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**Datasheet for the decision
of 21 July 2021**

Case Number: T 1838/16 - 3.2.02

Application Number: 11715851.9

Publication Number: 2558139

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Language of the proceedings: EN

Title of invention:
Evaporative body-fluid containers

Patent Proprietor:
KCI Licensing, Inc.

Opponent:
Smith and Nephew, Inc.

Headword:

Relevant legal provisions:
EPC Art. 54, 56, 83, 84, 123(2)

Keyword:

Novelty - (yes) - main request (yes)
Inventive step - main request (yes)
Sufficiency of disclosure - main request (yes)
Claims - clarity - main request (yes)
Amendments - added subject-matter (no)

Decisions cited:

G 0003/14

Catchword:



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Case Number: T 1838/16 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 21 July 2021

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
13 June 2016 concerning maintenance of the
European Patent No. 2558139 in amended form.**

Composition of the Board:

Chairman M. Alvazzi Delfrate
Members: S. Böttcher
C. Schmidt

Summary of Facts and Submissions

- I. Both the patent proprietor and the opponent filed an appeal against the decision of the opposition division finding that, on the basis of the first auxiliary request (then on file), the patent in suit met the requirements of the EPC.
- II. Oral proceedings before the Board were held on 21 July 2021.
- III. Claim 8 of the main request reads as follows:
- "A container for receiving and processing body fluids, the container comprising:
a container (104, 204, 304, 404, 704, 804, 1204, 1304) housing having an interior space for receiving the body fluids;
a body fluid inlet (132, 232, 432, 532, 732, 832, 1232, 1332) through the container housing, the body fluid inlet for receiving body fluids into the interior space of the container housing;
a reduced-pressure inlet (134, 234, 434, 534, 734, 834, 1234, 1334) for providing reduced pressure in the interior space;
wherein at least a portion of the container housing comprises a material (136, 236, 336, 436, 736, 836, 1136, 1236, 1336) that is liquid impermeable and vapour permeable; and characterised in
a forced-air device (755, 855, 1355) associated with an exterior of the liquid-impermeable, vapour-permeable material and which forces air across the exterior of the liquid-impermeable, vapour-permeable material."

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

"A system for treating a tissue site on a patient with reduced pressure, the system comprising:
a treatment manifold (105, 603) for placing proximate to the issue site;
a sealing member (112) for forming a fluid seal over the treatment manifold and a portion of the patient's epidermis whereby a sealed treatment space is formed;
a reduced-pressure source (122, 322) for providing reduced pressure;
a container (104, 204, 304, 404, 704, 804, 1204, 1304) for receiving fluids, wherein the container is fluidly coupled to the reduced-pressure source and the sealed treatment space;
wherein the container comprises:
a container housing (126, 226, 326, 426, 726, 826, 1226, 1326) defining an interior space for receiving the fluids;
a fluid inlet (132, 232, 432, 532, 732, 832, 1232, 1332) through the container housing, the fluid inlet for receiving the fluids into the interior space of the container housing;
wherein at least a portion of the container housing comprises a liquid-impermeable, vapour-permeable material (136, 236, 336, 436, 636, 736, 836, 1136, 1236, 1336) that allows egress of evaporated water from the fluids; and characterised in that
the container comprises a forced-air device (755, 855, 1355) associated with an exterior of the liquid-impermeable, vapour-permeable material and which forces air across the exterior of the liquid-impermeable, vapour-permeable material."

V. Claim 15 of the main request reads as follows:

"A wound dressing for treating a wound on a patient, the wound dressing comprising:
an absorbent layer (674) having a first side and a second, patient-facing side, the absorbent layer in fluid communication with the wound and operable to receive body fluids from the wound;
a covering having at least a portion formed from a liquid-impermeable, vapour-permeable layer (636), the covering for covering the absorbent layer and the wound, the liquid-impermeable, vapour-permeable layer operable to allow water from the body fluids from the absorbent layer to evaporate and exit the liquid-impermeable, vapour-permeable layer; and characterised in a forced-air device (755, 855, 1355) that moves air against an exterior of the liquid-impermeable, layer."

