

Internal distribution code:

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

**Datasheet for the decision
of 13 December 2018**

Case Number: T 0853/18 - 3.3.03

Application Number: 13171270.5

Publication Number: 2738221

IPC: C08L83/08, C08G77/388

Language of the proceedings: EN

Title of invention:

Silicone hydrogel composition and silicone hydrogel contact lenses made from the composition

Applicant:

Pegavision Corporation

Relevant legal provisions:

EPC Art. 84

Keyword:

Claims - clarity (all requests: no)



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 0853/18 - 3.3.03

D E C I S I O N
of Technical Board of Appeal 3.3.03
of 13 December 2018

Appellant: Pegavision Corporation
(Applicant) 2F.-1, No.5, Xingye St., Guishan Township
333 Taoyuan County (TW)

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

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 9 November 2017
refusing European patent application No.
13171270.5 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman D. Semino
Members: O. Dury
C. Brandt

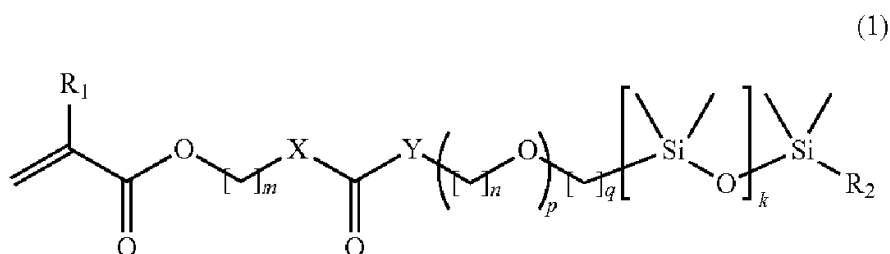
Summary of Facts and Submissions

I. The appeal by the applicant (appellant) lies against the decision of the examining division posted on 9 November 2017 refusing European patent application No. 13 171 270.5.

II. That decision was based on a single request filed with letter of 22 September 2017, claim 1 of which read as follows:

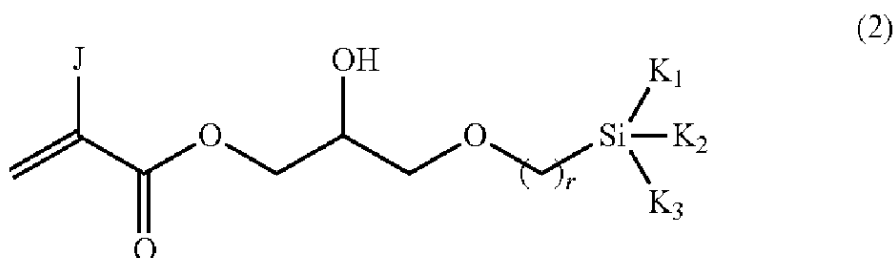
"1. A silicone hydrogel composition, comprising:

at least one silicone macromer in the amount of 5 to 50 wt% based on the total weight of the composition, wherein the silicone macromer has a structure of chemical formula (1):



wherein X is a secondary amino group (-NH-); Y is a secondary amino group (-NH-); R₁ is a hydrogen atom or a methyl group; R₂ is a C1-C12 alkyl group; m is an integer from 2 to 4; n is an integer from 2 to 4; p is an integer from 0 to 4; q is an integer from 2 to 4; and k is an integer which makes the number average molecular weight (M_n) of the silicone macromer in the range of 600 to 3000;

a hydroxy-functionalized silicone-containing monomer in the amount of 5 to 50 wt% based on the total weight of the composition, wherein the hydroxy-functionalized silicone-containing monomer has a structure of chemical formula (2):



wherein J is a hydrogen atom or a methyl group; r is an integer from 2 to 10; K₁, K₂ and K₃ are each a methyl group or a trimethylsiloxy (-OSi(CH₃)₃), wherein at least one of K₁, K₂ and K₃ is a methyl group or at least one of K₁, K₂ and K₃ is a trimethylsiloxy (-OSi(CH₃)₃);

a first hydrophilic monomer in the amount of 30 to 60 wt% based on the total weight of the composition, wherein the first hydrophilic monomer is N-vinyl pyrrolidone, and the silicone macromere, the hydroxy-functionalized silicone-containing monomer or a combination thereof are mutually soluble with N-vinylpyrrolidone; and

at least one crosslinker in the amount of less than 20 wt% based on the total weight of the composition."

