



PATENTS ACT 1977

BETWEEN

Welland Medical Limited

Claimant

and

Phillip Arthur Hadley

Defendant

PROCEEDINGS

Reference under sections 8 and 12 of the Patents Act 1977 in
respect of patent application number GB 0907051.7

HEARING OFFICER

A C Howard

DECISION

Introduction

- 1 Patent application GB 0907051.7 entitled “Ostomy Pouch Material” (“the application”) was filed on 24 April 2009 in the name of Phillip Arthur Hadley (“the Defendant”). Mr Hadley was also named as the sole inventor. The application was subsequently published on 27 October 2010 as GB 2469686 A. On 16 March 2010 Welland Medical Limited (“the Claimant”) initiated proceedings under sections 8(1)(a) and 12(1)(a) of the Patents Act 1977 (“the Act”) in relation to this application.
- 2 The Claimant seeks a determination from the comptroller as to their entitlement to the application and also as to their entitlement to file patent applications overseas for the subject matter contained therein, on the grounds that Dr Rory Smith, a consultant to the claimant, was the deviser of the inventive concept of the application, and not Mr Hadley. Mr Hadley denies this and maintains that he devised the inventive concept and is therefore entitled to the application.
- 3 After the usual evidence rounds, the matter came before me at a hearing on 15-

16 February 2011 at which the Claimant was represented by Mr Richard Hacon instructed by Fry Heath & Spence and the Defendant was represented by Mr Miles Copeland instructed by Forresters. Mr Hadley, and Dr Smith were both cross-examined during the hearing.

Background

- 4 The application relates to ostomy pouches, which are bags for collecting bodily waste in a pouch attached to a person. It relates in particular to a material suitable for the manufacture of an ostomy pouch which aids disposal of the pouch. Material 10, as illustrated in Figure 1 of the application (see below), includes a degradable layer 12 sandwiched between inner layer 14 and outer layer 16. A portion 16a of outer layer 16 is separable. In use the separable portion 16a of outer layer 16 is removed so as to expose degradable layer 12 to a degrader.

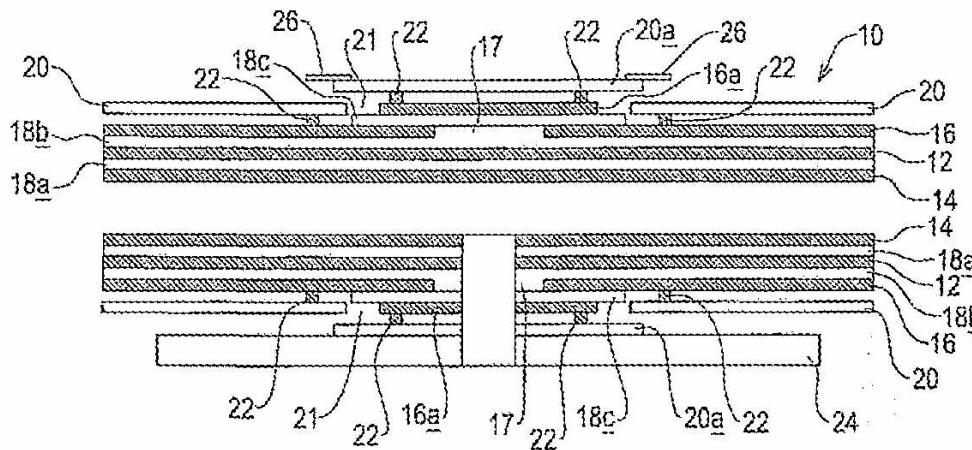


FIG. 1

- 5 In the embodiment illustrated in Figure 1 above, the degradable layer degrades when it comes into contact with water, for example in a toilet bowl. The degradable, inner and outer layers are adhered to each other using layers 18a, 18b and 18c of water-soluble adhesive. When the separable portion 16a of outer layer 16 is peeled away, the water-soluble adhesive layers and the degradable layer 12 are exposed to water when the pouch is placed in a toilet bowl. The degradable layer, which could be made out of polyvinyl alcohol (PVOH), forms the major portion of the material. This enables the entire pouch to be flushable down a toilet. Claim 1 states:

1. A material for the manufacture of an ostomy pouch, including a plurality of layers, including a degradable layer which is sandwiched between a first, inner layer and a second, outer layer, at least a portion of the second, outer layer being separable from the degradable layer, to expose at least a part of the degradable layer to a degrader, such that in use the material is inhibited from degradation until the degradable layer is exposed.

