

Answer to Question 1:

The amended set of claims (3 claims) is as follows:

1. A hydrocolloid plaster comprising:

- a carrier film; and
- a hydrocolloid layer on the carrier film;

characterized in that the hydrocolloid layer comprises pectin.

2. A hydrocolloid plaster according to claim 1, wherein the hydrocolloid layer comprises CMC and at least 10% weight/weight pectin.

3. A hydrocolloid plaster according to any previous claim, wherein the hydrocolloid layer comprises from 0.5% to 1.5% (w/w) salicylic acid.

Comment:

When preparing the CEIPi answer to this paper, we have debated whether D3 discloses the features of claim 1 as shown above.

Indeed, D3 discloses a carrier film (D3, cling film), a hydrocolloid (pectin is a hydrocolloid because it forms a gel when it mixes with water (D3) – see definition of “hydrocolloid” in the Application) on the carrier film (D3, place a spoonful of jam on a piece of cling film), and the hydrocolloid comprises pectin.

It is debatable whether a “spoonful” of the jam can be considered a “layer” of jam, or a “lump” of jam. In this respect, the corresponding description used in D3 (“place a spoonful on a plate or on a piece of cling film, and leave to cool”) corresponds rather to a lump than to a layer (e.g. „pour a spoonful [...] and leave to solidify“ would imply formation of a layer from a semi-liquid jam).

It is not fully convincing that a cling film with a spoonful of jam can be considered to be a “plaster”. According to the definition in the Application, the term “plaster” is used to describe an adhesive, protective covering that is applied to skin. D3 discloses touching, and that can be considered to show “application to skin”, but there is no clear disclosure of adhesive and protective properties. E.g. there is no indication of tackiness or adhesion of the jam when touched. It is noted that there is no explicit or implicit disclosure of use of the cling film with a spoonful of jam in any uses corresponding to plaster.

It is also noted, as a slight pointer, that the EESR presented in the paper did not mention that D3 would be novelty-destroying for claim 1 as filed.

A small team of tutors debated the disclosure of D3 for a rather long time. In the short timeframe of the exam, a candidate had to make a decision and proceed correspondingly. It is important to have consistency between the set of claims and the argumentation.

In case the candidate considered D3 as disclosing all features of claim 1 as shown above, the following claim set would be appropriate:

Amended set of claims (**narrow version**):

1. A hydrocolloid plaster comprising:

- a carrier film; and
- a hydrocolloid layer on the carrier film, wherein the hydrocolloid layer comprises CMC and pectin.

2. A hydrocolloid plaster according to claim 1, wherein the hydrocolloid layer comprises at least 10% weight/weight pectin.

3. A hydrocolloid plaster according to any previous claim, wherein the hydrocolloid layer comprises from 0.5% to 1.5% (w/w) salicylic acid.

Possible further amendment: replacement of „plaster“ by „adhesive protective covering for application to skin“ (basis: first paragraph of page 2)

Possible further amendment: in claim 3, broadening the claim to cover any antibacterial agent (basis: first sentence of the last paragraph).

Answer to Question 2:

The hydrocolloid layer in claim 1 was specified as comprising pectin. This is based on page 2, lines 15-18, wherein it is indicated that “in some embodiments, the hydrocolloid layer comprises pectin”. This feature was not disclosed as linked to any other feature.

Basis for claim 1 in case of the „**narrow version**“ of the claims: The hydrocolloid layer in claim 1 was specified as comprising CMC (based on claim 2) and pectin (based on page 2, lines 15-18).

Claim 2 discloses the composition of the hydrocolloid layer, based on the preferred embodiment disclosed on page 2, lines 15-18, wherein it is indicated that in “a preferred embodiment, the hydrocolloid layer comprises CMC and at least 10% weight/weight (w/w) pectin”.

Claim 3 is now dependent on amended claims 1 and 2, but this combination is derivable from the application as filed (page 2, lines 20-23, where it is indicated that salicylic acid can be contained as a further component, i.e. can be combined with any other embodiment).

The amended claims are thus directly and unambiguously derived from the patent application as filed.

Answer to Question 3:

Documents D1, D2 and D3 are prior art in accordance with Article 54(2) EPC.

The subject-matter of claim 1 is novel over D1 since D1 does not disclose that the hydrocolloid layer comprises pectin.

