replace PIB. Therefore, the highly adhesive non-crosslinked polyacrylates in D12, especially Duro-Tak 87-2051, were obvious solutions.

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

The patent was primarily directed to the provision of a TTS that maintained its adhesive strength during storage. This technical effect was paramount and could not be ignored when assessing inventive step.

Starting from Example 1 of D1 as the closest prior art, the TTS in claim 1 of auxiliary request 3 differed in two respects: the second PSA polymer was a non-crosslinked polyacrylate instead of a PIB, and the first PSA polymer had lower adhesiveness than the second PSA polymer.

Examples 1 and 2 of the patent demonstrated that the adhesiveness of a TTS according to the invention was maintained during storage. Even if Examples 1 and 2 did not provide a direct comparison with the closest prior art, the technical effect that they showed had to be taken into consideration. Therefore, the objective technical problem was to provide a TTS with excellent shelf-life properties, in particular with regard to storage over time.

The combination of Example 1 of D1 with D12 suggested by the appellant was based on hindsight. PIB was generally disclosed in D1 as the preferred PSA polymer. Even if polyacrylates were known as PSA polymers in TTS, D1 did not propose to use them and expressly taught that PIB was preferred. As alternatives to PIB, paragraph [0079] of D1 proposed several PSA polymers, none of which was a polyacrylate. Therefore, the skilled person would find no motivation in D1 to replace PIB with a polyacrylate. Nor would they turn to

D12, which failed to disclose any of the alternatives proposed in paragraph [0079] of D1, let alone selecting a non-crosslinked polyacrylate from among all the options disclosed in D12. Furthermore, if PIB was replaced in D1, there would be no need to introduce an intermediate layer since the intermediate layer was incorporated to minimise the cold flow of PIB. Then, the two-adhesive-layer structure disclosed in D1 could be dispensed with, which would lead away from the invention.

XIII. The parties' final requests were as follows:

- The appellant requested that the decision under appeal be set aside and that the patent be revoked in its entirety.
  
- The respondent requested that the patent be maintained in amended form on the basis of one of auxiliary requests 3 to 10, all filed with the reply to the statement of grounds of appeal.

It also requested that the appellant's arguments relating to the non-limiting effect of the adhesiveness of the PSA polymers in claim 1 not be admitted into the appeal proceedings.

## Reasons for the Decision

### 1. *Auxiliary request 3 - inventive step (Article 56 EPC)*

- 1.1 The patent is directed to a transdermal therapeutic system (TTS) as described in point II above. Such a TTS retains its adhesive properties during storage and remains adhesive for a prolonged period of time. This makes the TTS suitable for the continuous administration of an active ingredient over several days (see patent, paragraphs [0001] and [0019]).

The TTS according to claim 1 of auxiliary request 3 is characterised by the structure and composition of its pressure-sensitive adhesive (PSA) layer, which comprises two layers: a first layer which is in contact with the backing layer and comprises a first PSA polymer, and a second layer which is in contact with the release liner and comprises a second PSA polymer. The adhesiveness of the first PSA polymer is lower than that of the second PSA polymer. Furthermore, the first PSA polymer is a crosslinked polyacrylate, a polyisobutylene, a styrene-butadiene-styrene block copolymer or a styrene-butadiene copolymer, and the second PSA polymer is a non-crosslinked polyacrylate.

- 1.2 The parties agreed that the TTS prepared in Example 1 of D1 constitutes the closest prior art. D1 discloses a TTS which has the layer structure defined in claim 1 of auxiliary request 3. This structure is depicted in Figure 1 of D1, which is reproduced here below and explained in paragraph [0032] of D1.

