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**Datasheet for the decision  
of 6 May 2026**

**Case Number:** T 0578/24 - 3.3.03

**Application Number:** 11799874.0

**Publication Number:** 2649101

**IPC:** C08B37/00, A61K8/73, C08J3/075

**Language of the proceedings:** EN

**Title of invention:**  
PROCESS OF PREPARING A CROSS LINKED GEL

**Patent Proprietor:**  
Teoxane

**Opponents:**  
Peterreins Schley Patent- und Rechtsanwälte  
PartG mbB  
Merz Pharma GmbH & Co. KGaA

**Relevant legal provisions:**  
EPC Art. 84, 111(1)  
RPBA 2020 Art. 11, 12(4), 12(6), 13(2)

**Keyword:**

Late-filed facts - admitted (no)

Late-filed main request - admitted in first-instance proceedings (yes)

Claims - clarity - main request (no) - clarity - auxiliary request 3 (yes)

Late-filed auxiliary request 1 - admitted (no)

Amendment after summons - exceptional circumstances - auxiliary request 3 (yes)

Remittal - (yes)

**Decisions cited:**

G 0003/14, G 0001/24, T 0690/93, T 1294/16, T 1598/18,  
T 2920/18, T 0339/19, T 2295/19, T 0499/20, T 0847/20



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Case Number: T 0578/24 - 3.3.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.03**  
**of 6 May 2026**

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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted/electronically  
transmitted on 1 March 2024 revoking European  
patent No. 2649101 pursuant to Article 101(3) (b)  
EPC.**

**Composition of the Board:**

**Chairman**            D. Semino  
**Members:**            O. Dury  
                             M. Millet

## **Summary of Facts and Submissions**

I. The appeal of the patent proprietor is against the decision of the opposition division revoking European Patent No. 2 649 101.

II. The following document was, among others, cited in the decision under appeal:

D15: WO 2010/131175 A1

III. This decision was based on a main request and on auxiliary requests 1 to 30. Taking into account the withdrawal of some requests and the filing of a new request during the oral proceedings before the opposition division, the final requests defended by the patent proprietor were as follows:

- The main request, which was identical to auxiliary request 1 filed with letter of 1 December 2023.
- Auxiliary requests 1 to 29, which were identical to auxiliary requests filed with letter of 1 December 2023.
- Auxiliary request 30, which was filed for the first time during the oral proceedings before the opposition division.

As far as relevant to the present case, the following conclusions were reached by the opposition division in this decision:

- Claim 1 of each of the main request and auxiliary requests 1 to 30 did not meet the requirements of Article 84 EPC (section 3.2 of the reasons of the decision under appeal).
  
- Taking into account the renumbering of the final requests defended by the patent proprietor due to the withdrawal of some requests during the oral proceedings, all the operative requests were considered to have been submitted on the day of the oral proceedings and were, therefore, late-filed. Further, rather than overcoming the objections raised in the notices of opposition, all these requests were found to *prima facie* introduce clarity issues. Therefore, none of these requests would change the outcome of the proceedings, namely the revocation of the patent. Consequently, all requests were not admitted into the proceedings (section 4 of the reasons of the decision under appeal).

In view of the above, no admissible request was on file and the patent was to be revoked (section 5 of the reasons).

IV. The patent proprietor (appellant) appealed against the above decision and, together with the statement of grounds of appeal, filed several sets of claims as main request and auxiliary requests 1 to 17. Also, the following documents were filed:

D22: Stomacher® Bags - Strainer Bags, Seward,  
two pages, undated

D23: Stomacher® lab blender, Product Pathfinder,  
Seward, two pages, undated

- V. Opponents 1 and 2 (respondents 1 and 2) both submitted a rejoinder to the statement of grounds of appeal.
- VI. The parties were summoned to oral proceedings and a communication pursuant to Article 15(1) RPBA dated 20 October 2025 indicating specific issues to be discussed at the oral proceedings was sent to the parties.
- VII. With letter of 10 April 2026 the appellant filed further submissions as well as a main request and auxiliary requests 1 to 19 in replacement of all the requests that had been filed with the statement of grounds of appeal.
- VIII. With letter of 29 April 2026, respondent 1 made further submissions.
- IX. At the beginning of the oral proceedings that were held on 6 May 2026 in the presence of all parties, the appellant withdrew auxiliary requests 2, 4, 5, 7, 9, 11, 13, 15, 17 and 19 that had been filed with letter of 10 April 2026.
- X. **The final requests of the parties were as follows:**
- (a) The appellant requested that the decision under appeal be set aside and the case be remitted to the opposition division for further prosecution on the basis of the main request or any of auxiliary requests 1, 3, 6, 8, 10, 12, 14, 16 or 18, all filed with letter of 10 April 2026.
- (b) Respondents 1 and 2 both requested that the appeal be dismissed. The respondents further requested that none of the appellant's requests be admitted

into the proceedings and that, should any of the operative requests be admitted into the proceedings and be considered to meet the requirements of Article 84 EPC, the case be remitted to the opposition division for further prosecution.

