

Europäisches  
Patentamt

Beschwerdekammern

European Patent  
Office

Boards of Appeal

Office européen  
des brevets

Chambres de recours



T 102/82

Summary of Facts and Submissions

I. European Patent application No. 79 900 341.3 filed under the Patent Cooperation Treaty on 30 March 1979 and published on 1 November 1979 under publication No. WO 79/-00871, claiming the priority of an application of 3 April 1978 (SE 7803697-7), was refused by the decision of the Examining Division 001 of the European Patent Office on 6 April 1982. The decision was based on the claim filed by the applicant with their letter of 9 December 1981, which has the following wording:

"A sterile compress for the treatment of discharging wounds, comprising a dry compress containing sodium chloride and/or zinc salt(s) in a dry solid condition, said salt(s) effecting the wound bottom directly to stimulate the healing of the wound and by osmotic forces effecting the secretion from the wound being absorbed by the dry compress."

II. The stated grounds for the refusal were that the subject-matter of the claim was not novel. German Patent 112 192 discloses a menstrual wadding which has been impregnated with solutions of sodium chloride and other salts, and then dried. The addition of glycerine to such compositions was only optional. The statement of the desired effect of the dry compress in the claim should not distinguish the same from the wadding of the cited art, since it must be assumed that the latter would provide the same result. The claim therefore covered the known menstrual waddings and lacks novelty.

**DECISION**  
of the Technical Board of Appeal 3.3.1  
of 19. September 1983

Appellant: Mölnlycke AB.  
S 40503 Göteborg

Representative: Roth, Michel  
Göteborgs Patentbyrå AB  
Box 5005  
S-40221 Göteborg

Decision under appeal: Decision of Examining Division 001 of the European Patent  
Office dated 6.4.82 refusing European patent  
application No 79 900 341.3 pursuant to Article 97(1)  
EPC

**Composition of the Board:**

Chairman: D. Cadman  
Member: G. Szabo  
Member: L. Gotti-Porcinari

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III. The applicants filed an appeal against the decision of 6 April 1982 on 1 June 1982 with the payment of the fee, and submitted a statement of the grounds on 3 August 1982. According to the appellants the documents cited in the search report suggested moist compresses or, alternatively, a dry sanitary towel for a purpose different from the healing of wounds. The cited German Patent was published in 1899. The disclosure therein contained no hint towards the new use represented by the present invention. The more relevant art is the moist compress with sodium chloride which is in everyday use.

IV. When invited by the Board of Appeal to give further explanation and convincing evidence, the appellants responded in due time and submitted details of clinical investigations in comparison with conventional moist compresses containing sodium chloride. Finally the following amended claim was submitted for consideration:

"A compress for treatment of discharging wounds, said compress containing sodium chloride characterised in that the compress is sterile and that the said salt is in a dry solid condition".

V. The appellants requested that the contested decision be set aside and the application accepted on the basis of the new claim.

#### Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC, and is, therefore, admissible.

2. There can be no formal objection to the current version of the claim, since it is adequately supported by the specification as originally filed. The reference to particular conditions of use have been deleted and the salts limited to sodium chloride in a dry solid condition (cf. also page 2, lines 30 - 34).
3. The invention relates to problems in the treatment of wounds. The desired healing effect should avoid a maceration of the wound edges and the formation of crusts. This was to be achieved with a compress that need not be changed as often as those presently available and which shows no tendency to stick to the wound. The problem was solved by the claimed sterile compress, which contains dry solid sodium chloride.
4. According to the state of the art, moist compresses containing a solution of sodium chloride have been in regular use for a long time. There has been no suggestion that such compresses would be improved by simply presenting them in a dry instead of a wet state. The evidence submitted by the appellant shows that the healing process was improved in difficult cases by a change from moist to dry sodium chloride-containing dressings. The avoidance of crust formation and of capillary injuries was achieved and this was crucially important for patients with decubitus who are often suffering from the consequences of a protracted and even insufficient healing process. Apart from the advantages in such and similar cases, the new treatment with the dry compresses generally involved no disadvantage when compared with the moist varieties in conventional use. These results were unexpected, particularly in view of the long usage of the latter variety. The claimed compress is, therefore, not obvious in respect of such prior art.