- 6 Claim 15 relates to an ostomy pouch manufactured from the material claimed in previous claims.
- 7 The Claimant Company is in the business of designing and selling ostomy bags. They currently produce an ostomy bag made of an inner pouch and an outer pouch (“pouch-in-pouch” system) where the outer pouch is removable from the inner pouch and the inner pouch is flushable down a toilet. The outer pouch is disposed of using conventional waste disposal means, for example ending up in landfill.
- 8 On 24 December 2008 Dr Smith, made contact with Mr Hadley by telephone. Dr Smith had been given Mr Hadley’s name by a business associate, Mr Gray, as a possible contact in connection with the supply of soluble films for making ostomy bags. Mr Hadley’s company, Acedag Ltd, manufactures laundry bags which are provided with a seam of water soluble material so that the bag opens on contact with water. Dr Smith arranged to meet Mr Hadley at Mr Hadley’s office on 8 January 2009. At this meeting Dr Smith and Mr Hadley discussed ideas for a new flushable ostomy bag. It is not in dispute that at that meeting (at which a confidentiality agreement was signed) a sample material was demonstrated, and Dr Smith showed Mr Hadley a drawing entitled “Fully Flushable Pouch – Concept”. However there is disagreement over the details of the discussion as well as precisely what the sample material was and when it was put together.
- 9 The application was filed on 24 April 2009 in the name of the Defendant, just prior to a further meeting, which took place on 27 April 2009. A third meeting was subsequently arranged for 17 February 2010, however shortly before this was scheduled to take place, Mr Hadley contacted Dr Smith informing him that he had filed the application. The meeting was then cancelled and Welland commenced these proceedings claiming entitlement.
- 10 On 2 September 2009 Welland filed their own patent application following which an international application, later published as WO 2010/122314, was filed.

The law

- 11 The law concerning the right to apply for and obtain a UK patent is set out in section 7 of the Act. Section 7 states:

7.-(1) Any person may make an application for a patent either alone or jointly with another.

(2) A patent for an invention may be granted –

(a) primarily to the inventor or joint inventors;

(b) in preference to the foregoing, to any person or persons who, by virtue of any enactment or rule of law, or any foreign law or treaty or international convention, or by virtue of an enforceable term of any agreement entered into with the inventor before the making of the invention, was or were at the time of the making of the invention

entitled to the whole of the property in it (other than equitable interests) in the United Kingdom;

(c) in any event, to the successor or successors in title of any person or persons mentioned in paragraph (a) or (b) above or any person so mentioned and the successor or successors in title of another person so mentioned; and to no other person.

(3) In this Act “inventor” in relation to an invention means the actual deviser of the invention and “joint inventor” shall be construed accordingly.

- 12 Determination before grant of questions about entitlement to the grant of a UK patent and to entitlement to foreign patents is governed by sections 8 and 12 of the Act respectively. Section 8(1) of the Act states:

8.-(1) At any time before a patent has been granted for an invention (whether or not an application has been made for it) –

(a) any person may refer to the comptroller the question whether he is entitled to be granted (alone or with any other persons) a patent for that invention or has or would have any right in or under any patent so granted or any application for such a patent; or

(b) ...

and the comptroller shall determine the question and make such orders as he thinks fit to give effect to the determination.

