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Datasheet for the decision of 9 January 2014

Case Number: T 0856/12 - 3.2.08

Application Number: 02705739.7

Publication Number: 1349520

IPC: A61F5/00, A61F5/01

Language of the proceedings: EN

Title of invention:
ROLL FORM MEDICAL BANDAGING PRODUCT, MEDICAL BANDAGE MATERIAL, METHOD OF CONSTRUCTING SAME, AND BANDAGING METHOD.

Patent Proprietor:
BSN Medical, Inc.

Opponent:
Paul Hartmann AG

Headword:

Relevant legal provisions:
EPC Art. 108, 110, 100(a), 54(2), 54(3), 56
EPC R. 99(1)(a), 101(2), 139

Keyword:
Admissibility of appeal - (yes)
Novelty - main request (no) - auxiliary request (yes)
Inventive step - auxiliary request (yes)
Correction of error - immediately evident that nothing else could have been intended (yes)

Decisions cited:
T 0613/91, T 0867/91

Catchword:

Europäisches Patentamt
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Case Number: T 0856/12 - 3.2.08

D E C I S I O N
of Technical Board of Appeal 3.2.08
of 9 January 2014

Appellant: (Opponent)	Paul Hartmann AG Paul-Hartmann-Strasse 12 89522 Heidenheim (DE)
Representative:	Dreiss Patentanwälte Gerokstraße 1 70188 Stuttgart (DE)
Respondent: (Patent Proprietor)	BSN Medical, Inc. Corporation Trust Center, 109 Orange Street Wilmington, Delaware 19801 (US)
Representative:	Sherrard-Smith, Hugh Appleyard Lees 15 Clare Road Halifax HX1 2HY (GB)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 21 February 2012 rejecting the opposition filed against European patent No. 1349520 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman: T. Kriner
Members: C. Herberhold
D. T. Keeling

Summary of Facts and Submissions

I. By decision posted on 21 February 2012 the opposition division rejected the opposition against European patent EP-B-1 349 520.

II. The appellant (opponent) lodged an appeal against this decision on 11 April 2012, paying the appeal fee on the same day. The statement setting out the grounds of appeal was filed on 28 June 2012.

III. Oral proceedings before the Board of Appeal were held on 9 January 2014.

At the end of the oral proceedings the requests of the parties were as follows:

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 as inadmissible or unfounded and that the patent be maintained as granted (Main Request), or that the patent be maintained as granted without the method claims, or that the patent be maintained on the basis of one of the Auxiliary Requests A to E, or one of the Auxiliary Requests A to E without the method claims.
The respondent further requested permission to correct the value 3.4 mm given in paragraph [0047] of the patent into 0.34 mm in accordance with Rule 139 EPC.

IV. The independent claims 1, 6 and 7 of the Main Request (patent as granted) read as follows:

Claim 1:
"A medical bandaging product (10) in roll form for being dispensed in predetermined lengths suitable for a given medical use, comprising:
(a) an elongate sleeve (15,15a) formed of moisture—impervious material and sealable to prevent entry of moisture;
(b) an unpadded elongate medical bandage material substantially the same length as the sleeve and positioned in said sleeve in a single length along the length of the sleeve and sealed therein against entry of moisture until use, said medical bandage material comprising:
(i) a substrate (11)
(ii) a reactive system impregnated into or coated onto said substrate, said system remaining stable when maintained in substantially moisture—free conditions and hardening upon exposure to sufficient moisture to form a rigid, self supporting structure; and
(iii) a protective liner (12) sheet enclosing said substrate along its length and forming a barrier between the substrate (11) and the sleeve (15,15a) during storage, said substrate (11) adapted for having a protective padding material interposed between the substrate and the patient; and
(c) resealing means (25) for resealing said sleeve against entry of moisture after a predetermined length of said bandaging product has been dispensed for use to prevent hardening of said substrate remaining in said sleeve, **characterised in that**, said protective liner sheet (12) is optionally removable after removal of the medical bandage material from the sleeve and prior to application to a patient."