XI. Claims 1 and 4 of the **main request**, which are the sole claims of this request that are relevant for the present decision, read as follows:

"1. Process of preparing a crosslinked gel of hyaluronic acid or one of its salts, comprising at least the steps consisting in:

a) providing, at a temperature below 35°C, an aqueous gel of said hyaluronic acid in an uncrosslinked form together with at least one difunctional or multifunctional epoxy crosslinking agent;

b) maintaining the mixture of step a) at a temperature below 35°C for at least one hour;

c) stimulating the crosslinking reaction of the mixture obtained after step b), step c) being carried out thermally, at a temperature between 35 and 60°C, for a time ranging from 30 to 300 minutes, and if need be;

d) recovering said crosslinked gel formed,

wherein said process is carried out in a pouch."

"4. Process according to any one of the preceding claims, wherein the aqueous gel considered in step a) is obtained beforehand by bringing together, in an appropriate receptacle:

(i) an aqueous medium;

(ii) at least one hyaluronic acid, or one of its salts, in an uncrosslinked form; and

(iii) at least one difunctional or multifunctional epoxy crosslinking agent,

and by homogenizing the mixture thus obtained, the order of addition of said compounds (i), (ii) and (iii) into the receptacle being indifferent."

XII. Claim 1 of **auxiliary request 1** differed from claim 1 of the main request in the following amendment (additions in **bold**, deletions in ~~strikethrough~~):

"... wherein said process is carried out in ~~a pouch~~ **a receptacle, said receptacle being a pouch, and wherein said receptacle is deformable and hermetic**".

Claim 4 of **auxiliary request 1** was identical to claim 4 of the main request.

XIII. **Auxiliary request 3** corresponded to the main request in which claim 4 was deleted and the claims were renumbered accordingly.

XIV. The other operative auxiliary requests are not relevant for the present decision.

XV. The parties' arguments, in so far as they are pertinent for the present decision, may be derived from the reasons for the decision below. They were essentially directed to the following issues:

- (a) The admittance into the proceedings of D22 and D23.
- (b) The admittance into the proceedings of the main request as well as of auxiliary requests 1 and 3.
- (c) The question if claims 1 and 4 of each of the main request and auxiliary request 1 met the requirements of Article 84 EPC.

### **Reasons for the Decision**

- 1. Admittance of D22 and D23
  - 1.1 Both respondents requested that documents D22 and D23, which were filed by the appellant together with the statement of grounds of appeal, be not admitted into the proceedings.
  - 1.2 The filing of documents D22, D23 and of the submissions based thereon with the statement of grounds of appeal constitutes an amendment to the appellant's case (Article 12(2) and (4) RPBA), the admittance of which undergoes the stipulations of Article 12(4) to (6) RPBA.
  - 1.3 It can be inferred from the appellant's submissions that D22 and D23 were filed in support of their line of defence that the term "pouch" mentioned in claim 1 of the main request dealt with in the decision under appeal, which is identical to the main request defended during the appeal proceedings (see point 2.1 below), met the requirements of Article 84 EPC, contrary to the conclusion reached by the opposition division.

1.4 In addition, it is derivable from the file history that:

- The first time that the term "pouch" was used in a claim of a request defended by the patent proprietor during the opposition proceedings was in claim 1 of auxiliary request 1 that was filed with letter of 1 December 2023 (dated 30 November 2023), i.e. about two months ahead of the date set for the oral proceedings before the opposition division (1 February 2024).
- The first time that the term "pouch" was objected to as lacking clarity was in the last written submission of opponent 1, shortly ahead of the oral proceedings (letter of 26 January 2024: point II).

1.5 In view of the above, the Board considers that D22 and D23 were both filed in reaction to the decision of the opposition division with the aim to address a late development of the case during the opposition proceedings, which turned out not to be in their favour. Accordingly, although it is correct that the appellant could have filed D22 and D23 earlier (for instance during the oral proceedings before the opposition division), they were confronted with the opinion (and final decision) of the opposition regarding the opponents' objection of clarity related to the term "pouch" for the first time during the oral proceedings. On that basis, the Board considers that the circumstances of the case are not such that it could have been expected that the appellant should have filed D22 and D23 already during the opposition proceedings. Therefore, it is not justified that the Board disregards D22 and D23 pursuant to Article 12(6),

second sentence RPBA.

