CANDIDATE'S ANSWER

C, EQE 2016

NOTICE OF OPPOSITION

A: Effective dates of the claims

Claims 1, 3 and 5: priority date because they validly claim priority and their subject matter corresponds to that of the priority application (A.88(3) and 89 EPC).

Claims 4 and 6: filing date because subject matter of these claims does not correspond to that of the priority document (Art. 87(1) EPC and G2/98). In particular, claim 4 was not present in the priority document, and the description of the priority document does not disclose a fastening means with one elastic strap and one non-elastic strap (see [25] of the priority document which describes only fastening means with two elastic straps). Claim 6 was also not present in the priority document, and [11] of the application which relates to the subject matter of claim 6 was not present in the priority document.

B: Documents used

A1 (EN): patent opposed

A2 (EN): Art. 54 (3) EPC against claims 1, 3 and 5, because publication date after effective date but filing date before.

Art. 54(2) EPC against claims 4 and 6 because publication date before effective date.

A3 (EN), A4 (EN), A5 (EN), A6 (EN):

Article 54(2) EPC against all claims as publication date before effective date.

Note that A5 is a package insert of the product Therapack © purchased in 2010. Further evidence as to the purchase of this product in 2010 will be submitted shortly.

Claim 1: Novelty using A2 (A. 54 EPC)

A2 discloses

- A re-usable therapeutic device ([8] – pad may be reactivated, [3] – therapeutic pad)

- a closed envelope ([5] - pouch, A3[4] – a pouch is a closed envelope)

- the envelope being partitioned into at least two rows ([5] – pouch with one or more rows)

- each comprising at least two non-communicating pockets ([5] – individual compartments shown in Fig. 1 with 5 in each row, [6] – each compartment isolated)

- positioned side by side ([5] and shown in Fig 1)

- each pocket comprising a thermally active composition ([4] – gel composition actively produces heat as a result of a chemical reaction, A1[2] – thermally active composition = composition which as a result of a chemical reaction is able to actively produce heat)

- integrated fastening means for providing temporary fastening of the device to a patient ([7] – buttons and button holes, [8] – after the buttons are unfastened, thus fastening must be temporary, [7] describes that buttons keep pad in place on the area to be treated).

Thus claim 1 lacks novelty over A2.

Inventive step: Claim 1 using A3 and A4 (A. 56 EPC)

A3 is the closest prior art because it relates to the same technical field as the patent, namely therapeutic devices for animals, especially horses, and it concerns the same general problem as claim 1, namely a device with even distribution (A3[3]) of the therapy applied.

A3 discloses:

- A re-usable therapeutic device ([10] – stored until a next use, implies can be used more than once, described as therapeutic device)

- a closed envelope ([4] – pouch 20 is a closed envelope)

- the envelope being partitioned into at least two rows each comprising at least two non-communicating pockets positioned side-by-side ([5] – 6 rows, each having 6 pockets side by side, material cannot seep out of pocket, thus pockets do not communicate).

- integrated fastening means for providing temporary fastening of the device to a patient ([9] – pressure tabs 80, [10] – pressure tabs can be unfastened so fastening must be temporary, pressure tabs hold pouch in place on body part to be treated)

Claim 1 differs from A3 in that each pocket comprises a thermally active composition.

This has the technical effect of accelerating a healing process, as disclosed in A1 [2].

This solves the objective technical problem of accelerating the healing process.

The skilled person would consider A4, which relates to anti-inflammatory medicines such as applied in the device of A3. A4 discloses the feature of applying a thermally active composition to accelerate the healing process ([8] of A4).

There is no technical difficulty with combining the thermally active composition of A4 with the composition of Edgalane and Totilasen in the pockets in A3 because A4 discloses that Totilasen can be combined with the composition in [6], and furthermore describes a composition with Edgalane in [9]. Furthermore, [10] of A3 discloses cooling of the area with water to enhance healing process, thus clearly points towards use of cooling and [7] of A3 discloses soaking the device in water. Thus claim 1 is not inventive over A3 in light of A4 .

