

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MÖLNLYCKE HEALTH CARE AB,  
Petitioner,

v.

SMITH & NEPHEW, INC.,  
Patent Owner.

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Case: PGR2018-00035  
Patent 9,642,750 B2

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Before LINDA E. HORNER, JAMES J. MAYBERRY, and  
JASON W. MELVIN, *Administrative Patent Judges*.

MELVIN, *Administrative Patent Judge*.

DECISION  
Denying Institution of Post-Grant Review  
*37 C.F.R. § 41.208*

## I. INTRODUCTION

Petitioner, Mölnlycke Health Care AB (“MHC”), filed a Petition (Paper 3, “Pet.”) requesting post-grant review of all 24 claims of U.S. Patent No. 9,642,750 B2 (Ex. 1001, “the ’750 patent”). Patent Owner, Smith & Nephew, Inc., filed a Preliminary Response. Paper 8 (“Prelim. Resp.”). Pursuant to 35 U.S.C. § 324 and 37 C.F.R. § 42.4(a), we have authority to determine whether to institute review.

A post-grant review may not be instituted unless “the information presented in the petition . . . if such information is not rebutted, would demonstrate that it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable.” 35 U.S.C. § 324(a). For the reasons set forth below, we conclude that Petitioner has not adequately demonstrated that the ’750 patent is eligible for post-grant review. We, therefore, do not institute post-grant review of any claim of the ’750 patent.

### A. RELATED MATTERS

Petitioner identifies the following applications that claim priority to the ’750 patent’s filing date: U.S. Patent Application No. 15/198,690, filed June 30, 2016 (issued as US 9,999,547 B2 on June 19, 2018); U.S. Patent Application No. 15/256,349, filed September 2, 2016 (issued as US 9,974,695 B2 on May 22, 2018); and U.S. Patent Application No. 15/681,165, filed August 18, 2017. Pet. 3.

### B. THE ’750 PATENT

The ’750 patent is directed to apparatuses and methods for negative-pressure wound therapy. Ex. 1001, 1:20–25. Such therapy is employed for

“treatment of open or chronic wounds that are too large to spontaneously close or otherwise fail to heal.” *Id.* at 1:29–32. The Specification explains:

Negative pressure wound treatment systems currently known in the art commonly involve placing a cover that is impermeable to liquids over the wound, using various means to seal the cover to the tissue of the patient surrounding the wound, and connecting a source of negative pressure (such as a vacuum pump) to the cover in a manner so that an area of negative pressure is created under the cover in the area of the wound.

*Id.* at 1:32–39. Although the patent discloses a number of embodiments, the parties agree that the embodiment of Figures 15A–15D are relevant to the issues raised in the Petition. *See* Pet. 20; Prelim. Resp. 10–11. Figures 15A and 15B are reproduced below:

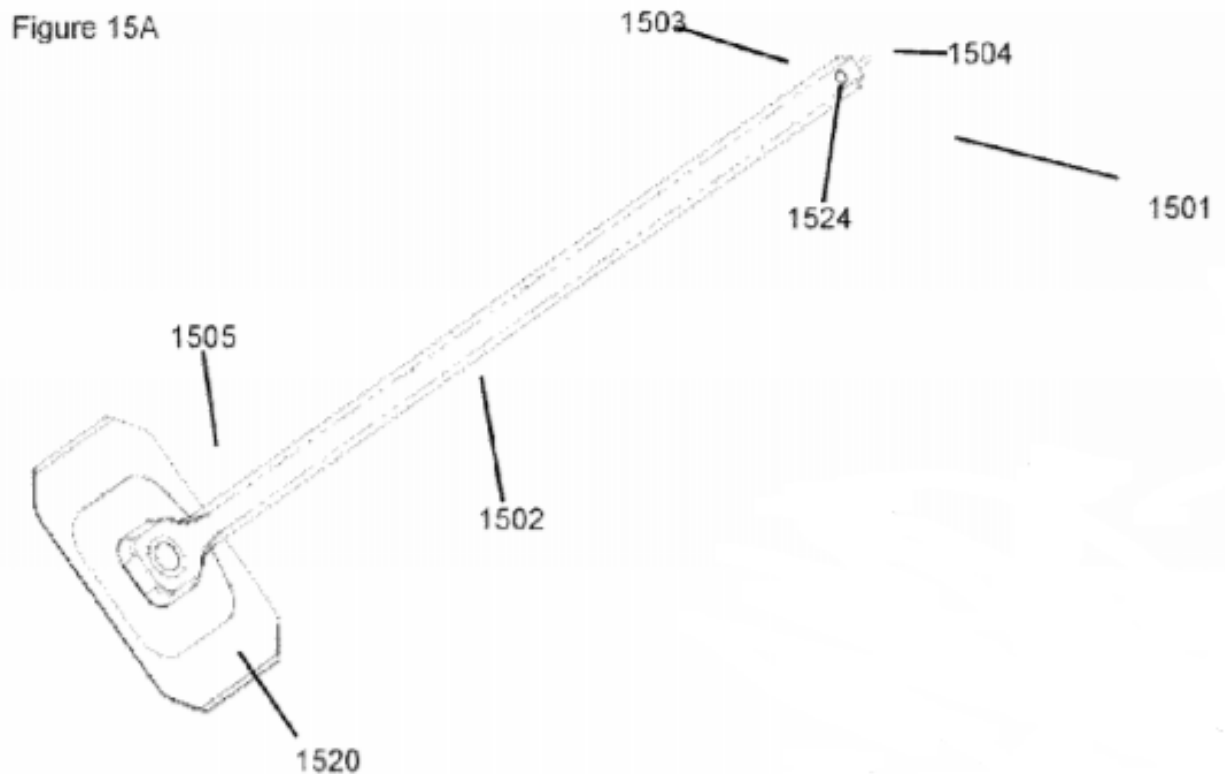


Figure 15A illustrates a “negative pressure wound treatment system 1501 comprising a flexible suction adapter.” Ex. 1001, 22:1–3. The illustrated system comprises “a bridge 1502 having a proximal end 1503 and a distal end 1505 and an applicator 1520 at the distal end 1505 of the bridge 1502.” *Id.* at 22:7–10.