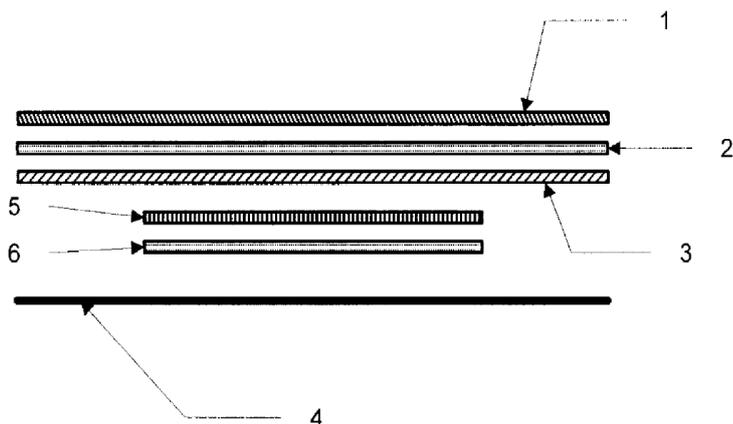


Fig. 1

The correspondence between the layers of the TTS in D1 and those of the TTS in claim 1 is the following (see also Figure 1 in point II above):

Layer in D1	Layer in claim 1
1	backing layer (5)
2	first PSA layer (41)
3	second PSA layer (42)
4	release liner (1)
5	separating layer (3)
6	active ingredient layer (2)

D1 teaches that when the PSA polymer in layer 3 (second PSA layer in present claim 1) has a low molecular weight, it can pass through the backing layer 1, which is porous, causing the device to become tacky and discoloured. This can be prevented by inserting intermediate layer 2 (first PSA layer in present claim 1), which permits the passage of moisture, but not that of the PSA polymer in layer 3, towards the backing layer (paragraphs [0020], [0088] and [0089]).

In Example 1 of D1, the PSA polymer in layer 3 is a polyisobutylene (PIB) and the PSA polymer in

intermediate layer 2 is Duro-Tak 87-2852 (paragraphs [0108] and [0109]). The parties did not dispute that Duro-Tak 87-2852 was a well-known and commercially available crosslinked polyacrylate generally used in TTS. This was confirmed by D12, which discloses a selection of commercially available PSA polymers for use in TTS.

- 1.3 It was common ground that the TTS in claim 1 of auxiliary request 3 differs from the TTS in Example 1 of D1 in that the second PSA polymer is a non-crosslinked polyacrylate instead of a PIB. However, the parties disagreed on whether the condition in claim 1 that the first PSA polymer has lower adhesiveness than the second PSA polymer was an additional distinguishing feature.

In the Board's view, it is not possible to determine whether Duro-Tak 87-2852 has lower adhesiveness than the unspecified PIB in Example 1 of D1. Therefore, the relative adhesiveness feature in claim 1 is also considered to be a distinguishing feature.

On this point, the appellant argued that the relative adhesiveness feature in claim 1 was so unclear that it had to be disregarded for the assessment of inventive step. The respondent requested that this argument not be admitted because it had not been raised during the opposition proceedings.

The Board holds that the appellant's new argument can be admitted but that it is not convincing. In view of the outcome of the assessment of inventive step taking into account the relative adhesiveness of the PSA polymers in claim 1 (see point 5 below), the Board does not need to give more details on this issue.

- 1.4 With regard to the technical effect produced by the distinguishing features, the respondent referred to the examples in the patent.

Example 1 of the patent compares the variation in adhesive strength of two overtapes two weeks after preparation. The overtapes contain a backing layer and a PSA layer. Reference Overtape 1 has a single PSA layer made of Duro-Tak 87-2051, while Overtape 2 has two PSA layers: a first PSA layer made of Duro-Tak 87-2054 and a second PSA layer made of Duro-Tak 87-2051. According to the patent, Duro-Tak 87-2054 is a crosslinked polyacrylate and Duro-Tak 87-2051 a non-crosslinked polyacrylate (paragraphs [0052] and [0053]). The patent does not specify the relative adhesiveness of Duro-Tak 87-2054 and Duro-Tak 87-2051. However, the parties agreed that it was known that the adhesiveness of a polymer generally decreases with crosslinking. Furthermore, the respondent stated at the oral proceedings before the Board that the content of D12 was well known to the skilled person in the field of TTS so that the skilled person was aware that the adhesiveness of Duro-Tak 87-2054 was lower than that of Duro-Tak 87-2051 (see table in D12, fourth and sixth entries from bottom). Consequently, Overtape 2 is an overtape in accordance with claim 1.

