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

**Case Number:** T 2282/16 - 3.2.06

**Application Number:** 06719658.4

**Publication Number:** 1848390

**IPC:** A61F13/00, A61F15/00, B32B38/04

**Language of the proceedings:** EN

**Title of invention:**  
WOUND DRESSING AND METHOD FOR MANUFACTURING THE SAME

**Patent Proprietor:**  
BSN medical GmbH

**Opponent:**  
Schmitt-Nilson, Gerhard

**Headword:**

**Relevant legal provisions:**

EPC Art. 100(c), 56, 111(1)  
RPBA Art. 13(1), 13(3)  
RPBA 2020 Art. 25(3), 13(1)

**Keyword:**

Grounds for opposition - added subject-matter (yes)

Late-filed auxiliary requests - admitted (yes)

Inventive step - auxiliary request (yes)

**Decisions cited:**

G 0002/10, T 1362/15

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

Case Number: T 2282/16 - 3.2.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.06**  
**of 21 December 2021**

**Appellant:**  
(Patent Proprietor)

BSN medical GmbH  
Quickbornstrasse 24  
20253 Hamburg (DE)

**Representative:**

Zimmermann & Partner  
Patentanwälte mbB  
Postfach 330 920  
80069 München (DE)

**Appellant:**  
(Opponent)

Schmitt-Nilson, Gerhard  
Destouchesstrasse 68  
80796 München (DE)

**Representative:**

Schmitt-Nilson Schraud Waibel Wohlfrom  
Patentanwälte Partnerschaft mbB  
Pelkovenstraße 143  
80992 München (DE)

**Decision under appeal:**

**Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
28 July 2016 concerning maintenance of the  
European Patent No. 1848390 in amended form.**

**Composition of the Board:**

**Chairman** M. Harrison  
**Members:** M. Dorfstätter  
W. Ungler

## **Summary of Facts and Submissions**

- I. Appeals were filed by the opponent and the proprietor against the interlocutory decision of the opposition division in which it found that European patent No. 1 848 390 in an amended form according to the (then) auxiliary request II met the requirements of the EPC. Since both parties are appellants, they will be referred to as 'the opponent' and the '(patent) proprietor' respectively in the following.
- II. The opponent requested that the decision under appeal be set aside and the patent be revoked in its entirety.
- III. The patent proprietor requested that the decision under appeal be set aside and the patent be maintained as granted (main request), or that the patent be maintained in amended form on the basis of auxiliary request I, or that the opponent's appeal be dismissed (auxiliary request Ia), or that the patent be maintained on the basis of one of auxiliary requests II to X filed with the statement of grounds of appeal.
- IV. The Board issued a summons to oral proceedings and a subsequent communication in which it indicated *inter alia* that it considered the subject-matter of claims 1 and 5 of the main request extended beyond the content of the application as filed (Article 100(c) EPC). It also gave a negative opinion on all auxiliary requests I, Ia and II-X in this respect.
- V. In a letter dated 18 November 2020 the patent proprietor requested postponement of the oral proceedings due to the difficulties involved with travelling during the Covid-19 pandemic. At that time,

the patent proprietor did not consent to conducting the oral proceedings as a videoconference.

- VI. The Board then rescheduled the oral proceedings to a later date.
- VII. With letter dated 17 December 2020 the patent proprietor submitted auxiliary requests XI and XII.
- VIII. Based on renewed uncertainty in relation to impairments caused by the Covid-19 pandemic, the Board asked the parties in a communication dated 18 November 2021 to give their consent to holding oral proceedings by videoconference or to indicate any reasons they wished to invoke against such.
- IX. In response, both parties stated that they preferred in-person oral proceedings but that they were prepared to attend the oral proceedings by videoconference.
- X. Oral proceedings by videoconference took place before the Board, during which the patent proprietor withdrew all auxiliary requests and submitted a single new auxiliary request.

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

The proprietor requested that the decision under appeal be set aside and the patent be maintained as granted (main request), or that the patent be maintained in amended form on the basis of the auxiliary request filed during the oral proceedings of 21 December 2021.

