

**Internal distribution code:**

- (A) [ - ] Publication in OJ  
(B) [ - ] To Chairmen and Members  
(C) [ - ] To Chairmen  
(D) [ X ] No distribution

**Datasheet for the decision  
of 5 February 2013**

**Case Number:** T 1828/09 - 3.3.10

**Application Number:** 04701045.9

**Publication Number:** 1587555

**IPC:** A61L15/28, A61L15/56

**Language of the proceedings:** EN

**Title of invention:**

WOUND DRESSING ALLOWING VISUAL INSPECTION OF WOUND HEALING

**Applicant:**

ConvaTec Technologies Inc.

**Headword:**

**Relevant legal provisions:**

EPC Art. 123(2)

**Keyword:**

Amendments - added subject-matter (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

European Patent Office  
D-80298 MUNICH  
GERMANY  
Tel. +49 (0) 89 2399-0  
Fax +49 (0) 89 2399-4465

Case Number: T 1828/09 - 3.3.10

**D E C I S I O N**  
**of the Technical Board of Appeal 3.3.10**  
**of 5 February 2013**

**Appellant:** ConvaTec Technologies Inc.  
(Applicant) 3993 Howard Hughes Parkway  
Suite 250  
Las Vegas, NV 89169-6754 (US)

**Representative:** Mays, Julie  
Venner Shipley LLP  
200 Aldersgate  
London  
EC1A 4HD (GB)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted 7 April 2009  
refusing European patent application No.  
04701045.9 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman:** P. Gryczka  
**Members:** R. Pérez Carlón  
D. Rogers

## Summary of Facts and Submissions

- I. The appeal lies from the decision of the examining division to refuse European patent application No. 04701045.9.
- II. The examining division decided that the subject-matter of claim 1 of the main request and the first auxiliary request was not novel, and that claim 1 of the second auxiliary request was not clear.
- III. With the statement of grounds of appeal, the appellant submitted a main request and three auxiliary requests, the main request and auxiliary requests 1 and 2 being identical to the respective requests before the examining division. Claim 1 of these requests reads as follows:

Main request:

*"A wound dressing for post-operative sites comprising: a thin film layer of 0.02 mm to 0.04 mm in thickness covered on one side with an adhesive and an absorbent layer adhered to the adhesive side of the thin film layer, the absorbent layer being made by carboxymethylating a cellulosic fabric and being capable of absorbing exudate to allow the wound to be viewed through the dressing."*

Auxiliary request 1:

*"A wound dressing comprising: a thin film layer of 0.02 mm to 0.04 mm in thickness covered on one side with an adhesive and an absorbent layer adhered to the adhesive side of the thin film layer, the absorbent layer being made by carboxymethylating a cellulosic fabric and being capable of absorbing exudate to allow the wound to be*

*viewed through the dressing for use as a dressing on post-operative sites."*

Auxiliary request 2:

*"A wound dressing for post-operative sites comprising: a thin film layer of 0.02 mm to 0.04 mm in thickness covered on one side with an adhesive and an absorbent layer adhered to the adhesive side of the thin film layer, the absorbent layer being made by carboxymethylating a cellulosic fabric and being capable of absorbing exudate to allow the wound to be viewed through the dressing both before and after the absorption of exudate."*

Auxiliary request 3:

*"A wound dressing for post-operative sites comprising: a thin film layer of 0.02 mm to 0.04 mm in thickness covered on one side with an adhesive and an absorbent layer adhered to the adhesive side of the thin film layer, the absorbent layer being made by carboxymethylating a cellulosic fabric and being capable of absorbing exudate to allow the wound to be viewed through the dressing both before and after the absorption of exudate as indicated by at least 7 lines of demarcation on a grey scale being viewed through the dressing before the absorption of exudate according to the grey scale test as described herein."*

- IV. In a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal to prepare oral proceedings, the board informed the appellant, *inter alia*, that the feature "a thin film layer of 0.02 mm to 0.04 mm in thickness", which could be found in claim 1 of all the requests on file, appeared to be disclosed in the application as originally filed only in combination with additional features which were not

- in the claims (Article 123(2) EPC).
- V. With a letter dated 29 January 2013, the appellant informed the board that it would not be attending the oral proceedings.
- VI. Oral proceedings took place on 5 February 2013, in the absence of the appellant, as announced.
- VII. The appellant requested, in writing, that the decision be set aside and that a patent be granted in the following version: Claims 1-13 of the main request, or alternatively upon the basis of the claims of any of the auxiliary requests 1-3, all of the above requests being submitted under cover of a letter dated 12 August 2009.
- VIII. At the end of the oral proceedings, the chairman announced the decision.

### **Reasons for the Decision**

1. The appeal is admissible.

Added subject-matter, Article 123(2) EPC:

Main Request:

2. Claim 1 of the main request contains the feature "a thin film layer of 0.02 mm to 0.04 mm in thickness".
3. The feature "0.02 mm to 0.04 mm in thickness" can only be found in the application as originally filed on page 2, lines 23-25, which reads as follows:

*"The thin film layer provides a viral and bacterial barrier to the wound. It is preferably made from polyurethane, has a thickness of 0.02 mm to 0.04 mm and is transparent".*

This passage, therefore, discloses the thickness of 0.02 mm to 0.04 mm only in combination with a particular material, namely polyurethane, whereas the chemical composition of the thin film layer is not a feature of claim 1.

4. It remains to be examined whether the thickness as mentioned above could be generalised to every material which could form a thin film layer.

According to the patent application, the thin film layer should provide a viral and bacterial barrier to the wound (page 2, line 23). Additionally, it needs to have suitable mechanical properties to be handled upon use, and needs to be attached to the absorbent layer.

Not every thin layer with a thickness of 0.02 mm to 0.04 mm would be suitable as a component of a wound dressing, since such a layer of a material different from polyurethane could be, for example, too brittle, or not sufficiently impervious to viruses and bacteria. A thin film of 0.02 mm to 0.04 mm in thickness would only be suitable for the intended use when made of polyurethane. For a different material, the thickness required could vary.

For this reason, it is concluded that the skilled person would not recognise directly and unambiguously from the application as originally filed that the feature "0.02 mm to 0.04 mm in thickness" is independent from the chemical composition of the thin

film.

5. The thickness range from 0.02 mm to 0.04 mm as defined in claim 1 represents for these reasons an unallowable generalisation of the original disclosure, with the consequence that claim 1 of the main request contains subject-matter which extends beyond the content of the application as filed (Article 123(2) EPC).

The main request is thus not allowable.

Auxiliary requests 1-3:

6. Since claim 1 of all the auxiliary requests contains the feature "a thin film layer of 0.02 mm to 0.04 mm in thickness" without specifying the chemical nature of said film, these requests are not allowable for the same reason as the main request.

## **Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:



C. Rodríguez Rodríguez

P. Gryczka

Decision electronically authenticated