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**Datasheet for the decision
of 3 March 2026**

Case Number: T 1484/24 - 3.2.04

Application Number: 18773106.2

Publication Number: 3681452

IPC: A61F13/00, A61B5/00

Language of the proceedings: EN

Title of invention:

SENSOR ENABLED WOUND THERAPY DRESSINGS AND SYSTEMS
IMPLEMENTING CYBERSECURITY

Patent Proprietor:

Smith & Nephew PLC

Opponents:

Paul Hartmann AG
Essity Hygiene and Health AB

Headword:

Relevant legal provisions:

EPC Art. 100(c), 123(2)
RPBA 2020 Art. 13(2)

Keyword:

Amendments - added subject-matter - main request and auxiliary requests 1 to 9 - (yes)
Amendment after notification of Art. 15(1) RPBA communication
- auxiliary requests 10 and 11 - exceptional circumstances (no)

Decisions cited:

T 0032/16

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1484/24 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 3 March 2026

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
22 November 2024 concerning maintenance of the
European Patent No. 3681452 in amended form.**

Composition of the Board:

Chairman A. Pieracci
Members: M. Hannam
 T. Bokor

Summary of Facts and Submissions

I. An appeal was filed by each of the appellant (opponent I) and the appellant (patent proprietor) against the interlocutory decision of the opposition division in which it found that European patent No. 3 681 452 in an amended form met the requirements of the EPC.

II. The patent proprietor requested in their statement setting out the grounds of appeal that the decision under appeal be set aside and the patent be maintained as granted. Alternatively, the patent should be maintained as amended according to the auxiliary requests 1 to 9.

The opponent I requested that the decision under appeal be set aside and the patent be revoked.

Opponent II, a party as of right, requested to dismiss the proprietor's appeal.

III. The Board issued a summons to oral proceedings and a subsequent communication containing its provisional opinion, in which it indicated *inter alia* that the ground for opposition under Article 100(c) EPC appeared to be prejudicial to maintenance of the patent as granted and that auxiliary requests 1 to 9 seemed also to be unallowable for reasons of added subject-matter.

IV. With letter of 4 December 2025 in response to the Board's communication, the proprietor filed auxiliary requests 10 and 11.

V. Oral proceedings were held before the Board on 3 March 2026 at the end of which the parties' requests were as follows:

The proprietor requested that the decision under appeal be set aside and the patent be maintained as granted. Alternatively, the patent should be maintained as amended according to the auxiliary requests 1 to 11, of which auxiliary requests 1 to 9 were filed with the proprietor's grounds of appeal, and auxiliary requests 10 and 11 were filed with letter dated 4 December 2025.

Opponent I requested that the decision under appeal be set aside and the patent be revoked.

Opponent II, a party as of right, requested to dismiss the proprietor's appeal.

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

"A wound monitoring and/or therapy apparatus comprising:
a wound dressing configured to be positioned in contact with a wound,
the wound dressing comprising one or more sensors configured to obtain measurement data of at least one of the wound or periwound; and
a controller configured to:
generate a device clock indicative of a non-real time clock;
receive measurement data obtained by the one or more sensors; and
transmit measurement data to a remote computing device according to a security protocol,
the security protocol comprising including the device

clock associated with the measurement data in the transmission."

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

"wherein the controller is configured to maintain the device clock when power is supplied to the controller, and
wherein the controller is configured to maintain the device clock by counting up from zero, a random number, or a unique number."

A recitation of the specific wording of claim 1 of each of auxiliary requests 2 to 9 is not necessary in view of the decision on each of these requests.

Claim 1 of auxiliary request 10 reads as for claim 1 of auxiliary request 1 except for after the feature 'generate a device clock indicative of a non-real time clock' the following feature is inserted:

"when the wound dressing is connected to the controller and the controller initializes;".

Claim 1 of auxiliary request 11 reads as for claim 1 of auxiliary request 10 except for in the final feature of the claim the word "zero" is deleted.

VII. The relevant arguments of the parties are discussed in the Reasons for the Decision.

Reasons for the Decision

1. *Main request*
Article 100(c) EPC
- 1.1 Relative to claim 1 as filed which defined a controller configured to 'maintain' a device clock, claim 1 of the main request defines the controller being configured to 'generate' a device clock.
- 1.2 The Board finds the terms 'maintain' and 'generate' not to be synonymous one with the other. As opponent I also argues, the term 'maintain' means there is something before which might be maintained, the term 'generate' means something is newly created. With different meanings, one term cannot simply replace the other in the absence of a disclosure providing a basis for the amendment somewhere in the application as filed.
- 1.3 The proprietor's first line of argument that the skilled person would, in the context of the constantly changing nature of a device clock, not see a difference between the terms 'maintain' and 'generate' is not accepted. Even though a device clock has a constantly changing nature reflecting the passage of time, this does not negate the inherent difference in meaning of the terms 'maintain' and 'generate'. As indicated in point 1.2 above, for a controller configured to generate a device clock, this device clock is newly created having not previously been existent. Conversely, for a controller configured to maintain a device clock, this device clock is already existent and its operation is kept going / sustained. This very clear difference in meaning between these two terms, even in the context of a constantly changing count of

the device clock, results in a simple exchange of these terms in claim 1 not being possible without a direct and unambiguous basis in the application as filed.