VI. In the present decision, reference is made to the following documents:

D1: EP - A- 0 378 296
D2: US 4 275 732
D3: US - A- 2009/0306630
D4: US 5 549 584
D5: US -A- 2007/0016152
D6: WO 2009/004370

VII. The arguments of the opponent, as far as relevant for the decision, can be summarized as follows:

Added subject-matter

Since the feature "which forces air across the liquid-impermeable, vapour-permeable material" was disclosed in the application as filed only in relation to an embodiment of a container, there was no basis for the system to comprise such a forced-air device. The

inclusion of this feature in claims 1 and 8 represented an unallowable intermediate generalisation.

Clarity

Claims 1 and 8 lacked clarity for the following reasons:

It was not clear what properties were necessary for a liquid-impermeable, vapour-permeable material. Furthermore, it was not clear what devices could be regarded a forced-air device, in particular whether the forced-air device could comprise a vacuum pump.

As to the feature "which forces air across the exterior of the (...) material", it was not clear whether "across" had to be understood as "over the surface of the material" or "through the material" or both. The last sentence of paragraph [0069] conveyed the impression that "across" meant "through". It further appeared that in the embodiment described at page 15, line 30, to page 16, line 1, the flow was through the material ("through the ducts across the liquid-impermeable, vapour-permeable material before entering the interior space").

The patent did not clearly indicate which surface of the liquid-impermeable, vapour-permeable material was meant by the term "exterior" in the feature "which forces air across the exterior...", i.e. whether "exterior" denoted the exterior of the container housing or any exterior surface of the material.

The phrase "which forces air" related to the use of a forced-air device, instead of clearly defining the device in terms of its technical features. The claims

should be construed as product-by-process claims accordingly.

Sufficiency of disclosure

There was no teaching in the patent as to what constituted the treatment manifold in claims 1 and 8, and which location "proximate to the tissue site" the manifold was to be placed to. Paragraph [0002] of the patent, which stated that "the manifold is to be placed in the wound bed", simply provided background information and referred to prior studies concerning negative pressure wound therapy.

The patent did not provide a teaching as to what constituted "a portion of the epidermis" and which size or shape thereof was required to provide the fluid seal.

Furthermore, the patent did not teach which size the portion of the container comprising the liquid-impermeable, vapour-permeable material should have, in particular since there were limits at which the invention did not perform the required increased removal of water vapour from the container. The patent placed an undue burden on the person skilled in the art to select the appropriate dimensions of the liquid-impermeable, vapour-permeable material.

It was thus not apparent to a person skilled in the art how to put the invention into practice.

Claims 1 and 8 - novelty in view of D2

The subject-matter of claims 1 and 8 lacked novelty in view of D2, in particular since the flexible bag 22

could be regarded as the container and the vacuum pump could be regarded as a forced-air device (column 2, lines 20 to 52, Figures 1 and 3). Drawing of air out of the nipple 10 of the container would inevitably lead to an air flow across the exterior of the membrane.

The vacuum pump could be considered as a part of the container, since the claim did not require that the forced-air device was contained within the container. From Figures 10 and 17 of the patent it was clear that the forced-air device could be remote from the container.

Claim 8 - novelty in view of D1

The subject-matter of claim 8 lacked novelty in view of D1, since the valve 27 could be regarded as a portion of the housing comprising a liquid-impermeable, vapour-permeable material, and the pump 2 could be regarded as a forced-air device (column 2, line 41, to column 3, line 34, column 4, lines 13 to 31, Figure 1). As the flow of air through the filter 29 into the small area above the filter was not completely laminar, there would be some flow across the exterior of the filter.

The filter 29 formed an integral constituent of the container housing (Figure 1) and was therefore a part of the container housing.

Claim 8 - novelty in view of D3

The subject-matter of claim 8 lacked novelty in view of D3, in particular as the filter elements 240 could be regarded as a liquid-impermeable, vapour-permeable material (paragraphs [0006], [0035], [0036], [0048] and [0050]). Since the housing defined not only the

external housing, these filter elements were comprised by the housing.

The reduced pressure source 108 acted as the forced air device, and delivered reduced pressure into interior region 244, which inevitably resulted in flow of air across an exterior of the filter material. The pump could be considered as part of the container, since it was not required that the forced air device was contained entirely within the housing. Figure 10 of the patent in suit showed a forced air device which was remote from the container housing.