Claim 2: Added matter (A. 100(c) EPC)

Claim 2 was added to the application during examination. Paragraph [22] of the application as filed teaches a device shaped to fit the contours of the hock or the hoof, but this is not a clear and unambiguous disclosure of the feature that the device is shaped to simultaneously conform to both the contours of the hock and hoof, particularly when taken in combination with paragraphs [20] and [21], which clearly describe a separate device for the hoof and for the hock.

Claim 2 thus extends beyond the context of the application as filed under A.123(2)EPC.

Claim 3: Inventive Step (A.56 EPC) using A3, A4 and A6

A3 is the closest prior art for the same reason as claim 1. Claim 3 differs from A3, apart from the features already discussed for claim 1 by the additional features of:

1) the thermally active composition upon activation with water provides a cooling action to the hock or the hoof,;

2) the device is shaped to conform to the contours of the hock or the hoof of a horse.
The thermally active composition described in A4 provides a cooling action upon activation with water ([3] of A4). Thus in applying the teaching of A4 to the device of A3 to solve the problem of accelerated healing by including the thermally active composition of A4 in the device of A3, a thermally active composition providing a cooling action upon activation with water would be included, as this is what is described to accelerated healing in A4 ([8] for example).

Feature 2) has the technical effect of avoiding abrasions due to rubbing (A1 [22]).

This effect has no synergy with the technical effective achieved by the feature 1) i.e. acceleration of healing, and can therefore be discussed independently for inventive step (GL G.VII.6), following the partial problems approach.

This further technical effect solves the additional technical problem of avoiding abrasions due to rubbing.

The skilled person would consider A6, which is from the neighbouring field of technology of gaiters for horses.

The feature of “the device is shaped to conform to the contours of the hock or the hoof of a horse” is interpreted as a device which is shaped to the hock or a device which is shaped to the hoof, as this is in line with the description on paragraph [20] and [21], which describe separate devices, one shaped to the hoof and one to the hock.

A device which is shaped to conform to the contours of the hock is disclosed in [8] of A6 which describes a gaiter matching the contours of the hock.

A device which is shaped to conform to the contours of the hoof is disclosed in ([11]) of A6.

Thus both alternatives in the claims are disclosed in A6.

Both of these devices in A6 are described as avoiding abrasions due to the shape ([3], [8] and [13] of A6).

There is no technical difficulty in modifying the shape of the device in A3 to conform to the contours of the hock or the hoof as taught in A6, as A3 [11] teaches that the shape of the device should be modified to apply to other parts of the horses leg.

Furthermore, both the device in A3 and the device in A6 are sleeve like devices with fastening means on opposing edges, thus the shape of the device in A6 could easily be applied to the device in A3, as they are a similar design.

Thus claim 3 is not inventive over A3 in light of A4 and A6.

Claim 4: Inventive Step (A.56 EPC using A2 and A6)

A2 is the closest prior art as it relates to the same technical field as the patent, namely therapeutic pads, and it concerns the same general problem of even temperature distribution. A2 discloses all of the features of claim 1, as discussed in the novelty attack against claim 1 above.

Claim 4 differs from A2 in that the fastening means comprises two straps, only one of which is elastic, and wherein the straps are fixed to opposing sides of the envelope, along the entire length of the edge of each side, and wherein the straps have complementary securing means.

This has the technical effect of providing an even distribution of pressure and avoiding any pressure points, as described in A1 [19].

This solves the objective technical problem of avoiding pressure points.

The skilled person would consider A6, which is from a neighbouring field of technology, namely gaiters, and discloses such a fastening system for the same purpose of achieving even pressure distribution ([5] of A6).

Specifically, A6 discloses:

- fastening means comprising two straps ([10] – elastic strap and non-elastic strap)

- only one of which is elastic ([10] – elastic strap and non-elastic strap).

