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Datasheet for the decision of 7 July 2025

Case Number: T 2048/22 - 3.3.02

Application Number: 16205251.8

Publication Number: 3338813

IPC: A61L15/44

Language of the proceedings: EN

Title of invention:
MULTI-LAYER WOUND CARE PRODUCT WITH PERFORATED RELEASE LAYER

Patent Proprietor:
BSN Medical GmbH

Opponents:
Mölnlycke Health Care AB
KCI Manufacturing Unlimited Company

Headword:
BSN MEDICAL / WOUND DRESSING / MULTILAYER

Relevant legal provisions:
EPC Art. 54, 56, 100(a), 100(c)

Keyword:
Grounds for opposition - added subject-matter (no) - novelty (no)
Auxiliary request 1 - added subject-matter (no) - inventive step - (yes)

Decisions cited:
G 0001/24

Catchword:

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Chambres de recours

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Case Number: T 2048/22 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 7 July 2025

Appellant I: (Patent Proprietor)	BSN Medical GmbH Quickbornstraße 24 20253 Hamburg (DE)
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Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 26 July 2022 concerning maintenance of the European Patent No. 3338813 in amended form.**

Composition of the Board:

Chairman	M. O. Müller
Members:	M. Maremonti
	M. Blasi

Summary of Facts and Submissions

I. The appeals by the patent proprietor and opponent 1 are against the opposition division's interlocutory decision according to which European patent No. 3 338 813 ("the patent") as amended in the form of auxiliary request 1, the claims of which were filed as auxiliary request 3 by letter dated 23 March 2021, and the invention to which it relates, meets the requirements of the EPC.

II. Claim 1 as granted reads as follows:

"*1. A multilayered wound care product comprising:*

(a) *an upper liquid-absorbing layer;*

(b) *an intermediate occlusive layer; and*

(c) *an active agent-releasing bottom layer;*

wherein the occlusive layer and the active agent-releasing layer are sheet-like layers with co-aligned pores or perforations that enable the passage of wound exudate through the common pores or perforations of the said two layers to reach the liquid-absorbing layer and simultaneously enable the release of the active agent from the area between the pores or perforations to enter the wound site."

III. Two oppositions were filed invoking grounds under Article 100(a) to (c) EPC. Reference was made to the following documents, *inter alia*:

D1: WO 2016/038109 A1

D12: WO 2016/079538 A1

D13: WO 2012/052561 A2

IV. By letter dated 23 March 2021, the patent proprietor filed *inter alia* the set of claims of auxiliary request 3. During the oral proceedings, it made auxiliary request 3 its auxiliary request 1. The patent as granted was maintained as the main request. The opposition division's conclusions in its decision included the following:

- The ground for opposition under Article 100(c) EPC did not prejudice maintenance of the patent as granted.
- The subject-matter of claim 1 as granted was not novel over the disclosure in document D1.
- The subject-matter of claim 1 of auxiliary request 1 was novel and involved an inventive step in view of D12 or D13 taken as the closest prior art.

V. Since the patent proprietor and opponent 1 are both appellant and respondent in the present proceedings, for simplicity the board will continue to refer to the parties as the patent proprietor and opponent 1.

VI. In its statement of grounds of appeal and its reply to opponent 1's appeal, the patent proprietor argued, *inter alia*, that the subject-matter of claim 1 as granted did not extend beyond the content of the application as filed, was novel over the disclosure in document D1 and involved an inventive step.

VII. In its statement of grounds of appeal and its reply to the patent proprietor's appeal, opponent 1 argued, *inter alia*, that the subject-matter of claim 1 as granted extended beyond the content of the application as filed, was not novel over the disclosure in D1, and did not involve an inventive step starting from D1 as the closest prior art. Furthermore, opponent 1 objected

under Article 123(2) and Article 56 EPC to auxiliary request 1 found allowable by the opposition division.

VIII. The parties were summoned to oral proceedings as per their requests. In preparation for the oral proceedings, the board issued a communication under Article 15(1) RPBA. In that communication, the board expressed, *inter alia*, its preliminary opinion that the subject-matter of claim 1 as granted lacked novelty over the disclosure in document D1.