III. In that decision, the examining division held in particular that claim 1 of said request lacked clarity pursuant to Article 84 EPC because certain experimental parameters concerning the solubility of the compounds mentioned therein were lacking, in particular regarding the temperature of determination and the weight

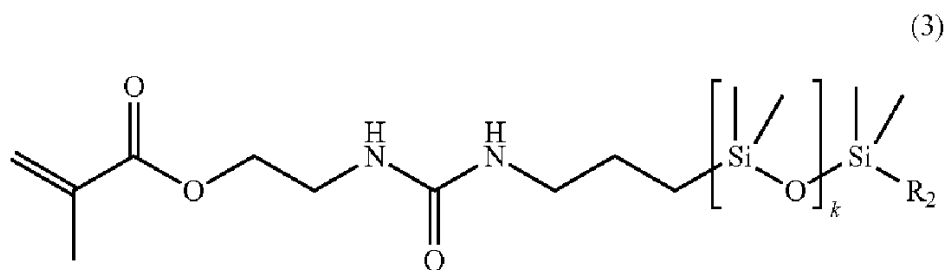
percentage of each component when testing their solubility (section 2 of the reasons). Besides, the examining division considered that the application as filed contained no indication of a test to evaluate unambiguously whether or not the solubility feature of operative claim 1 was satisfied (section 3 of the reasons).

IV. In its statement of grounds of appeal the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the request filed with letter of 22 September 2017 as **main request** (see section II above) or, alternatively, on the basis of a single auxiliary request filed therewith.

Claim 1 of said **auxiliary request** read as follows:

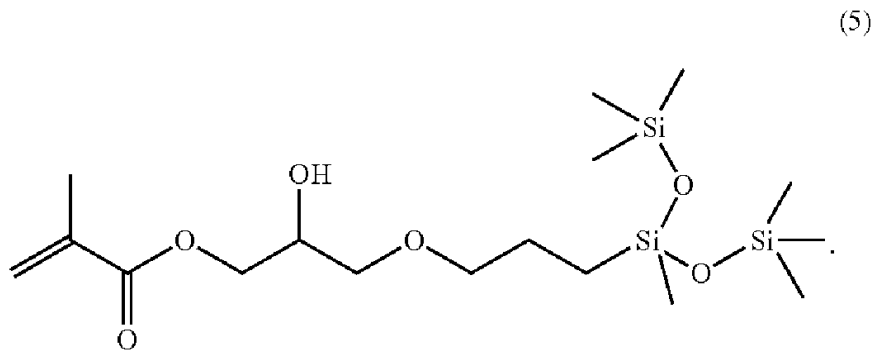
"1. A silicone hydrogel composition, comprising:

at least one silicone macromer in the amount of 5 to 50 wt% based on the total weight of the composition, wherein the silicone macromer has a structure of chemical formula (3):



wherein R₂ is a C1-C10 alkyl group; and k is an integer which makes the number average molecular weight (M_n) of the silicone macromer in the range of 600 to 3000;

a hydroxy-functionalized silicone-containing monomer in the amount of 5 to 50 wt% based on the total weight of the composition, wherein the hydroxy-functionalized silicone-containing monomer has a structure of chemical formula (5):



N-vinyl pyrrolidone in the amount of 30 to 60 wt% based on the total weight of the composition, wherein the silicone macromer, the hydroxy-functionalized silicon-containing monomer and the N-vinylpyrrolidone are mutually soluble in a single phase; and

at least one crosslinker in the amount of less than 20 wt% based on the total weight of the composition."