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

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

D1 US 2004 / 0127835 A1  
D10 US 6 051 747  
D14 WO 00 / 06215 A1  
D15 WO 93 / 19709 A1  
D16 US 6 765 123 B2  
D17 EP 1 327 442 A1

XII. Claim 1 of the main request (i.e. claim 1 as granted) reads as follows:

"A method for producing a wound dressing, comprising the steps of:  
extruding a curable silicone mixture onto a continuously moving generally planar molding surface, the silicone mixture defining a first surface adjacent the molding surface and a second surface opposite the first surface;  
heating the molding surface at a curing temperature sufficient to cause the silicone mixture to cross-link;  
uniformly spreading the silicone mixture over the molding surface such that the silicone mixture has a generally uniform thickness and the second surface is substantially planar;  
perforating the silicone mixture as it cures on the molding surface; and  
laminating the second surface of the silicone mixture to an absorbent material after the silicone mixture has started to cross-link and transforms to a gel due to exposure to the heated molding surface."

XIII. The auxiliary request (the claim of which is identical to claim 1 of withdrawn auxiliary request XII) contains

a single claim, in which the following feature is appended to claim 1 of the main request:

"wherein the molding surface is a belt that moves and defines a plurality of perforating elements extending from the planar molding surface, wherein the perforating elements have a height that is greater than the thickness of the silicone mixture after it is evenly spread onto the molding surface, and wherein the perforating elements form a plurality of openings in the silicone mixture as it cures."

XIV. The opponent's arguments relevant to the present decision may be summarised as follows:

The subject-matter of claim 1 of the main request extended beyond the application as filed. Claims 5 and 7 as filed could not form a basis therefor, as they were each only dependent on claim 1. Neither the claims nor the description disclosed the combination of a continuously moving surface and perforating the silicone mixture as it cured, in such generality.

The new auxiliary request should not be admitted into the proceedings. It could have been filed earlier and it was not *prima facie* allowable due to its subject-matter lacking inventive step.

The subject-matter of the claim of the new auxiliary request lacked inventive step over the combination of D1 and the skilled person's general knowledge or the teaching of any one of D15, D10, D14, D16 and D17. The subject-matter of the claim merely differed from the method described in paragraphs [0113] to [0119] of D1 in that a continuously moving belt was used as the moulding surface. The technical effect of this

difference was a continuous instead of a batch-wise process. The objective technical problem was thus to modify the method of D1 in such a way that a continuous production process could be achieved.

XV. The patent proprietor's arguments relevant to the present decision may be summarised as follows:

The subject-matter of claim 1 of the main request did not extend beyond the content of the application as filed. Its basis was found in claims 1, 5 and 7 as filed, at least in view of the whole teaching of the application. The skilled person read these claims to include their combination.

Alternatively, since the combination of features of claims 1 and 5, and claims 1 and 7 respectively, was disclosed in the application as filed, the skilled person would derive the claimed subject-matter by combining either of these combinations with the disclosure on page 6.

The new auxiliary request should be admitted into the proceedings. It was a reaction to the course of the proceedings. The preliminary opinion of the Board in its communication was the first clear indication as to which features were missing in respect of the objection under Article 123(2) EPC.

The subject-matter of the claim of the new auxiliary request involved an inventive step. None of the combinations of D1 and any other document cited by the opponent guided the skilled person to the claimed method. The subject-matter of the claim differed from the method described in paragraphs [0113] to [0119] of D1 in that the moulding surface was continuously



moving, that it was in the form of a belt, but also in that the silicone mixture was extruded onto the moulding surface as opposed to being merely disposed in D1, and also in the step of uniformly spreading the mixture as opposed to merely smoothing it over as in D1. The technical effect of these differences was a uniform and strong bonding between the silicone facing layer and the absorbent layer. The objective technical problem was thus to provide a more stable, higher integrity of the bond.

## **Reasons for the Decision**

### 1. *Oral proceedings by videoconference*

Both parties expressed their preference for in-person oral proceedings. Nonetheless, in view of the ongoing Covid-19-pandemic and the potential risks of infection and impediments in travelling, the Board decided to hold the oral proceedings by videoconference, applying its discretion under Article 15a(1) RPBA 2020. Since both parties accepted this format, there is no need for the Board to give more detailed reasoning for its decision.