IX. The patent proprietor replied to the board's communication and made further submissions in support of patentability of the claimed subject-matter.

X. Oral proceedings before the board were held on 7 July 2025 by videoconference in the presence of the patent proprietor and of opponent 1. Opponent 2 did not attend the oral proceedings, as announced by letter dated 19 May 2025. The proceedings were continued in its absence pursuant to Rule 115(2) EPC and Article 15(3) RPBA.

XI. Final requests relevant to the decision

The patent proprietor requested that the appealed decision be set aside and that the patent be maintained as granted (main request), implying that the oppositions be rejected. Alternatively, the patent proprietor requested, as auxiliary request 1, the dismissal of the opponent 1's appeal, meaning that the patent be maintained in amended form in the version considered allowable by the opposition division.

Opponent 1 requested that the appealed decision be set aside and that the patent be revoked in its entirety.

Opponent 2, a party to the appeal proceedings under Article 107, second sentence, EPC, did not file any submission or request.

XII. As regards the parties' submissions that are relevant to the decision, reference is made to these in the reasons for the decision set out below.

Reasons for the Decision

Main request - patent as granted - claim 1 - ground for opposition under Article 100(c) EPC - added subject-matter

1. Claim 1 as granted (point II above) contains the following amendments to claim 1 of the application as filed, which have been highlighted by the board:

"*1. A multilayered wound care product comprising:*

(a) *an upper liquid-absorbing layer;*

(b) *an intermediate occlusive layer; and*

(c) *an active agent-releasing bottom layer;*

wherein the occlusive layer and the active agent-releasing layer are sheet-like layers with ~~*common*~~ ***co-aligned*** *pores or perforations that enable the passage of wound exudate through* ***the common pores or perforations of the*** *said two layers to reach the liquid-absorbing layer* ***and simultaneously enable the release of the active agent from the area between the pores or perforations to enter the wound site.***"

1.1 Opponent 1 raised several objections of added subject-matter, as follows.

1.1.1 It argued that the application as filed did not contain any basis for two kinds of pores or perforations, namely *co-aligned* and *common pores* or perforations as required by claim 1 as granted. In particular, the term co-aligned was unclear, giving rise to an extension of the claimed subject-matter to embodiments not disclosed in the application as filed.

1.1.2 Moreover, the feature "*co-aligned pores or perforations*" expressed two alternatives, namely either co-aligned *pores* or co-aligned *perforations*. The fact alleged by the patent proprietor and opposition division that claim 14 as filed or the description as filed did not distinguish between pores and perforations was irrelevant since claim 1 was clear as such. Indeed, it was well known in the field of medical wound dressing that both pores and perforations existed and represented different items. For example, a wound contact layer might be perforated, while an absorbent foam might have open cell pores. No reasons were apparent why the term "pores" would just represent another redundant term used to overdetermine the term "perforations". There was thus no need to consult the description or the dependent claims to interpret claim 1 as granted. It could thus not be assumed that pores and perforations as mentioned in claim 1 as granted were one and the same thing. Therefore the application as filed had to provide basis for both co-aligned *pores* and co-aligned *perforations*. However, the application as filed did not contain any disclosure of co-aligned pores.

1.1.3 Opponent 1 further argued that, as regards co-aligned perforations, the opposition division had referred to figures 1A and 5 of the application as filed, allegedly showing a sort of aligned perforations, whereas figures 1B, 1C and 4 did not show any co-alignment. However, no preference was disclosed in the application as filed for figures 1A and 5. Even accepting that the skilled person would have considered figures 1A and 5, the co-alignment feature would have had to be extracted from the specific embodiments shown in these figures, without also including in claim 1 as granted other

features present in these embodiments. This amounted to an unallowable intermediate generalisation.