- 13 Section 12(1) makes equivalent provisions for patent applications made under the law of any country other than the United Kingdom or under any treaty of international convention.
- 14 The law on the entitlement of a patent was considered by the House of Lords in *Yeda Research and Development Co Ltd v Rhone-Poulenc Rorer International Holdings Inc* [2008] RPC 1. Lord Hoffman said in paragraphs 20 and 21:

“20 The inventor is defined in s.7(3) as “the actual deviser of the invention”. The word “actual” denotes a contrast with a deemed or pretended deviser of the invention; it means, as Laddie J. said in University of Southampton’s Applications [2005] R.P.C. 11, [39], the natural person who “came up with the inventive concept.” It is not enough that someone contributed to the claims, because they may include non-patentable integers derived from prior art: see Henry Brothers (Magherafelt) Ltd v Ministry of Defence [1997] R.P.C. 693, 706; [1999] R.P.C. 442. As Laddie J. said in the University of Southampton case, the “contribution must be to the formulation of the inventive concept”. Deciding upon inventorship will therefore involve assessing the evidence adduced by the parties as to the nature of the inventive concept and who contributed to it. In some cases this may be quite complex because the inventive concept is a relationship of discontinuity between the claimed

invention and the prior art. Inventors themselves will often not know exactly where it lies.

21 The effect of s.7(4) is that a person who seeks to be added as a joint inventor bears the burden of proving that he contributed to the inventive concept underlying the claimed invention and a person who seeks to be substituted as sole inventor bears the additional burden of proving that the inventor named in the patent did not contribute to the inventive concept. But that, in my opinion, is all. The statute is the code for determining entitlement and there is nothing in the statute which says that entitlement depends upon anything other than being the inventor. There is no justification, in a dispute over who was the inventor, to import questions of whether one claimant has some personal cause of action against the other.”

- 15 My task is therefore to assess the evidence adduced by the parties so as to decide upon the nature of the inventive concept and who contributed to it. Mr Copeland submitted that I should determine the inventive concept in the light of the prior art. The Court of Appeal in *Markem Corp v Zipher Ltd* [2005] RPC 31 provides some guidance on this. In paragraph 88 Jacob LJ said:

“88 We have no doubt that Mr Thorley is right. If the patent or part of it is clearly and unarguably invalid, then we see no reason why as a matter of convenience, the Comptroller should not take it into account in exercising his wide discretion. The sooner an obviously invalid monopoly is removed, the better from the public point of view. But we emphasise that the attack on validity should be clear and unarguable. Only when there is self-evidently no bone should the dogs be prevented from fighting over it.”

- 16 Mr Hacon submitted that in determining the inventive concept I should look only to the claims and not to other subject matter in the application. Mr Copeland disagreed and argued that I should look at all the subject matter disclosed in the application when determining the inventive concept. This matter arose in *Markem* and in paragraphs 100 and 101 Jacob LJ said:

“100 So what then about s.8? Does “invention” there mean what is claimed or does the context otherwise require? We think it must have some more general meaning than what is in the claims. The most obvious reason for that is that s.8 applies to situations where there are no claims at all—indeed even prior to a patent application. And applications themselves are not required to have claims. The question of entitlement can therefore arise before any claims exist—and in principle must remain the same whatever claims later emerge. Moreover, as the deputy judge observed, it is often the practice of patent agents to put in first drafts which are wider than they expect to end up with so as to draw a wide search. As for the final claims in the patent as granted, their form and content will depend upon a number of individual factors—what has turned up in the prior art forcing reduction in scope, what subsidiary claims the patent agent has formulated based on the description and what monopoly is actually thought to be valuable (there is no point in claiming wider).

101 Accordingly, we think one is driven to the conclusion that s.8 is referring essentially to information in the specification rather than the form of the claims. It would be handy if one could go by the claims, but one cannot. Section 8 calls for identification of information and the rights in it. Who contributed what and what rights if any they had in it lies at the heart of the inquiry, not what monopolies were actually claimed.”