The subject-matter of claim 1 is novel over D2 since D2 does not disclose that the hydrocolloid layer comprises pectin.

The subject-matter of claim 1 is novel over D3 since D3 does not disclose a plaster as defined in the Application (adhesive and protective), and does not disclose a hydrocolloid layer (it discloses a spoonful of hydrocolloid placed on a film which is not a layer).

In case of the “**narrow version**” of the claims: The subject-matter of claim 1 is novel over D3 since D3 does not disclose CMC in the hydrocolloid (jam).

The subject-matters of dependent claims 2-3 are new in view of D1, D2 and D3 by virtue of the dependency of these claims on claim 1.

Answer to Question 4:

The claimed invention is in the field of protective coverings. Documents D1 and D2 mention such protective coverings (pimple patches, corn removal plasters), while document D3 is in the field of jam manufacturing which is an entirely different field.

Documents D1 and D2 are in the same field as the present invention, but D1 is closer because D2 does not disclose a carrier layer. D2, although also describing plasters and hydrocolloids, is further away, because it primarily is directed to the role of salicylic acid in corn removal.

D1 is the closest prior art.

Note: It would be defensible to also choose D2 as the closest prior art, with a convincing reasoning (example: While both D1 and D2 relate to plasters, only D2 deals with a technical purpose of “providing protection from rubbing and pressure” (see D2, line 21), that is closely related to the one of the application as originally filed (see page 1, lines 7-8). On top of that, the corn removal plasters of D2 are meant to be used on toes or the sole of the foot, just like the blister plasters disclosed by the application as originally filed (see figure). Also, it is arguable that, by disclosing corn removal plasters, D2 implicitly teaches a carrier film, in view

of the definition of the term “plaster” that is provided for in the application as originally filed. Therefore, D2 discloses as many features of claim 1 as D1. Consequently, D2 would qualify as closest prior art).

The remainder of the argumentation would remain essentially the same whether starting from D1 or D2 as CPA.

Claim 1 of the present invention differs from D1 in that *the hydrocolloid layer comprises pectin*.

Effect of pectin: When pectin is used in the hydrocolloid layer, it provides structural support for cell and tissue regrowth and therefore speeds up wound healing time (Application, page 2, lines 15-17).

The objective technical problem solved by the distinguishing feature (pectin) is thus to speed up the wound healing time.

D1 itself does not mention pectin, and also does not contemplate speeding up wound healing. D1 contains CMC and salicylic acid in the hydrocolloid, which serve to heal acne spots by absorbing bacteria and fluid.

D2 does not mention pectin and does not contemplate speeding up wound healing. The mechanism of action of the plaster of D2 is to break down skin cells by salicylic acid, for treatment of corns and calluses.

None of D1 and D2 contains any hint towards solving the technical problem by adding pectin into the hydrocolloid layer.

D3 is from a far removed field and would not be taken into account by the skilled person. Even in the unlikely case the skilled person would consult D3, the skilled person would not learn from D3 that pectin could solve the technical problem underlying the invention, as D3 only refers to use of pectin as a gelling agent.

The subject matter of claim 1 thus involves an inventive step in view of the of the cited prior art. By virtue of their dependencies, the subject matter of claims 2 and 3 also involve an inventive step in view of the cited prior art.

Answer to Question 5:

Claim 1 recites a hydrocolloid plaster, and is not limited to any specific type or use of hydrocolloid plaster.

Page 2, lines 1 to 3 of the patent application as filed defines the plaster as follows: “the term “plaster” is used herein to describe an adhesive, protective covering (such as a sticker or

patch) that is applied to skin and can be used as a dressing to treat wounds or skin conditions such as blisters, minor burns, corns, calluses, or acne.”

In line with Article 69(1) EPC and with Article 1 of the Protocol on the Interpretation of Article 69 EPC, the currently pending claim already covers hydrocolloid wound dressings.

This also means that the filing of a divisional application makes no sense, because there is no support in the present application to claims plasters other than those as presently claimed.

Answer to Question 6:

It would not be possible to add claims directed to hydrocolloid plasters made from gelatine or containing gelatine to this application without infringing Article 123(2) EPC, since the application as originally filed does not mention gelatine.

A new patent application on this subject-matter cannot be filed either, since your main competitor has already made such plaster available to the public by selling them, with the composition being detailed in the leaflet. The subject-matter of a claim directed to such plasters would thus not be novel in view of such prior use.