1.4 As a further line of argument, the proprietor alleges that page 33, lines 4 to 17 as filed provides a basis for the controller being configured to 'generate' a device clock. Indeed line 11 discloses 'generating a device clock' but this is not a disclosure isolated from any context. Rather line 6 discloses that 'the controller can initialize' and it is in this context that the controller can then optionally generate a device clock. Lines 13 to 14 further disclose that after initiation, the device clock will count up whenever the controller is under power. If this passage is to be seen as the basis for the amendment made during prosecution, then the omission of the features relating to the controller initialising and the device clock counting up from claim 1, which are disclosed in combination with the feature 'generate a device clock' on page 33, lines 4 to 17, is an intermediate generalisation of the disclosure in the application as filed.

1.5 The proprietor argued that the basis provided for the wording 'generate a device clock' on page 33, lines 4 to 17 as filed included lots of optional language so that there was no inextricable link between this feature and the controller initialising or the device clock counting up. Whilst this paragraph on page 33 indeed includes much optional language, a completely isolated disclosure of 'generating a device clock' in line 11 is not accepted. The option of 'generating a device clock' in line 11 is unambiguously disclosed in the context of the controller initialising in line 6, and only following this initialising can the controller

then perform one or more (see line 7) of the three bulleted options which includes 'generating a device clock'. This understanding of lines 5 to 14 follows not only grammatically and contextually but is also reasonable from a technical point of view. The Board thus finds that the generation of a device clock is inextricably linked to the initialization of the controller and to the counting up.

- 1.6 The proprietor further argued that the sentence starting 'This may include ...' on page 33, line 7 indicated that the action of the controller initialising was only optionally related to generating a device clock. This is also not accepted. The action of generating a device clock has been included in claim 1 such that its disclosure on page 33 as an option is irrelevant. Since 'generate a device clock' has been included in claim 1, it is necessary to consider in what context the occurrence of generating a device clock is disclosed on page 33, and this is unambiguously solely in combination with the controller initialising.
- 1.7 The proprietor further submitted that the skilled person would understand the generating of a device clock to be associated with anonymised user data rather than initialising of the controller. It held that in light of the technical effect to be achieved by the device clock, which is to increase security and confidentiality, the person skilled in the art would understand that the disputed features can be dispensed with in claim 1, which should only reflect the inventive concept for which protection is sought. The alleged association between the device clock and patient confidentiality is indeed disclosed in the application as a whole (see e.g. the paragraph bridging

pages 34 and 35 as filed), yet this is not relevant for the consideration of original disclosure for the subject-matter of claim 1 where a basis for the feature 'generate a device clock' is required. This is solely disclosed on page 33, line 11 in the context of the paragraph from line 4 to 17 which, as found in items 1.4 to 1.6 above, fail to provide the requisite direct and unambiguous basis for the subject-matter of claim 1.

1.8 As for the omission from claim 1 of the device clock counting up, the proprietor argues that this is also merely disclosed as an option by way of the sentence from line 11 to 14 starting 'For example, ...'. The proprietor is correct that the device clock counting up is disclosed exemplarily in lines 11 to 14 yet line 13 provides the context for this example to be 'at initiation' and, as found above, the controller initialising is unambiguously disclosed in combination with generating a device clock. Consequently, since initiation of the controller necessarily occurs with the generation of the device clock, the device clock counting up is not merely exemplary but also necessarily occurs in combination with generating a device clock and these features are thus inextricably linked to each other.

1.9 In summary, therefore, the omission from claim 1 of both the controller initialising and the device clock counting up lacks a direct and unambiguous basis in the application as filed. The ground for opposition under Article 100(c) EPC is consequently prejudicial to maintenance of the patent as granted. The main request is thus not allowable.

2. *Auxiliary request 1*
Article 123(2) EPC

2.1 Claim 1 has been amended relative to claim 1 of the main request to include *inter alia* that the controller is configured to maintain the device clock by counting up. Although this might overcome the objection of added matter with respect to the device clock counting up found to be prejudicial to claim 1 of the main request, the omission of the feature directed to the controller initialising, also found to be prejudicial to claim 1 of the main request, has not been remedied.

2.2 The proprietor argued that claim 6 as filed defined initialisation of the controller independently from generating the device clock such that inclusion of the former in claim 1 was not required. Irrespective of the admittance of this argument presented for the first time at oral proceedings, a disclosure in claim 6 of the controller initialising without one of generating a device clock fails to provide a basis for claim 1 in which the feature of a controller configured to generate a device clock has already been introduced into the claim. As discussed above with respect to claim 1 of the main request, the sole disclosure in the application as filed of a controller configured to generate a device clock is on page 33, lines 4 to 17 which is unambiguously disclosed in combination with the controller initialising. Thus, as already concluded above with respect to the main request, the omission of the controller initialising from claim 1 extends its subject-matter beyond the content of the application as filed.