Claims 1 and 8 - novelty in view of D6

The subject-matter of claims 1 and 8 lacked novelty in view of D6 which mentioned on page 5, lines 8 to 13 an additional pump to remove fluid vapour from a container (Figures 1B and 3). This pump could be regarded as a forced-air device, and it was implicit that air was removed through the filter elements arranged in an exit duct of the container (page 4, lines 29 to 31). This inevitably resulted in some flow of air across the exterior of the filter, since the flow could not be expected to be completely laminar.

The exit duct formed part of the container housing, and therefore the housing comprised a liquid-impermeable, vapour-permeable material.

Claim 15 - novelty in view of D5

The subject-matter of claim 15 lacked novelty in view of D5 since the cover 22 of the wound dressing 12 was made of a liquid-impermeable, vapour-permeable material, and the suction tube 14 was a forced-air

device (paragraphs [0002], [0027], [0028] and [0030], Figure 1). Air that was present under layer 22 was drawn towards the patch 30, and thus against an exterior of layer 22.

Even if, instead of the suction tube, the reduced pressure source was considered a forced-air device, this component could still be considered a part of the dressing.

Claim 15 - novelty in view of D4

The subject-matter of claim 15 lacked novelty in view of D4, in particular since it disclosed a wound dressing having an outer sheet 54 made of a liquid-impermeable, vapour-permeable material (column 6, lines 27 to 37). A liquid-impermeable, vapour-permeable layer was also disclosed in column 6, lines 17 to 21. The resilient bellows 12 (Figure 1) could be regarded as a forced-air device which drew exudate through the fluid permeable portions of the outer surface. This implied that air was moved against the exterior of the outer sheet.

Claim 8 - inventive step in view of D2 in combination with the common general knowledge or with D3, D4 or D5

In view of the distinguishing feature that the forced-air device was not part of the container, the problem to be solved was the repositioning of the vacuum pump. Moving the vacuum pump closer to the container did not have a technical effect or benefit and was therefore an obvious alternative, in particular since D3 (Figure 1) and D4 (Figure 1) showed pumps which were arranged closer to the container.

The solution was also obvious in view of D5, which disclosed a vacuum pump directly connected to a suction canister (Figure 5). Hence, the container comprised the forced-air device, similar to the embodiment of Figure 17 of the patent.

Hence, the subject-matter of claim 8 did not involve an inventive step in view of D2 in combination with the common general knowledge or with any of D3, D4 and D5.

Claim 8 - inventive step in view of D1 in combination with the common general knowledge

Since there were no advantages by forcing the air flow across the filter, the subject matter of claim 8 was an obvious alternative to the air flow through the filter of D1, in particular since D1 did not require this flow to be completely parallel.

Hence, the subject-matter of claim 8 lacked an inventive step in view of D1 in combination with the common general knowledge.

Claims 1 and 8 - inventive step in view of D6 in combination with the common general knowledge

D6 could be regarded to represent the closest prior art since it related to reducing the volume of the wound exudate in the container by increasing evaporation.

It would be a matter of common general knowledge of a person skilled in the art that increasing airflow over the point of exit of the container would increase evaporation of the fluid from therein. Hence, since D6 disclosed pumps as means for improving evaporation, D6 provided motivation to provide a forced-air device for

this purpose, as an alternative to the solutions presented in this document.

It would also be obvious to the person skilled in the art to move the filter elements from the exit duct to a part of the housing.

Thus, the subject-matter of claim 8 lacked an inventive step in view of D6 in combination with the common general knowledge. I

Claim 15 - inventive step in view of D5 in combination with the common general knowledge or D4

There was no advantage from a forced-air device which was arranged in the dressing. Figure 5 of D5 disclosed a vacuum pump acting as a forced-air device and connected by a tube to the dressing. It was obvious to shorten the tube to include the pump in the dressing, in particular as D4 disclosed a bellows pump as part of the dressing.

Hence, the subject-matter of claim 15 lacked an inventive step in view of D5 in combination with the common general knowledge or D4.