### 2. *Main request - Article 100(c) EPC*

The subject-matter of claim 1 extends beyond the content of the application as filed. The ground for opposition under Article 100(c) EPC thus prejudices maintenance of the patent as granted.

#### 2.1 Claim 1 according to the main request is directed to a method for producing a wound dressing, wherein the moulding surface is a continuously moving surface and

wherein the method further comprises a step of perforating the silicone mixture as it cures on the (moving) moulding surface. By claiming this combination with both features in such general form, the claim defines subject-matter which is not directly and unambiguously derivable from the application as filed.

2.2 As also referred to by the opponent, the "gold standard" for assessing whether an amendment fulfills the requirement of Article 123(2) EPC is laid out in G2/10 (OJ EPO, 296), which for the purposes of the present case can be summarised as being whether the subject-matter defined by the amended claim is, be it explicitly or implicitly, directly and unambiguously disclosed to the skilled person using common general knowledge, in the application as filed. The Board finds that this is not the case, neither in the claims nor in the description, nor in the combination of both.

2.3 Claims 5 and 7 as filed are each only dependent on claim 1, but not on each other. They are thus not directly linked to each other by the claim structure. Such claims therefore do not form a direct and unambiguous basis for deriving a claim to their combination. This is also in line with established case law (see e.g. T 1362/15, Reasons 4). Therefore, the claims do not provide a literal, and thus explicit basis for a method for producing a wound dressing, wherein the moulding surface is a continuously moving surface and which further comprises a step of perforating the silicone mixture as it cures on this moving moulding surface. This was as such not disputed by the parties. The proprietor nevertheless argued that there was an implicit basis for deriving the claimed method.

2.3.1 The proprietor argued that because both claims 5 and 7 as filed referred to the moulding surface, the skilled person would have understood that they could be combined and that they would have interpreted the application to cover such a combination. This is, however, not accepted by the Board.

It is true that both claims 5 and 7 mention the expression 'molding surface'. This alone cannot however establish a link between the two separate aspects of a moulding surface that is continuously moving on the one hand and on the other hand perforating the mixture as it cures on the moulding surface, where the moulding surface is of a non-specified (i.e. general) type. Furthermore, claim 8 additionally specifies a plurality of perforating elements extending from the planar moulding surface and having a particular height. Since claim 8 depends only on claim 7 and not on claim 5, this emphasises that the further features relating to perforating the silicone mixture in claim 7 cover an aspect which is separate and independent from the moulding surface being of a continuously moving type as defined in claim 5.

2.3.2 The proprietor's further argument that multiple dependencies were not allowed or at least not common when drafting applications that covered the US, and the claim structure was to be interpreted before such background, is also not accepted. There being no general prohibition of multiple dependencies in US patent law, the applicant could have claimed the combination either in a dependent claim having multiple dependencies or by a further independent, more restricted claim. As there are not even claim fees due in the PCT procedure (noting that the application as filed is a PCT application), it is equally possible

that not having formulated claim 7 to be dependent on claim 5 was simply the deliberate choice of the applicant. Any conclusion as to the intention of the applicant at the time of filing is mere speculation and thus not something directly and unambiguously derivable.

2.3.3 The Board therefore finds that claims 5 and 7 of the application as filed relate simply to two different concepts, each of which defines a separate fallback position. The skilled person would thus not derive their combination directly and unambiguously from the set of claims as filed.

2.4 In an alternative line of argument, the proprietor stated that the claims had to be construed in the context of the application as filed, such that even though the combination was not explicitly claimed, the basis therefor could still be seen in claims 1, 5 and 7 when taking the whole teaching of the application into account. In support of this view, the proprietor argued that the skilled person was not a patent professional. Then, with a mind willing to understand, the skilled person would not only look for literal support in the claims but would instead derive from the application as a whole that the features of claims 5 and 7 could be combined. Again, the Board does not accept this.