- straps are fixed to opposing sides of the envelope ([10] – elastic strap sewn along first edge, non-elastic strap sewn along opposite edge, fig 1b and 2b clearly show envelope shape).

- along the entire length of each side (fig 1A – strap 50 and 60 are along entire length)

wherein the straps have complementary securing means ([10] – hook like projections and outer surface of straps engage, A1 [25] – hook-like elements and loop-like elements are described as complementary securing means).

There is no technical difficulty in applying the fastening means described in A6 to the pad described in A2, in place of the buttons and button holes. Firstly, A2 states that the buttons may cause pressure points ([7]) and thus points towards modification the fastening means. Furthermore, [15] of A6 states that the fastening system could be applied to other types of wraps requiring a more even pressure distribution.

Thus claim 4 is not inventive over A2 in light of A6.

Claim 5: Inventive step (A.56 EPC) using A5 and A4

A5 is the closest prior art because it relates to the same technical field as the patent, namely a therapeutic device for treating horses, and it concerns the same general problem as claim 5, namely producing a cooling effect.

A5 discloses the following features of claim 5.

- A thermally active composition (line 1 describes that the composition cools the leg, line 15 describes that the composition is Ah and Pag, which must be thermally active as A4 [3] discloses that Ah always produces a cooling chemical reaction with water in the presence of an EKLAG activator, and Pag is described as an EKLAG activator in A1[12], a cooling chemical reaction meaning that the composition is thermally active as defined in A1[2]. Further, A1[3] and [4] describe the composition used in prior art devices such as the thermapack as thermally active).

- which produces a cooling effect upon activation with water (lines 5-7 – soaked in water to activate, as discussed above, contains Ah and Pag, thus must cool when in contact with water as described in A4 ([3]).

- 20-40% of Ah (line 15: 35% by weight of Ah, the novelty of a range being destroyed if prior art discloses an example which falls within the range –T188/83).

Claim 5 differs from A5 in that the composition consists of Lesmorsase and Ahlericheon, whereas in A5 the gel consists of Pageatase and Ahlericheon. This has the technical effect that the claimed composition is non-toxic (see A1[12] and A5 [19]).

This solves the objective technical problem of making the composition non-toxic. The skilled person would consider A4, which is in the neighbouring technical field of cooling compositions and discloses the feature of Lemorsase as an activator in a composition being non-toxic ([9]).

There is no technical difficulty in replacing Pageatase with Lesmorsase in the gel of A5 as A4 describes that all the class EKLAG activators produce a chemical reaction when placed in contact with water, thus if the Pag in the gel of A5 were replaced with Les, the

pack would still produce a cooling effect when used as directed in A5, i.e. soaked in water.

Claim 5 is thus not inventive over A5 and A4.

Claim 6: Novelty (A.54 EPC) over A2

A2 discloses:

- A thermally active composition ([4] – gel composition actively produces heat as a result of chemical reaction, A1[2] – a thermally active composition is any composition which as a result of a chemical reaction is able to produce heat).

- which produces a cooling effect upon activation with water (although the gel composition described in [4] is used to produce heat by activation with microwave radiation, the compound Ah always produces a cooling reaction when placed in contact with water in the presence of one or more members of the EKLAG activators. This is evidenced in A4 [3] for example. Thus the composition described in A2 [4], of Ah, Edg and Les must produce a cooling reaction when placed in contact with water, Edg and Les being EKLAG activators – A1 [12]).

- comprising Ah and Edg in combination with Les ([4] of A2 describes such a combination).

Thus claim 6 lacks novelty over A2.

Examination Committee II: Paper C - Marking Details - Candidate No

Category		Max. possible	Marks Marker	Marker
Novelty	Novelty Use	10	10	10
Novelty	Novelty Argumentation	7	7	7
Inventive step	Inventive Step Use	27	20	21
Inventive step	Inventive Step Argumentation	42	33	33
Other	Other Use	8	8	8
Other	Other Argumentation	6	5	5
Total			**83**	**84**

Examination Committee II agrees on 84 points and recommends the grade PASS