As stated in paragraph [0090] of the patent, the results of the comparative test in Example 1 show that the adhesive strength of the overtape consisting of two PSA layers (Overtape 2) is maintained over time, while that of the overtape comprising only one PSA layer (Reference Overtape 1) is not. In other words, the patent ascribes the improvement of Overtape 2 over Reference Overtape 1 to the fact that the former has

two PSA layers while the latter has only one. It is silent on the relevance of the relative adhesiveness of the two PSA layers.

Example 2 of the patent confirms that a TTS in accordance with claim 1 maintains its adhesive strength after one month's storage at 40°C and 75% relative humidity.

Thus, the examples in the patent show that a TTS in accordance with claim 1 retains its adhesive properties during storage. This technical effect has not been compared with the TTS of the closest prior art, but there is no reason to believe that the TTS of claim 1 is superior to or substantially different from the one in Example 1 of D1: as stated in paragraph [0090] of the patent, the maintenance of the adhesive strength during storage is attributed to the fact that the TTS has two PSA layers, a feature that is also present in the TTS of the closest prior art. Consequently, it cannot be concluded that the distinguishing features produce any technical effect over the TTS of the closest prior art.

- 1.5 In the absence of a technical effect over the closest prior art, the objective technical problem has to be defined as the provision of an alternative TTS.

The respondent argued that, even if no technical effect has been demonstrated in comparison with the closest prior art, the technical effect shown in the patent has to be considered in the definition of the objective technical problem.

In the Board's view, the technical effect shown in the patent is implicitly considered when the objective

technical problem is defined as an alternative. As set out above (point 1.4), it can be expected that the TTS in Example 1 of D1 also maintains its adhesive strength during a certain period of storage. This seems reasonable on its own, given that TTS are not prepared *in situ* and must retain their adhesive strength for at least a period extending from preparation to commercialisation and application by the final user. Thus, whether the objective technical problem is defined as an alternative or as an alternative which maintains adhesive strength during a period of storage does not change the situation.

- 1.6 On the issue of obviousness, the parties discussed the combination of the closest prior art with D12 and D5. In view of the outcome of combining the closest prior art with D12 (point 1.6.2 below), a discussion of the combination with D5 is superfluous.
- 1.6.1 At the oral proceedings before the Board, the respondent submitted that the appellant had never combined Example 1 of D1 with D12 in relation to claim 1 of auxiliary request 3. Therefore, the inventive-step objection based on that combination of prior-art disclosures should not be admitted against auxiliary request 3.

In the opposition proceedings, the appellant argued that the TTS in claim 1 as granted was obvious from a combination of Example 1 of D1 with D12 (decision, page 31, last paragraph and page 32, first paragraph). The opposition division dealt with this objection in the decision under appeal (page 42, fifth paragraph to page 43, second paragraph) and the patent was ultimately maintained as granted. So there was no need to discuss

the objection with regard to auxiliary request 3 in the opposition proceedings.

In the statement of grounds of appeal, the appellant maintained that the TTS of claim 1 as granted was not inventive over the combination of Example 1 of D1 with D12 (page 33, point 2.2.2) and extended the argument to claim 1 of each of auxiliary requests 1 to 4. In particular, the statement of grounds of appeal reads on page 41, paragraph 170: *"the subject-matter of claim 1 of the 2<sup>nd</sup> Auxiliary Request does not involve an inventive step starting from document D1 in combination with either one of documents D5, D6, or D12"*.

