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**Datasheet for the decision  
of 21 July 2006**

**Case Number:** T 0099/06 - 3.2.06

**Application Number:** 99953011.6

**Publication Number:** 1178846

**IPC:** A61L 15/34

**Language of the proceedings:** EN

**Title of invention:**

Absorbent article with skin care composition

**Applicant:**

THE PROCTER & GAMBLE COMPANY

**Opponent:**

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**Headword:**

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**Relevant legal provisions:**

EPC Art. 54

**Keyword:**

"Novelty (yes - after amendment)"  
"Request for remittal"

**Decisions cited:**

-

**Catchword:**

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Case Number: T 0099/06 - 3.2.06

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.06  
of 21 July 2006

**Appellant:**

THE PROCTER & GAMBLE COMPANY  
One Procter & Gamble Plaza  
Cincinnati, OH 45202 (US)

**Representative:**

Kremer, Véronique Marie Joséphine  
Procter & Gamble Service GmbH  
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**Decision under appeal:**

Decision of the Examining Division of the  
European Patent Office posted 25 July 2005  
refusing European application No. 99953011.6  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** P. Alting van Geusau  
**Members:** G. L. De Crignis  
K. Garnett

## Summary of Facts and Submissions

- I. European patent application No. 99 953 011.6 published as International application PCT WO 00/69483 was refused by the decision of the Examining Division dated 25 July 2005.
- II. The application was refused because the subject-matter of claim 1 was found to lack novelty having regard to the disclosure of
- |    |                  |
|----|------------------|
| D1 | WO-A-99/12530 or |
| D2 | WO-A-99/12583 or |
| D3 | WO-A-99/22684.   |
- III. On 23 September 2005 a notice of appeal against this decision was filed by the appellant (applicant) and the appeal fee was paid that same day, followed by the statement of grounds of appeal filed on 5 December 2005 together with an amended main request. The appellant requested that the decision of the Examining Division be set aside and a patent be granted on basis of the newly submitted set of claims.
- IV. In a communication dated 27 March 2006 the Board informed the appellant that the Board shared the opinion of the Examining Division and that also the subject-matter of claim 1 of the newly submitted set of claims did not appear to be novel over D1.
- V. Oral proceedings were held on 21 July 2006. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of claim 1 of the main request filed with letter dated 18 July 2006 or alternatively on the basis of claim 1

according to the first or second auxiliary requests filed with that same letter.

Claim 1 of the main request reads as follows:

"A feminine hygiene absorbent article having a body surface and a garment surface, the absorbent article comprising a topsheet disposed at the body surface, a backsheet disposed at the garment surface, and an absorbent core disposed therebetween, at least a portion of the absorbent article being provided with a skin care composition, characterized in that the absorbent article has a preferential acquisition zone and a skin care zone, the preferential acquisition zone covering at least a portion of the vulva of the wearer when the absorbent article is applied on the wearer's body, wherein both said preferential acquisition zone and said skin care zone are provided with skin care composition, the skin care zone is provided with the skin care composition of greater basis weight than the preferential acquisition zone."

In claim 1 of auxiliary request 1, it was further added that the preferential acquisition zone "positions generally at the center of the absorbent article".

In claim 1 of auxiliary request 2, it was additionally specified that "said skin care composition is applied on a portion of or the entirety of the topsheet".

VI. In support of its main request the appellant essentially relied upon the following submissions:

When compared to the claim underlying the decision under appeal, the subject-matter of claim 1 was limited to a feminine hygiene article wherein both the said preferential acquisition zone and the said skin care zone were provided with skin care composition. These further features were supported by page 1, lines 10/11, page 4, line 27 and page 8, lines 20 to 33 of the description as originally filed.

D1 did not disclose a feminine hygiene article comprising both said zones provided with skin care composition combined with the skin care zone being provided with a skin care composition of respectively greater basis weight.

D1 disclosed an absorbent article and mainly diapers wherein the topsheet might have regions with and without skin care composition. Particularly with regard to the embodiment concerning a feminine hygiene article, no skin care composition was applied within the crotch portion. The crotch region had to be considered as representing at least part of the preferential acquisition zone. Hence, the subject-matter of claim 1 was novel over the disclosure of D1.