Also, the following documents were filed:

D6: Test Method Protocol for Solubility
Determination, 24 September 2003

D7: Excerpt from Wikipedia, keyword "Löslichkeit"

v. In a communication accompanying the summons to oral proceedings, the Board identified relevant issues to be addressed during the oral proceedings, whereby the following document was annexed thereto:

D8: Excerpt from Wikipedia, keyword "Room

temperature"

- VI. With letter of 13 November 2018 the appellant put forward further arguments and filed an auxiliary request II, whereby the auxiliary request filed with the statement of grounds of appeal was renamed **auxiliary request I**.

Claim 1 of said **auxiliary request II** differed from claim 1 of said auxiliary request I in that the term "mutually" was deleted from the expression "are mutually soluble in a single phase".

It was further specified in that submission that the request for reimbursement of the appeal fee indicated in the notice of appeal was withdrawn.

- VII. Towards the end of the oral proceedings, which were held on 13 December 2018, the appellant submitted an **auxiliary request III**, claim 1 of which differed from claim 1 of auxiliary request I only in the fact that the expression "in a single phase" was deleted.

- VIII. The appellant's arguments, as far as relevant for the present decision, may be summarized as follows:

Main request - Article 84 EPC

- (a) During the oral proceedings before the Board, the solubility test indicated in claim 1 of the main request was argued to be superfluous because it was satisfied by all the silicone macromers according to formula (1) and by all the hydroxy-functionalised silicone-containing monomers according to formula (2) defined in said claim 1. This was in particular derivable from the table on

page 19 and from the passages at the bottom of page 19 and at the top of page 20 of the application as filed. Therefore, the objections of lack of clarity retained by the examining division were not relevant for the specific components now being defined in claim 1 of the main request;

- (b) Regarding the temperature at which the solubility test should be carried out, room temperature was the standard temperature for solubility determination, as shown in D6 and D7. In particular, the fact that D6, which was a standard test method protocol, made only reference to room temperature, showed that the meaning of the term "room temperature" was clear *per se* for the skilled person.

Also, considering that it was derivable from D6 to D8 that the expression "room temperature" defined a temperature range and not a certain temperature value, the expression "room temperature" should be read for the present application so that it "includes 20-25 °C".

Finally, as put forward during the oral proceedings before the Board, the solubility of the components defined in operative claim 1 did not change over the broadest range of temperature disclosed in D8 as possibly defining room temperature;

- (c) Regarding the amounts of the components, it was clear from the wording of the claim itself that the solubility test should be satisfied over the ranges defined by the amounts explicitly indicated as weight percentage in claim 1 for each of the components;

- (d) Regarding the solubility test, visual testing was a common analytical method in the pharmaceutical field to evaluate whether a compound was soluble in another one, as shown in D6, whereby it was explicitly stated therein that a compound is soluble in another one if it results in a clear solution without visible cloudiness or precipitate. Besides, the skilled person would be able to determine whether or not the solubility feature mentioned in claim 1 was satisfied on the basis of the information provided on pages 18-19 of the application as filed, which was related to a similar type of analysis;
- (e) In view of the above, the objections pursuant Article 84 EPC retained by the examining division against the main request should be rejected.

Auxiliary request I - Article 84 EPC

- (f) In claim 1 of auxiliary request I the definition of the silicone macromer and of the hydroxy-functionalized silicone-containing monomer was amended in view of an objection made in the letter of the examining division dated 21 February 2017, according to which it was doubtful that all the compounds encompassed by formulae (1) and (2) of the main request satisfied the solubility test defined in claim 1 of the main request. In addition, the limitation of these definitions strengthened the argument that the solubility test was superfluous for these more specific compounds.

The amendment "wherein the silicon macromer ... in a single phase" further indicated that the solution

formed by the three components mentioned for the solubility test should be a clear one.

Auxiliary request II - Article 84 EPC

(g) The amendments made in auxiliary request II defined even more clearly than in auxiliary request I that the solution formed by the three components mentioned for the solubility test should be a clear one, which should overcome the objection retained by the examining division in relation to the solubility test.

Auxiliary request III - Article 84 EPC

(h) The amendments made in auxiliary request III were intended to overcome a possible objection pursuant to Article 123(2) EPC against claim 1 of auxiliary request I but had no impact on the clarity issues discussed for the higher ranking requests.