2.4.1 As also argued by the opponent, the person skilled in the art, when considering the subject-matter claimed, would have the skills of a process engineer, and would apply their technical knowledge and understanding when reading the claims. There is however no basis for the combination of claims 5 and 7 when considering the broad definitions used in them, not even in the eyes of a skilled person having the insights of a process

engineer. On the contrary, a person with a technical background in producing wound dressings, but who is not trained in patents, would most probably understand claim 5 in view of the description as relating to the belt mentioned at numerous places therein. If anything, an engineer would thus understand the "continuously moving surface" as being a reference to such a belt, merely defined in more general language, as is well known to be common in the field of patents. It is not necessary to be a patent professional to draw this conclusion.

- 2.4.2 The proprietor's further argument that page 6 and the embodiment on pages 20 to 24 exclusively referred to moving moulding surfaces and that the skilled person thus read the claims to include this combination, is not persuasive. The application indeed describes an embodiment which includes the combination of a moving moulding surface and perforating the mixture as it cures. However, there is still no other type of moving moulding surface than a belt derivable from any part of the description.
- 2.4.3 In the application as filed, page 6 represents the most general description of the combination of a moving moulding surface (the moulding surface being described here as being a surface which "is a belt that moves") and perforating the mixture as it cures (by a plurality of perforating elements extending from the belt and having a particular height). The only directly and unambiguously derivable disclosure therefore does not give any hint that the features defined in the general manner of claims 5 and 7 should be combined, but only in the specific form stated there.

2.5 In a further alternative line of argument, the proprietor argued that since claim 5 was dependent on claim 1, the additional features required could be taken from the description and incorporated into original claim 1. According to the proprietor, there was thus a clear disclosure for the method of claim 1 together with a continuously moving moulding surface in its general form. This subject-matter (i.e. the subject-matter of claim 5 as filed) could then be combined with the step of 'perforating the silicone mixture as it cures on the moulding surface' as derivable from several parts of the description, including the disclosure on page 6. The same allegedly applied when starting from claim 7, the subject-matter of which was thus combinable with the general idea of a continuously moving moulding surface. However, neither of these arguments relates to a disclosure which is directly and unambiguously derivable.

2.5.1 Starting from claim 5, the skilled person would not find a disclosure of perforating in the description that were as general as the definition in claim 7. In particular on page 6, perforating is only described together with perforating elements extending from the planar moulding surface in the form of a belt, the perforating elements having a height greater than the thickness of the silicone mixture. The general concept as claimed is thus not derivable from page 6.

2.5.2 The proprietor further referred to page 21 of the application as filed, where it was stated that the moulding surface is 'preferably in the form of a belt'. By using the word 'preferably', the belt was thus not presented as an essential part of the invention. This, however does not change the Board's finding.

The standard in the assessment of whether a generalisation is allowable is what a skilled person directly and unambiguously derives from a disclosure, not what they could imagine being used instead. In this case the embodiment which is shown and described on page 21, does use a belt, even if the description mentions this in the specific context of that embodiment as being 'preferable'. However there is no disclosure of a continuously moving surface other than a belt, but the claim covers all kinds of alternatives therefor. None of these alternatives, and even well-known ones, form part of the disclosure in the context of the requirement of Article 123(2) EPC. Leaving aside the question of whether one aspect of that specific embodiment, described as preferable, could be selected in isolation from its context and inserted into claim 1, there is anyway no other form of moulding surface than a belt derivable from the application as filed, be it continuously moving or not. It is thus only the skilled person's imagination which might lead them to alternatives for the belt. This is however not part of the disclosure in the application but must be attributed to an intellectual activity of the skilled person.

2.6 The Board thus finds that, for the combination of features of claim 1 in their general form, the description does not provide a basis either, whether taken alone or together with claims 1, 5 and/or 7 as filed.

Since claim 1 defines subject-matter extending beyond the content of the application as filed, the ground for opposition under Article 100(c) EPC prejudices maintenance of the patent. The main request is thus not allowable.

3. *New auxiliary request - Admittance*

The auxiliary request, filed during the oral proceedings (referred to as the "new" auxiliary request), was admitted into the proceedings (Article 13(1) of the Rules of Procedure of the Boards of Appeal 2007 (RPBA 2007)).