VIII. The arguments of the patent proprietor, as far as relevant for the decision, can be summarized as follows:

Added subject-matter

It was clear that the container referred to in paragraph [0069] was for use in the system disclosed in other parts of the application, e.g. in the treatment system disclosed in paragraph [0028] and Figure 1.

Clarity

The terms "liquid-impermeable, vapour-permeable material" and "forced-air device" were not open to objection during the opposition process since they were present in the claims as granted.

It was clear for the person skilled in the art that "across" expressed that the air was forced along the surface of the material, and not through the material. This was further confirmed by the requirement that the air was forced across the "exterior" of the material. In the embodiment at page 15, line 30, to page 16, line 1, the air was pulled (due to the reduced pressure in the container) from the outside of the housing to its inside through an intentional leak and not through the liquid-impermeable, vapour-permeable material.

The fact that two arrangements were covered by the wording of the claims in relation to the term "exterior" did not render their scope unclear.

The term "which forces air" defined how the forced-air device operated when in use, and did not render the claims unclear.

Hence, claims 1 and 8 met the requirements of Article 84 EPC.

Sufficiency of disclosure

Although paragraph [0002] of the patent was in the background section, it provided the person skilled in the art with the knowledge as to what constituted a manifold within the relevant technical field.

The person skilled in the art had no difficulty in placing the manifold proximate to the tissue site by placing it on the wound bed.

It was well within the capabilities of the person skilled in the art to select an appropriate portion of the epidermis to which the sealing member was attached to form a seal, and to select an appropriate portion of the container to be formed from the liquid-impermeable, vapour-permeable material.

Therefore, the invention complied with Article 83 EPC.

Claims 1 and 8 - novelty in view of D2

The vacuum pump pulled gas through the membrane, but did not force air across the membrane.

Furthermore, the vacuum pump was not part of the container, but merely placed in fluid communication with the container. On the contrary, Figures 10 and 17 of the patent showed, in a schematic way, a container comprising a forced-air device, although the specific mechanical arrangement was not shown.

Hence, D2 did not anticipate the subject-matter of claims 1 and 8.

Claim 8 - novelty in view of D1

The filter 29 was arranged in the lid which was not part of the container housing 1.

Furthermore, air was not forced to flow across the filter material, since the air flow was through the

filter.

Hence, the subject-matter of claim 8 was novel over D1.

Claim 8 - novelty in view of D3

The reduced pressure source 108 was not part of the canister, but merely connected to it by a tube.

The filter elements were arranged in the housing, but did not form a portion of the housing.

Hence, the subject-matter of claim 8 was novel over D3.

Claims 1 and 8 - novelty in view of D6

The subject-matter of claims 1 and 8 was novel over D6 since the air flow was through the filter, which was also not part of the housing, and not across the exterior of the filter material.

Claim 15 - novelty in view of D5

The term "exterior of the layer" meant exterior to the device. Hence, the patch 30 did not cause air movement against an exterior surface of the dressing.

Furthermore, the suction tube 14 was not a forced-air device. It was merely a passive component for connecting the dressing to the canister and the vacuum pump.

The forced-air device had to be part of the dressing. However, neither the portable pump 102 nor the stationary suction source were parts of the dressing.

Hence, D5 did not anticipate the subject-matter of claim 15.

Claim 8 - inventive step in view of D2 in combination with the common general knowledge or with D3, D4 or D5

To provide the container of D2 with a vacuum pump resulted in an improved, integrated container. The claimed solution was neither suggested by the common general knowledge nor by any of D3, D4 and D5.

In the embodiment of Figure 5 of D5, the pump could be connected to the container as mentioned in paragraph [0054], but was not a part of the container. Hence, D5 did not disclose a container comprising a forced-air device, and the combination of D2 with D5 did not lead to the invention.

Claim 8 - inventive step in view of D1 in combination with the common general knowledge

It was not suggested to force air across the exterior of the filter of D1 instead of through the filter to provide for increased evaporation.

Hence, the subject-matter of claim 8 was inventive in view of D1 in combination with the common general knowledge.

Claims 1 and 8 - inventive step in view of D6 in combination with the common general knowledge

D6 could not be regarded as representing the closest prior art, since the distinguishing features solved different, partial problems.