IX. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the request filed with letter of 22 September 2017 as main request or, alternatively, on the basis of auxiliary request I filed as sole auxiliary request with the statement of grounds of appeal or of auxiliary request II filed with letter of 13 November 2018 or of auxiliary request III filed during the oral proceedings on 13 December 2018.

Reasons for the Decision

Main request - Article 84 EPC

1. The operative main request is the main request dealt with in the contested decision, which was refused for lack of clarity (Article 84 EPC) because it was held that certain experimental parameters concerning the solubility of compounds mentioned in claim 1 were lacking (see sections 2 and 3 of the reasons).

2. During the oral proceedings before the Board the appellant argued that the solubility test indicated in claim 1 of the main request was in fact superfluous because it was satisfied by all the silicone macromers according to formula (1) and by all the hydroxy-functionalised silicone-containing monomers according to formula (2) defined in operative claim 1. Therefore, according to the appellant, the objections retained by the examining division were not relevant for the subject-matter now being claimed.
 - 2.1 However, no evidence was provided by the appellant in support of his argument, in particular not in reply to the Board's communication in which it was explicitly mentioned that it appeared to be derivable from the indications at page 19, lines 11-16 and at page 20, lines 3-7 that not all silicon macromers or hydroxy-functionalized silicone-containing monomers defined in operative claim 1 led to clear mixed solution in N-vinyl pyrrolidone (NVP) at any ratio (see last sentence of section 3.3.2). Further considering that that issue had already been addressed during examination (albeit in respect of Article 123(2) EPC but for the same reason, namely regarding whether or

not the solubility test could be held to be superfluous: see page 2 of the examining division's annex to the summons to oral proceedings dated 21 February 2017, which was referred to by the appellant in section VIII f) above), it would have been the duty of the appellant to provide convincing evidence in support of his line of argumentation.

2.2 Besides, that argument is not in line with the indication at page 19, lines 11-16 and at page 20, lines 3-7 according to which silicon macromers or hydroxy-functionalised silicone-containing monomers defined in operative claim 1 lead to clear mixed solution in N-vinyl pyrrolidone (NVP) at any ratio when the ratio of the polar functional group of the silicone macromer (according to the number of nitrogen atom) to the non-polar siloxane (according to the number of silicon atoms) or respectively when the molar ratio of silicon to the hydroxyl group of the hydroxy-functionalised silicone-containing monomer is higher than one certain value. In that respect, the application as filed fails to disclose any information regarding said "certain value" both for the silicone macromer and the hydroxy-functionalised silicone-containing monomer. Besides, no argument or evidence was provided in order to demonstrate that the compounds defined by formulae (1) and (2) according to operative claim 1 mandatorily satisfy that criterion. This is particularly true for compounds of formula (1), which are among others characterised in that they comprise two secondary nitrogen atoms (X and Y) as polar groups and a silicon containing repeating unit with index "k", whereby k is such that the number average molecular weight of the silicone macromer is in the range of 600 to 3000, and a silicon containing endgroup containing a C1-C12 alkyl substituent (R₂) as non-polar groups.

Accordingly, in view of that structure, the passage at page 19, lines 11-16 of the application as filed implies that the solubility of compounds according to formula (1) in NVP decreases when the number of silicone containing repeating units increases (i.e. when the value of "k" increases in formula (1)), whereby at a certain point, the mixture of the silicone macromer in NVP is not a clear solution any more. The same applies for the hydroxy-functionalised silicone-containing monomers of formula (2) (which contain a single hydroxy group and from one to four silicone atoms) in view of the passage at page 20, lines 3-7 of the application as filed.