Subsequently, in paragraph 175, it reads with regard to auxiliary request 3: *"the claimed subject-matter lacks an inventive step over document D1 for the same reasons as the 2<sup>nd</sup> Auxiliary Request"*.

Against this background, the Board concludes that the argument based on the combination of Example 1 of D1 with D12 is admissible under Article 12(4) RPBA.

In its letter in response to the Board's preliminary opinion indicating that the situation of auxiliary request 3 might be different from that of the patent as granted and auxiliary requests 1 and 2, the appellant developed its inventive-step argument based on the combination of Example 1 of D1 with D12 further, specifically for auxiliary request 3 (letter dated 19 May 2025, page 2). The Board considers that these submissions do not constitute a change of the appellant's appeal case but that they are merely a further development of a line of argument already made in the statement of grounds of appeal.

Therefore, the argument against auxiliary request 3 based on the combination of Example 1 of D1 with D12 is part of the appeal proceedings.

- 1.6.2 As set out above (point 1.2), D1 teaches that when the PSA polymer in layer 3 has a low molecular weight, it can pass through the backing layer 1, which is porous, causing the device to become tacky and discoloured. This migration of low-molecular PSA polymers as thick viscous liquids is a well-known phenomenon in the field of TTS: it is acknowledged in paragraph [0047] of the patent and is generally called "cold flow". In Example 1 of D1, the PSA polymer of low molecular weight prone to migration is a PIB. The intermediate PSA layer which prevents the migration of the PIB but allows the passage of moisture towards the backing layer is made of Duro-Tak 87-2852, a commercially available crosslinked polyacrylate (see table in D12, seventh entry from bottom).

The skilled person willing to provide an alternative TTS to the one in Example 1 of D1 would first look at the alternatives proposed in D1. In that respect, the respondent is right that D1 suggests in paragraph [0079] several PSA polymers that can be used in layer 3 in place of PIB, and that none of them is a non-crosslinked polyacrylate as required by claim 1. However, as noted by the appellant, paragraph [0097] of D1 discloses another PSA polymer that satisfactorily fulfils the adhesive function of PIB in the TTS, namely a polyacrylate. The ability of these two PSA polymers to adhere to skin for long periods of time was tested and both polymers gave good adhesivity results. Nevertheless, PIB was considered to be a better option when volatile compounds or enhancers are present (see Table 2 in paragraph [0097]). Consequently, the skilled

person would understand from D1 that a PSA polyacrylate was a suitable polymer for use in layer 3, even if PIB might be advantageous under certain conditions. Thus, D1 presents the PSA polyacrylate as a suitable alternative to PIB, although it is a less-preferred alternative under specific circumstances.

Considering that the essential function of PIB in Example 1 of D1 is to provide good adhesion to skin, the skilled person looking for an alternative would turn to the common PSA polymers used in TTS and select in the first place those providing the highest adhesiveness. Such PSA polymers are disclosed in D12 and, in line with the alternative proposed in paragraph [0097] of D1, are all polyacrylates with the exception of Duro-Tak 87-6908, which is a PIB (last entry of the table in D12). In D12, the most adhesive polymers appear to be non-crosslinked polyacrylates, Duro-Tak 87-2051 clearly being the product with the highest adhesiveness. Therefore, in the light of the teaching in D1 and D12, the skilled person would replace the PIB in Example 1 of D1 with Duro-Tak 87-2051. This appears also to be the non-crosslinked polyacrylate used as the second PSA in the patent examples.

With regard to the relative adhesiveness of the first and second PSA polymers, it is apparent from D12 that Duro-Tak 87-2852, the PSA polyacrylate in layer 2 of Example 1 of D1 has lower adhesiveness than Duro-Tak 87-2051. Thus, replacing the PIB in Example 1 of D1 with its obvious alternative Duro-Tak 87-2051 would lead to a TTS which satisfies the relative adhesiveness required by claim 1 of auxiliary request 3.

Consequently, the skilled person willing to provide an alternative TTS to the one in Example 1 of D1 would

arrive at the subject-matter of claim 1 of auxiliary request 3 in an obvious manner in view of D12.