1.1.4 Furthermore, according to opponent 1, the application as filed did not provide any basis for pores or perforations enabling, i.e. causing, the flow of exudate and active agent in opposite directions as required by claim 1 as granted (hereinafter the "enabling feature"). According to opponent 1, the passage on page 4, lines 26 to 34 of the application as filed, which was indicated by the patent proprietor as a basis, did not constitute a proper disclosure for the enabling feature of claim 1 as granted. In this passage, the application as filed disclosed two separate mechanisms: on the one hand, the passage of wound exudate through the active agent-releasing layer and the occlusive layer as enabled by the pores or perforations; on the other hand, the release of active agent from the area between the pores or perforations to reach the wound site. These two mechanisms had been combined in claim 1 as granted, i.e. a nexus between these two mechanisms had been included, by stating that especially the pores should enable the release of the active agent. Opponent 1 argued that pores might well allow the release of active agents from their inner surface, i.e. this feature made technical sense, but it was not disclosed in the application as filed.

1.2 Opponent 1's arguments are not convincing for the following reasons.

1.2.1 The board holds that the feature of claim 1 as granted expressed by the sentence (emphasis added by the board): "*the occlusive layer and the active agent-releasing layer are sheet-like layers with* ***co-aligned pores or perforations*** *that enable the passage of wound exudate through* ***the common pores or perforations*** *of the said two layers*" may create ambiguity; in fact, co-

aligned and common pores or perforations could be regarded as referring either to the same pores or perforations or to different sets of pores or perforations, one possibly being a sub-set of the other. However, when construing this feature in the light of the description of the patent (see in this respect decision G 1/24 of the Enlarged Board of Appeal, Order), the skilled person would have established directly and unambiguously that the same pores or perforations are intended. Indeed, the term "*co-aligned*" is not mentioned as such in the description, which recites only "*common*" pores or perforations (see e.g. paragraphs [0001] and [0156] to [0158] of the patent). According to these passages of the patent, the pores or perforations common to the intermediate occlusive layer and the active agent-releasing layer enable the passage of wound exudate through these two layers. This enabling feature is mentioned with the same wording in claim 1 as granted as belonging to the co-aligned pores or perforations. The board thus holds that the term "*co-aligned*" is to be regarded as merely expressing another way, but with the same meaning, to define the pores or perforations "*common*" to the intermediate occlusive layer and the active agent-releasing layer. Thus the co-aligned feature does not change the technical content of claim 1 as granted. Hence the fact that this feature is not disclosed *verbatim* in the application as filed does not mean that it adds subject-matter extending beyond the content of the application as filed.

1.2.2 Contrary to opponent 1's view, the board further holds that the term "*pores or perforations*" in claim 1 as granted creates ambiguity since it is unclear whether it expresses two alternative items or the same item. However, the board concurs with the patent proprietor's view that the skilled person, when construing this term

in the light of the description of the patent (see in this respect decision G 1/24 of the Enlarged Board of Appeal, Order), would have directly and unambiguously established that pores and perforations indicate the same entity. This conclusion results for example from reference sign 4: in fact, on page 18, line 44 the patent discloses examples of perforation patterns on the wound care product by referring to figure 2 of the patent. In figure 2, the perforations bear the reference sign 4. The same reference sign 4 then indicates the item "pores" in the list of reference signs provided in paragraph [0205] of the patent. Additionally, as indicated by the patent proprietor, claim 14 as granted discloses that "pores or perforations have a triangular, rectangular, hexangular, ellipsoid or circular form", thus confirming that the same item is intended. The same follows from the disclosure of the method of preparation of the claimed wound care product in paragraph [0194] of the patent: the occlusive layer is bonded to the active agent-releasing layer and then the bilayer so obtained "is provided with pores or perforations". Moreover, as submitted by the patent proprietor, the diagram in figure 3 of the patent mentions "*holes*" when referring to pores and perforations as a further demonstration that the same entity is intended. Therefore, contrary to opponent 1's view, no separate basis for pores on one hand and perforations on the other hand, extending through the whole thickness of the occlusive layer and active agent-releasing layer, is needed according to the disclosure of the application as filed.