Furthermore, D6 did not motivate the person skilled in the art to provide a forced-air device which forces air across the exterior of a liquid-impermeable, vapour-permeable material forming part of the housing of the container since this would require significant changes of the container of D6.

Hence, the subject-matter of claims 1 and 8 was inventive in view of D6 in combination with the common general knowledge.

Claim 15 - inventive step in view of D5 in combination with the common general knowledge or D4

It was not suggested by D5 or D4 to include the forced-air device in the wound dressing. By shortening the tube between the pump and the dressing of D5, the pump would become a part of the dressing.

The device of D4 was structurally different from the system of D5 since the pump was arranged before the container. Moreover, the bellows pump was not a part of the dressing.

Hence, the subject-matter of claim 15 involved an inventive step in view of D5 in combination with the common general knowledge or D4.

Reasons for the Decision

1. Summary of the invention

The invention relates to evaporative body fluid containers or wound dressings to be used in the treatment of a tissue site on a patient with reduced pressure.

As shown in Figure 1, in such a treatment, the treatment site 106 (e.g. a wound) is covered by a sealing member 112, and a reduced pressure delivery conduit 120 is connected to the sealed treatment space. Through this conduit body fluids are removed from the tissue site and placed in a container 104 as defined in claim 8. The container receives reduced pressure from a reduced-pressure source 122 via a further conduit 124 (Figure 1).

In order to promote drying of the exudates in the container 104, at least a portion of its housing 126 is formed from a liquid-impermeable, vapor-permeable material 136. This portion can be a window 138. The material 136 allows water vapor to exit while retaining liquids (Figure 2).

To increase the rate of water vapor transport through the material 136, the container includes a forced-air device 755, 855 or 1355 (e.g. a fan) that directs air across the exterior of the material (Figures 10, 11 and 17 and paragraphs [0067] to [0073], and [0082] to [0086]).

Claim 15 relates to a wound dressing comprising a covering having a liquid-impermeable, vapor-permeable layer and a forced-air device that moves air against an

exterior of the liquid-impermeable, vapour-permeable layer (paragraphs [0060] to [0062], and Figure 9, the forced-air device not shown).

The forced-air device causes the wet air on the exterior of the liquid-impermeable, vapour-permeable material to be replaced by more dry air, thereby enhancing the rate of water vapour transport.

2. Added subject-matter

The introduction of the feature "which forces air across the exterior of the liquid-impermeable, vapor-permeable material" in claims 1 and 8 does not constitute an unallowable intermediate generalisation. Figures 10-12 and 17 show that the air is forced along the liquid-impermeable, vapour-permeable material. Although these drawings and the description on page 15, lines 24 to 27, relate to containers, the application as a whole discloses that the containers described therein are intended for use in a complete system for treating a tissue site (see for instance paragraph [0028]).

Hence, claims 1 and 8 meet the requirements of Article 123(2) EPC.

3. Clarity

3.1 The expressions "liquid-impermeable, vapour-permeable material" and "forced-air device" were already present in the claims as granted. Thus, their clarity is not to be examined (G 3/14).

3.2 In the Board's view, the wording "across the exterior of the material" can only be understood to mean "along

the material" and not "through the material". As already explained by the opposition division (point 3.3.2 of the appealed decision), the phrasing "across the exterior" clearly implies an air flow along a surface of the material.

Contrary to the opponent's view, the description does not support a different interpretation of this term. It can be clearly derived from Figures 10 to 12 and 17 that air is forced along the surface of the material, i.e. across its exterior.

In the last sentence of paragraph [0069] the term "across" is used in connection with the moisture gradient between the two sides of the material. However, this sentence does not refer to the air flow with respect to the material.

In the embodiment described on page 15, line 30, to page 16, line 1, the air is pulled through the leak in the housing into the container, after it is forced along the surface of the material through the ducts or baffles. Hence, also in this embodiment, the air is not forced through the material.

- 3.3 The "exterior of the liquid-impermeable, vapour-permeable material" denotes the outer surface of the material which may be inside or outside of the housing. This definition does not render the claims unclear.
- 3.4 It is clear that the wording "which forces air" describes the functionality of the device when in use. This wording does not render the claims unclear.
- 3.5 Consequently, claims 1 and 8 do not lack clarity.

