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THE EUROPEAN PATENT  
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**Datasheet for the decision  
of 7 May 2010**

**Case Number:** T 0431/08 - 3.2.02

**Application Number:** 98307131.7

**Publication Number:** 0903130

**IPC:** A61F 5/441

**Language of the proceedings:** EN

**Title of invention:**

Improvements relating to ostomy appliances

**Patentee:**

Bristol-Myers Squibb Company

**Opponent:**

Coloplast A/S

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 56

**Relevant legal provisions (EPC 1973):**

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**Keyword:**

"Inventive step (yes)"

**Decisions cited:**

-

**Catchword:**

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Case Number: T 0431/08 - 3.2.02

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.02  
of 7 May 2010

**Appellant:** Coloplast A/S  
(Opponent) Holtedam 1  
DK-3050 Humlebaek (DK)

**Representative:** -

**Respondent:** Bristol-Myers Squibb Company  
(Patent Proprietor) P.O. Box 4000  
Princeton NJ 08543-4000 (US)

**Representative:** Holmes, Miles Keeton  
First Thought IP  
35 New Broad Street House  
New Broad Street  
London EC2M 1NH (GB)

**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
19 December 2007 concerning maintenance of  
European patent No. 0903130 in amended form.

**Composition of the Board:**

**Chairman:** D. Valle  
**Members:** P. L. P. Weber  
M. J. Vogel

## Summary of Facts and Submissions

I. The appellant (opponent) lodged an appeal on 27 February 2008 against the decision of the Opposition Division posted on 19 December 2007 to maintain the patent in amended form. The fee for the appeal was paid simultaneously and the statement setting out the grounds for appeal was received by the EPO on 25 April 2008.

II. The following documents are relevant for the present decision:

D1 = US - A - 4 211 224  
D2 = EP - A - 0 373 795  
D3 = WO - A - 96/10378.

III. Oral proceedings were held on 7 May 2010.

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

The respondent (patent proprietor) requested that the appeal be dismissed or, as an auxiliary request, that the patent be maintained on the basis of claims 1 to 21 as filed on 7 April 2010.

IV. Claim 1 as maintained by the opposition division reads as follows:

"A combination of:  
an ostomy pouch coupling member (16) for attaching an ostomy pouch to a complementary coupling member worn on the body, characterized in that the coupling member

(16) includes a deodorising filter assembly; the assembly comprising a filter housing (24) having an elongate bore (28; 50) therein; and a plurality of elongate deodorising filter elements; each for insertion individually and longitudinally in the elongate bore to be comprised in the deodorising filter assembly and to deodorise flatus passing through the housing, each filter element including deodorising material for masking, absorbing or changing the odour of flatus gases, and the filter elements having generally the same transverse dimension, the plurality of filter elements including first and second filter elements having different flow resistances to gas passing through the filter to enable a user to select one of said filter elements for insertion in the elongate bore to provide a desired flatus vent flow rate."

- V. The appellant conceded that the subject-matter of claim 1 of the main request was novel but argued that it did not involve an inventive step having regard to D3 (closest prior art) and D1, D2.

The respondent contested the arguments of the appellant and argued that the subject-matter of claim 1 of the main request involved an inventive step.

## **Reasons for the Decision**

1. The appeal is admissible.

2. Late filed document

The appellant filed with letter dated 7 April 2010 document US-A-4 463 757 and requested it to be introduced into the proceedings because of prima facie highly relevance in the sense of the jurisdiction of the Boards of Appeal. The reason for the late filing was that this was in response to the preliminary opinion of the Board.

However, the Board is of the opinion that the document is not prima facie highly relevant. The patent is titled "covering device for tracheostomy stoma" and concerns a field far away from the ostomy field of the invention. Certainly, the device described in the US patent contains filters, but the filters used in the tracheostomy field are substantially different in form and function from those used in the ostomy field. It cannot be expected either that the skilled person in the field of ostomy appliances would take into consideration in his routine activity all the notoriously very numerous and broad medical fields in which filters are used.

For these reasons US-A-4 463 757 is not introduced into the proceedings.

Novelty

3. Inventive step

It is uncontested that D3 as the closest prior art discloses a combination of an ostomy pouch coupling member (1) for attaching an ostomy pouch to a

complementary coupling member worn on the body, the combination including a deodorising filter assembly, the assembly comprising a filter housing (7) having an elongate bore therein, a plurality of elongate deodorising filter elements (see page 2, line 11 to 30), each for insertion individually and longitudinally in the elongate bore to be comprised in the deodorising filter assembly and to deodorise flatus passing through the housing, each filter element including deodorising material for absorbing the odour of flatus gases (active coal, page 5, line 21), the filter elements having generally the same transverse dimension.

However, D3 does not disclose that: (a) the filter assembly is included in the coupling member. On the contrary, D3 discloses a filter assembly included in the wall of the pouch.

Furthermore, D3 does not disclose that: (b) the plurality of elongate deodorising filter elements include first and second filter elements having different flow resistances to gas passing through the filter to enable a user to select one of said filter elements for insertion in the elongate bore to provide a desired flatus vent flow rate.

Whereas D2 discloses a filter assembly (50) included in the coupling member (20) (feature (a)), the feature (b) of the filter elements having different flow resistances is not disclosed nor hinted at by any opposed document of the prior art.

The appellant argued that D1 disclosed the above distinguishing feature and pointed at the passages in

column 3, lines 44 to 48 and in column 7, lines 51 to 58 and Figures 8 to 23. However, none of these passages shows a plurality of filter elements having different flow resistance which can be selected by the user. The passage at column 3 shows merely that the venting devices may be separately purchased and inserted in the appliance; Figures 6 to 23 and the passage at column 7 show alternative embodiments of the venting device.

Focusing on the distinguishing feature (b), one of the purposes of the invention has therefore to be seen in improving the venting properties of the appliance. This purpose is achieved by providing first and second filter elements having different flow resistances to gas passing through the filter to enable a user to select one of said filter elements for insertion in the elongate bore to provide a desired flatus vent flow rate. This measure provides flexibility in the use of the appliance in that the filter can be chosen according to the venting characteristics adapted to the momentaneous needs of the patient, and is at the same time simple and cheap to realize.

Since none of the opposed documents of the prior art discloses this feature nor hints at it in an obvious way, the subject-matter of claim 1 of the main request involves an inventive step.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:

D. Sauter

D. Valle