- 17 This is the approach I shall take. Lord Hoffman commented in paragraph 20 of *Yeda* that the inventor does not always know initially where the inventive concept lies, and it often happens that the actual inventive concept in an application only emerges as the examination process progresses. I will therefore consider all the subject matter disclosed in the specification, having regard to evidence which relates to the state of the art prior to the filing of the application, when determining the inventive concept.

The evidence

- 18 The written evidence comprises a series of statements by Dr Smith and Mr Hadley. In addition, the Claimant’s evidence includes various internal documents and meeting minutes to support their case while Mr Hadley’s evidence includes details as to his own expertise and that of his company, Acedag Limited, and also a number of patent specifications to which he refers to in the context of his submissions regarding the inventive concept of the application.
- 19 At the hearing Dr Smith and Mr Hadley were both cross-examined. Of the two, Dr Smith seemed to have a much clearer recollection of the events relevant to these proceedings than did Mr Hadley.
- 20 Dr Smith and Mr Hadley were also cross-examined as to their views of what would be known prior to the filing of the application in suit, or prior to the first contact between them in December 2008. However I have not accorded this great weight in respect of determining the inventive concept. Neither Dr Smith nor Mr Hadley were held out as expert witnesses, nor could they have been regarded as such in view of their involvement in the proceedings. Mr Hacon also cross-examined Mr Hadley for some time on what he considered his inventive concept to be at the time the patent application was being drafted, but I have not found this particularly helpful in relation to the determination I have to make.

The inventive concept

- 21 My first task is to identify the inventive concept. As I said above, I will take account of the information in the specification when doing so. There is no technical disclosure in the specification which falls outside the scope of the broadest claim (claim 1) so it is reasonable to start there.
- 22 An important question of construction arises in relation to claim 1, namely whether the claim is limited to a material made up of layers which are attached to each other across their entire surface (e.g. laminated or extruded layers) or whether they can be attached at only part of their surface (e.g. at their peripheries) with an air gap between the unattached parts of at least two of the

layers. Although the first construction appears more consistent with the disclosure of the application as a whole the second is also possible and must be taken into account.

23 Mr Hacon submitted that the inventive concept lies in what he termed the “delamination concept”, namely in the means by which the degradable layer is exposed to a degrader through the separation of the inner and outer layers.

24 Mr Copeland had set out what he considered the inventive concept to be in paragraph 46 of his skeleton, in which he identified it as relating to *“material for use in a flushable ostomy pouch which comprises a layer of water-soluble material (PVOH) sandwiched between two biodegradable water-insoluble layers made of polylactic acid and attached to the polylactic acid layers by layers of water-soluble adhesive, and in which the layers are extruded together, such that the material is inhibited from degradation until the water-soluble adhesive and/or the water-soluble layer is exposed.”* However in response to an invitation from Mr Hacon at the hearing to clarify this, he offered the following:

“The inventive concept lies in the arrangement of the materials and the use of the water-soluble adhesive in conjunction with a water-soluble core layer protected by a water-insoluble outer layer, and the specific arrangement of the materials, the use of the water-soluble adhesive, to permit the exposure of the water-soluble polyvinyl alcohol middle layer. “

25 Mr Copeland’s identification of the inventive concept is therefore considerably narrower than that of Mr Hacon.

26 In determining where the inventive concept lies, I do not propose to carry out a detailed analysis of the validity of claim 1 or of any other feature disclosed in the application in suit. This is in my view not mandated by the authorities referred to above and will in any event will be the examiner’s task as the application progresses. The prior art documents referred to in evidence are however worthy of consideration and will help me in my task. These are:

D1: GB 2273052 (Welland)

D2: EP 1022127 (Cryovac)

D3: US 4868024 (Cross)

D4: US 5769831 (Freeman)

27 D1 is the claimant’s own prior art and discloses an ostomy bag with an inner bag and an outer bag detachably secured together by a peelable connection. The outer bag could be made for example of polyvinyl dichloride (PVDC) or ethylene vinyl alcohol (EVA). The inner bag is made of a water-impermeable inner layer and a water-soluble layer external to the inner layer. Both layers may be made from polymeric materials such as PVOH. In use the outer bag is peeled away and disposed of separately. The inner bag is then placed in the toilet bowl, exposing its outer water-soluble layer to the water in the bowl so that it may degrade in the bowl. Thus a mechanical trigger is used to expose the water-soluble layer to

water (rather than for example a chemical trigger).