1.2.3 Irrespective of whether the terms "*pores*" and "*perforations*" indicate the same or different items, the feature expressing that the intermediate occlusive layer and the active agent-releasing layer have co-

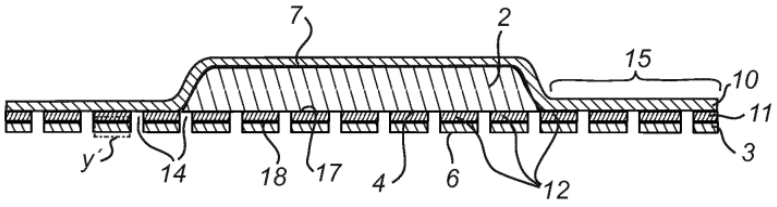
aligned pores or perforations is directly and unambiguously disclosed e.g. in claim 1 as filed. Therefore there is no need to consult the figures of the application as filed to find a basis for this feature.

1.2.4 As regards the enabling feature, the board shares the patent proprietor's view that this feature is directly and unambiguously disclosed on page 4, lines 26 to 34 of the application as filed. In fact, even though a different wording is included in claim 1 as granted, no difference in comparison with this passage of the description results: according to the passage on page 4 of the application as filed, it is the presence of the pores or perforations provided in the occlusive layer and the active agent-releasing layer that enables on one hand the passage of wound exudate through said two layers to reach the liquid-absorbing layer and, on the other hand, the simultaneous release of the active agent from the area between the pores or perforations, as mentioned in claim 1 as granted. The enabling feature of claim 1 as granted does not imply that the active agent is released from the inner surface of the pores, as alleged by the opponent, but only from the area between the pores or perforations. The inner surface of a pore or perforation is within this pore or perforation rather than between pores or perforations.

1.3 For these reasons, the board concluded that the amendments to claim 1 of the application as filed contained in claim 1 of the patent as granted do not lead to any added subject-matter. Therefore the ground for opposition pursuant to Article 100(c) EPC does not prejudice maintenance of the patent as granted.

Main request - patent as granted - claim 1 - ground for opposition under Article 100(a) EPC and Article 54 EPC - novelty

2. According to the appealed decision (pages 10 to 12), opponent 1 objected to novelty of the subject-matter of claim 1 as granted in view of the disclosure in document D1. It referred in particular to the embodiment of a wound dressing shown in figure 2b of D1, reproduced below.



2.1 The patent proprietor argued that in figure 2b of D1 both layers (2) and (3) contained an active agent and thus were sub-layers of the active agent-releasing layer of D1. Hence substrate (2) of D1 had to be regarded as an active agent-releasing layer and not as an overlying liquid-absorbing layer as required by claim 1 as granted. Even though D1 disclosed that layer (2) might contain an absorbent material, a selection had to be made from page 9 of D1 where figure 2b was disclosed. Moreover, layer (11) in figure 2b of D1 could not be considered an occlusive layer within the meaning of claim 1 as granted since its permeability was not disclosed in D1. The patent proprietor noted that the permeability depended on various variables, such as thickness, production method and types of plastics used for layer manufacture. Indeed, polyurethane, polypropylene and polyethylene were mentioned on page 11, lines 11 and 12 of D1 as the materials of layer (11). The same materials were mentioned on page 10, lines 5 to 7 of D1 as being suitable to produce an optional vapour-permeable

transmission layer (10). Therefore the same materials could be used to produce both permeable and impermeable layers. Moreover, the embodiment of figure 2b of D1 incorporated the active agent in a coating (9) shown in figure 2C, which, however, was in the form of a plurality of dots or particles, thus not qualifying as a sheet-like layer as required by the active agent-releasing layer (c) of claim 1 as granted. The patent proprietor further noted that the skilled person in the field of wound dressings was very familiar with the term "sheet-like" layer. Accordingly, a layer needed to have a certain structural integrity and specific properties to qualify as being sheet-like. Silicone-based adhesives stated on page 3, lines 17 to 21 of D1 to be preferred for the adhesive layer (3) were typically wobbly and lacked the type of structural integrity and stand-alone properties to qualify as being sheet-like. The patent proprietor also observed that no perforations common to an occlusive and an active agent-releasing layer as required by claim 1 as granted were disclosed in figure 2b. Indeed, the coating (9) containing the active agent to be released was in the form of dots or particles. Thus it was not a layer containing perforations common to layer (11). While D1 on page 3, lines 22 to 24 disclosed that the coating might also be provided as a continuous layer, this was merely one alternative among various possibilities. Thus a further selection would have been needed to arrive at the subject-matter of claim 1 as granted. Therefore the patent proprietor argued that opponent 1's novelty objection had been conducted in a mosaic-like fashion with the benefit of hindsight; it should be concluded that the subject-matter of claim 1 as granted was novel over D1.