1.6 However, the admittance of D22 and D23 is subject to the Board's discretion, which is to be exercised in view of e.g. the complexity of the amendment, the suitability of the amendment to address the issues which led to the decision under appeal, and the need for procedural economy (Article 12(4) RPBA, last sentence).

a) In this regard, the appellant have not replied to the respondents' argument that D22 and D23 cannot address the issue of clarity related to the term "pouch" which was central to the decision under appeal since they do not even disclose the term "pouch" (rejoinder of respondent 1: page 10, section C, fifth paragraph). The Board further notes that these documents were not shown to disclose equipments suitable for carrying out a polymerisation process, let alone a process for preparing a crosslinked gel of hyaluronic acid or one of its salts, which is the object of claim 1 of the operative main request.

b) In addition, the appellant have also not replied to the respondents' argument that, since D22 and D23 do not bear any publication date, they cannot demonstrate the understanding of the term "pouch" by the skilled person at the priority/filing date of the patent in suit (rejoinder of respondent 1: page 10, section C, fourth paragraph).

c) In particular, the appellant have not submitted any counter-arguments - in particular during the oral proceedings before the Board - in reply to the respondents' concerns, which were held to be reasonable in the Board's communication (point 5.2.6.c) that was

dispatched to the parties well ahead of the oral proceedings before the Board (20 October 2025 vs. 6 May 2026).

d) In view of the above, the Board made use of its discretion to decide that D22 and D23 were not admitted into the proceedings (Article 12(4) RPBA).

### **Main request**

#### 2. Admittance

2.1 It was common ground that the claims of the operative main request are identical to the ones of the main request dealt with in the decision under appeal, which was not admitted by the opposition division because it was held to be late-filed and *prima facie* raised issues of lack of clarity.

2.2 However, the Board shares the appellant's view (statement of grounds of appeal: point III.1.4) that the then pending main request was not late-filed only at the oral proceedings for the following reasons:

2.2.1 It is derivable from the file history that the main request is identical to auxiliary request 1 filed with letter of 1 December 2023, i.e. within the deadline set by the opposition division for the parties to file further submissions or amendments in the second and last summons to oral proceedings (EPO form 2310 dated 30 October 2023). The mere renumbering of this request at the beginning of the oral proceedings did not change in any manner the substance of the subject-matter being claimed. Therefore, the main request has to be considered to have been effectively filed with letter of 1 December 2023 and not on the date of the oral

proceedings before the opposition division.

2.2.2 In addition, the Board shares the view of respondent 1 (rejoinder: page 5, last full paragraph) that the conclusion of the opposition division that the main request lacked clarity was reached after "thorough review" of the requests (see sections 3.2.2 to 3.2.5 of the reasons of the decision under appeal). In that respect, it is established case law that such a "thorough review" has to be distinguished from a *prima facie* assessment (Case Law of the Boards of Appeal of the EPO, 11th edition, 2025, IV.C.4.5.3.a; see in particular the passage related to T 847/20, whereby the present Board in particular agrees to the findings indicated in point 4.1 of the reasons). Therefore, when carrying out this "thorough review", the opposition division had implicitly already admitted the main request. In these circumstances, the Board considers that the opposition division wrongly exercised its discretion because, having implicitly admitted the main request, there was no discretion left for them not to admit it any more.

2.2.3 During the oral proceedings before the Board, respondent 2 argued that the decision of the opposition division regarding lack of clarity of the main request was very short, which meant that it was not reached after a thorough review of this request (reasons: point 3.2.2, second and third paragraphs). This was in line with the recollection of the oral proceedings of respondent 2 that the discussion on that issue was also very short and lasted about 10 minutes. This was further confirmed by the fact that the opposition division explicitly indicated in point 4 of the reasons that (among others) the main request *prima facie* introduced clarity issues. Accordingly, respondent 2

considered that the decision on clarity of the main request was taken by the opposition division on the basis of a *prima facie* assessment. In these circumstances, the fact that respondent 1 had indicated that the conclusion of the opposition division was reached after "thorough review" of the requests was irrelevant. Also, since the opposition division had not conducted a full analysis of clarity of the main request, the circumstances of the present case differed significantly from the ones of the case underlying T 847/20. Therefore, the conclusions reached in this decision were not relevant for the present case, so respondent 2.

a) However, the Board considers that it is explicitly stated in the decision under appeal that the opposition division first decided that the main request did not comply with Article 84 EPC before they decided not to admit it into the proceedings (reasons: point 3.2.2, last sentence; point 4, first sentence). This is also in line with the statement made in point 3.5, second paragraph, of the minutes of the oral proceedings that the Chair of the opposition division "informed the parties that the term "pouch" was unclear under Art. 84 EPC", i.e. that the operative main request did not meet the requirements of Article 84 EPC. Therefore, since a decision on clarity of the main request was taken by the opposition division, the main request was *de facto* admitted by the opposition division.

b) In addition, it is derivable from the decision under appeal that the conclusion regarding clarity of claim 1 of the main request was reached after having dealt with the parties' arguments in substance (reasons: point 3.2.2, second and third paragraphs). On that basis, the examination of clarity of the main request

that was carried out by the opposition division does not constitute a mere *prima facie* assessment but is rather a complete analysis.

c) In reaching the above conclusion that the main request was - implicitly - already admitted by the opposition division, the Board considers that the length of the part of the decision regarding clarity of the main request and/or the duration of the discussion of this issue during the oral proceedings before the oral proceedings is irrelevant. What matters is that the opposition division eventually took a decision in substance regarding clarity of the main request.