- 28 D2 discloses a biodegradable multi-layer film suitable for use with ostomy bags. The film has a central layer of PVOH and outer layers comprising one or more biodegradable ester-amide copolymers. Tie layers may also be included to increase the adhesion between the layers. D3 discloses a material for making disposable products such as ostomy bags which has a central layer of polyvinyl alcohol (PVOH) with an inner layer and outer layer, the inner layer being resistant to the contents of the bag and the outer layer being resistant to water at neutral pH but degradable in an alkali. In use a pH tablet is placed in the toilet bowl along with the bag so that the outer layer is exposed to an alkali. It then degrades, exposing the thicker PVOH layer to the water in the bowl, which may then degrade.
- 29 Both documents demonstrate that a laminated material with a central water-soluble PVOH layer and inner and outer layers which are not dissolvable in neutral water is known. The method of exposing the central layer to the degrader in both is however different from that of the application. D2 does not disclose a means for exposing the central layer. In D3 the pH of the water is altered so as to dissolve the outer layer and thus expose the central layer to water.
- 30 D4 discloses an ostomy bag made out of a three-layer material. The middle layer is an absorbent layer such as tissue paper. The inner and outer layers are made out of a pH-sensitive layer. The outer layer includes a number of apertures which are covered by a seal such as a pressure sensitive adhesive strip or cover over the entire wall of the pouch. In use the strip is peeled away before the pouch is placed in the toilet bowl. This allows water to travel to the inside of the layers to increase the surface area exposed to the fluid.
- 31 It may seem on the face of it that this discloses a means for exposing the degradable layer similar to that of the application. I do not however consider that the invention even as claimed in its broadest sense is clearly disclosed in D4. In D4 there is an absorbent degradable layer sandwiched between inner and outer layers. Although the absorbent layer would be exposed to a degrader and degrade when the strip is peeled away and the material exposed to water, a failure to peel off this strip does not inhibit the material from degradation, as is required by claim 1 of the present application. The outer and inner layers and the absorbent layer will still degrade if placed in an alkali solution whether or not the strip is peeled. Peeling the strip merely serves to speed up the process. I therefore conclude that this document is likely to be of only marginal relevance to the invention of the application.
- 32 If I construe the disclosure and claims of the present application as encompassing layers not required to be attached to each other across their entire surface, this would clearly be anticipated by D1. D1 has a degradable layer (the outer water-soluble layer of the inner bag) sandwiched between two non-degradable layers (the inner layer of the inner bag and the outer bag). The outer layer is peelably separable so as to expose the degradable layer to the degrader (i.e. water). D1 therefore clearly discloses all the features of claim 1 on this interpretation and I am satisfied that I need not consider this possibility further in accordance with the principle set out in *Markem*. I would add that D1 also

discloses a mechanical trigger (i.e. a mechanical separation of at least a portion of the outer layer). This feature alone cannot therefore comprise the inventive concept, although it may contribute to it in combination with other features.

- 33 I conclude from the above that the inventive concept must include at least a material such as a laminate made up of layers which are in contact across substantially their whole extent. It follows that I do not accept Mr Hacon's broad characterisation of the inventive concept. This is consistent with the embodiment described which is directed towards a laminated material where the layers are adhered to each other using layers of water-soluble adhesive.
- 34 Accordingly, the inventive concept does not lie in the mechanical trigger alone, but in the arrangement of the layers in combination with the specific trigger means disclosed in the application.