2.3 In Table 1 on page 19 of the application as filed, the solubility test is illustrated for five different mixtures, of which only two illustrate the subject-matter of operative claim 1, namely examples A3 and A4, as argued by the appellant during the oral proceedings before the Board. These examples A3 and A4 show that a clear mixed solution is obtained when using a weight ratio of NVP/silicone species between 0.09-9.80 and 0.09-9.83, whereby the silicone species is a 1:3 or a 3:1 mixture (molar ratio) of a silicone macromer of formula (3) having an average molecular weight of about 1100 and of a hydroxy-functionalised silicone-containing monomer of formula (5), both as defined in claim 1 of the auxiliary request filed with the statement of grounds of appeal shown in section V above (application as filed: page 18, lines 10-25). However, although these two specific examples A3 and A4 illustrate the argument of the appellant, they only constitute two specific compounds (1) and (2) as defined in operative claim 1, in particular a compound according to formula (1) with $R_1 = \text{methyl}$, $m = 2$, $p = 0$, $q = 3$, k such that $M_n = 1100$, R_2 not specified

and a compound according to formula (2) with J = methyl, r = 3, K₁ = K₂ = trimethylsiloxy and K₃ = methyl. No evidence was provided and no argument was put forward by the appellant in order to demonstrate that the same result would also be mandatorily obtained for any components (1) and (2) as defined in operative claim 1, in particular for those components (1) and/or (2) containing more non-polar groups (i.e. higher amounts of silicone containing groups), whereby the ratio of polar functional groups to non-polar functional groups of components (1) and/or (2) are, according to the passages at page 19, lines 11-16 and page 20, lines 3-7 of the application as filed, crucial for fulfilling the solubility test defined in operative claim 1.

- 2.4 For those reasons, the appellant's argument did not convince.
- 2.5 As a consequence, it is considered hereinafter that the solubility test defined in operative claim 1 "the silicone macromer ... are mutually soluble with N-vinylpyrrolidone" is not superfluous and effectively limits the scope of operative claim 1.
3. According to sections 2 and 3 of the contested decision, certain experimental parameters concerning the solubility of compounds mentioned in claim 1 were lacking, in particular regarding:
- the temperature of determination;
 - the amounts (weight percentage) of each component when testing their solubility;

- the indication of a test to evaluate unambiguously whether or not the solubility feature of operative claim 1 was satisfied.

4. Regarding the amounts

4.1 As already indicated in section 2 above, it is derivable from the passages at page 19, lines 11-16 and at page 20, lines 3-7 that not all silicon macromers or hydroxy-functionalized silicone-containing monomers defined in operative claim 1 lead to clear mixed solution in N-vinyl pyrrolidone (NVP) at any ratio. Further considering that the appellant did not contest the opposition division's view according to which the relative amounts of each component used when testing the solubility influenced the determination of the solubility, the skilled person should know which amounts of silicone macromer, hydroxy-functionalised silicon-containing monomer and N-vinyl pyrrolidone have to be used in order to carry out the solubility test in a reliable manner.

4.2 The appellant argued that the weight percentage of each compound was indicated in claim 1 and that it was evident that the solubility test had to be carried out using amounts of silicone macromer, hydroxy-functionalised silicon-containing monomer and N-vinyl pyrrolidone as indicated in operative claim 1.

However, the percentages indicated in operative claim 1 are those defining the amounts of each component in the claimed composition. In that respect, contrary to the appellant's view, the Board is convinced that it cannot be concluded from the wording of said claim 1 itself which amounts of the components should be used to carry out the solubility test defined in operative claim 1

without indicating any amounts, as already indicated in the decision (section 2 of the reasons, first sentence). That conclusion is particularly true in respect of the solubility test for a "combination" of the silicone macromer and of the hydroxy-functionalized silicone-containing monomer defined in claim 1, for which also no relative amounts of those components is specified (section 2 of the reasons, last sentence).

4.3 In view of the above, the appellant's arguments are not suitable to overcome the examining division's conclusion regarding the lack of clarity regarding the amounts of components (1), (2) and N-vinyl pyrrolidone to be used when carrying out the solubility test mentioned in claim 1.

5. Regarding the temperature

5.1 The appellant did not contest the examining division's view according to which the temperature influences the determination of the solubility, which is also considered by the Board as being well known in the art (D7: page 3, section "Temperaturabhängigkeit der Löslichkeit").

5.2 The appellant argued that, in the absence of any information to the contrary, the solubility should be determined at room temperature.

5.2.1 However, it is derivable from D8 that several definitions of "room temperature" may be considered, e.g. 20 to 25 °C in sciences or even 15 to 25 °C for applications in the pharmaceutical field (D8: top of pages 1 and 2), which appears to be the one of the present application (see statement of grounds of

appeal: page 2, last full paragraph).