Claim 6:
"A medical bandaging product (10) for being packaged in predetermined lengths suitable for a given medical use, comprising:
(a) a sleeve (15,15a) formed of moisture-impervious material and sealable to prevent entry of moisture;
(b) an unpadded medical bandage material positioned in said sleeve and sealed therein against entry of moisture until use, said medical bandage material comprising:
(i) a substrate (11)
(ii) a reactive system impregnated into or coated onto said substrate, said system remaining stable when maintained in substantially moisture-free conditions and hardening upon exposure to sufficient moisture to form a rigid, self supporting structure; and
(iii) a protective liner sheet (12) enclosing said substrate and forming a barrier between the substrate and the sleeve during storage said substrate adapted for having a protective padding material interposed between the substrate and the patient, **characterised in that** said protective liner sheet (12) is optionally removable after removal of the medical bandage material from the sleeve and prior to application to a patient."

Claim 7:
"A method of utilizing a medical bandaging product (10) comprising the steps of:
(a) providing an elongate sleeve (15, 15a) and an unpadded elongate medical bandage material comprised of an unpadded substrate (11) enclosed within a protective liner sheet (12);
(b) impregnating into or coating onto said substrate a reactive system which remains stable when maintained in substantially moisture—free conditions and hardens upon

exposure to sufficient moisture to form a rigid, self—supporting structure;
(c) positioning said elongate medical bandage material within said elongate sleeve;
(e) sealing said sleeve to prevent entry of moisture until use;
(f) removing the medical bandage material from the sleeve immediately prior to use;
(g) wetting the substrate (11) to activate the reactive system;
(h) interposing a padding between the substrate and the patient; and
(i) applying the substrate and interposed padding to the patient, **characterised in that** said liner sheet (12) is optionally removed from the substrate after removal of the medical bandage material."

The claims of Auxiliary Request 1 differ from the Main Request in that the method claims have been discarded.

Auxiliary Requests A to E, with or without method claims, have not played a role for the present decision.

V. The following documents are of relevance for the present decision:

D1: US-A-4 770 299;
D2: US-A- 5 003 970;
D3: US-A- 5 607 387;
D5: US-A- 4 899 738;
D9: US-A- 5 755 678;
D11: WO-A-01/54639.

VI. The essential arguments of the appellant can be summarised as follows:

Admissibility of the appeal

The omission of the name and the address of the appellant required under Rule 99(1)(a) EPC was a deficiency remediable once it had been communicated to the appellant in accordance with Rule 101(2) EPC. However, no communication inviting the appellant to remedy the deficiency had been received, which was anyway unnecessary, because the missing information had been provided in the meantime.

The invoked evidence was referred to by the identifiers used during the opposition procedure and the documents were thus readily identifiable. Consequently, the appeal was admissible.

Correction of an error in the description under Rule 139 EPC

Whereas it was true that the thickness value 13.5 mils and its SI unit conversion 3.4 mm given in paragraph [0047] of the patent specification were inconsistent, neither the description nor the figures made it possible to deduce the value of 0.34 mm offered as the correction.
Consequently, it was not immediately evident that nothing else would have been intended than what was offered as the correction and the correction should not be allowed.

Main Request

Document D3 disclosed a method of utilizing a medical bandaging product comprising the steps of claim 7. In particular in column 5, lines 3-50 D3 described a first embodiment having a textile layer No. 38 which became

embedded with the substrate after curing and which was thus not removed from the substrate. Moreover, in column 6, line 54 - column 7, line 10 and Figure 10 D3 described a further embodiment having a plastic layer No. 56 which dissolved as a result of the product being submersed in water according to column 7, lines 7-10. The respective layers No. 38 and 56 qualified as a protective liner sheet which was either removed from the substrate or not removed from the substrate after removal of the medical bandage material from the sleeve No. 30, D3 thus disclosing that the liner sheet was optionally removed as defined in the characterising portion of claim 7. The splint disclosed in D3 also comprised a padding No. 24 which upon application of the splint became interposed between the substrate and the patient.