Dr Smith's and Mr Hadley's contribution to the inventive concept

Dr Smith's research prior to contacting Mr Hadley

- 35 It is the Claimant's case that Dr Rory Smith, a consultant to Welland, carried out research in relation to the concept of a fully flushable ostomy bag in the latter part of 2008, prior to any contact with Mr Hadley. They have provided evidence in the form of various internal reports, internal minutes of meetings and notebook pages relating to Dr Smith's work on this concept to support this claim. In the light of this evidence, which I have no reason to doubt, I conclude that Dr Smith had worked up a concept of a fully flushable ostomy pouch prior to making contact with Mr Hadley. Although a number of ideas were discussed, including the use of a peelable panel or label to expose a PVOH layer to water, the idea which appeared to emerge is a development of the known 'pouch-in-pouch' ostomy bag in which a liner of sorts is retained within an outer protective layer, with an air gap between the two. The liner could be made of a PVOH/EVA laminate and the outer protective layer of a PVOH fabric/film/peel seal laminate. The nature of the outer layer is less clear from the evidence. It appears that initially the idea was to use a water-insoluble material for the entire outer layer. But the diagrams present on the page of Dr Smith's notebook dated 3 December 2008 suggest that Dr Smith contemplated using a PVOH/EVA laminate for the outer bag also, with a water-soluble PVOH layer facing inwards. The outer liner is then peelable away from the inner bag to expose both PVOH layers to water in the toilet bowl. The air gap ensures that the PVOH layers dissolve rapidly in the toilet bowl and the thin EVA layers are sufficiently thin so as to be flushable without risk of blocking the toilet. Thus the entire ostomy bag is flushable. Dr Smith paid particular attention to ensuring the bag provided a sufficient odour barrier.
- 36 This concept of Dr Smith later became the subject of the patent application filed on 2 September 2009 in the name of Welland Medical Limited and the subsequent international application WO 2010/122314 A1 (claim 1 of which is clearly limited to an ostomy bag with an inner pouch and an outer pouch.)

Mr Gray's involvement

- 37 According Dr Smith, he contacted Mr Gray to obtain details of local

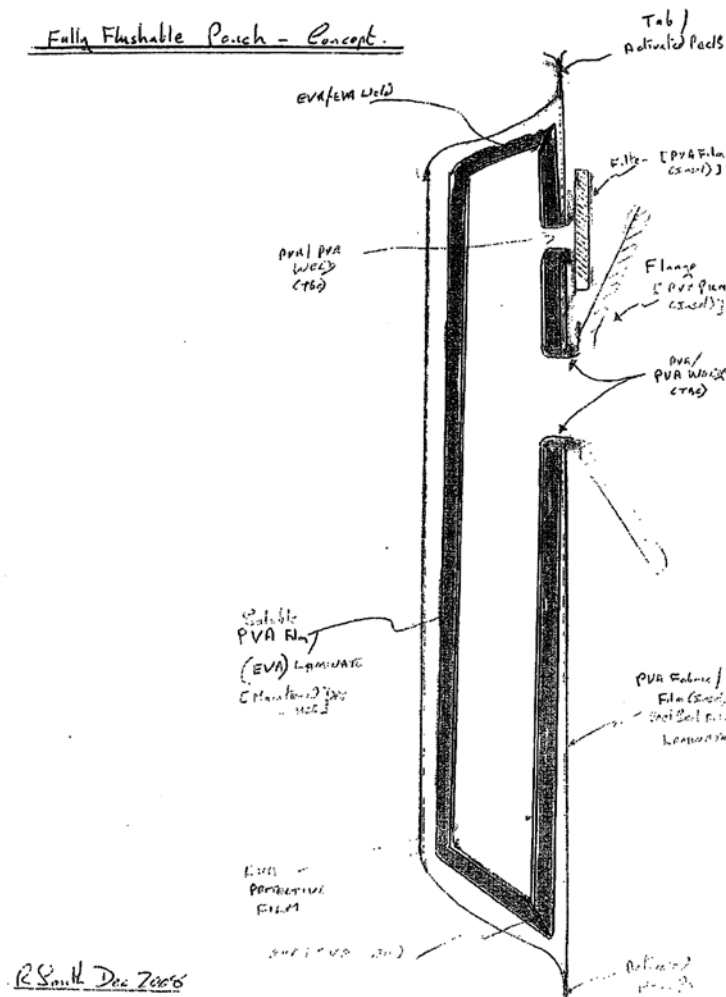
manufacturers of resins in film form which might suit his purpose. Mr Gray gave Dr Smith a list of contacts which included the details of the Defendant's company, Acedag Limited. Acedag produced a "solu-strip" laundry bag with a water-soluble seam which dissolved in the washing machine, allowing the laundry enclosed by the bag to be properly washed. Dr Smith became interested in the opening mechanism of this bag and thus made contact with Mr Hadley and their initial meeting took place on 8 January 2009.