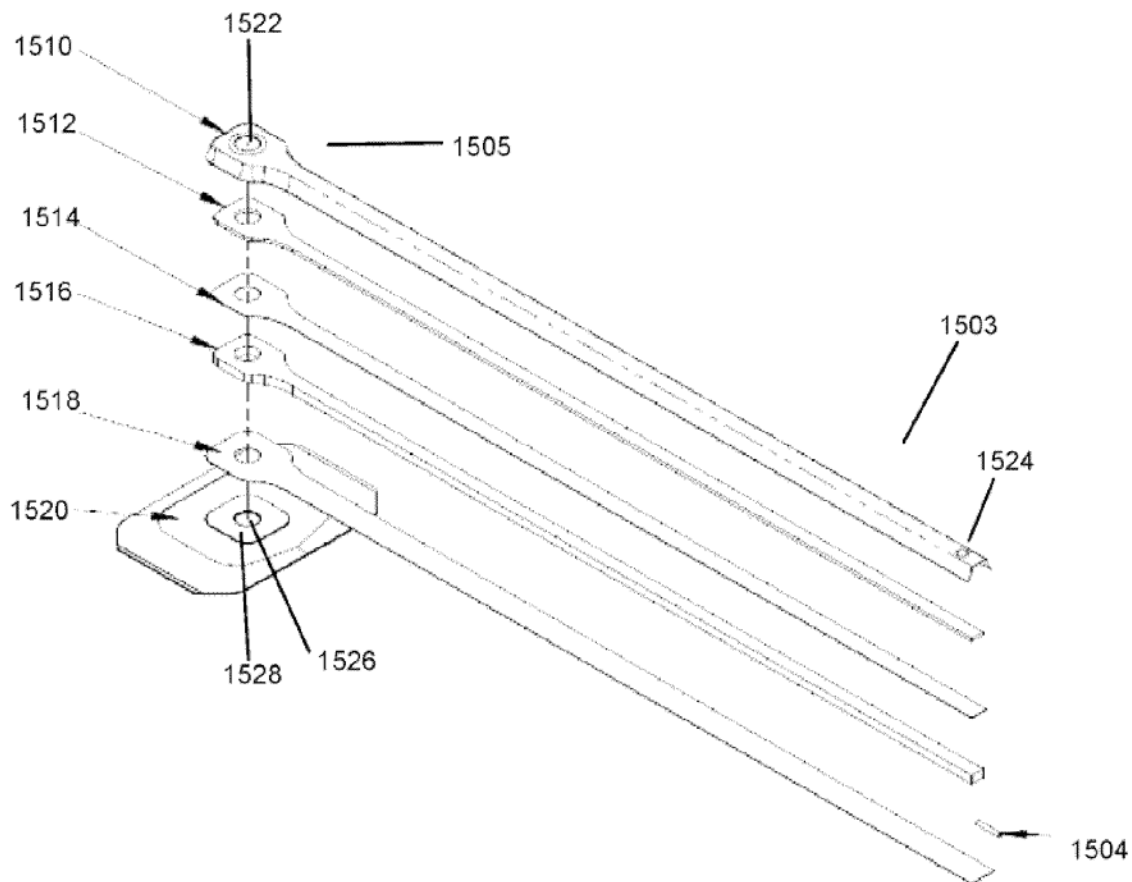


Figure 15B

Figure 15B illustrates an exploded view of the flexible suction adapter, showing a bridge that comprises “an upper channel layer 1512 sandwiched between an upper layer 1510 and an intermediate layer 1514, with a lower

channel layer 1516 sandwiched between the intermediate layer 1514 and a bottom layer 1518.” *Id.* at 22:10–14. The upper layer of the bridge includes a “viewing window 1522 that permits targeting and visualization of the wound site prior to placement of the system 1501 as well as ongoing monitoring of the wound site during the course of treatment.” *Id.* at 24:65–25:2. The Specification describes that, preferably, the viewing window “is at least partially transparent.” *Id.* at 25:8–11. “[A] connector 1504 is provided at the proximal end 1503 which may be used to connect the lower channel layer 1516 to a source of negative pressure,” thus permitting “wound exudate to be suctioned away from the wound and for negative pressure to be applied to the wound site.” *Id.* at 23:1–11.

### C. CHALLENGED CLAIMS

Challenged claims 1 and 18 are independent, illustrative of the claimed subject matter, and reproduced below:

1. An apparatus to provide suction to a wound site comprising:
  - a suction adapter configured to be sealed to a wound cover covering a wound site, the suction adapter comprising:
    - an applicator configured to be positioned over an opening in the wound cover, the applicator comprising at least one aperture; and
    - a bridge portion connected to the applicator and comprising at least a first channel and a second channel extending parallel to an upper surface of the applicator, wherein at least one of the first channel and second channel is configured to provide suction to the wound site through the aperture in the applicator from a source of negative pressure;
  - a visualization window provided in an upper surface of the bridge portion over the at least one aperture in the applicator that provides unobstructed visualization

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