- 3.1 The new auxiliary request and the previous auxiliary requests XI and XII on which it is based were filed after the summons dated 1 August 2019. With the summons having been issued before the entry into force of the revised Rules of Procedure of the Boards of Appeal (RPBA 2020), Article 13(2) RPBA 2020 shall not apply (see transitional provisions in Article 25(3) RPBA 2020). Instead, Article 13 RPBA 2007 shall continue to apply. Article 13(1) RPBA 2020 however also applies (see Article 25(1) RPBA 2020).

In exercising its discretion under Article 13 RPBA 2007 and considering inter alia the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy, the Board exercised its discretion to admit the new auxiliary request into the proceedings (Article 13(1) RPBA 2007). It also considered whether the amendments raised issues which the Board or the other party (here: the opponent) could not reasonably have been expected to deal with without adjournment of the oral proceedings (Article 13(3) RPBA 2007), even though no argument to that effect was put forward by the opponent. In terms of Article 13(1) RPBA 2020 the additional requirements specified therein relate to the party needing to justify why the amendment was filed



when it was and explaining why the amendment resolved the issues at hand.

The opponent indeed objected already in its grounds of appeal that the general disclosure in the description was insufficient for claim 1 in the given generality (grounds of appeal, page 3, first paragraph). The proprietor replied and indicated *inter alia* page 6 as the basis for such a generalised claim (see its reply, page 2, penultimate paragraph).

In its communication (see item 1.1, fourth paragraph), the Board summarised that it considered page 6 of the application to represent the most generic disclosure. It also indicated that it described the combination of a continuously moving moulding surface and perforating the silicone mixture as it cured, but that further features were mentioned in this context. The Board explicitly referred to the moulding surface being a belt, perforating being performed by a plurality of perforating elements extending from the belt and having a particular height.

The Board thus follows the proprietor's argument that, in the circumstances of this particular case, it was for the first time in the Board's communication that the proprietor was made aware that specific features mentioned on page 6 were regarded as lacking. There were thus good reasons for filing of auxiliary requests XI and XII, with a claim 1 including those particular features, as a reaction to the Board's communication.

The opponent's argument that the subject-matter of claim 1 did not *prima facie* involve an inventive step, and the request should not be admitted for that reason, is unpersuasive. No conclusion by the Board on

inventive step of previous claim 1 had been given and the opposition division had also considered the subject-matter of (then) auxiliary request II to involve an inventive step (that claim being the same as claim 1 as granted). Adding further features, as a result of the objection under Article 100(c) EPC to such a claim, cannot therefore be seen to result in a *prima facie* lack of inventive step. The opponent gave no further reasons on this matter.

- 3.2 The new auxiliary request contains a single claim that is identical to claim 1 of each of auxiliary requests XI or XII. During the oral proceedings, the Chairman stated that the Board had no objections under Article 84 EPC and Article 123 EPC, and that the subject-matter of its claim appeared to be novel. The opponent stated that its only objection to this request was that its subject-matter lacked inventive step (see minutes, page 3, fourth paragraph) and that it was able to present its arguments on inventive step.

The new auxiliary request thus corresponds to withdrawn auxiliary requests XI and XII with all claims deleted but claim 1, which was considered to fulfill the requirements of Article 123 EPC by the Board and the opponent. Upon submission of the request, the issue of extension of subject-matter of its claim had thus already been discussed and no new issues were raised thereby. Under these circumstances, the Board considers that, by submitting the new auxiliary request, the proprietor merely limited its appeal case to defending a single claim which was part of the claim sets submitted as auxiliary requests XI and XII. Both the opponent and the Board had thus had sufficient time to prepare for a discussion of inventive step of its subject-matter and indeed the opponent agreed to

proceed therewith after a break in the oral proceedings for it to reconsider its arguments.

4. *New auxiliary request - Inventive step*

The subject-matter of the claim involves an inventive step (Article 56 EPC). None of the attacks presented by the opponent demonstrated that it would have been obvious for a skilled person to arrive at a method having all the method steps defined in the claim, in particular including extruding a curable silicone mixture onto a continuously moving belt forming the moulding surface.

