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**D E C I S I O N**  
**of 7 May 2002**

**Case Number:** T 0484/01 - 3.2.6

**Application Number:** 96936796.0

**Publication Number:** 0858308

**IPC:** A61F 13/15

**Language of the proceedings:** EN

**Title of invention:**

Disposable training pant with improved disposal means

**Applicant:**

THE PROCTER & GAMBLE COMPANY

**Opponent:**

-

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 56

**Keyword:**

"Inventive step (yes - after amendment)"

**Decisions cited:**

-

**Catchword:**

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<b>Europäisches Patentamt</b>	<b>European Patent Office</b>	<b>Office européen des brevets</b>
Beschwerdekammern	Boards of Appeal	Chambres de recours

**Case Number:** T 0484/01 - 3.2.6

**D E C I S I O N**  
**of the Technical Board of Appeal 3.2.6**  
**of 7 May 2002**

**Appellant:** THE PROCTER & GAMBLE COMPANY  
One Procter & Gamble Plaza  
Cincinnati  
Ohio 45202 (US)

**Representative:** Hirsch, Uwe Thomas  
Procter & Gamble European Service GmbH  
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**Decision under appeal:** Decision of the Examining Division of the European Patent Office posted 14 November 2000 refusing European patent application No. 96 936 796.0 pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** P. Alting van Geusau  
**Members:** G. Pricolo  
M. B. Tardo-Dino

## Summary of Facts and Submissions

I. European patent application No. 96 936 796.0 filed as PCT/US96/16857 on 21 October 1996 and published on 9 May 1997 under No. WO 97/16146 was refused by the Examining Division by decision dated 14 November 2000.

II. In its decision, the Examining Division held that the disposable garment of claim 1 lacked inventive step because it was obvious for a skilled person, starting from the disposable diaper disclosed in:

D1: US-A-4 430 087,

to provide, instead of adhesive tapes, seams joining the front portion to the rear portion of the disposable garment, in view of the teaching of document:

D2: US-A-5 246 433,

which corresponded to the disposable garment according to the preamble of claim 1. The further adaptation of the disposal means to comprise a frangible section for separation of said disposal means into independent portions was obvious having regard to document:

D3: US-A-3 230 956.

III. On 17 January 2001 the Appellant (applicant) lodged an appeal against this decision and paid the prescribed appeal fee. The statement setting out the grounds of appeal was received on 22 March 2001.

IV. Following a telephone call on 7 August 2001 with the Rapporteur of the Board, the Appellant filed, with letter dated 26 September 2001, new documents for grant of a patent, which were then modified with subsequent letters dated 8 January 2002 and 8 April 2002.

V. The Appellant requested that the decision under appeal be set aside and a patent granted on the basis of the following documents:

**Claims:** 1 to 8 as filed with letter dated 8 April 2002;  
9, 10 as filed with letter dated 16 March 2000.

**Description:** pages 3, 4, 7, 9, 10, 14 as originally filed;  
pages 5, 8, 12 as filed with letter dated 16 March 2000;  
pages 1, 2, 13 as filed with letter dated 26 September 2001;  
pages 6, 11, 15 as filed with letter dated 8 January 2002.

**Drawings:** pages 1/4 to 4/4 as originally filed.

Claim 1 reads as follows:

"A disposable garment (20) comprising a chassis (14) having a front portion (56), a rear portion (58) opposed to said front portion, and a crotch portion (57) positioned between said front portion and said rear portion, said chassis comprising an outer layer (48) forming an exterior of said garment, and an inner layer (46), seams (10) joining said front portion to said rear portion so as to form two leg openings (110) and a waist opening (112),

disposal means (140) joined to said outer layer for allowing the disposable garment to be secured in a configuration that provides convenient disposal of the disposable garment, characterized by said disposal means comprising a frangible section (152) to provide for separation of said disposal means into independently movable strip portions (154,156), which are long enough such that they may be extended to effectively seal the leg openings (110)."

VI. In essence, the Appellant's arguments in support of the request are as follows:

The closest prior art was a disposable garment as acknowledged in the section "background of the invention" of the description, and on which was based the preamble of claim 1.

The technical problem underlying the subject-matter of claim 1 was to provide a disposable garment having disposable means that effectively contained the contents within the soiled disposable garment, particularly at the leg openings.

The prior art according to D1, D2 and D3 failed to disclose or suggest a frangible section that provided for separation of the disposal means into independently moveable strip portions long enough such that they may be extended to effectively seal the leg openings, and therefore the claimed subject-matter involved an inventive step.

## Reasons for the Decision

1. The appeal is admissible.
2. *Amendments (Article 123(2) EPC)*
  - 2.1 Claim 1 has been amended to define the following features in addition to the features of claim 1 as originally filed:  
  
the outer layer forms an exterior of the disposable garment;  
and  
  
the disposal means may be separated into independently movable strip portions which are long enough such that they may be extended to effectively seal the leg openings.  
  