2.2.4 In view of the explicit deadline indicated in the summons to oral proceedings dated 30 October 2023 mentioned in point 2.2.1 above, the parties' considerations regarding the fact that this was a second summons issued or that a high number of auxiliary requests were submitted by the patent proprietor during the whole opposition proceedings (rejoinder of respondent 1: bottom of page 4 to middle of page 5; rejoinder of respondent 2: bottom of page 3 to middle of page 4) is not relevant.

2.3 In view of the above, the main request is in the proceedings (Article 12(2) RPBA) and the Board saw no reason to disregard it pursuant to Article 12(6), first sentence RPBA.

3. Article 84 EPC

3.1 In the decision under appeal (reasons: points 3.2.2 and 4) the main request was held not to comply with the requirements of Article 84 EPC because the term "pouch" that is present in claim 1

thereof had no clear meaning.

- 3.2 It is first noted that it was not in dispute between the parties that the feature of operative claim 1 "wherein said process is carried out in a pouch" was not present in any of the claims as granted and that it could therefore be examined at the present stage of the proceedings if it introduced a lack of clarity pursuant to Article 84 EPC. Considering the findings of G 3/14, the Board has no reason to be of a different opinion.

***Claim 1: feature "wherein said process is carried out in a pouch"***

- 3.3 Regarding the meaning of the term "pouch" that is contained in the added feature here at stake, the Board agrees with the appellant that this term has to be read in the context of claim 1 as a whole (statement of grounds of appeal: section V.1.5). Therefore, a pouch according to claim 1 cannot be read "as used in common language", as was apparently done by the opposition division when reaching their decision on the basis that this term covered "a wide spectrum of receptacles that would most certainly not be suited to carry out a hyaluronic acid cross linking reaction" (reasons: point 3.2.2, page 5, first paragraph). Rather, in the context of claim 1, the pouch mentioned therein must be a container/receptacle whose walls exhibit some deformability/flexibility (which derives from the term "pouch" and as opposed to e.g. usual chemical reactors such as tanks, vessels or pots) and is suitable to carry out a process for preparing a crosslinked gel of hyaluronic acid or one of its salts at temperatures up to 60°C as otherwise defined in claim 1.

3.3.1 Although it is correct that the appellant has, even at the appeal stage, not provided a "complete definition" of the term "pouch", in particular in the context of present claim 1, the normal rule of claim construction is, according to established case law, that the terms used in a claim should be given their broadest technically sensible meaning. In the present case, although the reading of the term "pouch" considered in above point 3.3, last sentence, is broad, it is in the Board's view sufficient to allow the skilled person to assess when s/he is working within or outside the scope of claim 1. For example, the Board is convinced that this feature unambiguously distinguishes the processes being claimed from usual chemical reactors such as tanks, vessels or pots. This reading is further supported by paragraph 72 of the patent in suit. In these circumstances, the Board is satisfied that although the term "pouch" does not define all the details of the invention, it nevertheless allows the skilled person to determine the boundaries of claim 1 so as to meet the requirements of Article 84 EPC (see Case Law, *supra*, II.A.3.4, in particular the paragraph related to T 690/93).

3.3.2 During the oral proceedings before the Board, respondent 1 stressed that the term "pouch" was highly ambiguous since it had no generally accepted meaning. In particular, it was unclear whether this term imposed any limitations regarding for instance the level of rigidity/flexibility/deformability, size, hermeticity and/or whether the pouch was a closed envelope or it could be open to the environment (see also rejoinder of respondent 1: page 14, last three paragraphs). In that regard, although it could be accepted that a broad term could in certain cases be clear in the sense of Article 84 EPC, this was not necessarily the case:

according to established case law, this was only true if the boundaries of the claims were clear, which was not the case for claim 1 of the main request in view of the use of the term "pouch", so respondent 1.

a) However, in the Board's view, the arguments of respondent 1 do not demonstrate that the boundaries of the claims cannot be inferred by the skilled person but merely show that the term "pouch" specified in claim 1 of the main request has a large scope since it is not limited regarding e.g. the level of rigidity/flexibility/deformability, size, hermeticity and encompasses any kind of embodiments such as closed envelopes or receptacle that are open to the environment.

