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D E C I S I O N
of 18 September 2002

Case Number: T 0932/01 - 3.2.6

Application Number: 96201593.9

Publication Number: 0754440

IPC: A61F 13/15

Language of the proceedings: EN

Title of invention:
Individually wrapped sanitary napkin

Applicant:
UNI-CHARM CORPORATION

Headword:
-

Relevant legal provisions:
EPC Art. 123(2), 56

Keyword:
"Amendments - added subject matter (no)"
"Inventive step - (yes) after amendment"

Decisions cited:
G 0002/98

Catchword:
-



Case Number: T 0931/01 - 3.2.6

D E C I S I O N
of the Technical Board of Appeal 3.2.6
of 18 September 2002

Appellant: UNI-CHARM CORPORATION
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 27 February 2001
refusing European patent application
No. 96 201 593.9 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. 96 201 593.9 filed on 7 June 1996 and published under No. 0 754 440 was refused by the Examining Division by decision posted on 27 February 2001.

II. In its decision, the Examining Division held that the feature of claim 1, according to which the adhesive zone C' was on the underlying outer surface of the wrapping sheet, was not supported by the application documents as originally filed and therefore the requirements of Article 123(2) EPC were not met. An adhesive zone C' was neither mentioned as such in the description and drawings as originally filed.

Furthermore, in a section of the appealed decision entitled "Additional comments", the Examining Division remarked that a hypothetical claim formulated such as to overcome the objection under Article 123(2) EPC would not meet the requirements of Article 52(1) and 56 EPC, its subject-matter lacking inventive step in the light of the disclosure of document:

D1: US-A-5 413 568.

III. On 26 April 2001 the Appellant (applicant) lodged an appeal against this decision. The prescribed appeal fee was paid on 27 April 2001. The statement setting out the grounds of appeal was received on 27 June 2001.

IV. Following a telephone call on 23 May 2002 with the Rapporteur of the Board, the Appellant filed, with letters dated 24 June and 18 July 2002, new documents for the grant of a patent according to a main and an

auxiliary request.

V. The Appellant's main request is that the decision under appeal be set aside and a patent granted on the basis of the following documents:

claims: 1 to 4 as filed with letter dated
18 July 2002;

description: pages 1 to 7 as filed with letter dated
24 June 2002;

drawings: pages 1/2 and 2/2 as originally filed.

Claim 1 of the main request reads as follows:

"An individually wrapped sanitary napkin comprising (i) a sanitary napkin (1) extending in a longitudinal way, comprising a topsheet (3) defining a wearer's skin-contacting surface, a back sheet (4) defining a wearer's skin-noncontacting surface and an absorbent core (5) disposed between the two sheets (4,5), said skin-noncontacting surface having two longitudinally opposite ends with an intermediate section therebetween and including an adhesive zone (6) for fastening said napkin (1) to wearer's pants and a release sheet (7) with an inner surface and an outer surface, said inner surface of said release sheet (7) covering protectively said adhesive zone (6); and (ii) a wrapping sheet (8) with an inner surface and an outer surface and having a first end and a second end longitudinally opposed with an intermediate section therebetween, said wrapping sheet (8) being dimensioned larger and longer than said napkin (1), in order to have a first marginal area (15D) at the first end and a second marginal area (15C)

at the second end respectively, the inner surface of said wrapping sheet (8) being fastened to the outer surface of the release sheet (7) on at least one fastening area (C), so that the longitudinally intermediate section of said wrapping sheet (8) is covering the longitudinally intermediate section of the wearer's skin-noncontacting surface and longitudinally opposite ends of said wrapping sheet (8) are lying adjacent longitudinally opposite ends of the wearer's skin-noncontacting surface, said napkin (1) with said wrapping sheet (8) being folded up longitudinally with the release sheet lying inside and the wrapping sheet (8) being oriented outwardly in such a manner that the first marginal area (15D) of the wrapping sheet (8) lies inside while the second marginal area (15C) of the wrapping sheet (8) lies outside and said second end of the wrapping sheet (8) overlaps and is releasably fastened to an outer surface of the wrapping sheet (8) at an area thereof underlying said second end of the wrapping sheet (8) by means of an adhesive (17B) provided on an inner surface of the second end of the wrapping sheet (8), characterised in that the inner surface of the wrapping sheet (8) in correspondence of said area (C) is integrally fastened to the release sheet (7) by means of hot melt adhesive (9)."

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

The new claims filed in the appeal proceedings were supported by the application as originally filed and therefore the requirements of Article 123(2) EPC were met.

Furthermore, the subject-matter of claim 1 was novel

and also involved an inventive step. The problem underlying the subject-matter of claim 1 consisted in providing a wrapped sanitary napkin for which it was possible to open the wrapper repeatedly by stripping away one end thereof without damaging it. According to the claimed solution to this problem, the wrapping sheet was integrally fastened to the release sheet by means of hot melt adhesive at least in correspondence of the area to which said one end of the wrapping sheet was releasably fastened. D1, being the only prior art document, neither disclosed nor suggested this feature.

Reasons for the Decision

1. The appeal is admissible.
2. *Amendments (main request)*
 - 2.1 The grounds of non-compliance with the requirements of Article 123(2) EPC given in the appealed decision no longer apply to claim 1, since the feature concerning an adhesive zone C' provided on the underlying outer surface of the wrapping sheet has been replaced by the feature that an adhesive is provided on an inner surface of an end of the wrapping sheet, in accordance with the definition of claim 1 of the application as originally filed.
 - 2.2 Claim 1 includes all the features of claim 1 as originally filed. Support for the features added to claim 1 can be found on page 3, last paragraph, to page 4, last paragraph, of the description as originally filed.