4.1 The Board agrees with the parties that the closest prior art to the subject-matter of the claim is the method for producing a wound dressing described in paragraphs [0113] to [0119] of D1. With reference to Figures 19 and 20 it shows a stationary planar carrier surface 47 having a plurality of needle-like perforating elements 44, used to perforate a layer of uncured silicone.

In paragraph [0122], D1 describes an alternative with a roller as the carrier surface.

Neither of these embodiments thus shows a belt, and the one coming closer to the subject-matter of the claim not even a continuously moving carrier surface.

4.2 The method defined in claim 1 thus differs from D1 at least in that the moulding surface is a continuously moving belt.

The parties disagreed whether there were further differences to the embodiment of paragraphs [0113] to

[0119] of D1, notably the step of 'disposing' the silicone mixture onto the mould (see paragraph [0116]) as opposed to the claimed step of 'extruding', and the step of 'smoothing over' (*ibid.*) as opposed to the claimed 'uniformly spreading'. The Board agrees with the proprietor that 'disposing' as mentioned in paragraph [0116] of D1 is more generic than 'extruding' (albeit this expression is used to describe another embodiment using a roller instead of the flat, stationary moulding surface in paragraph [0116]). The Board also accepts the proprietor's argument that 'uniformly spreading' implies that there is a generally uniform thickness, whilst 'smoothing over' (as mentioned in paragraph [0116] of D1) only refers to a smooth surface. Whether these further differences contribute to an inventive step can however be left unanswered, as the Board considers that, starting from the method of paragraphs [0113] to [0119] of D1, already providing a moulding surface in the form of a continuously moving belt was not obvious for the reasons set out below.

4.3 The parties disagreed on the technical effect(s) achieved by the respective distinguishing features and the objective technical problem to be solved thereby. However, even accepting the technical problem as being 'to facilitate a continuous production process' as formulated by the opponent, the Board finds that neither common general knowledge nor the other cited prior art leads the skilled person to use a moving belt in the method of D1.

4.4 Starting from the embodiment of paragraphs [0113] to [0119] of D1 and trying to solve the technical problem of 'facilitating a continuous production process', a skilled person would first look for alternatives

already described in D1. They would see that in paragraph [0122] D1 itself proposes a heated mechanical roller, rotating at a predetermined speed. As argued by the opponent, a skilled person might thus be prompted to use the continuously moving roller instead of the stationary carrier surface.

In this context, the opponent argued that the roller had the same function as the belt in the contested patent, namely to achieve a continuous production process. It further argued that it was an obvious measure to use a belt with the same function as the roller, if a planar surface were to be used. These arguments are however not accepted.

Not only would the skilled person have to combine two different embodiments of D1, they would also have to single out particular features for inclusion, such as the perforating elements from one embodiment and the moving surface from the other, and even then they would not arrive at the claimed subject-matter without further substituting the roller by a continuously moving belt. The Board concludes that, without the benefit of hindsight, a skilled person would not be prompted to take all these steps. D1, when taken alone, even with the knowledge of the skilled person therefore would not lead to the subject-matter of the claim, unless an inventive step were involved.

4.5 None of the other cited prior art would lead the skilled person to use a moving belt in D1 either.

4.5.1 The opponent referred to D15, in which a perforated carrier material 2 is coated with a thermosetting silicone mixture 3. The carrier material itself is however moved by means which are not shown in D15 but

which 'may conveniently comprise a belt conveyor' (see D15, page 3, line 28). Consequently, even in this arrangement, the silicone mixture is not added onto the belt conveyor but instead onto the carrier material. The skilled person thus gets no incentive from D15 to extrude the silicone mixture onto a continuously moving moulding surface in the form of a belt.

Furthermore, D15 perforates the silicone layer by cold air being blown through the perforations in the carrier. The perforations in D15 are thus not perforating elements as in claim 1, but are simply holes in the carrier. Even if they were to be equated with perforating "elements", they anyway do not extend from the planar moulding surface as required by the claim. This claimed feature would thus have to be maintained in D1, while taking a belt from D15 where the carrier layer (which has the means allowing perforation) is simply discarded even though the method of D15 relies on it. But even then, the belt forming the moving moulding surface would still be only one of several possibilities presented in D15 from which the skilled person would need to choose. The skilled person would thus have to select single features from each of D1 and D15 and combine these, even though the methods are quite different, and then would still not necessarily have arrived at the claimed method.