Hence, the Main Request was not allowable due to lack of novelty.

Auxiliary Request 1 - Novelty

Firstly, the subject matter of claim 1 was not new in view of documents D1, D2, D5, D9 and D3.

D1 showed a medical bandaging product in roll form with an elongate sleeve (Figure 1-5, No. 13), a substrate (No. 16), a protective liner (No. 18) as well as resealing means (No. 15). The tubular wrapping No. 18 qualified as a protective liner sheet because it was easily separable from substrate No. 16 and thus optionally removable e.g. by use of scissors. In fact separability was the only structural feature required in order to make a particular structure "optionally removable". In particular, it did not matter whether

the structure was destroyed upon removal it being discarded anyway.

Also, the wrapping No. 18 was made from a non-woven polypropylene material, just as the protective liner disclosed in the patent. Thus, if the polypropylene non-woven disclosed in the patent qualified as "unpadded" bandage material, the same must be true for wrapping No. 18. In this context it had to be considered that every enclosing material inevitably had a padding effect and that it was not defined in the patent how much cushioning was required in order to consider a particular structure padded or unpadded. Therefore, the subject-matter of claim 1 was anticipated by the disclosure of D1.

Documents D2, D5, and D9 disclosed very similar bandaging products as D1. These documents were thus equally novelty destroying for claim 1.

D3 uncontestedly disclosed the preamble of claim 1. Furthermore protective liner sheets No. 38 as well as No. 56 discussed above were not fixedly connected to the substrate and therefore optionally removable.

Secondly, Claim 6 was anticipated by the disclosure of documents D9 and D11.

Further to a product in a roll form, D9 showed a pre-cut variant, i.e. a product packaged in a pre-determined length as defined in independent claim 6, its disclosure being otherwise comparable to D1.

Document D11 was prior art under Article 54(3) EPC. Although on page 9, lines 9-12 the document explicitly disclosed the medical bandaging product to include a

padding, the product nevertheless qualified as unpadded in the sense of the attacked patent, which also referred to a substrate enclosed by the inevitably padding liner sheet as "unpadded bandage material". Moreover, padding No. 12 was closed by a double sided tape, i.e. by the very same structural means ensuring the optional removability of the protective liner according to the invention. Structure No. 12 thus qualified as optionally removable protective liner sheet and D11 was consequently novelty destroying for claim 6.

Auxiliary Request I - Inventive step

Should the subject-matter of claims 1 and 6 be regarded as being novel, the invention defined in these claims was at least obvious for the person skilled in the art starting from either D1 or D3. In order to be able to use the substrate of either the D1 or D3 bandaging product to reinforce a cast, the person skilled in the art would remove any intermediate layer preventing the product to be laminated onto the cast. In fact, it was very likely that the layers enclosing the substrate of either the D1 or D3 bandaging product were regularly removed in daily practice when the physician was in need of a cast reinforcing material, in particular because scissors had been used immediately before in order to cut an appropriate length of the bandage material and were thus readily "at hand".

VII. The essential arguments of the respondent can be summarised as follows:

Admissibility of the appeal

The appeal was to be considered inadmissible, because the notice did not contain the name or the address of the appellant and the grounds left it open whether the decision was appealed as a whole or only partially. Moreover only abbreviated identifiers were used in the reasoning, without any indication as to what the documents were. It was thus impossible to comment on the content or the admissibility of the evidence.

Correction of an error in the description under Rule 139 EPC

Paragraph [0047] of the patent specification contained the statement that "the liner sheet 12 is preferably 13.5 mils (3.4 mm) thick". However, 13.5 mils did not convert to 3.4 mm but to 0.34 mm such that it was immediately obvious that a mistake had been made. In view of the consistent teaching of the liner sheet 12 being thin - i.e. thinner than the substrate - in the drawings as well as in the description paragraphs [0039], [0042] and [0047], it was immediately obvious that a thickness value of 0.34 mm had been contemplated.

