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Datasheet for the decision of 14 April 2015

Case Number: T 2410/13 - 3.2.08

Application Number: 06700864.9

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Language of the proceedings: EN

Title of invention:
SEALING FILM DRESSING

Patent Proprietor:
Mölnlycke Health Care AB

Opponents:
3M Innovative Properties Company
Paul Hartmann AG

Headword:

Relevant legal provisions:
EPC Art. 56

Keyword:
Inventive step - (no)

Decisions cited:

Catchword:

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Case Number: T 2410/13 - 3.2.08

D E C I S I O N
of Technical Board of Appeal 3.2.08
of 14 April 2015

Appellant: (Patent Proprietor)	Mölnlycke Health Care AB P.O. Box 13080 402 52 Göteborg (SE)
Representative:	Tostmann, Holger Carl Wallinger Ricker Schlotter Tostmann Patent- und Rechtsanwälte Zweibrückenstrasse 5-7 80331 München (DE)
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Appellant: (Opponent 2)	Paul Hartmann AG Paul-Hartmann-Strasse 12 89522 Heidenheim (DE)
Representative:	DREISS Patentanwälte PartG mbB Postfach 10 37 62 70032 Stuttgart (DE)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 7 October 2013 concerning maintenance of the European Patent No. 1845912 in amended form.**

Composition of the Board:

Chairman	I. Beckedorf
Members:	M. Foulger
	P. Acton

Summary of Facts and Submissions

I. Opponent I, opponent II and the patent proprietor lodged appeals against the interlocutory decision of the Opposition Division, dispatched on 7 October 2013. The Opposition Division found that the patent and the invention to which it related, according to the first auxiliary request, met the requirements of the EPC.

The notices of appeal and the statements setting out the grounds of appeal were filed within the given time limits and in due form.

II. Oral proceedings took place before the Board of Appeal on 14 April 2015.

III. Appellants I and II (opponents I and II respectively) requested that the decision under appeal be set aside, the patent be revoked and the appeal of appellant III be dismissed.

IV. Appellant III (patent proprietor) requested that the that the decision under appeal be set aside,
that the patent be maintained in amended form on the basis of the set of claims according to the main request re-filed with letter of 13 March 2015,
that the appeals of appellants I and II be dismissed,
or,
in the alternative, that in setting aside the decision under appeal the patent be maintained in amended form on the basis of one of the sets of claims according to the second and third auxiliary requests filed with letter of 13 March 2015.

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

"Film dressing (1) comprising a thin plastic film (2) coated with an adhesive (3), the adhesive (3) has a softness of 10-22 mm, the adhesive coating has a weight per unit area of 50 g/m^2 or more, the thickness of the plastic film is less than 50 micrometers, characterized in that a carrier sheet (4), which is to be removed after application of the dressing, is applied on the film on the side opposite to the adhesive coating, in order to facilitate application of the film dressing, wherein the function of the carrier sheet is to stiffen up the film dressing comprising the adhesive-coated thin plastic film."

Claim 1 of the first auxiliary request, as upheld by the Opposition Division, has the additional feature that the thin plastic film has "a bending rigidity of less than 3 mm".

Claim 1 of the second auxiliary request has the additional feature over the first auxiliary request that the film dressing is "for the prevention of micro leakage".

Claim 1 of the third auxiliary request has the additional feature over the second auxiliary request that the adhesive consists of a silicone elastomer.

VI. The following documents are relevant for the current decision:

D6: WO 99/61078 A
D12: Data sheet for Wacker Silgel(R) 612
D43: CA 1 222 671 A

VII. As far as it is relevant for the present decision, appellants I and II argued essentially the following:

Main request

The subject-matter of claim 1 of the main request did not involve an inventive step with regard to D43 in combination with D6. D43 disclosed a film dressing (1) comprising a thin plastic film (2) coated with an adhesive (3), the thickness of the plastic film was less than 50 micrometers, wherein a carrier sheet (4), which was to be removed after application of the dressing, was applied on the film on the side opposite to the adhesive coating, in order to facilitate application of the film dressing, wherein the function of the carrier sheet is to stiffen up the film dressing comprising the adhesive-coated thin plastic film.

The subject-matter of claim 1 differed from the dressing known from D43 in that the adhesive had a softness of 10-22 mm and that the adhesive coating had a weight per unit area of 50 g/m^2 or more.

The problem to be solved may be regarded as being to provide a more skin friendly dressing (cf Patent, [0005]).

It was known from D6, page 4, line 31 - page 5, line 7, that soft elastomers had skin friendly adhesive properties. According to D6, page 3, lines 29 - 30, the elastomer layer was preferably formed by an elastomer adhesive retailed under the designation Silgel 612 which was the same adhesive as used in the patent in suit. The elastomer layer had a thickness which exceeded the largest dimension of the particles used as anchoring elements which had a volume smaller than

10^{-3} mm^3 (D6, page 3, lines 20-27). Thus D6 disclosed an adhesive with a thickness of greater than 0.1 mm and thus, using the density of Silgel 612 known from D12, a weight per unit area of 97.2 g/m^2.