2.2 The patent proprietor's arguments are not convincing for the following reasons.

2.2.1 As noted by opponent 1, D1 discloses (page 4, line 22 to page 5, line 6; page 9, line 18 to page 10, line 3; figure 2b; claims 1, 2, 4 and 13) a wound dressing, comprising (reference signs as in figure 2b of D1 reproduced above)

- a substrate layer (2),
- an intermediate layer (11), corresponding to the intermediate occlusive layer (b) of claim 1 as granted and
- an adhesive layer (3) coated with a chemical compound to be released to a wound, corresponding to the active agent-releasing bottom layer (c) of claim 1 as granted,

wherein layer (11) and adhesive layer (3) are provided with common perforations (14), corresponding to the co-aligned pores or perforations required by claim 1 as granted.

According to D1 (*loc. cit.*), the absorption of exudates and wound fluids from the wound, and/or the release of a chemical compound from the substrate (2) to the wound, is facilitated through said perforations (14). At the same time, said chemical compound is released from the adhesive layer (3) present between said perforations (14) to reach the dermal surface. Hence the enabling feature of claim 1 as granted is also disclosed in D1.

2.2.2 Since the absorption of wound exudate by substrate layer (2) is directly and unambiguously disclosed in said passages of D1, substrate layer (2) qualifies as a liquid-absorbing layer (a) within the meaning of claim 1 as granted. The fact pointed to by the patent proprietor that, according to D1, substrate layer (2) can also comprise a chemical compound to be released to

the wound does not change the nature of substrate layer (2) able to absorb the wound exudate. Moreover, the possibility of having a releasable active agent in absorbing layer (a) is not excluded by the wording of claim 1 as granted either. Additionally, the fact that substrate layer (2) may include an absorbing material is directly and unambiguously disclosed throughout D1 (see e.g. page 4, lines 1 to 6; page 11, lines 26 to 30 and claim 13). Even accepting the patent proprietor's argument that a selection in this respect would have had to be made from the above-cited passage of D1, this would be a single selection, not able to confer novelty.

2.2.3 It follows that D1 discloses all the features of claim 1 as granted in combination.

2.2.4 As set out above, the patent proprietor alleged that the intermediate perforated layer (11) shown in figure 2b of D1 would not be occlusive within the meaning of claim 1 as granted, especially because its permeability was not mentioned. However, the term "*occlusive*" in claim 1 as granted is so vague and general that no distinction with respect to intermediate layer (11) of D1 can be recognised. In fact, as noted by opponent 1, no thickness or permeability or other properties of the occlusive layer (b) are specified in claim 1 as granted.

2.2.5 The same applies to the definition of active agent-releasing bottom layer (c) as being "*sheet-like*" according to claim 1 as granted. First of all, it is to be noted that what is required by claim 1 as granted is not that the layer is a sheet but rather that it is sheet-like. Also, the term "*sheet-like*" is so vague and general that no distinction between adhesive layer (3) of D1 and the active agent-releasing bottom layer (c) of claim 1 as granted can be recognised. With respect

to the patent proprietor's argument that silicone-based adhesives lacked structural integrity and stand-alone properties, the board notes that no particular structure or properties are specified in claim 1 as granted for the active agent-releasing bottom layer (c) apart from having co-aligned or common perforations with the occlusive layer (b). As set out above, the same is true for adhesive layer (3) and intermediate layer (11) of figure 2b of D1.