- 1.6.3 According to the respondent, the skilled person would not replace the PIB in Example 1 of D1 because D1 generally teaches that PIB is the preferred PSA polymer to be used in layer 3. Even less would the skilled person replace the PIB with a polyacrylate, since the latter is not among the alternatives suggested in paragraph [0079]. Furthermore, as cold flow in D1 was associated with the PIB, if the PIB was replaced, the intermediate PSA layer would no longer be necessary, which would lead away from the invention.

These arguments are not convincing. D1 teaches that PIB is generally preferred as the PSA polymer in layer 3 because the solubility of volatile components or enhancers in it is low. Such volatile components or enhancers, e.g. DMSO and ethyl lactate, may be present in the active-ingredient layer (layer 6) and they could migrate to layer 3 and adversely affect its adhesiveness. Therefore, the lower the solubility of the volatile components or enhancers in layer 3, the lower the risk of impaired adhesiveness (paragraphs [0077], [0088], [0094] and [0095]). In line with this teaching, the reduced solubilisation of volatile compounds or enhancers in the PIB compared with the polyacrylate explained that the PIB retains adhesiveness better than the polyacrylate when volatile compounds or enhancers are present and can migrate (paragraphs [0096] and [0097]). Nevertheless, the results of the test in paragraph [0097] show that the polyacrylate also retains adhesiveness at a good level and that it is a suitable PSA polymer for layer 3. The polyacrylate is even better than the PIB under

conditions that minimise the migration of volatile compounds or enhancers, e.g. at 25°C.

Therefore, the skilled person will learn from D1 that a PSA polyacrylate is a suitable alternative to PIB, although under certain circumstances PIB might better retain adhesiveness over time. The patent does not disprove the teaching in D1 that a TTS in accordance with claim 1 is an alternative with lower performance when volatile compounds or enhancers are present in the active-ingredient layer and can migrate to the adhesive layer. Nor is there any experimental evidence on file in that respect. Therefore, the claimed TTS appears to be an obvious alternative which, in the presence of volatile compounds or enhancers, could retain adhesiveness over time to a lesser degree than the TTS of the closest prior art.

2. *Auxiliary request 4 - inventive step (Article 56 EPC)*

Claim 1 of auxiliary request 4 differs from claim 1 of auxiliary request 3 in that the first PSA polymer has been limited to a crosslinked polyacrylate. This limitation does not introduce any additional distinguishing feature with regard to Example 1 of D1, in which the first PSA polymer was the crosslinked polyacrylate Duro-Tak 87-2852. Therefore, the inventive-step arguments set out for auxiliary request 3 are also applicable to auxiliary request 4.

3. *Auxiliary requests 5 to 7 - inventive step (Article 56 EPC)*

Claim 1 of each of auxiliary requests 5 to 7 contains amendments based on claim 1 as granted that were intended to overcome an objection of lack of

insufficiency of disclosure (Article 83 EPC). These amendments do not add any distinguishing feature beyond those discussed for claim 1 of auxiliary request 3 and, therefore, do not change the situation with regard to inventive step.

4. *Auxiliary requests 8 to 10 - inventive step (Article 56 EPC)*

Claim 1 of each of auxiliary requests 8 to 10 also contain amendments based on claim 1 as granted that were intended to overcome an objection of insufficiency of disclosure (Article 83 EPC). As for auxiliary requests 5 to 7, these amendments do not add any distinguishing feature beyond those discussed for claim 1 of auxiliary request 3. Therefore, the inventive-step arguments and the conclusion set out for auxiliary request 3 are also applicable to auxiliary requests 8 to 10.

5. Therefore, the Board concludes that the patent as amended during these appeal proceedings does not meet the requirements of Article 56 EPC.

**Order**

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

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

The Registrar:

The Chairman:



B. Atienza Vivancos

A. Uselli

Decision electronically authenticated