The skilled person would therefore apply the teaching of D6 to the dressing of D43 and thereby arrive at the subject-matter of claim 1 without the exercise of inventive activity.

First auxiliary request

The extra feature of the first auxiliary request was implicitly known from D43 because the film of D43 had the same thickness and material as that disclosed in the patent. Moreover D6 disclosed that the anchoring elements did not affect the rigidity of the thin plastic film.

Hence the subject-matter of claim 1 of the first auxiliary request did not involve an inventive step.

Second auxiliary request

The functional feature "for preventing micro leakage" was a direct consequence of using the adhesive of D6 because the patent itself in paragraph [0031] described that the prevention of micro leakage was due to the use of a soft adhesive with a high weight per unit area.

Hence the subject-matter of claim 1 of the second auxiliary request did not involve an inventive step.

Third auxiliary request

D6 disclosed an elastomer adhesive so the combination

of the teachings of D43 and D6 would also lead to the subject-matter of claim 1 without an inventive step being involved.

Hence the subject-matter of claim 1 of the third auxiliary request did not involve an inventive step.

VIII. As far as it is relevant for the present decision, appellant III argued essentially the following:

Main request

The invention defined in claim 1 solved principally the problem of preventing micro leakage. As explained in [0031] of the patent, micro leakage was reduced by using a soft adhesive with a sufficiently high weight per unit area. Moreover the thin plastic film with a thickness of less than 50 µm allowed the dressing to follow the contours of the skin. Due to the low rigidity of the plastic film, a carrier sheet was applied to facilitate application of the dressing. Therefore all features of the claim worked together in a synergistic way in order to solve the problem underlying the invention.

Should D43 be regarded as closest prior art then, in order to arrive at the claimed film dressing, the person skilled in the art would have had to i) replace the acrylic adhesive with a soft adhesive and ii) select a coating weight of more than 50 g/m^2.

D6 solved the problem of adhesive remaining on the skin by providing anchoring elements (see page 1, lines 25-28). This would have dissuaded the person skilled in the art from applying the adhesive taught by D6 to D43 because the anchoring elements would also have to be

carried over.

Finally, the invention could also be regarded as a "problem" invention where the inventive step lay in recognising that micro leakage was a problem.

Consequently the subject-matter of claim 1 of the main request involved an inventive step.

First auxiliary request

The provision of the anchoring elements in D6 would make the plastic film of D6 more rigid. It could not therefore be assumed that the plastic film resulting from the combination of the teachings of D6 and D43 would have the same rigidity as that of the patent.

Hence the combination of the teachings of D43 and D6 would not necessarily lead to the subject-matter of claim 1 of the first auxiliary request and consequently it involved an inventive step.

Second auxiliary request

D43 could not be regarded as the closest prior art because it was not suitable to be used for the given purpose i.e. preventing micro leakage. According to the problem-solution approach, the closest prior art should be that disclosing subject-matter conceived for the same purpose as the claimed invention. Since D43 neither mentioned nor was suitable for preventing micro leakage then it was not the closest prior art. Consequently D6 should be regarded as being the closest prior art. Starting from D6, the subject-matter of claim 1 involved an inventive step.

Third auxiliary request

With the addition of the feature relating to an elastomer adhesive, the claimed invention was even further away from the film dressing disclosed in D43. Therefore, the subject-matter of claim 1 according to the third auxiliary request involved an inventive step.

Reasons for the Decision

1. The appeals are admissible.

2. Although objections under Articles 54, 83, 84 and 123(2) EPC were raised by Appellants I and II it was not necessary to consider these grounds in arriving at the conclusion below.

3. Main request of Appellant III - Inventive step

3.1 D43, which is considered to represent the closest prior art, indisputably discloses:

a film dressing (1) comprising a thin plastic film (2) coated with an adhesive (3), the adhesive coating has a weight per unit area of 50 g/m^2 or more, the thickness of the plastic film is less than 50 micrometers, wherein a carrier sheet (4), which is to be removed after application of the dressing, is applied on the film on the side opposite to the adhesive coating, in order to facilitate application of the film dressing, wherein the function of the carrier sheet is to stiffen up the film dressing comprising the adhesive-coated thin plastic film.

Although the adhesive coating of D43 has a weight per unit area within the claimed range this value is

regarded by the Board as being inextricably linked to the type of adhesive used. If the person skilled in the art were to change the softness of the adhesive and by implication the adhesive itself then it would be necessary to change the weight per unit area of the adhesive as well.

The subject-matter of claim 1 therefore differs from the dressing known from D43 in that:

the adhesive has a softness of 10-22 mm and the adhesive coating has a weight per unit area of 50 g/m^2 or more.

The above characterising features have the following technical effects which are described in [0005] of the patent:

i) Micro leakage is reduced.
ii) The skin friendliness is improved because removal of the dressing may be done without causing reddening and pain.
iii) The dressing exhibits a lower adhesion to hairs.

3.2 The objective technical problem is therefore to provide a film dressing which is skin friendly and which reduces micro leakage.