4. Sufficiency of disclosure

4.1 The Board has no doubts that the person skilled in the art, in particular in the field of reduced pressure wound treatment, knows what a "treatment manifold" is and to which location "proximate to the tissue" it is to be placed. Furthermore, from paragraph [0002] and Figure 1 the person skilled in the art learns that the manifold typically is a porous pad which is placed in the wound bed.

4.2 The person skilled in the art would also have no difficulties to select an appropriate portion of the patient's epidermis to be covered by the sealing member to form a sealed treatment space, and to select an appropriate portion of the container housing to be formed from the liquid-impermeable, vapour-permeable material such that egress of evaporated water is allowed.

4.3 Hence, the invention is sufficiently disclosed to be carried out by the person skilled in the art.

5. Claims 1 and 8 - novelty in view of D2

5.1 It is undisputed that D2 discloses a container (the plastic bag 22) comprising the features of the preamble of claim 8 (Figures 1 and 3, column 2, lines 36 to 52). The membrane 28 can be regarded as the liquid-impermeable, vapor-permeable material.

5.2 The vacuum pump mentioned in column 2, lines 20 to 27, can be considered a forced-air device which is associated with an exterior of the liquid-impermeable, vapor-permeable material (via the space 41, the nipple 10 and the (not shown) tube). Since the nipple is

arranged perpendicular to the exterior of the membrane, the pulling of air by the vacuum pump through the membrane 28 into the space 41 and then into the nipple 10 inevitably leads to air being passed over the exterior of the membrane.

- 5.3 However, present claim 8 relates to a container which comprises a forced-air device. Hence, the forced-air device is part of the container. In contrast, the vacuum pump of D2, which is not even shown in the figures, cannot be considered to be part of the container. It is merely mentioned that the nipple 10 of the canister 2 can be coupled to a tube leading to a vacuum pump (column 2, lines 20 to 27).

The Board agrees with the opponent that the forced-air device does not have to be arranged in the container to be considered as "comprised in". However, the forced-air device has to be arranged such that the person skilled in the art clearly and unambiguously perceives that it belongs to the container, as for instance in Figure 11 of the patent.

In this respect, the Board does not share the opponent's view that Figures 10 and 17 of the patent disclose that the forced-air device could be remote from the container but still a part of it. These schematic figures show the flow of air across the exterior of the liquid-impermeable, vapor-permeable material in different configurations of the container. However, these figures do not disclose what type of forced-air device is used (paragraph [0069] mentions various types in this respect) and how it is arranged on the container. Hence, these figures are not in contradiction to the claim requiring the forced-air

device to be part of the container.

- 5.4 Since the system to which claim 1 relates comprises a container as defined in claim 8 (albeit without a reduced pressure inlet), the above reasoning also applies to claim 1.

Thus, the subject-matter of claims 1 and 8 is novel over D2 since D2 does not disclose a forced-air device which is part of the container.

6. Claim 8 - novelty in view of D1

- 6.1 D1 discloses a container comprising the features of the preamble of claim 8 (Figure 1, column 2, line 41, to column 3, line 34). Since the plate 20 can be considered as forming a lid of the container (jar 1), it belongs to the container housing. Hence, the filter 29 mounted below the one-way valve 27 can be regarded as a portion of the container housing comprising a liquid-impermeable, vapor-permeable material.

- 6.2 Furthermore, the pump 2 can be regarded as a forced-air device which is associated with an exterior of the liquid-impermeable, vapor-permeable material. Upward movement of the upper plate 31 causes gas in the jar 1 to be drawn through the vent tube 30 and the filter 29 into the pump chamber 39. However, the air flow created by the pump cannot be regarded as "directed across the exterior" of the filter but through the filter, even if this air flow might not be completely laminar.

- 6.3 Hence, D1 does not disclose that the forced-air device forces air across the exterior of the liquid-impermeable, vapor-permeable material. The subject-

matter of claim 8 does not lack novelty over D1.

7. Claim 8 - novelty in view of D3

7.1 D3 discloses a reduced pressure source 108 which is connected via a tube 128 to a canister 102 (paragraph [0035], Figure 1). For the same reasons as explained with regard to D2 (point 5.3), the reduced pressure source cannot be regarded as a part of the container.