4.6 The opponent further referred to D10, Figure 3, in which an uncured gel mixture 9 and an absorbent foam 10 are laminated on a plastic film 8 which is itself conveyed by a conveyor. The opponent argued that if the skilled person looked for a continuous process, they would extrude the silicone gel onto a conveyor and provide the moulding surface with perforating elements,

as is already implemented in D1. This is however not accepted by the Board.

As also argued by the proprietor, D10 concerns a very specific wound dressing with a very thin gel layer. It is also very different from what D1 and the patent want to achieve (i.e. an extruded curable silicone layer with a certain, even and constant thickness). The skilled person is thus not motivated to consider D10. But even if they were to, nothing in D10 would lead them to provide the moulding surface in the form of a belt.

- 4.7 The opponent also referred to D14, which relates to a bio-adhesive composition to produce medical skin electrodes, but also describes using the composition in a wound dressing (see page 9, line 5 and page 31, line 3 describing example 15). The opponent argued that D14 described extruding a pre-gel composition onto a moving surface in the form of a web and curing a silicone mixture on a continuously moving surface in order to reach a gel layer to be used as the adhesive wound facing layer of a wound dressing. These arguments are however, again, not persuasive.

As also asserted by the proprietor, the mixture in D14 is applied onto a material forming a web. D14 mentions that '[t]he web is preferably made from paper, polyester, polyolefin or any other material commonly used in the art' (see page 18, lines 24/25). None of these examples nor the general reference to a 'web' would lead the skilled person to use a continuously moving belt as the moulding surface with perforating elements extending therefrom.

4.8 Still further, the opponent referred to the Figure 7 embodiment of D16, which it argued came closest to the subject-matter of the claim, as it has a heating element 91 that heats a web 19. The opponent argued further that D16 taught the use of a continuously moving process for producing wound dressings. Whilst this can be accepted as such, it does not lead the skilled person to the claimed method however.

In particular, D16 makes use of an already prepared web as a wound facing layer. In this process, the already fully cured web cannot be substituted by a partly cured silicone as would be necessary if the skilled person were trying to arrive at the claimed method. Such would only be obvious with the use of impermissible hindsight.

4.9 Lastly, the opponent referred to paragraph [0138] and the embodiment shown in Figure 5 of D17. In this embodiment, a gel-forming composite is coated on a polypropylene sheet. The cross-linking reaction in the composite proceeds during transfer on a belt conveyor. The opponent acknowledged that D17 showed a different structure to that in the patent, but argued that it taught curing of the sticky wound facing layer of a wound dressing on a continuously moving 'base' or 'mold' and thereby the use of a continuous process while curing. This argument is however not persuasive.

Also in D17, the gel-forming composite 7 is dispersed onto a material in the form of a polypropylene sheet 1, not onto a belt forming the moulding surface. There are furthermore no perforating elements extending from the polypropylene sheet. Thus, a very different process is involved compared to D1 such that, to arrive at the claimed invention, specific features have to be taken



from D17 while discarding others which are however necessary for the method of D17. Without hindsight this would not be done.

4.10 Therefore, based on the arguments of the opponent and the passages cited, the Board finds that there is no teaching in any of the documents cited by the opponent that would lead the skilled person to the method of the claim unless an inventive step were involved. The Board thus concludes that the subject-matter of the claim of the new auxiliary request involves an inventive step (Article 56 EPC).

5. As no other objections were raised against the new auxiliary request, the Board concludes that, besides the description necessitating adaptation to the new claim, the requirements of the EPC are fulfilled. In order to do this, the Board makes use of its power under Article 111(1) EPC.

## 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 with the claim of the auxiliary request filed during the oral proceedings of 21 December 2021 and a description to be adapted thereto.

The Registrar:

The Chairman:



D. Grundner

M. Harrison

Decision electronically authenticated