b) In particular, considering that the term "pouch" is used in further documents, such as D15, to describe receptacles with a single deformable wall that are used to carry out a process for preparing a crosslinked gel of polymers such as the ones derived from hyaluronic acid or from one of its salts (D15: claims 1, 17; bottom of page 5, point I), which is fully in line with the disclosure of paragraphs 71 and 72 of the patent in suit, claim 1 of the main request unambiguously encompasses this (broad) interpretation of the term "pouch". In that respect, the Board further considers that the description of the patent and/or the other operative claims also provide no reason to disregard such a (broad) reading of claim 1 (taking into account that, according to G 1/24, the description and drawing/figures are always referred to when interpreting the claims).

c) For the same reasons, a "pouch" according to claim 1 of the main request, as long as it is suitable to carry

out the process being claimed, contains no additional limitation - as compared to above point 3.3.2.b - regarding for instance the level of rigidity/flexibility/deformability, size, hermeticity and/or whether it is a closed envelope or it can be open to the environment.

d) During the oral proceedings before the Board, respondent 1 additionally argued that according to paragraphs 71 and 72 of the patent in suit, specific properties of the pouch were required in order to obtain the effects to be achieved by the claimed process. Considering that these requirements were not reflected by any "pouch" as specified in claim 1 of the main request, the boundaries of the claim were unclear.

However, it is first noted that claim 1 of the main request is merely directed to a process of preparing a crosslinked gel of hyaluronic acid or one of its salts and does not mention any effect to be achieved. In addition, paragraph 71 of the patent in suit only indicates that, in the sense of the present invention, "a specific receptacle having a deformable wall" may be "a pouch" and is therefore not directed to any properties of the pouch or any effect aimed at but only provides an example of a receptacle that can be suitably used to carry out the process of the invention. The Board further considers that paragraph 72 merely discloses that receptacles with specific properties (deformability/hermeticity) are particularly preferred embodiments of the receptacles that can be suitably used to carry out the invention (see wording "optimal conditions", "result in an even better crosslinked gel"). Therefore, also paragraph 72 of the patent in suit does not impose any requirements that have to be necessarily met by "a pouch" according

to claim 1 of the main request. For those reasons, the argument of respondent 1 did not succeed.

- 3.3.3 In view of the above, the objection of lack of clarity raised by the respondents against claim 1 of the main request in relation to the term "pouch" is rejected.

***Claim 1: feature "recovering said crosslinked gel formed"***

- 3.4 The respondents additionally argued that claim 1 did not meet the requirements of Article 84 EPC because it contained an inherent inconsistency: it was not possible to recover the crosslinked gel formed as specified in step d) while carrying out steps a) to d) according to claim 1 "in a pouch", as now specified in the added feature (rejoinder of respondent 1: page 15, section B, first and second paragraphs; rejoinder of respondent 2: page 5, third to sixth full paragraphs).

- 3.4.1 However, the Board shares the appellant's view that, according to established case law, claim 1 of the main request should be read with a mind willing to understand (statement of grounds of appeal: section V.1.2.2 to V.1.2.7 on page 16). In doing so, the sole reading of claim 1 of the main request that makes sense is that, as put forward by the appellant, steps a) to c) of the claimed process are to be carried out in a pouch, while step d) of the claimed process defines the recovery of the crosslinked gel from the pouch (i.e. recovery of the gel present in the pouch).

- 3.4.2 This view, which was communicated to the parties in the Board's communication (point 7.3.1), remained uncontested, in particular during the oral proceedings before the Board. Therefore, the Board has no reason to

deviate from its preliminary considerations.

- 3.4.3 On that basis, the objection of the respondents is rejected.

***Claims 1 and 4: "pouch" vs. "appropriate receptacle"***

- 3.5 Respondent 1 additionally put forward that it was unclear whether the "appropriate receptacle" mentioned in claim 4 of the main request, which was dependent on claim 1, was mandatorily the same as the "pouch" specified in the added feature of claim 1 of the main request. For this reason, according to respondent 1, the claims of the main request were unclear (rejoinder: page 15, section B, third paragraph).

- 3.5.1 In that regard, the Board agrees with respondent 1 that claim 4 of the main request does not meet the requirements of Article 84 EPC for the following reason:

Whereas the feature of claim 1 of the main request "wherein said process is carried out in a pouch" imposes that the whole process takes place "in a pouch", claim 4 further defines that step a) is obtained "beforehand" and "in an appropriate receptacle". In view of this wording and taking into account that claim 4 is dependent on claim 1, it is unclear whether the "appropriate receptacle" of claim 4 is necessarily the same as the "pouch" according to claim 1, i.e. whether steps (i)-(iii) and the homogenisation step according to claim 4 must take place in the "pouch" of claim 1 or not. Although the added feature "wherein said process is carried out in a pouch" would appear to impose that they are, the use of different terms - "pouch" in claim 1 vs. "appropriate

receptacle" in claim 4 - leaves this open, which renders the scope of claim 4 ambiguous, i.e. unclear. Accordingly, the addition of the feature "wherein said process is carried out in a pouch" in claim 1 of the main request introduces a lack of clarity pursuant to Article 84 EPC in claim 4 of the main request.