These features are disclosed *expressis verbis* in the application as originally filed on page 3, line 21, 22; page 14, lines 1 to 3; page 15, lines 12 to 14.
  - 2.2 Dependent claims 2 to 10 have been amended only by way of introducing numeral reference signs.
  - 2.3 The description of the application is adapted to be consistent with claim 1 as amended.
  - 2.4 Since the amendments do not introduce subject-matter which extends beyond the content of the application as filed, the patent application meets the requirements of Article 123(2) EPC.

3. *Novelty*

Novelty of the subject-matter in accordance with claim 1 follows from the fact that none of the available prior art documents discloses a disposable garment of the kind provided with seams joining a front portion to a rear portion so as to form two leg openings and a waist opening (ie of the so-called pant-style type), which has disposal means comprising a frangible section to provide for separation of said disposal means into independent portions.

4. *Inventive step*

- 4.1 The Board agrees with the applicant's view that the closest prior art is a training pant with an adhesive disposal system as acknowledged in the paragraph "Background of the invention" of the originally filed patent application and having in combination all the features defined in the preamble of claim 1. Indeed the known training pant is the most suitable for the desired purpose of the invention, which consists in providing, in a disposable garment having fixed sides (ie of the pant-style type; see page 1, first paragraph, of the originally filed patent application), disposal means that contain the contents within the soiled garment (see page 1, fourth paragraph).

- 4.2 The adhesive disposal means of the closest prior art acknowledged in the description has only one member positioned on the outer cover of the training pant that effectively keeps the training pant in a rolled-up configuration but does not effectively seal the leg openings to contain the contents within the soiled training pant (see page 1, third paragraph of the originally filed patent application). In view thereof, the technical problem underlying the claimed subject-matter is to provide a disposable garment having disposable means that effectively contains the contents within the soiled disposable garment (see page 1, fourth paragraph of the originally filed patent application).
- 4.3 This problem is solved by a disposable garment according to claim 1. Indeed, effective containment of the contents within the soiled disposable garment is achieved by means of the independently movable strip portions which are long enough to seal the leg openings and at the same time keep the training pant in a rolled-up configuration (see Figure 4 of the patent application).
- 4.4 The available prior art neither discloses nor suggests the claimed solution to the technical problem.
- 4.4.1 Document D1 (see Figure 1) discloses a disposable diaper in which no side seams are provided to form waist and leg openings: it is a flat article in its unused configuration, with adhesive tabs 23 for securing the diaper on an infant's body. It comprises disposal means 13 in the form of a storage bag which can be deployed (see Figure 3) for allowing the diaper to be secured in a configuration that provides convenient disposal thereof (see Figure 5, 6).



Document D3 discloses a sanitary napkin (see Figure 1) comprising disposal means 15 joined to an outer layer 13 for allowing the disposable garment to be secured in a configuration (see Figure 3) that provides convenient disposal of the disposable garment. The disposal means consists of a cover 15 having a frangible section 18 to provide for separation of said cover into independent pleated side portions 17 that may be wrapped around the napkin so that the latter becomes completely enveloped by the cover (see column 2, lines 6 to 12).

Hence both D1 and D3 teach the provision of disposal means in the form of a bag or cover completely enveloping the disposable garment. These documents do not therefore suggest the provision of independently movable strip portions since a skilled person would not regard the latter to be suitable for completely enveloping a disposable garment.

4.4.2 Document D2 relates to a disposable garment of the kind having two leg openings and a waist opening (of the so-called pant-style type), but does not make mention of any disposal means and thus contains no useful indication for solving the technical problem posed.

4.4.3 The remaining prior art documents on file do not lead the skilled person to the claimed solution, because none of them discloses or suggests the provision of disposal means comprising a frangible section to provide for separation of said disposal means into independently movable strip portions for sealing leg openings in a disposable garment.

4.5 It follows that the subject-matter of claim 1, and of claims 2 to 10 dependent therefrom, is found to involve an inventive step.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance with the order to grant a patent in the following version:

**Claims:** 1 to 8 as filed with letter dated 8 April 2002;  
9, 10 as filed with letter dated 16 March 2000.

**Description:** pages 3, 4, 7, 9, 10, 14 as originally filed;  
pages 5, 8, 12 as filed with letter dated 16 March 2000;  
pages 1, 2, 13 as filed with letter dated 26 September 2001;  
pages 6, 11, 15 as filed with letter dated 8 January 2002.

**Drawings:** pages 1/4 to 4/4 as originally filed.

The Registrar:

The Chairman:

M. Patin

P. Alting van Geusau