- 5.2.2 In the Board's communication sent on 11 September 2018 together with the summons to oral proceedings, it was indicated that in the absence of any evidence that, in the ranges indicated in above section 5.2.1, the temperature had no influence on the solubility test of the components mentioned in operative claim 1, the appellant's argument in respect of "room temperature" was not convincing (see section 3.2.2 of said communication).

No evidence or written argument in that respect was submitted by the appellant in reply to that statement of the Board, in particular not in its written submission of 13 November 2018. It is only during the oral proceedings before the Board (13 December 2018) that the appellant declared that, for compounds of formulae (1) and (2) as defined in operative claim 1 and NVP, no change in solubility would be observed when working at temperatures between 15-25°C, i.e. in the broadest range defined in D8 by the term "room temperature". However, in the absence of any evidence in that respect, that mere allegation is not sufficient for the Board to overturn the examining division's conclusion.

- 5.2.3 The appellant put forward that since in D6, which was a standard test method protocol, reference was only made to room temperature, the meaning of the term "room temperature" was clear *per se* for the skilled person.

Although it is correct that D6 teaches to work at room temperature (see e.g. page 9, sections 2.a.1 and 2.a.2), this only means, in the Board's view, that in the absence of any specification indicated in D6, the

teaching of D6 may be applied at any temperature which is encompassed by the term "room temperature". However, the issue addressed here is that, according to Article 84 EPC the subject-matter being claimed should be clear in itself, which means in particular that the skilled person should be in a position to determine unambiguously whether he is working within or outside the scope of the claims, which was, as explained above, not the conclusion of the examining division. Therefore, the appellant's argument fails to convince.

- 5.2.4 The appellant argued that it was derivable from the documents on file that the term "room temperature" defined a temperature range and not mandatorily a certain temperature value. In addition, if necessary, the term "room temperature" should be read for the present application so that it "includes 20-25 °C".

However, those arguments are not suitable to overcome the objection made by the examining division since it remains unclear from the present application which of the possible definitions should be used in claim 1, e.g. either a single temperature or a range, and in each case which temperature or which range. In addition, since the wording of the claims should be clear *per se*, it is not acceptable to read a feature in a claim in a limited manner on the basis of a statement made by the appellant during the proceedings. For those reasons, the appellant's arguments are rejected.

- 5.3 In view of the above, the appellant's arguments were not suitable to overcome the examining division's conclusion regarding the lack of clarity in respect of the temperature at which the solubility test mentioned in claim 1 should be carried out.

>

6. Regarding the evaluation of the solubility test
 - 6.1 D6 confirms the appellant's argument that visual observation, which is used in the present application (see page 19 and Table 1 of the application as filed), is a common analytical method (D6: title; page 3, sections V and VI). In that respect, a clear solution indicates (full) solubility whereas a cloudy solution indicates limited solubility.
 - 6.2 However, it remains that the wording of claim 1 "are mutually soluble" neither specifies any degree of solubility, nor defines that a clear solution has to be obtained. For instance, the question may be posed if the cloudy solution of comparative example A could be held to be a solution in which the macromer and NVP are "mutually soluble", e.g. a composition wherein at least some amount of macromer is dissolved in NVP.
 - 6.3 The appellant argued that it was indicated in D6 that solubility meant "clear solution without visible cloudiness or precipitate".

However, not only is that information not present in the present application but, in the Board's view, it may be agreed with the examining division that it is derivable therefrom that a different criterion was contemplated therein (decision: section 3 of the reasons). In particular, since it is e.g. indicated at page 18, lines 8-10 of said application that "the mixed solution was more clear when the mutual solubility between N-vinyl pyrrolidone and the silicon containing species was higher", it is derivable from the application as filed that different levels of "clarity" were contemplated, whereby the skilled person is not provided with any information when a mixture is "clear

enough" to consider that the mixture is "soluble enough", as already concluded by the examining division (section 3 of the reasons).