Main Request

Although it was true that D3 disclosed one embodiment with a removable liner and a second embodiment with a non-removable liner, this disclosure was in two different embodiments which could not be combined for novelty evaluation. D3 did not disclose a method wherein the user had both options, i.e. to remove the liner or to not remove the liner. Furthermore the D3 splint was already provided with padding No. 24, its use thus not comprising the step of "interposing a padding between the substrate and the patient".

Consequently, the subject matter of claim 7 was novel over the disclosure in D3.

Auxiliary Request 1 - Novelty

None of the bandaging products disclosed in prior art documents D1, D2, D5, D9 and D11 comprised an unpadded elongate medical bandage material. As stated in paragraph [0047] of the patent specification, an unpadded material was defined as having "just enough thickness and density to retain the resin on the substrate", whereas the material disclosed in D1, D2, D5, D9 and D11 was explicitly described as cushioning or even padding.

Moreover, the documents disclosed unitary products from which a particular structure could only be removed by destroying the product such that no optionally removable protective liner sheet could be identified. Even the double sided tape closure shown in D11, Figure 2, No. 13 could not be considered as making the liner "optionally removable" because it depended on the particular adhesive of the tape whether such a closure could be easily reopened or would create a permanent connection. D11 disclosed the double sided tape as an alternative to ultrasonic welding, seaming or application of an adhesive (page 9, lines 12 to 14), such that the double sided tape closure had to be understood as equally permanent.

D3 disclosed an unpadded bandage material positioned within a moisture impervious sleeve, but the textile layer No. 38 disclosed in D3 was clearly not "optionally removable". On the contrary it was disclosed to become embedded into the substrate thereby enhancing the strength of the splint and thus had a

particular functionality teaching away from it being removed. Regarding plastic layer No. 56, it dissolved upon submersion in water and therefore was inevitably and not optionally removed.

Auxiliary Request I - Inventive step

There was no indication, either in D1 or in D3, to remove the intermediate layer which in D1 was required as a padding or in D3 was not even accessible. The documents disclosed unitary products. Only with knowledge of the invention, i.e. in a typical hindsight analysis, could there be an incentive to remove the enclosing layers let alone to make them optionally removable.

Reasons for the Decision

1. Admissibility

1.1 The notice of appeal clearly indicates the name of the appellant ("Gegen den Beschluss des Europäischen Patentamtes vom 21. Februar 2012 wird hiermit namens und im Auftrag der Paul Hartmann AG Beschwerde eingelegt."). It is true that the address, i.e. the street and the particular town where the appellant is based are missing. However, this information is easily available to the respondent as well as to the Board from the impugned decision (see item 2 of the Facts and Submissions of the impugned decision), the information in the notice of appeal thus being sufficient to identify the Appellant itself and its address. In accordance with the established case law of the Boards of Appeal (see Case Law of the Boards of Appeal, 7th edition 2013, IV.E.2.5.2 a), in particular decisions

T613/91, r. 1; T867/91, r. 1.1) the requirements of Rule 99(1) (a) are thus considered met.

1.2 In the statement of grounds of appeal, several documents are discussed in detail. Although there is no explicit assignment of the identifiers (D1...D11) used, it is obvious that the nomenclature from the opposition proceedings and in particular from the impugned decision applies. The respondent's alleged difficulties in identifying the documents are thus not understandable.
It is noted that according to Article 12(2) of the RPBA the grounds of appeal "should specify expressly all the facts, arguments and evidence relied on", an attachment of the documents being however only required "insofar as they have not already been filed in the course of the grant, opposition or appeal proceedings or produced by the Office in said proceedings". Thus a re-filing of the documents used is not necessary and it is possible to understand immediately on what facts the appellant based his arguments, without any investigations.