3.3 D6 discloses a film dressing with a soft adhesive. Furthermore, D6, page 4, line 31 - page 5, line 7, states that soft elastomers have skin friendly adhesive properties. According to D6, page 3, lines 29 - 30, the elastomer layer is preferably formed by an elastomer adhesive retailed under the designation Silgel 612 which is the same adhesive as used in the patent in suit. The elastomer layer has a thickness which exceeds

the largest dimension of the particles used as anchoring elements which have a volume smaller than 10^{-3} mm^3 (D6, page 3, lines 20-27). Thus D6 discloses an adhesive with a thickness of greater than 0.1 mm and thus, using the density of Silgel 612 known from D12, a weight per unit area of 97.2 g/m^2.

It is true that D6 does not mention micro leakage. D6 does however make it clear that the elastomer adhesive used is more skin friendly and thus provides a solution to one of the disadvantages of the prior art. Thus the skilled person would apply the adhesive known from D6 to the dressing of D43 in order to at least solve the problem of reddening and pain when the dressing is removed. In so doing the person skilled in the art would also use the weight per unit area of the adhesive of D6 and would thereby arrive at the subject-matter of claim 1.

3.4 It is true that the problem of micro leakage has not been addressed in either D6 or D43. However the claimed invention cannot be considered a "problem" invention because the features of the claim also solve a well known problem, i.e. the provision of a skin friendly dressing.

Finally, the use of anchoring elements as described in D6 is not excluded by claim 1. Thus even if the person skilled in the art would consider, in the light of D6, that anchoring elements were necessary, the combination of the teachings of D43 and D6 would still lead to the subject-matter of claim 1.

3.5 Hence, the subject-matter of claim 1 does not involve an inventive step in the sense of Article 56 EPC.

4. First Auxiliary Request - Inventive step

4.1 The subject-matter of claim 1 of auxiliary request I is further restricted over the main request in that the bending rigidity of the thin plastic film is less than 3 mm.

4.2 This feature is also known from D43 because D43 discloses a thin plastic film of the same material, i.e. polyurethane, see D43, claim 10, and also of the same thickness, i.e. < 50 µm as in the contested patent. The argument that the anchoring elements would stiffen up the film is not convincing because D6, page 2, lines 9-11, specifically states that the anchoring elements do not reduce the flexibility of the film to any appreciable extent.

4.3 Therefore, in combining the teachings of D43 and D6 as set out above, the skilled person would arrive at the subject-matter of claim 1 without an inventive step being involved.

5. Second and Third Auxiliary Requests

5.1 The subject-matter of claim 1 of the second auxiliary request is further restricted over claim 1 of the first auxiliary request in that the film dressing is "for the prevention of micro leakage".

5.2 Appellant III argued that the film dressing of D43 is not suitable for the prevention of micro leakage and therefore this document cannot be regarded as representing the closest prior art.

5.3 The closest prior art is generally taken as that which in one single reference discloses the combination of

features which constitutes the most promising starting point for a development leading to the invention. In general it should be directed to a similar purpose or effect as the invention or at least belong to the same or a closely related technical field as the claimed invention, see Case Law of the Boards of Appeal, 7th Edition, 2013, I.D.3.1.

5.4 D43 is directed to a similar purpose as the patent in that it relates to film dressings. Although D43 does not address the specific problem of preventing micro leakage, it does provide the general effects that are associated with film dressings. D43 therefore belongs to the same technical field as the claimed invention and can therefore be considered as being the closest prior art.

5.5 D43 discloses the features of claim 1 identified above with respect to the main and first auxiliary requests. The subject-matter of claim 1 therefore differs from this known film dressing in that:

the film dressing is for preventing micro leakage, the adhesive has a softness of 10-22mm and the adhesive coating has a weight per unit area of 50 g/m^2 or more.

5.6 As discussed above the person skilled in the art would combine the teachings of D6 and D43 without the exercise of inventive activity. In so doing the person skilled in the art would arrive at a film dressing wherein the adhesive has a softness of 10-22 mm and the adhesive coating has a weight per unit area of 50 g/m^2 or more. As explained in the patent [0031] the combination of a soft adhesive possessing a high weight per unit area eliminates or significantly reduces the risk of micro leakage. Consequently, the resultant skin

dressing would also have the inherent property that it prevents micro leakage. Thus even though micro leakage is not mentioned in either D43 or D6 the skilled person would arrive at the subject-matter of claim 1 of the second auxiliary request without an inventive step being involved.

5.7 Claim 1 of the third auxiliary request further specifies that the adhesive should be a silicone elastomer. This feature is however known from D6. Hence by applying the teaching of D6, in particular the type of adhesive used, to the film dressing of D43 the skilled person would arrive at the subject-matter of claim 1 of the third auxiliary request without the exercise of inventive activity.

5.8 Therefore the subject-matter of claim 1 of both the second and third auxiliary requests does not involve an inventive step.

Order

For these reasons it is decided that:

1. The appeal of appellant III (patent proprietor) is dismissed.

2. The decision under appeal is set aside.

3. The patent is revoked.

The Registrar: The Chairman:

V. Commare I. Beckedorf

Decision electronically authenticated