Mr Hadley's research prior to the 8 January 2009 meeting with Dr Smith

- 38 Mr Hadley says that he became aware of the nature of Welland's interest prior to the 8 January 2009 meeting. He claims that Mr Gray informed him that Welland was interested in his know-how of water-soluble products and that he looked at the Welland website prior to the meeting where he saw a video clip of one of Welland's existing partially flushable ostomy bag products.
- 39 It is disputed whether Mr Gray spoke about Welland to Mr Hadley. While I do not have the benefit of direct evidence from Mr Gray, emails from him submitted in evidence by the Claimant and the Defendant respectively do not resolve the matter. It seems that Mr Gray cannot recollect whether or not he spoke to Mr Hadley about this matter, but he did comment that a non-disclosure agreement was in effect between the Claimant and himself. Mr Hadley for his part insists that he did speak to Mr Gray on this subject, although it may have been in passing as part of a call on another matter.
- 40 On the balance of probabilities I come to the conclusion that Mr Hadley did at some point before his meeting with Dr Smith have at least a brief conversation with Mr Gray regarding Welland's interest in working with him. While it is not clear precisely what information Mr Hadley received from Mr Gray during this conversation, I am satisfied that Mr Hadley had formed the view, prior to the meeting with Dr Smith, that Welland were likely to be interested in discussing how Mr Hadley's water-soluble materials could be used for flushable ostomy pouches. He would have done this on the basis of his conversation with Mr Gray, his initial telephone conversation with Dr Smith, and his visit to Welland's website.

What Dr Smith disclosed to Mr Hadley

- 41 There is a dispute as to who disclosed what at the meeting between Dr Smith and Mr Hadley of 8 January 2009. Dr Smith and Mr Hadley do however agree that a drawing labelled "Fully Flushable Pouch – Concept" was shown to Mr Hadley by Dr Smith (see below), although their statements differ as to the extent of discussion which took place around this drawing. A colour version of this drawing was included in the hearing bundles, although it could not be established in cross-examination whether or not at the meeting Mr Hadley was shown the colour drawing or a black and white copy. This is of relevance as the colour drawing is significantly clearer than the black-and-white version.



42 I have no reason to doubt Dr Smith's submission that he explained this diagram and something of his basic idea to Mr Hadley at the meeting of the 8 January 2009. However under cross-examination, Mr Hadley appeared to have genuine difficulty in understanding the drawing, and the extent to which he understood Dr Smith's explanation at the time must therefore be in considerable doubt.

43 The black-and-white version of this drawing is not entirely clear and even with the colour version it is not obvious that there is supposed to be an air gap between the two layers. The outer layer is labelled "PVA Fabric/ Film (Insol) Peel Seal Film Laminate". While it is not entirely clear what this label means, it is apparent that the layer would be insoluble. It is also reasonably clear from the drawing that the outer layer is peeled away using the upper tab (as shown in the drawing). This bears no relation to the concept of a peelable strip or label of the type disclosed in the application.