7.2 Furthermore, the filter elements 240 do not form part of the canister housing. They are rather arranged in the interior space which is defined by the housing but which cannot be considered as a part of it.

7.3 It follows that D3 does not anticipate the subject-matter of claim 8.

8. Claims 1 and 8 - novelty in view of D6

8.1 D6 discloses a container to which a further pump (forced-air device) for removing fluid vapour can be connected, in addition to the vacuum source providing the reduced pressure in the container (page 5, lines 8 to 11).

8.2 However, D6 does not disclose that a portion of the container housing comprises a liquid-impermeable, vapor-permeable material. The filter elements referred to by the opponent are rather incorporated into an exit duct (page 4, lines 23 to 31), as can also be derived from Figure 5 (page 9, lines 21 to 25).

8.3 Furthermore, it cannot be derived from D6 that the vacuum source or the additional pump force air across

the exterior of the filter elements.

8.4 Since the system to which claim 1 relates comprises a container as defined in claim 8 (albeit without a reduced pressure inlet), the above reasoning also applies to claim 1.

8.5 Hence, the subject-matter of claims 1 and 8 is novel over D6.

9. Claim 15 - novelty in view of D5

9.1 D5 discloses a wound dressing 12 having a cover 22 made from a liquid-impermeable, vapor-permeable material. The dressing is connected via a suction tube 14 and a canister 16 to a suction source 20 or 102 (paragraphs [0025] to [0027] and [0030], and Figures 1 and 5).

Suction applied by the suction source leads to movement of air against an exterior of the liquid-impermeable, vapor-permeable layer, namely, the underside of the layer. In this respect, the Board agrees with the Opposition Division that "an exterior of the (...) layer" may be on the inside or on the outside of the wound dressing. The use of the indefinite article "an exterior" suggests that there is more than one exterior.

9.2 The Board does not agree with the opponent that the suction tube 14 can be regarded as a forced-air device. The tube itself does not force air, it rather delivers reduced pressure from a suction source, such that airflow and any fluid from the wound passes into the canister 36.

Furthermore, the suction pump unit 102 cannot be

regarded as a part of the wound dressing.

Thus, D5 does not disclose a wound dressing comprising a forced-air device.

9.3 Hence, the subject-matter of claim 15 is novel over D5.

10. Claim 15 - novelty in view of D4

10.1 D4 discloses a wound dressing which does not comprise a liquid-impermeable, vapour-permeable layer. The outer sheet 54 is liquid- and vapour-impermeable (column 6, lines 56 to 62, Figure 4), and is provided with windows or openings to allow egress of air and fluid from the dressing. The openings are covered with sheets 58, which are air- and liquid permeable (column 6, lines 38 to 46).

Contrary to the opponent, the Board cannot find in the passage at column 6, lines 17 to 21 a disclosure of a liquid-impermeable, vapour-permeable layer.

10.2 Furthermore, D4 does not disclose a forced-air device which is part of the wound dressing, since the bellows 12 do not belong to the wound dressing.

10.3 Hence, the subject-matter of claim 15 is novel over D4.

11. Claims 1 and 8 - inventive step in view of D2 in combination with the common general knowledge or with D3, D4 or D5

11.1 The subject-matter of claim 8 differs from the container of D2 in that it comprises the forced-air device.

11.2 The technical effect achieved by this feature is an integrated, improved container.

Hence, the objective technical problem to be solved is to improve the functionality of the container.

The Board does not concur with the opponent that the problem to be solved is merely the repositioning of the forced-air device by moving it closer to the container. Claim 8 requires that the forced-air device is a part of the container, such as, for instance, shown in Figure 11 of the patent. However, moving the forced-air device closer to the container does not lead to a container which comprises a forced-air device.

11.3 Neither the common general knowledge nor any of D3, D4 or D5 disclose or suggest to integrate the forced-air device of D2 into the container.

In D3 and D4, the container is connected via a tube to a pump, but it does not comprise the pump.

D5 discloses a container which can be connected to a portable suction pump unit 102 (paragraphs [0053] and [0060] and Figure 5). However, even if the container is received by the docking station 55, it does not comprise the pump unit. Hence, applying the teaching of D5 to the canister of D2 would not lead to the subject-matter of claim 8.