3.5.2 The appellant argued that, in view of the wording of claims 1 and 4 of the main request and of paragraphs 71 and 72 of the patent in suit, the skilled person would readily understand that the terms "pouch" in claim 1 and "appropriate receptacle" in claim 4 were specifically linked to each other, i.e. it was clear that the "appropriate receptacle" of claim 4 was necessarily the "pouch" of claim 1 (letter of 10 April 2026: page 5, last paragraph; oral proceedings before the Board). Also, according to the appellant (letter of 10 April 2026: top of page 6), the relationship between "pouch" and "appropriate receptacle" was perfectly clear to respondent 1 when appropriate, for instance in some passages on pages 2, 4 and 5 of their letter dated 26 January 2024.

a) However, while it is correct that claim 4 is dependent on claim 1 and for that reason should fulfil all the requirements of said claim 1, already the use of the different terms "pouch" in claim 1 and "appropriate receptacle" in claim 4 of the main request cannot impose that the "appropriate receptacle" in claim 4 is necessarily the "pouch" according to claim 1.

b) This conclusion is confirmed by the fact that it is specified in claim 4 that the process steps i) to iii) defined therein are carried out "beforehand", i.e. before providing the aqueous gel according to step a)

of claim 1, which leaves open the possibility that these steps i) to iii) could be carried out in "an appropriate receptacle" that is not necessarily the "pouch" according to claim 1.

c) This reading of claims 1 and 4 of the main request is further reinforced by the use of indefinite articles in both terms "a pouch" and "an appropriate receptacle" in these claims. In particular, it is common practice in claims drafting that when a dependent claim makes reference to a feature that is already present in a precedent independent claim, the preferred embodiment in the dependent claim makes reference to the more general embodiment of the independent claim by using a definite article "the". Considering that this is not the case in claims 1 and 4 of the main request, the Board sees no reason to consider that the two terms "pouch" and "appropriate receptacle" are specifically linked to each other as argued by the appellant.

d) The Board further considers that paragraph 71 of the patent in suit only shows that "an appropriate receptacle" can be "a pouch" but does not impose that it is necessarily limited to this embodiment. Also, neither the description, nor the other claims of the main request, contain a definition or feature(s) that would impose that the "appropriate receptacle" of claim 4 can only be the "pouch" of claim 1. Therefore, even if the description is referred to when interpreting claims 1 and 4 of the main request (G 1/24), it cannot be concluded that embodiments in which steps (i)-(iii) according to claim 4 take place in a "suitable receptacle" that is not "the pouch" of claim 1 of the main request are excluded from the scope of claim 4.

e) In the passages on pages 2 and 4 of the letter of respondent 1 dated 26 January 2024 mentioned by the appellant, respondent 1 merely made statements related to the fact that a suitable receptacle to carry out the process of claim 1 may be a pouch. These statements do not provide any reason to consider that respondent 1 held that "an appropriate receptacle" according to claim 4 of the main request was necessarily the "pouch" according to claim 1 of the main request. Therefore, these statements provide no cause for the Board to deviate from the conclusion reached in points 3.5.1 and 3.5.2 above, which is based on the fact that "an appropriate receptacle" according to claim 4 is not necessarily the "pouch" according to claim 1 (and not on the fact that said receptacle cannot be the "pouch").

In the passage on page 5 of the letter of respondent 1 dated 26 January 2024 mentioned by the appellant, respondent 1 argued that there was no valid support in the application as filed for a process according to claim 1 that was carried out in a pouch in combination with steps i) to iii) of claim 4 being carried out "in an appropriate receptacle". In the Board's view, although this statement was made in regard of added-matter, it is fully in line with the the conclusion reached in points 3.5.1 and 3.5.2 above that "an appropriate receptacle" according to claim 4 is not necessarily the "pouch" according to claim 1. Accordingly, also this argument of the appellant is not convincing.

g) For these reasons, the appellant's line of defence did not succeed.

3.5.3 In view of the above, claim 4 of the main request does not meet the requirements of Article 84 EPC.

3.6 Therefore, the main request as a whole is not allowable.

**Auxiliary request 1**

4. Admittance

4.1 Both respondents requested that auxiliary request 1 be not admitted into the proceedings.

4.2 It was common ground that auxiliary request 1 is identical to auxiliary request 2 that had been filed for the first time by the appellant with their statement of grounds of appeal. Therefore, the admittance of auxiliary request 1 undergoes the stipulations of Article 12(4) and (6) RPBA and is subject to the Board's discretion.