Since the amendment overcame the objection made by the Examining Division, the case should be sent back to the first instance in order to have two instances of prosecution for dealing with the new situation.

## Reasons for the Decision

1. The appeal is admissible.
2. *Amendments*

The subject-matter of claim 1 has been changed in view of the decision of the Examining Division in two aspects. On the one hand, the subject-matter of claim 1 now is limited to feminine hygiene articles and, on the other, the subject-matter of claim 1 now is limited to both the said preferential acquisition zone and the said skin care zone being provided with skin care composition.

The limitation to a feminine hygiene absorbent article is supported by page 1, line 10 and page 4, line 27 of the application as originally filed.

The limitation to both the said preferential acquisition zone and the said skin care zone being provided with skin care composition is supported by page 8, line 20 to page 9, line 6, of the description as originally filed.

The subject-matter of claim 1 does not give rise to objections based on Article 123 (2) EPC.

1. In the decision under appeal the lack of novelty objection was mainly argued with respect to D1, and in particular concerned an embodiment falling within the scope of claim 1 according to which the preferential acquisition zone was not provided with skin care

composition. Such an embodiment was the direct result of the presence of claim 3 in this set of claims.

Present claim 1 now clearly specifies that both the acquisition zone and the skin care zone are provided with skin care composition whereby the skin care zone is provided with the greater basis weight of the skin care composition. Therefore the above argument of the Examining Division no longer applies to the present claim 1.

It is to be noted that D1 further discloses that the skin care composition can be applied non-uniformly, by which is meant that the amount, location and pattern of distribution can vary over the wearer-contacting surface of the article (page 32, lines 22 to 25). However, although this disclosure, starting from paragraph V (from page 31 onwards), obviously applies to absorbent articles in general, when it comes to deal specifically with diapers, and their treatment with the skin care composition, it is said that preferably the crotch region of such a diaper should have no skin care composition (page 32, lines 27 to 32). In any event, in so far as any reference is made to greater or lesser amounts of skin care composition, there is no suggestion that so far as feminine hygiene articles are concerned the skin care zone should be provided with a greater amount of skin care composition than the acquisition zone.

The Examining Division further addressed D2 (pages 33 to 36) and D3 (in particular pages 32 and 34) which documents involve basically the same disclosure as D1 (see page 4, second paragraph of the decision under

appeal). Indeed the disclosures of D1, D2 and D3 are very similar but as regards the more specific references made by the Examining Division in the communication dated 19 April 2002 and on page 2 of the communication dated 7 July 2003, D3 appears to be the most relevant in that for a sanitary napkin the formulation of the skin care compositions applied to the barrier cuff, the topsheet, and the flaps can be different so as to provide different skin care benefits to different portions of the skin of the wearer (page 32, lines 24 to 26). However, this does not imply that necessarily the acquisition zone should have a lesser amount of skin care composition than the rest of the napkin.

Therefore, the Board comes to the conclusion that the subject-matter of claim 1 is novel when compared to the disclosures of D1, D2 and D3.

2. The refusal of the patent application was essentially based on lack of novelty when compared to the disclosure of D1, D2 or D3. Under point 2.4 of the decision, the Examining Division considered the problem to be solved by the present patent application to be the provision of absorbent articles which absorb body exudates effectively while delivering skin care benefits to the wearer's skin. This problem was considered to be - and effectively is - already solved by D1 to D3. However, obviously this problem no longer applies to the subject-matter of the amended claim 1.

Therefore, both novelty when compared to the other cited documents and inventive step need to be examined. Since the appellant expressly requested the remittal of



the case to the Examining Division in order to have two instances of jurisdiction and since it is normally not the function of the appeal board to consider and decide upon questions which were raised for the first time during the appeal proceedings, the Board exercises its discretion under Article 111(1) EPC and refers the case back to the Examining Division.

## **Order**

### **For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The case is remitted to the Examining Division for continuation of the examination proceedings.

The Registrar:

The Chairman:

M. Patin

P. Alting van Geusau