11.4 Hence, the solution of claim 8 was not obvious to the person skilled in the art. It follows that the subject-matter of claim 8 does not lack an inventive step in view of D2 in combination with the common general knowledge or with D3, D4 or D5.

Since the system to which claim 1 relates comprises a container as defined in claim 8 (albeit without a reduced pressure inlet), the above reasoning also applies to claim 1.

12. Claim 8 - inventive step in view of D1 in combination with the common general knowledge

12.1 The subject-matter of claim 8 differs from the device of D1 in that the forced-air device forces air across the exterior of the liquid-impermeable, vapour-permeable material.

12.2 The technical effect achieved by this feature is an increased water vapour transport rate.

Hence, the objective technical problem to be solved is to provide an enhanced evaporative body fluid container.

12.3 The Board does not agree with the opponent that the forcing of air across the filter instead of through the filter in D1 is an obvious alternative. It rather solves a technical problem which is not addressed in D1 and would require significant modification of the device of D1. Hence, the skilled person would not be motivated by its common general knowledge to modify the arrangement the filter and the pump of D1 to provide air flow across the membrane.

12.4 Hence, the subject-matter of claim 8 is inventive over D1 in combination with the common general knowledge.

13. Claims 1 and 8 - inventive step in view of D6 in combination with the common general knowledge

- 13.1 D6 does not disclose that a portion of the container housing comprises a liquid-impermeable, vapour-permeable material and that a forced-air device as part of the container forces air across the exterior of this material.
- 13.2 The objective technical problem solved by the distinguishing features is how to increase the rate of water vapour egress from the wound fluid in the container.
- 13.3 The opponent alleges that providing a forced-air device forcing air across the exterior of the filter mentioned on page 4, lines 23 to 31, would be an obvious alternative to the person skilled in the art.

The Board does not agree with that since the filter is arranged in an exit duct of the container. This filter cannot be regarded as a portion of the container housing. Furthermore, it would not be obvious for the person skilled in the art to move the filter material to a part of the housing and to provide an air flow across the exterior of such a filter.

D6 does not prompt the person skilled in the art to provide a pump as a forced-air device which forces air across the exterior of a liquid-impermeable, vapour-permeable material forming part of the housing of the container. This would require significant modifications of the container of D6. D6 rather suggests to use pumps in different solutions to the problem of removing the water vapour, namely, "to provide a separate flow of gas bubbles through the waste fluid" (page 6, lines 8 to 13) in addition to heating means for heating the fluid in the container.

13.4 Hence, the subject-matter of claim 8 involves an inventive step in view of D6 in combination with the common general knowledge.

Since the system to which claim 1 relates comprises a container as defined in claim 8 (albeit without a reduced pressure inlet), the above reasoning also applies to claim 1.

14. Claim 15 - inventive step in view of D5 in combination with the common general knowledge or D4

14.1 The wound dressing of D5 does not comprise a forced-air device.

14.2 The objective technical problem to be solved by this feature is to provide a compact, integrated wound dressing which enhances egress of water vapour from the dressing.

14.3 D5 does not relate to increasing evaporation from a wound site, and it does not motivate the person skilled in the art to provide a forced-air device as part of the wound dressing that moves air against an exterior of the liquid-impermeable layer.

14.4 Furthermore, the Board does not share the opponent's view that by shortening the suction tube, the vacuum pump would become a part of the wound dressing. The integration of a forced-air device in the dressing would rather require significant modifications of the dressing of D5, which would not be obvious to the person skilled in the art.

The bellows pump of D4 is also not a part of the wound

dressings.

14.5 Hence, the subject-matter of claim 15 does not lack an inventive step in view of D5 in combination with the common general knowledge or D4.

15. From the above it follows that none of the objections raised prejudices the maintenance of the patent as amended according to the main request.

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 as amended in the following version:
 - Claims 1 to 15 of the main request, filed with the letter setting out the grounds of appeal,
 - paragraphs 1 to 5 and 8 to 93 of the description filed during the oral proceedings before the Board and
 - figures 1 to 17 as filed during the oral proceedings before the Board.

The Registrar:

The Chairman:



D. Hampe

M. Alvazzi Delfrate

Decision electronically authenticated