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**D E C I S I O N**  
**of 22 July 2002**

**Case Number:** T 1015/98 - 3.3.2

**Application Number:** 92907245.2

**Publication Number:** 0576523

**IPC:** A61L 25/00

**Language of the proceedings:** EN

**Title of invention:**  
Wound dressing

**Patentee:**  
Smith & Nephew PLC

**Opponent:**  
Coloplast A/S

**Headword:**  
Wound dressing/SMITH & NEPHEW

**Relevant legal provisions:**  
EPC Art. 123(2), (3), 84, 113(2), 83, 56

**Keyword:**  
"The appellant had no objection against the set of claims under consideration"

**Decisions cited:**  
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**Catchword:**  
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Case Number: T 1015/98 - 3.3.2

**D E C I S I O N**  
**of the Technical Board of Appeal 3.3.2**  
**of 22 July 2002**

**Appellant:** Coloplast A/S  
(Opponent) Holtedam 1  
DK-3050 Humlebaek (DK)

**Representative:** Von Kameke, Allard, Dr.  
Uexküll & Stolberg  
Patentanwälte  
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D-22607 Hamburg (DE)

**Respondent:** Smith & Nephew PLC  
(Proprietor of the patent) Heron House  
15 Adam Street  
London WC2N 6LA (GB)

**Representative:** Gilholm, Stephen Philip  
Corporate Patents Department  
Smith & Nephew Group Research Centre  
York Science Park  
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**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 21 August 1998  
rejecting the opposition filed against European  
patent No. 0 576 523 pursuant to Article 102(2)  
EPC.

**Composition of the Board:**

**Chairman:** U. Oswald  
**Members:** J. Riolo  
S. U. Hoffmann

## Summary of Facts and Submissions

- I. European Patent No. 0 576 523 based on application No. 92 907 245.2 was granted on the basis of 23 claims.

Independent claim 1 as granted read as follows:

1. A wound dressing comprising a gel containing a water insoluble, water swellable cross-linked cellulose derivative, water and a polyol component wherein the gel comprises less than 10% by weight of the cellulose derivative.

- II. Notice of opposition was filed against the granted patent by the appellant.

The patent was opposed under Article 100(a) EPC for lack of inventive step.

The following documents were cited, inter alia, during the proceedings:

(1) WO-A-8400111

(2) EP-A-415183

- III. The decision of the Opposition Division pronounced on 30 June 1998 rejected the opposition.

The Opposition Division held that, despite the broad scope of claim 1, the contested patent disclosed the invention in a manner sufficiently clear and complete for it to be carried out by the skilled person. It was of the opinion that the submissions made by the

opponent related in fact to objections under Article 84 EPC, which is not a ground of opposition. It therefore concluded that the requirements of Article 83 were fulfilled.

As to inventive step the Opposition Division considered that the problem to be solved by the patent in suit was to provide a wound dressing which promoted debridement where necrotic tissue was already present and eschar formation had already occurred, and acted as an absorbent where the wound was exuding.

In its view, this problem was solved with a wound dressing comprising a gel containing a water insoluble, water swellable cross-linked cellulose derivative, water and a polyol component, wherein the gel comprises less than 10% by weight of the cellulose derivative.

Starting from document (1), which disclosed an aqueous gel composition for treating wounds comprising a cellulose derivative and a polyol, as closest state of the art, the Opposition Division held that nothing in the available prior art documents taught or suggested using water insoluble, cross-linked cellulose derivatives in an amount of less than 10% by weight in order to solve the above defined problem, the more so, because the problem itself was not considered in the prior art.

IV. The appellant (opponent) lodged an appeal against the said decision.

V. Oral proceedings were held before the Board on 22 July 2002

During the oral proceedings, the respondent (patentee) filed a set of 20 claims as a sole request. This set of claims corresponds to the set of claims as granted wherein dependent claims 13 and 14 as well as the process claim 23 were deleted and with claim 1 having the following wording:

"A wound dressing containing a water insoluble, water swellable cross-linked cellulose derivative, water and a polyol component wherein the dressing comprises a gel and the gel comprises 2 to 4% by weight of the gel of the cellulose derivative, and 10 to 30% by weight of the gel of the polyol component."

- VI. The appellant announced that it had no objections to the maintenance of the patent on the basis of the sole request as filed during the oral proceedings before the Board.
  
- VII. The appellant requested that the decision under appeal be set aside and it had no objections against the subject-matter of the sole request filed during the oral proceedings.

The respondent requested that the patent be maintained on the basis of its sole request filed during the oral proceedings.

### **Reason for the Decision**

- 1. The appeal is admissible.
  
- 2. The appealed decision is set aside, since the patentee no longer agreed with the text of the set of claims as

granted, ie it requested the maintenance of the patent in amended form based on the set of claims as filed during the oral proceedings before the Board (Article 113(2) EPC).

3. *Article 123(2) and (3) and 84 EPC*

Claim 1 was restricted with respect to claim 1 as granted and as maintained by the Opposition division by the introduction of the gel and polyol concentration ranges disclosed respectively on page 10, line 1 and page 9, paragraph 3 of the application as originally filed.

The requirements of Article 123(2) and (3) are therefore fulfilled.

The Board has also no objections as to Article 84 EPC with respect to this set of claims.

4. *Article 83 EPC and Inventive step*

The Opposition Division accepted that the broader claims as granted fulfilled the requirements of Article 83 EPC as well as the requirements of inventive step.

The appellant did not contest that the restricted subject-matter of the set of claims now under consideration fulfilled the requirements of both Articles 83 and 56 EPC.

The Board sees no reason to differ.

**Order**

**For these reasons it is decided:**

1. The decision under appeal is set aside
  
2. The case is remitted to the first instance with the order to maintain the present patent on the basis of claims 1 to 20 according to the sole request filed during the oral proceedings and a description to be adapted.

The Registrar:

The Chairman:

Mr. Townend

U. Oswald