- 2.3 Support for the dependent claims 2 to 4 can be found on, respectively, page 5, first paragraph; page 6, 2nd paragraph and original claim 2.
- 2.4 The description of the application is adapted to be consistent with claim 1 as amended. Furthermore, it acknowledges D1 as the closest prior art (Rule 27(1)(b) EPC).
- 2.5 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 (main request)*
- 3.1 Using the wording of claim 1, document D1 discloses (see figures 1-3) an individually wrapped sanitary napkin comprising (i) a sanitary napkin (20) extending in a longitudinal way, comprising a topsheet (22) defining a wearer's skin-contacting surface, a back sheet (24) defining a wearer's skin-noncontacting surface and an absorbent core (26) disposed between the two sheets, said skin-noncontacting surface having two longitudinally opposite ends with an intermediate section therebetween and including an adhesive zone (40a) for fastening said napkin (20) to wearer's pants (see col. 7, lines 13-24) and a release sheet (col. 10, lines 4-9) with an inner surface and an outer surface, said inner surface of said release sheet covering protectively said adhesive zone (40a); and (ii) a wrapping sheet (34) with an inner surface and an outer surface and having a first end and a second end longitudinally opposed with an intermediate section therebetween, said wrapping sheet (34) being

dimensioned larger and longer than said napkin (col. 5, lines 15-17), in order to have a first marginal area at the first end and a second marginal area at the second end respectively, the inner surface of said wrapping sheet (34) being fastened to the outer surface of the release sheet on at least one fastening area (col. 10, lines 7-9), so that the longitudinally intermediate section of said wrapping sheet (34) is covering the longitudinally intermediate section of the wearer's skin-noncontacting surface and longitudinally opposite ends of said wrapping sheet (34) are lying adjacent longitudinally opposite ends of the wearer's skin-noncontacting surface, said napkin (20) with said wrapping sheet (34) being folded up longitudinally thereof with the release sheet lying inside and the wrapping sheet (34) being oriented outwardly in such a manner that the first marginal area of the wrapping sheet lies inside while the second marginal area of the wrapping sheet lies outside (Fig. 3) and said second end of the wrapping sheet overlaps and is releasably fastened to an outer surface of the wrapping sheet (by means of tab 55, see col. 12, lines 3-6) at an area thereof underlying said second end of the wrapping sheet by means of an adhesive provided on an inner surface of the second end of the wrapping sheet.

The subject-matter of claim 1 is distinguished therefrom in that the inner surface of the wrapping sheet in correspondence of said area is integrally fastened to the release sheet by means of hot melt adhesive. Indeed, although D1 discloses that the release strip is attached to the inwardly oriented face of the wrapper (col. 10, lines 3-12), it is silent about how the attachment is made and where any attachment portions between the wrapper and the release

strip should be located.

- 3.2 Of the two documents cited in the search report, only document D1 forms part of the state of the art in accordance with Article 54(2) EPC. In fact, the other document cited has been published after the priority date of the present application, and the priority claimed is valid because the subject-matter of the claims of the present application can be derived directly and unambiguously from the previous application as a whole (Article 87(1) and 88 EPC; see G 0002/98, OJ 2001, 413).

Therefore, the subject-matter of claim 1 is found to be novel (Article 52(1), 54(1) and 56 EPC).

4. *Inventive step (main request)*

- 4.1 The problem underlying the claimed subject-matter consists in avoiding that the wrapping sheet is torn or unduly extended as the individually wrapped sanitary napkin is opened (see page 1, last paragraph - page 2, first paragraph, of the patent application).

This problem is solved by a napkin in accordance with the definition of claim 1. Indeed, since the second end of the wrapping sheet is releasably fastened to an outer surface of the wrapping sheet at a region where the inner surface of the wrapping sheet is fastened to the release sheet, when the second end is stripped away to open the wrapped napkin, the wrapping sheet is retained at said region by the release sheet, thereby preventing deformation of the wrapping sheet at said region (see page 3, first paragraph of the patent application).

4.2 The skilled person faced with the above mentioned technical problem is led by the disclosure of D1 (see col. 3, lines 20-30) towards a selection of materials for the adhesive tape and wrapping sheet which have matching physical properties so as to improve bond security while at the same time making it easier to remove the adhesive tape from the wrapping sheet without tearing. However, there is no indication to be found in D1 suggesting that the position at which the wrapping sheet is fastened to the release sheet might contribute to the solution of the problem. In fact, as explained above (point 3.1), D1 is silent about where any attachment portions between the wrapper and the release strip should be located. Therefore, the claimed solution is not obvious in the light of the available prior art.

4.3 It follows that the subject-matter of claim 1, and of claims 2 to 4 dependent therefrom, is found to involve an inventive step.

5. Since the main request is allowable, there is no need to consider the auxiliary request.

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 4 as filed with letter dated

18 July 2002;

description: pages 1 to 7 as filed with letter dated
24 June 2002;

drawings: pages 1/2 and 2/2 as originally filed.

The Registrar:

The Chairman:

D. Sauter

P. Alting van Geusau