1.3 Furthermore, the notice of appeal clearly states the subject of the appeal in accordance with Rule 99(1) (c) EPC by requesting the Board to set aside the decision of the opposition division and to revoke the patent. ("Es wird beantragt, den Beschluss aufzuheben und das Patent zu widerrufen"). With all independent claims being attacked and in view of the request reproduced above, it is clear that the decision is attacked as a whole and that the appellant requests revocation of the patent in its entirety.

1.4 To conclude, the appeal is admissible.

2. Correction of an error in the description under Rule 139 EPC

The description of the patent is a document filed with the European Patent Office. Consequently, errors contained therein may be corrected upon request under Rule 139 EPC if "the correction is obvious in the sense that it is immediately evident that nothing else would have been intended than what is offered as the correction".

The passage in paragraph [0047] of the description which is to be corrected indicates the thickness of the liner sheet in mils, i.e. in thousandths of an inch, followed by a value in millimetres which is given in parenthesis. Because Rule 49 (10) EPC requires the use of SI units, it is common practice in patent specifications to provide a value converted into the metric system in parenthesis directly behind the original non SI-unit-value from which it was deduced. It is thus immediately evident that both numbers were intended to define the same thickness value and that an error in conversion has been made. With the usual rounding, the two values differ by a factor of 10: 13.5 mils convert to 0.34 mm (rounded to 2 significant digits) and not to the 3.4 mm given in the specification. Taking into account that, firstly, it is typically the converted value which is given in parenthesis, and that, secondly, imperial units such as "thousandths of an inch" or "mils" are traditionally used in the United States where the inventor of the present application is based, the person skilled in the art would consider the first number, i.e. the value given in mils, to be the original from which the millimetre value was (incorrectly) calculated. This is also the only plausible interpretation, because a liner

thickness of 3.4 mm would be in contradiction with the further disclosure of the patent: in accordance with paragraphs [0040] to [0042], the core (Nos. 11 in Figures 1-4, 14) of the fabric sheets of the substrate is available in 2 mm, 3 mm and 4 mm thicknesses. With respect to such a core, the liner is consistently described as thin. Also in the drawings the liner is always shown considerably thinner than the core. A liner of 3.4 mm thickness would however be as thick as or even thicker than the core contrary to said disclosure. It thus has to be concluded that it is the conversion into millimetres which has been incorrectly calculated and that nothing else than the correctly converted SI-unit value of 0.34 mm - offered by the respondent as the correction - could have been intended.

3. Main Request - Novelty

Document D3 discloses:

A method of utilizing a medical bandaging product (Figure 10, the use can be appreciated in Figure 6) comprising the steps of:
(a) providing an elongate sleeve (No. 30) and an unpadded elongate medical bandage material comprised of an unpadded substrate (No. 34) completely surrounded by (column 6, line 61-64) i.e. enclosed within a protective liner sheet (No. 56 or No. 38);
(b) impregnating into or coating onto said substrate a reactive system which remains stable when maintained in substantially moisture—free conditions and hardens upon exposure to sufficient moisture to form a rigid, self—supporting structure (column 4, lines 40-54);
(c) positioning said elongate medical bandage material within said elongate sleeve (Fig. 10 shows the unpadded

substrate, No. 34 and the protective liner, No. 56 within the sleeve No. 30 in which it has been positioned);
(e) sealing said sleeve to prevent entry of moisture until use (column 5, line 22-25: "..protected from exposure to moisture in the atmosphere by sealing the open end 40 of protective envelope 30");
(f) removing the medical bandage material from the sleeve, immediately prior to use (column 6, line 64-column 7, line 2: foil envelope No. 30 is removed, while plastic envelope remains - the plastic envelope even "enhancing removal of the foil envelope");
(g) wetting the substrate to activate the reactive system (column 7, line 6-10: submersion in water)
(h) interposing a padding between the substrate and the patient (foam layer No. 24 is positioned between the substrate and the patient, see also Figure 10); and
(i) applying the substrate and interposed padding to the patient (Figure 6).