2.2.6 Also, the fact invoked by the patent proprietor that the chemical compound to be released from adhesive layer (3) of D1 is provided on adhesive layer (3) in the form of dots or particles of coating (9) does not affect the novelty considerations set out above. In fact, claim 1 as granted does not require any particular distribution of the active agent within the active agent-releasing bottom layer (c). This layer should only enable the release of the active agent. This is ensured in D1 by adhesive layer (3).

2.3 For these reasons, the subject-matter of claim 1 as granted is not novel over D1. The ground for opposition under Article 100(a) EPC in combination with Article 54 EPC, lack of novelty, prejudices maintenance of the patent as granted. Therefore the main request is not allowable.

Auxiliary request 1 - claim 1 - added subject-matter under Article 123(2) EPC

3. Claim 1 of auxiliary request 1 differs from claim 1 of the patent as granted (point II above) in that item (c) was amended as follows (amendments have been highlighted by the board):

"*(c) an active agent-releasing bottom layer* ***comprising a therapeutic gas as active agent***"

3.1 Opponent 1 raised objections under Article 123(2) EPC against the subject-matter of claim 1 of auxiliary request 1.

3.1.1 In its written submissions, opponent 1's objections were the same as mentioned above with respect to claim 1 as granted. For the reasons set out above with respect to claim 1 as granted, these objections were not found to be convincing.

3.1.2 At the oral proceedings, opponent 1 raised a further objection, arguing that a therapeutic gas as active agent was disclosed in the application as filed in relation to the wound care product embodiment shown in figure 5. However, this embodiment comprised several additional features, especially a gas-permeable layer, that had not been included in claim 1 of auxiliary request 1. The subject-matter of claim 1 of auxiliary request 1 was thus an intermediate generalisation of the embodiment of figure 5 without any basis in the application as filed.

3.2 This objection is not convincing either. In fact, the application as filed does not disclose a therapeutic gas as the active agent to be released to the wound only in conjunction with the embodiment shown in figure 5. In contrast, claim 4 of the application as filed, dependent *inter alia* from claim 1 as filed, discloses this possibility in general, further stating that a gas-permeable layer can preferably be included. Therefore, when the active agent is a therapeutic gas, the inclusion of a gas-permeable layer is disclosed in claim 4 of the application as filed as being optional. The same disclosure is found e.g. on page 16, lines 30 and 31 of the application as filed.

3.3 For these reasons, the board concluded that the subject-matter of claim 1 of auxiliary request 1 meets the requirements of Article 123(2) EPC.

Auxiliary request 1 - claim 1 - inventive step under Article 56 EPC

4. Closest prior art

4.1 Opponent 1 objected to inventive step of the subject-matter of claim 1 of auxiliary request 1 in view of D1 taken as the closest prior art. The patent proprietor requested that this objection not be admitted.

4.2 At the oral proceedings, the board decided that this objection was admitted into the proceedings. However, since the final decision is in favour of the patent proprietor (see below) no reasoning is needed as regards this admittance decision by the board.

5. Distinguishing feature

In view of the considerations concerning novelty of the subject-matter of claim 1 as granted set out above, the subject-matter of claim 1 of auxiliary request 1 differs from the disclosure in D1 only in that the active agent-releasing layer comprises a therapeutic gas. In fact, D1 discloses solid or liquid compounds to be released from adhesive layer (3) (see in particular page 6, line 19 to page 7, line 4 of D1).

6. Objective technical problem

6.1 Opponent 1 argued that no technical effect derived from the use of a therapeutic gas in lieu of the chemical compounds disclosed in D1. Thus the objective technical problem was the provision of an alternative wound care product.