4.3 While claim 1 of auxiliary request 1 differs from claim 1 of the main request in that the process being claimed is specified to be carried out "in a receptacle, said receptacle being a pouch, and wherein said receptacle is deformable and hermetic", claim 4 of auxiliary request 1 is identical to claim 4 of the main request.

4.4 Considering that claims 1 and 4 of auxiliary request 1 are also drafted using indefinite articles as in the main request (claim 1: "in a receptacle"; claim 4: "in an appropriate receptacle"), the Board considers that the amendment made in auxiliary request 1 as compared to the main request is *prima facie* not suitable to overcome the objection of lack of clarity retained by

the Board against claim 4 of the main request. In particular, the use of indefinite articles does not seem to establish that the receptacles specified in claims 1 and 4 are necessarily the same, which would be necessary to overcome the considerations outlined in point 3.5.2.c above.

- 4.5 On that basis, the Board decided not to admit auxiliary request 1 into the proceedings (Article 12(6) RPBA).

### **Auxiliary request 3**

5. Admittance

- 5.1 Both respondents requested that auxiliary request 3 be not admitted into the proceedings.

- 5.2 It was undisputed that auxiliary request 3 was filed for the first time by the appellant with their letter of 10 April 2026, i.e. after the Board's communication pursuant to Article 15(1) RPBA had been notified to the parties. Therefore, the admittance of auxiliary request 3 undergoes the stipulations of Article 13(2) RPBA, according to which any amendment to a party's appeal case is, in principle, not taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.

- 5.3 It was common ground that auxiliary request 3 only differed from the main request in that claim 4 thereof was deleted and the remaining claims renumbered accordingly. It further remained undisputed that, on that basis, the filing of auxiliary request 3 constituted an amendment to the appellant's case. In the present case, the sole point of dispute between the

parties regarding the admittance of auxiliary request 3 was therefore if there were any exceptional circumstances that could justify the admittance of auxiliary request 3 into the appeal proceedings at such a late stage of the appeal proceedings.

- 5.3.1 In this regard, the amendment carried out in the main request in order to arrive at auxiliary request 3 was undoubtedly made in view of the preliminary opinion of the Board stated in the communication pursuant to Article 15(1) RPBA (points 7.4 and 7.5) that whereas claim 1 of the main request appeared to meet the requirements of Article 84 EPC, this was not the case of dependent claim 4. Accordingly, auxiliary request 3 was filed ahead of the oral proceedings in order to overcome this objection, should it be eventually retained by the Board.
- 5.3.2 One of the main point of contention between the parties was if auxiliary request 3 should have been filed earlier because the objection of lack of clarity against claim 4 of the main request had already been put forward during the opposition proceedings and/or in the rejoinder of opponent 1.
- a) In that respect, the Board agrees with the appellant that this specific objection was not dealt with in the decision under appeal (appellant's letter of 10 April 2026: page 7, first half). This was not disputed by the respondents.
- b) Respondent 1 argued that this objection had already been raised during the opposition proceedings, namely in their letter of 26 January 2024, page 3, first paragraph and page 5, point I (letter of respondent 1 dated 29 April 2026: bottom of page 2 to top of

page 3).

However, the Board concurs with the appellant's view put forward during the oral proceedings before the Board that the passage on page 3 of the letter of respondent 1 of 26 January 2024 is not directed to a claim set in which claim 1 contains the term "pouch" as in claim 1 of the main request dealt with in the decision under appeal and further defended in the present appeal proceedings (see e.g. letter of respondent 1 dated 26 January 2024: page 2, first paragraph of point I).

The Board also agrees that the second passage on page 5 of this letter was not unambiguously directed to an objection of lack of clarity of claim 4 of this main request.

On that basis, the objection of lack of clarity retained against claim 1 of the main request was not raised by respondent 1 in their letter of 26 January 2024.

c) The respondents argued that this objection had also been raised in the rejoinder of respondent 1, page 15, point B.

However, although it is correct that in this passage of their rejoinder respondent 1 indicated that they had concerns "whether this appropriate receptacle must be the same as, or must be different from, or can be either the same as or different from, the "pouch" now recited in claim 1", the Board agrees with the appellant that this passage did not amount to a clear and fully substantiated objection of lack of clarity raised against claim 4 of the main request. In

particular, although respondent 1 alleged that there was an inconsistency between "pouch" and "appropriate receptacle" they did not explain why they considered that this amounted to a lack of clarity of claim 4. Therefore, it cannot be concluded that the submissions of respondent 1 would necessarily have allowed the appellant to understand that respondent 1 specifically raised an objection of lack of clarity pursuant to Article 84 EPC against claim 4 of the main request.