The characterising portion of claim 7, which states that "said liner sheet is optionally removed from the substrate after removal of the medical bandage material" (emphasis added by the Board), is only an optional feature and thus not limiting. Unlike the product claims, which define the bandaging product to have a protective liner which is "optionally removable", the method claims are not so restricted. It is thus irrelevant whether the user of the product has both options, i.e. to remove the liner sheet or to not remove the liner sheet.

For this reason alone, D3 discloses also the characterizing step of claim 7.

Therefore, the disclosure of D3 is novelty destroying for the subject-matter of claim 7 and the Main Request is not allowable.

4. Auxiliary Request 1 - Novelty

4.1 D3:

It was uncontested that document D3 discloses the preamble of claim 1. As discussed above, the protective liner sheet is formed either by textile layer (No. 38) or by plastic envelope (No. 56).

However, plastic envelope (No. 56) dissolves as a result of the product being submersed in water (column 7, lines 6-10). It is thus always removed, without the option of not being removed. Consequently, plastic envelope (No. 56) is not "optionally removable".

Textile layer No. 38 serves to facilitate removal of envelope No. 30 (column 5, lines 10 to 14) and becomes embedded with the substrate No. 34 after hardening (column 5, lines 17 to 18). To allow for this functionality, the textile layer needs to remain around the substrate when the envelope No. 30 is pulled out. Consequently, textile layer No. 38 is also not "optionally removable".

There is also no direct and unambiguous disclosure that the textile layer No. 38 is "optionally removable" by simply pulling it out, as alleged by the appellant. Due to the frictional relationship with the underlying substrate, which is required to avoid that the textile layer No. 38 is pulled out together with the envelope No. 30, layer No. 38 may well disintegrate or rupture and remain partly within web No. 22 when forcibly

pulled out. Moreover, layer No. 38 is only accessible from the cut face because it is further enclosed by wrap No. 22 (made up from foam layer No. 24 and a suitable textile layer No. 26, see column 4, lines 27-33). It is therefore not even accessible to be removed by use of scissors unless the wrap is forcibly opened up as well.

Although formulated in terms of its function, the Board is of the opinion that the "optional removability" claimed is a device feature which requires the presence of a structural characteristic, identifiable on the product, which allows the protective liner sheet to be "optionally removed". In particular, it is not considered sufficient that a structure can principally be removed by force e.g. by using a tool as e.g. scissors. An example of such a structural characteristic allowing optional removability would be the double-side tape closure disclosed in the patent (paragraph [0047], last line). However, no such structural characteristic can be identified in D3.

Thus, document D3 does not directly and unambiguously disclose a protective liner sheet optionally removable after removal of the medical bandage material from the sleeve and prior to application to a patient. The subject-matter of claim 1 is therefore novel over D3.

4.2 D11

Document D11 has been cited as novelty destroying against the subject-matter of claim 6. However, claim 6 defines an unpadded medical bandage material whereas D11 explicitly refers to the sheet enclosing the substrate (D11, Figure 2, No. 12) as a "soft padding" (page 9, lines 9-10), which provides a

cushioning protective layer between the skin of the patient and hardened substrate No. 11 (page 11, lines 17-18). Consequently, D11 does not clearly and unambiguously disclose an unpadded elongate medical bandage material.

This analysis is not changed by the fact that both, the protective liner sheet according to the patent specification (paragraph [0047]) as well as the padding according to D11 (page 11, lines 14 to 17), are made from a polypropylene non-woven material. The cushioning effect does not only depend on the material used, but is further determined by its thickness. It is true that the line between a padded and an unpadded material may be hard to draw in particular for thin layers. However, this does not make a structure explicitly described to be "cushioning" or "padding" fall under the definition of an "unpadded bandage material".

