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D E C I S I O N
of 3 September 2004

Case Number: T 0478/02 - 3.2.6

Application Number: 94923981.8

Publication Number: 0774943

IPC: A61F 13/15

Language of the proceedings: EN

Title of invention:

Absorbent article having improved dry/wet integrity

Patentee:

THE PROCTER & GAMBLE COMPANY

Opponent:

SCA Hygiene Products AB

Headword:

-

Relevant legal provisions:

EPC Art. 54(1), 84, 123(2),(3)

Keyword:

"Admissibility of amendments - yes"
"Novelty of amended claim 1 - yes"
"Remittal to the first instance - yes"

Decisions cited:

-

Catchword:

-



Case Number: T 0478/02 - 3.2.6

D E C I S I O N
of the Technical Board of Appeal 3.1.1
of 3 September 2004

Appellant: THE PROCTER & GAMBLE COMPANY
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 7 March 2002
revoking European patent No. 0774943 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: R. T. Menapace
Members: G. C. Kadner
G. Pricolo

Summary of Facts and Submissions

I. The mention of the grant of European patent No. 774 943 in respect of European patent application No. 94 923 981.8 filed on 20 July 1994 and claiming two US-priorities from 26 July 1993 and from 30 June 1994 was published on 17 May 2000. Claim 1 reads as follows:

"An absorbent article (20), said article comprising:

- a) a liquid pervious topsheet (24);
 - b) a liquid impervious backsheet (26) joined to said topsheet;
 - c) an absorbent core (28) comprising one or more absorbent layers comprising hydrophilic fibers, said absorbent core and layers thereof having side edges (82) and end edges (83), said absorbent core being positioned between said topsheet and said backsheet; and
- characterized in that said absorbent article further comprises
- d) a primary core integrity (120) layer comprising a continuous mesh of strands of thermoplastic material in substantially random orientation, said primary core integrity layer having surface area dimensions such that it extends beyond at least a portion of one of said edges of at least one of said absorbent layers, said primary core integrity layer being joined, to said topsheet or said backsheet, said thermoplastic material being penetrated into at least one layer of said absorbent core during formation of said primary core integrity layer."

II. Notice of opposition was filed on 16 February 2001 by the Respondent (Opponent), based on the grounds of Article 100(a) EPC.

III. By decision announced during oral proceedings on 8 February 2002 and posted on 7 March 2002 the Opposition Division revoked the European patent.

The Opposition Division was of the opinion that the subject-matter of claim 1 as granted was not novel with respect to D3 (US-A-4 573 986). An amended claim 1 submitted during the oral proceedings as auxiliary request was not admitted under Article 114(1) EPC because it was deemed to be late filed since the amendment was taken from the description and the amended claim did not appear to overcome the objections made in respect of the main request.

IV. On 14 May 2002 the proprietor of the patent (Appellant) filed a notice of appeal against this decision and paid the appeal fee. The statement of grounds of appeal was received on 12 July 2002.

The appellant pursued its main request for rejection of the opposition and submitted four auxiliary requests.

V. In a communication dated 14 June 2004 the Board informed the parties that it did not see a reason to change the Opposition Division's decision in respect of the main request. The reasons of this decision also appeared to apply for the first auxiliary request in which only the description had been amended. The second to fourth auxiliary request also did not appear to be clearly allowable since the added features were

disclosed in specific embodiments and it was doubtful whether the introduction of isolated features was admissible.

VI. Oral proceedings were held on 3 September 2004. The following documents considered at first instance proceedings were discussed again:

D1: GB-A-2 085 281

D3: US-A-4 573 986

The Respondent (Opponent) requested that the appeal be dismissed.

The Appellant requested that the decision under appeal be set aside and that the case eventually be remitted to the first instance for further prosecution on the basis of the main request filed during the oral proceedings.

Claim 1 of this request reads as follows (amendments to the granted version of that claim in *italics*):

"An absorbent article (20), said article comprising:

- a) a liquid pervious topsheet (24);
- b) a liquid impervious backsheet (26) joined to said topsheet;
- c) an absorbent core (28) comprising one or more absorbent layers comprising hydrophilic fibers, said absorbent core and layers thereof having side edges (82) and end edges (83), said absorbent core being

positioned between said topsheet and said backsheet;
and

characterized in that said absorbent article further
comprises

d) a primary core integrity (120) layer comprising a continuous mesh of strands of thermoplastic material in substantially random orientation, said primary core integrity layer having surface area dimensions such that it extends *outside of* at least a portion of *each of the side edges* of said absorbent core and *the absorbent core is enveloped between the primary core integrity layer and a chassis component selected from the topsheet and the backsheet*, said primary core integrity layer being *directly joined to said chassis component in the areas where the primary core integrity layer extends laterally outside the enveloped absorbent core*, said thermoplastic material being penetrated into at least one layer of said absorbent core during formation of said primary core integrity layer, and *wherein said thermoplastic material of said primary core integrity (120) layer is a hot-melt, high wet strength adhesive having a Wet Peel Strength of at least 4 g/cm according to the Peel Test.*"