Mr Hadley's sample

44 A key point of dispute is whether Mr Hadley prepared a sample material in advance of the meeting, or if the sample was put together at the meeting itself (which took place in Mr Hadley's office). Under cross-examination Dr Smith said:

"In the meeting we had a discussion about a number of things. We got to

the point where Mr. Hadley then showed some materials he had on his desk. His desk was, as I said somewhere in my statement, rather confused, papers, samples, bits of film, and what-have-you. He did have a pot of adhesive there and he did cut what I took to be a competitive bag, it may have been his bag, this I take to be reference to one of his laundry bags and assembled something in front of my eyes there. So, it was basically putting together the kind of construction that we have just had quite a long and involved discussion about. So, whether within this confusion there was a readymade sample I have no way of knowing but if he claims that, then that is his claim.”

45 Paragraphs 46 and 47 of Mr Hadley’s counterstatement says:

“46. Prior to the Defendant meeting Dr Smith on 8 January 2009, and prior to Dr Smith showing the Defendant a drawing entitled “Fully Flushable Pouch – Concept”, the Defendant produced a sample of a three-layer film, comprising one layer of non-water-soluble, bio-degradable polylactic acid (also known as polylactide), an intermediary layer of “water soluble adhesive” and one layer of cold-water-soluble polyvinyl alcohol (PVOH) film. The sample was constructed manually and required that the “water soluble adhesive” be applied as a solution and thereafter having to dry out before the sample could be inspected. The sample was therefore created sometime before the meeting to allow for the drying out process to be achieved. ...

47. At the meeting on 8 January 2009, the Defendant demonstrated to Dr Smith that folding the three-layer sample which he had produced prior to the meeting, in half, resulted in a six-layer film, which effectively becomes a five-layer construction, since the two polyvinyl alcohol layers are face to face, and effectively provide a single layer, with both of the outer elements being non water soluble.”

46 When giving his evidence at the hearing Mr Hadley made a correction to paragraph 46 above, stating that in fact he used a polymer for the non-water-soluble layer of the sample rather than polylactic acid.

47 Dr Smith and Mr Hadley clearly have different perspectives of what went on at the meeting. It is my view that, on the balance of probabilities, Mr Hadley had prepared a three-layer sample in advance, and then at the meeting folded it to form a six-layer arrangement. This interpretation of events would be consistent with Dr Smith’s evidence, if he did not realise that Mr Hadley had prepared something in advance.

Conclusions

48 The inventive concept I have identified above clearly relates to Mr Hadley’s solution to the problem. Whether or not Mr Hadley understood Dr Smith’s concept, what he in fact went on to do was develop material for a single-pouch ostomy bag comprising a multi-layered laminated material with each layer substantially adhered to its neighbouring layers using layers of water-soluble adhesive. This is essentially a development of the seam of his own laundry bag

concept. He did not pursue a “pouch-in-pouch” inner and outer bag system when developing his material and drafting his patent application. In reality Mr Hadley and Dr Smith have devised different solutions to the problem of developing a fully flushable ostomy bag. Moreover I can find no disclosure in the application as a whole which relates to Dr Smith’s solution. I therefore conclude that the actual deviser and sole inventor of the inventive concept of the application is Mr Hadley.

Decision

- 49 I have found that the Defendant Mr Hadley is the actual deviser and sole inventor of the inventive concept disclosed in patent application GB 0907051.7. I therefore conclude that Mr Hadley, the present applicant, is entitled to patent application GB 0907051.7 and the reference under sections 8 and 12 is accordingly refused.

Costs

- 50 Neither side asked for costs in their statements, nor were any submissions made to me on this matter. I therefore make no order for costs.

Appeal

- 51 Under the Practice Direction to Part 52 of the Civil Procedure Rules, any appeal must be lodged within 28 days.

A C HOWARD

Divisional Director acting for the Comptroller