5. Notwithstanding the surprising effects achieved by the claimed modified compresses, the question arises whether or not the same articles may have already been obvious in view of other disclosures in the state of the art. German Patent 112 192 of 1899 discloses a menstrual wadding or sanitary napkin, which contains sodium chloride in a dry state. There is no evidence suggesting that the article could have been made of a fabric unsuitable for wound dressing. It appears, however, that no sterilisation was described or implied by the description. The discharge of the menstrual blood takes place in a non-sterile environment and there is no open wound involved which must be protected against infection by specific measures involving more than the usual cleanliness. The appellants, who are themselves selling sanitary napkins, confirm that such articles are neither sterile nor is there any reason for them to be so in a sense required for wound treatment. The sterility of the compress according to the present invention is, therefore, a feature which has no technical relevance to the old article, but is important to the provision of the desired effect, and thereby to the problem to be solved by the present invention. It distinguishes the new compress from the article described in the cited German specification.
6. However, whether or not the claimed compress is inventive in the light of German Patent 112 192 must also be investigated. The purpose of the menstrual waddings described in the cited art was the efficient absorption of blood and no sterility was required. Although involved in a sensitive location where irritation of the skin had to be avoided the alleged prevention of blood coagulation

- in the cited specification cannot, in any case, be considered as pointing to the treatment of wounds. The novel effects of the dry compresses, including those which are very advantageous to slow healing wounds, were neither to be expected in consequence of using the menstrual wadding itself for a new purpose, nor of the additional sterility condition itself. The menstrual waddings were not themselves described in terms which were sufficiently encouraging or far reaching in their implications to suggest obvious trials in other areas with promising results. If anything, any initial impact of the dry salt-containing menstrual aid in the art, as a source of further improvements, must have been lost in the 80 years since publication, in consequence of neglect and lack of interest.
7. In view of the above, the discovery of additional properties and new uses, the small but necessary modification of the known article render the same novel and inventive in this respect too. Although the modification itself, i.e. sterility, is not causing the advantageous results, it is nevertheless a normal condition of the new use. The feature did not suggest itself as providing a significant improvement of the known article for the original purposes of use in absorbing menstrual discharge. The skilled man was, therefore, not in an inevitable "one-way" situation which might have rendered the dry compress obvious on grounds of improved suitability for the original purpose, as a routine workshop variant, notwithstanding its newly discovered effect in another kind of use. It is in this respect the opinion of the Board, that whilst the existence of a surprising effect appears to be an essential condition for the inventive step, this may not necessarily override the con-

clusion of obviousness in another respect, particularly if the skilled man had had compelling reasons to consider the same entity as an inevitable or even unique solution of that another known problem. The need to balance such considerations does not arise in the present case, since the claimed compresses represented unforeseeable improvements which were not overshadowed by predictable advantages in another respect, and are therefore inventive on the basis of their unexpected effects.

ORDER

It is decided that:

1. The decision of the Examining Division 001 of the European Patent Office dated 6 April 1982 is set aside.
2. The case is remitted to the first instance with the order to grant a European patent on the basis of the following documents:

(1) Description

Pages 1, 3 to 5 as amended with letter of 6 September 1983 (received 9 September 1983), with minor corrections approved on the telephone on 15 September 1983,  
Page 2, as amended with letter of 9 September 1983 and received on 12 September 1983, with minor corrections approved on the telephone on 15 September 1983.

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(2) Claim:

As amended with letter of 9 September 1983, and received on 12 September 1983.

Registrar:

Chairman

J. R. He

DI Cadman