- 6.4 Under these circumstances, it is agreed with the examining division that the skilled person is not in a position to determine unambiguously whether or not the solubility feature specified in operative claim 1 is satisfied.
7. In view of the above, there is no reason for the Board to deviate from the examining division's conclusion according to which claim 1 of the main request does not fulfill the requirements of Article 84 EPC.

Auxiliary request I - Article 84 EPC

8. As compared to claim 1 of the main request, the amendments made in claim 1 of auxiliary request I
- limit the nature of the silicone macromer and of the hydroxy-functionalized silicone-containing monomer defined in claim 1; and
 - use a different formulation for the solubility test, namely "wherein the silicone macromer, the hydroxy-functionalized silicone-containing monomer and the N-vinylpyrrolidone are mutually soluble in a single phase".
- 8.1 Although the definitions of both the silicone macromer and of the hydroxy-functionalized silicone-containing monomer defined in claim 1 were limited (as compared to claim 1 of the main request) to compounds according to formulae (3) and (5), respectively, no evidence was provided to demonstrate that for the compounds so

defined the solubility test defined in claim 1 of auxiliary request I was superfluous, i.e. that it was implicitly fulfilled. Considering that formula (3) in particular is still defined using a repeating unit containing silicone with an index "k", which is indicated on page 19, lines 11-16 of the application as filed as being crucial for the fulfilment of the solubility test, the Board can only arrive at the same conclusion as outlined in section 2 above and according to which the solubility test is a limiting feature for the subject-matter defined in claim 1 of auxiliary request I.

8.2 In the absence of any other arguments why the amendments made may overcome the objections pursuant to Article 84 EPC identified in sections 4 to 6 above in respect of the main request, the same conclusion as outlined for claim 1 of the main request is bound to be reached for claim 1 of auxiliary request I.

8.3 In addition, the question was posed by the Board whether the formulation of the feature indicated in the second amendment identified in above section 8 ("wherein the silicone macromer ... in a single phase") had a clear, i.e. unambiguous, meaning (Article 84 EPC; see section 4.2 of the Board's communication): in particular, it was questioned if it meant that any two of the three components (in any relative amounts) should be "mutually soluble in a single phase" and/or that a combination of the three components, in any amounts thereof, should be "mutually soluble in a single phase".

The appellant argued that the skilled person would understand that that wording of claim 1 meant that "a combination of the three components were mutually

soluble in a single phase".

However, since, as indicated in the Board's communication, such a reading is not supported by the wording of the claim itself, the appellant's argument is rejected.

- 8.4 In view of the above, auxiliary request I does not satisfy the requirements of Article 84 EPC.

Auxiliary request II - Article 84 EPC

9. As compared to claim 1 of auxiliary request I, the amendments made in claim 1 of auxiliary request II lead to a different definition of the solubility test, namely "wherein the silicone macromer, the hydroxy-functionalized silicone-containing monomer and the N-vinylpyrrolidone are soluble in a single phase".

However, in the absence of any arguments showing how the amendments made may overcome the clarity objections identified in above sections 2 to 4, the same conclusion reached in sections 8.1 and 8.2 above for claim 1 of auxiliary request I is equally valid for claim 1 of auxiliary request II.

Auxiliary request III - Article 84 EPC

10. As compared to claim 1 of auxiliary request I, the amendments made in claim 1 of auxiliary request III lead to a different definition of the solubility test, namely "wherein the silicone macromer, the hydroxy-functionalized silicone-containing monomer and the N-vinylpyrrolidone are mutually soluble", i.e. the expression "in a single phase" was deleted.

The appellant indicated that the amendment carried out in claim 1 of auxiliary request III was only aimed at overcoming possible objections pursuant to Article 123(2) EPC in respect of auxiliary request I but that they had no impact on the issues of clarity discussed for the higher ranking requests, in particular for auxiliary request I. Under such circumstances, the Board is bound to arrive at the same conclusion regarding clarity of auxiliary request III as outlined above for auxiliary request I (sections 8.1 to 8.3).

11. Since none of the appellant's requests is allowable pursuant to Article 84 EPC, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



B. ter Heijden

D. Semino

Decision electronically authenticated