2.3 The subject-matter of claim 1 thus fails to meet the requirement of Article 123(2) EPC. Auxiliary request 1 is consequently not allowable.

3. *Auxiliary requests 2 to 9*
Article 123(2) EPC

3.1 In points 4.1 and 4.2 of the preliminary opinion under Article 15(1) RPBA, the Board indicated that the subject-matter of claim 1 of auxiliary request 2 and of auxiliary requests 3 to 9 seemed not to overcome the added-matter objection of claim 1 of the main request. At oral proceedings the proprietor presented no counter-arguments to this preliminary opinion, stating that it relied upon its written submissions.

3.2 Absent any arguments indicating why the preliminary opinion is incorrect, the Board, after having reconsidered all the factual and legal aspects of the case, confirms its preliminary opinion herewith and finds the subject-matter of claim 1 of each of the auxiliary requests 2 to 9 to not meet the requirement of Article 123(2) EPC. Auxiliary requests 2 to 9 are consequently not allowable.

4. *Auxiliary requests 10 and 11*
Admittance, Article 13(2) RPBA

4.1 These auxiliary requests were filed after notification of the communication under Article 15(1) RPBA and shall, in principle, not be taken into account unless exceptional circumstances justify their admittance.

4.2 In its submission of 4 December 2025 the proprietor argued that opponent I and II had, in their objections of added matter, never objected only to the omission of the features relating to 'initialising' and 'counting up' from claim 1 in combination with the feature to 'generate a device clock'; the Board had for the first time introduced this combined objection in its preliminary opinion with respect to the main request.

4.2.1 This is not seen to be an exceptional circumstance justifying auxiliary requests 10 and 11 to be taken into account. Opponent I had indeed argued the subject-matter of claim 1 of the main request to extend beyond the content of the application as filed on several counts. Yet, solely one of these objections would need to be found persuasive for the claimed subject-matter to be unallowably amended. In the present case, the Board found two of the individual objections to be persuasive, namely the omission from claim 1 of the controller 'initialising' and 'counting up' and gave its preliminary opinion on this basis. Yet, both of these added-matter objections had been raised by opponent I in its grounds of appeal and the proprietor had the opportunity to respond to these in its reply to the opponent's grounds. The Board then concluding that just two out of a plurality of objections are persuasive for a finding of a claim extending beyond the content of the application as filed cannot be seen as an unforeseeable circumstance and thus does not constitute exceptional circumstances that might have justified the taking into account of auxiliary requests 10 and 11.

4.2.2 The proprietor submitted that crystallising out the relevant elements of an objection should be seen as circumstances justifying the filing of a new auxiliary request. In support it cited T 0032/16, in which a communication by the Board had identified the salient argument for the first time from a lengthy submission of the opponent with respect to Article 100(c) EPC. Contrary to T 0032/16 however, in the present case the opponent had clearly identified several individual reasons why the claimed subject-matter extended beyond the content of the application as filed, including *inter alia* the omission from claim 1 of the 'initialising' and 'counting up' features. There was no doubt as to what the added-matter objections of opponent I were. In concurring with the opponent on two of these reasons, the Board had not introduced anything new or surprising which the proprietor had not yet had the opportunity to address. The presence of exceptional circumstances is thus denied.

4.3 At oral proceedings the proprietor argued that the Board had in its preliminary opinion, for the first time in the appeal proceedings, objected to the absence from claim 1 of the controller counting up whereas the opponents had objected to the omission of the device clock counting up. Thus justified the admittance of auxiliary requests 10 and 11.

4.3.1 Even if point 1.4 of the Board's communication were read this way, it is noted that the proprietor had anyway failed to react to the objection of both opponents in their respective complete appeal cases, that claim 1 failed to include a feature directed to the controller initialising. This objection was addressed by the proprietor for the first time in

auxiliary requests 10 and 11 which were filed after notification of the Board's communication under Article 15(1) RPBA. Thus, irrespective of how the Board interpreted the opponent's objections relating to 'counting up', the proprietor had not addressed the omission of the controller initialising from claim 1 until after the Board's communication. It is thus evident, following this argument of the proprietor to its logical conclusion, that the Board's communication was not causal for the filing of auxiliary requests 10 and 11 since the omission of the controller initialising from claim 1 was already objected to by the opponents in their respective complete appeal cases.

4.3.2 This argument of the proprietor thus also fails to persuade the Board that exceptional circumstances justified auxiliary requests 10 and 11 being taken into account.

4.4 In conclusion, the Board thus finds that exceptional circumstances justifying auxiliary requests 10 and 11 being taken into account are not present. Accordingly, the Board decided not to admit auxiliary requests 10 and 11 into the proceedings (Article 13(2) RPBA).

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:



G. Magouliotis

A. Pieracci

Decision electronically authenticated