5.3.3 On that basis, the Board shares the appellant's view that such an objection was only fully developed for the first time, undisputedly building up on the minimalistic concerns of respondent 1, in points 7.4 and 7.5 of the Board's communication pursuant to Article 15(1) RPBA. In these circumstances, the arguments of respondent 1 that the appellant should have filed auxiliary request 3 earlier (letter of 29 April 2026: point I) are rejected. Rather, the Board agrees with the appellant that the late development of the present case has eventually triggered the filing of auxiliary request 3 in reaction to the Board's communication (appellant's letter of 10 April 2026: pages 9 and 10). Although it is correct that auxiliary request 3 could still have been filed earlier, for instance in direct reaction to the Board's communication and not about six months after it was notified to the parties (letter of respondent 1 of 29 April 2026: page 3, second full paragraph), this is not a sufficient reason for disregarding auxiliary request 3 on this basis alone.

5.3.4 The Board points out that, in similar cases concerning among others deletion of claims, other Boards have already acknowledged exceptional circumstances within the meaning of Article 13(2) RPBA when the admittance

of the amendments was neither detrimental to procedural economy, nor to the convergent approach laid down in the RPBA, nor to the legitimate interests of a party to the proceedings, see e.g. T 1598/18 (reasons: point 25.1), T 1294/16 (reasons: points 18.3), T 339/19 (reasons: point 1.5), T 2920/18 (reasons: points 3.13 to 3.15), T 2295/19 (reasons: points 3.4.12 to 3.4.14), T 499/20 (reasons: point 7.3.3). The present Board agrees with this approach and finds it applicable to the present case for the following reasons:

a) Considering that auxiliary request 3 only contains claims that were present in the main request dealt with in the decision under appeal and that this main request was constantly defended by the appellant since the beginning of the appeal proceedings, the Board is satisfied that the convergent approach laid down in the RPBA (see explanatory remarks to Article 12 and 13 RPBA and e.g. T 1294/16, point 18.3 of the reasons) and the need for procedural economy are respected. In particular, the remaining claims have already been discussed in detail by the parties in their written submissions, so that the respondents' legitimate interests are not adversely affected. Therefore, the admittance of auxiliary request 3 neither alters the factual or legal framework of the proceedings, nor compromises the procedural rights of the respondents.

b) In addition, the Board is satisfied that admitting auxiliary request 3 into the proceedings does not complicate the case since all the claims of auxiliary request 3 were already part of the main request. Therefore, auxiliary request 3 cannot take the respondents by surprise, nor gives rise to new objections.

c) The fact that the appellant may have already filed many other auxiliary requests during the opposition proceedings and/or that several lower-ranked requests are still operative in the present appeal proceedings is also not seen as a valid reason to disregard auxiliary request 3 at the present stage of the proceedings, contrary to the view of respondent 1 (letter of 29 April 2026: page 6, first and second full paragraphs). In particular, as outlined above, the claims of auxiliary request 3 were all present in the main request that was dealt with in the decision under appeal and constantly defended during the appeal proceedings. Therefore, it can be inferred from the above that, in the present case, the filing of auxiliary request 3 does not only constitute a reasonable reaction of the appellant in light of the development of the case, but it also solves the objection of lack of clarity that was retained by the Board against the main request and this, without altering the legal and factual framework of the case.

d) Although it is correct that admitting auxiliary request 3 into the proceedings implies that the case has to be remitted to the opposition division for further prosecution, this procedural step is not triggered by the filing of auxiliary request 3 at a late stage of the proceedings but from the fact that several grounds for opposition that were raised by the respondents were not dealt with in the decision under appeal (see point 7. below). Therefore, the argument of respondent 1 that admitting auxiliary request 3 ran counter to procedural economy (letter of 29 April 2026: page 6, penultimate paragraph) is not convincing.

5.3.5 For these reasons, which in the Board's view constitute exceptional circumstances within the meaning of

Article 13(2) RPBA, the Board made use of its discretion pursuant to Article 13(2) RPBA by admitting auxiliary request 3 into the proceedings.

6. Article 84 EPC - No objections

As confirmed during the oral proceedings before the Board, the respondents had no further objections pursuant to Article 84 EPC against any of the claims of auxiliary request 3.

7. Remittal

The grounds for opposition pursuant to Article 100(a), (b) and (c) EPC that were raised during the opposition proceedings were not decided upon by the opposition division. It was undisputed that under the present circumstances the case should be remitted for further prosecution. This is seen by the Board to constitute "special reasons" within the meaning of Article 11 RPBA. Accordingly, exercising its discretion under Article 111(1), second sentence, EPC, the Board decides to remit the case to the opposition division for further prosecution.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division for further prosecution.

The Registrar:

The Chairman:



D. Hampe

D. Semino

Decision electronically authenticated