6.2 The board, in opponent 1's favour, accepts this formulation of the objective technical problem.

7. Obviousness of the claimed solution

7.1 Opponent 1 submitted that according to claim 1 of auxiliary request 1 a therapeutic gas had to be released in use from the active agent-releasing layer. Therefore claim 1 of auxiliary request 1 encompassed the embodiment in which the gas was generated in use from solid precursors. Opponent 1 argued that documents D12 and D13 disclosed wound dressings using nitric salts for the generation *in situ* of a therapeutic gas, specifically NO, as a bioactive agent for wound healing. Opponent 1 then referred to page 6, lines 19 to 27 of D1 disclosing various salts to be included in adhesive layer (3) as active agents to be released. Since salts were used in both D1 and D12 or D13, the incorporation of the precursor layer system as disclosed in D12 or D13 into the already-existing active agent-releasing layer of D1 required no structural modification. This was confirmed by the fact that the wound dressing disclosed in figure 2b of D1 (see novelty discussion above) comprised all the structural features mentioned in claim 1 of auxiliary request 1. Moreover, both D1 and D12 disclosed a hydrogel as a possible material for the layers of the wound dressing. Therefore D12 or D13 rendered the claimed subject-matter obvious.

7.2 The board disagrees.

7.2.1 D12 discloses (page 2, line 11 to page 3, line 4; claims 1 and 31 to 33) a two-component system to be used *inter alia* for treating a wound, whereby the first component is a layer containing a nitrite, and the second component, to be placed in contact with the skin, is a hydrogel comprising a sulfonic acid. According to D12, the two components can be considered as two separate dressings. The second component can absorb exudates from the wound. When the two components

are placed in contact with each other, a chemical reaction takes place to produce nitric oxide released to the wound.

7.2.2 D13 discloses (page 3, claim 1 and figures) a wound dressing comprising: a first compartment containing a reducing agent and an agent capable of forming a transient complex with nitric oxide; a second compartment containing a nitric oxide precursor that forms nitric oxide when contacted with and reduced by the reducing agent; a barrier separating the contents of the first and second compartments; and a nitric oxide-permeable membrane that is impermeable to the nitric oxide precursor and reducing agent. According to D13, the first and second compartments are configured such that breaking or removing the barrier allows the nitric oxide precursor to mix with the reducing agent and complex-forming agent, thereby producing nitric oxide and a transient nitrosyl complex. The nitric oxide produced is released from the dressing through the nitric oxide-permeable membrane.

7.2.3 The board concurs with the patent proprietor's view that the wound dressings disclosed in D12 and D13 are structurally entirely different from the wound dressing of D1. Even though both D1 and D12 disclose the use of a hydrogel, this is used in D1 as the material of the absorbing layer (2) (see figure 2b reproduced above and page 11, lines 26 to 30), whereas it is used in D12 for the layer in contact with the skin. Moreover, as argued by the patent proprietor, when D1 discloses the use of two active agents (page 9, line 18 to page 10, line 3), these are released separately to the wound, one from absorbing layer (2) through perforations (14) and the other from the adhesive layer (3). Even though salts are used as chemical agents in D1 as well as in D12 and D13, contrary to the opponent's view the gas delivery

system taught in D12 and D13 cannot be incorporated into the device of D1 without substantial structural modifications; for example, the intermediate layer (11) in D1 would have to be removed to allow the contact of the salts to first produce a gas to then be released to the wound.

7.2.4 Therefore, when starting from D1 and consulting D12 and D13, the skilled person facing the above-mentioned objective technical problem would at most have departed from the wound dressing of D1 and turned to the dressings of D12 or D13. The subject-matter of claim 1 of auxiliary request 1 would, however, not have been obtained.

7.3 For these reasons, the board concluded that the subject-matter of claim 1 of auxiliary request 1 involves an inventive step within the meaning of Article 56 EPC.

Conclusion

8. Opponent 1 did not raise any other objections against auxiliary request 1. It follows that auxiliary request 1 is allowable. Since auxiliary request 1 is the amended version of the patent found allowable by the opposition division and the patent proprietor's main request is not allowable, the overall conclusion is that the appeals by both the patent proprietor and opponent 1 have to be dismissed.

Order

For these reasons it is decided that:

The appeals are dismissed.

The Registrar: The Chairman:

C. Vodz M. O. Müller

Decision electronically authenticated