VII. In support of its requests the Appellant essentially relied upon the following submissions:

The amendments made to claim 1 were supported by the patent specification as well as by the corresponding text of the application as originally filed. In particular it had been clarified that the primary core integrity layer is joined to the topsheet or to the backsheet in a region which extended outward from the absorbent core thus corresponding with the embodiment

according to alternative II of the sketch presented by the Respondent during the oral proceedings.

The subject-matter of claim 1 was novel when compared with the teachings of D1 or D3 because the added features and in particular the features of added claim 4 were not disclosed in the prior art documents.

VIII. The submissions of the Respondent can be summarised as follows:

The subject-matter of amended claim 1 was not clearly defined and also covered the embodiment according to alternative I of the sketch with the primary core integrity layer being joined to the topsheet in the region covered by the absorbent core. Therefore claim 1 did not meet the requirements of Article 84 EPC.

Lack of novelty was no longer contended.

Reasons for the Decision

1. The appeal is admissible.
2. *Amendments (Article 123(2) and (3) EPC)*

The added features in amended claim 1 (marked in *italics* in above section IV) are disclosed in the description of the patent in suit (column 22, lines 13 to 17; lines 44 to 51; column 23, lines 5 to 9) and in granted claim 4 which find their basis in the description of the application as filed (page 26, lines 21 to 24; page 27, lines 18 to 21; lines 30 to

32) together with original claim 4 and the drawings (Figures 2 and 3). A skilled reader understands unambiguously that the topsheet and the backsheet are defined as chassis components, and although it is not expressly stated that the core integrity layer is directly joined to said chassis component in the areas where the primary core integrity layer extends laterally outside the enveloped absorbent core, this amendment is clearly derivable from the description relating to Figure 3.

Claim 4 disclosing the feature of a defined Wet Peel Strength depended on claim 1, and a method for measuring the Wet Peel Strength is described in the patent (column 27, line 36 et seq.).

For these reasons it has to be concluded that the amended claim 1 meets the requirements of Article 123(2) EPC and, since the amendments restrict the claim, is also allowable under Article 123(3) EPC.

3. *Article 84 EPC*

With the introduction of features all taken from the patent specification, the subject-matter of amended claim 1 is clearly defined and also supported by the description. Hence the requirements of Article 84 EPC are met.

4. *Novelty*

- 4.1 D3 discloses an absorbent article, comprising a liquid pervious topsheet 21, a liquid impervious backsheet 27 joined to said topsheet, an absorbent core 23

comprising an absorbent layer of hydrophilic fibers, said absorbent core and layers thereof having side edges and end edges, and in which the absorbent core is positioned between said topsheet and said backsheet. This absorbent article further comprises a core integrity layer 49 a,b comprising a continuous mesh of strands of thermoplastic material in substantially random orientation, said primary core integrity layer having surface area dimensions such that it can be wrapped around said absorbent core, said thermoplastic material being penetrated into the surface of said absorbent core.

When compared to the teachings of D3, the subject-matter of claim 1 is distinguished from the absorbent article disclosed there by the newly introduced features.

4.2 The disposable diaper disclosed in D1 comprises a liquid pervious topsheet 18, a liquid impervious backsheet 19 joined to said topsheet, an absorbent core comprising an absorbent layer of hydrophilic fibers, said absorbent core and layers thereof having side edges and end edges, and in which the absorbent core is positioned between said topsheet and said backsheet. The absorbent member 23 is covered with a hydrophobic netty sheet 26 which is wrapped into it thus constituting an absorbent core. From this disposable diaper the absorbent article according to claim 1 equally differs by the newly introduced features.

4.3 As a consequence the subject-matter of claim 1 meets the requirement of novelty (Article 54(1) EPC).

5. *Remittal to the First Instance*

Since claim 1 has been amended by the introduction of several features taken from the description and a substantive examination in respect of inventive step has not yet been carried out in the opposition proceedings, the case is remitted to the First Instance for further prosecution as was also requested by the Appellant.

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 for further prosecution on the basis of claims 1 to 6 as filed as main request during the oral proceedings held on 3 September 2004.

The Registrar:

The Chairman:

M. Patin

R. Menapace