Consequently, the subject-matter of claim 6 is novel over D11.

Remark 1: In view of this finding it need not be discussed whether the double-sided tape closure makes the padding No. 12 "optionally removable" or not.

Remark 2: With the subject matter of claim 6 being novel over D11, its priority document cannot be considered an earlier disclosure of the invention invalidating the priority claimed in the patent. Document D11, which was published on 2 August 2001, i.e. after the priority date (12 January 2001) of the patent but claiming an even earlier priority (27 January 2000), is thus prior art under Article 54(3) EPC and to be taken into account for novelty evaluation only.

4.3 D1, D2, D5, D9

The disclosure of documents D1, D2, D5 and D9 is very similar, with D9 additionally disclosing a pre-cut variant of the product as defined in claim 6. Their disclosure will thus be discussed exemplarily by reference to D1. The documents disclose a medical bandage material (Figure 4, No. 14) comprising a substrate (No. 16) enclosed by a tubular wrapping (No. 18). The bandage material is positioned in an elongate sleeve (Figure 3, No. 13) formed of moisture impervious material resealable by resealing means (column 4, line 8-19; Figure 2, No. 15). The appellant was of the opinion that tubular wrapping, No. 18 qualified as "protective liner sheet optionally removable after removal of the medical bandage material from the sleeve and prior to application to a patient" comprised in an "unpadded, elongate medical bandage material". However, tubular wrapping No. 18 is explicitly disclosed as providing a "cushioning protective layer between the skin of the patient and substrate 16" (D1 and, column 4, lines 37 to 39). Therefore, for the reasons discussed already in item 4.2 above, the bandage material does not qualify as "unpadded".

Furthermore, the protective wrapping is disclosed as comprising a non-woven cushion formed of polypropylene or some other hydrophobic fibre in the form of a tube. There is no disclosure of any structural device feature identifiable on the product and allowing for optional removability of the wrapping. Consequently, as discussed in item 4.1 above, documents D1, D2, D5 and D9 do not disclose a protective liner sheet which is "optionally removable after removal of the medical

bandage material from the sleeve and prior to application to the patient".

To conclude, the subject-matter of claims 1 and 6 is novel also with regard to D1, D2, D5 and D9.

5. Auxiliary Request 1 - inventive step

Claim 1: Document D3 is considered to be the closest prior art. As discussed in item 4.1 above, the subject-matter of claim 1 differs from said disclosure by the feature of the characterizing portion, i.e. by the optional removability of the protective liner sheet after removal of the medical bandage material from the sleeve and prior to application to a patient. Thereby, the protective liner may either be removed or left on the substrate. Removal of the liner makes it possible to use the product for re-enforcing a cast where lamination between the cast and the medical bandaging product is desired (patent, paragraph [0059]), thus solving the problem to improve versatility of the product.

None of the prior art documents under Article 54(2) EPC discloses a structural device feature which allows the structure alleged to qualify as the protective liner to be "optionally removed" (see the discussion in items 4.1 and 4.2 above).

The appellant argued that, in order to reinforce an existing splint by lamination with an additional substrate, it was obvious to remove the wrapping of any of D1, D2, D5 or D9 or the textile layer of D3 with the scissors already used for cutting an appropriate length of the product. However, this would still not prompt the modification of the product, i.e. there would be no

reason to provide the wrapping or textile layer with a structural feature allowing its optional removability.

The argumentation for claim 6 is analogous, using D9 as closest prior art, which shows a pre-cut variant of the bandaging product.

Consequently, the subject-matter of claims 1 and 6 is inventive and Auxiliary Request 1 is allowable.

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 with the order to maintain the patent on the basis of the following documents:
   - Claims 1 to 6 as granted;
   - Description, pages 1 to 6 as filed during the oral proceedings;
   - Figures 1 to 19 as granted.

The Registrar: The Chairman:

V. Commare T. Kriner

Decision electronically authenticated