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**Datasheet for the decision
of 27 September 2006**

Case Number: T 0255/06 - 3.2.06

Application Number: 01944090.8

Publication Number: 1309302

IPC: A61F 13/64

Language of the proceedings: EN

Title of invention:
Belted absorbent article

Applicant:
SCA Hygiene Products AB

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 84, 123(2)
EPC R. 88

Keyword:
"Clarity - yes"

Decisions cited:
-

Catchword:
-



Case Number: T 0255/06 - 3.2.06

D E C I S I O N
of the Technical Board of Appeal 3.2.06
of 27 September 2006

Appellant: SCA Hygiene Products AB
S-405 03 Göteborg (SE)

Representative: Hammond, Andrew David
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 4 October 2005
refusing European application No. 01944090.8
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: G. Pricolo
Members: G. Kadner
W. Sekretaruk

Summary of Facts and Submissions

- I. The appeal is from the decision of the Examining Division, posted on 30 September, refusing European patent application No. 01 944 090.8 filed on 28 June 2001 as an International Application.
- II. In the decision under appeal the Examining Division considered that claim 1 according to the Applicant's main request did not meet the requirement of Article 84 EPC. In particular, claim 1 defined a product by functional features which represented a result to be achieved. Generally such a definition of a product was not allowable if a definition in structural terms was possible, which also would not lead to an undue restriction of the scope of the claims. Moreover, since the parameters of release time at a given angle were totally unusual in the technical field concerned, claim 1 of the main request lacked clarity.

The two auxiliary requests were rejected on the grounds that the subject-matter of claim 1 of each request was not allowable under Article 123(2) EPC.

- III. The Appellant (Applicant) lodged an appeal, received at the EPO on 24 November 2005, against this decision and simultaneously paid the appeal fee. The statement setting out the grounds of appeal was filed on 13 February 2006.
- IV. In a communication dated 13 July 2006 the Board again raised the question whether claim 1 of the main request met the requirement of clarity (Article 84 EPC). It also appeared questionable whether the application

disclosed the invention in a manner sufficiently clear and complete for it to be carried out by a skilled person (Article 83 EPC).

V. Oral proceedings were held on 27 September 2006.

The Appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the new main request filed during the oral proceedings.

Claim 1 of the main request reads as follows:

"A belted absorbent article (10) comprising:

an absorbent structure (16) extending about a first longitudinal axis (18), said absorbent structure including a topsheet (20), a backsheet (22) and an absorbent batt (24) disposed between said topsheet and said backsheet, said absorbent structure having a transverse axis (T) dividing the absorbent structure into a front panel (26) terminating in a front end region (28) and a rear panel (30) terminating in a rear region (32), said absorbent structure being delimited by opposed longitudinal edges (34) and opposed transverse edges (36), and

a pair of opposed belt halves (12, 14) attached to said absorbent structure (16) at said rear end region (32) of said rear panel (30) by a respective joint (50), each belt half extending about a second longitudinal axis (42) such that each belt half extends outwardly from a respective longitudinal edge (34) of the absorbent structure, characterized in that

said joint (50) between each said belt half (12, 14) and said absorbent structure (16) is designed such that when each said belt half is subjected to a tension force of 35 N acting along said second longitudinal axis (42) and said longitudinal axis creates an angle (α) to said transverse axis (T) of said absorbent structure, the following minimum average release times (t) of each belt half from said absorbent structure are attained:

when $\alpha = 10^\circ$, minimum t = 720 seconds

when $\alpha = 20^\circ$, minimum t = 330 seconds

when $\alpha = 25^\circ$, minimum t = 240 seconds

when $\alpha = 30^\circ$, minimum t = 180 seconds

when $\alpha = 40^\circ$, minimum t = 75 seconds."

VI. In support of its request, the Appellant essentially made the following submissions:

The replacement of the operator "t >>" by "minimum t =" was made to correct an obvious error under Rule 88 EPC, which correction was supported by the application as filed.

The invention was based on the insight that belted absorbent products whose belt halves seemed to be securely fastened to the absorbent chassis were failing in use due to the fact that the joint between each belt half and the absorbent chassis was shearing or peeling apart as a result of the belt half being subjected to a tension at increasing values of the angle α . According to the Guidelines for Examination, C IV, 9.6 (i) a claimed invention could be based on the formulation of a new idea or a yet unrecognised problem to be solved, even if the solution became obvious once the problem

was clearly stated. That was the case here, and the skilled person being made aware of the problem was in a position, with his toolbox of routine knowledge, to readily propose viable solutions.

Reasons for the Decision

1. The appeal is admissible.
2. *Amendments (Article 123(2), Rule 88 EPC)*

Claim 1 as originally filed included the operator ">>" having generally the meaning of "much greater". However, when considering the values in the example compared with those in the claims, it is immediately evident that this operator was an obvious error made when drafting the claims and description. Since, from the specification and the claims, it clearly follows that the values of "t" relate to the "minimum average release time", the correction from "t >>" to "minimum t =" is allowable under Rule 88 EPC. It also does not alter the subject-matter claimed and therefore also complies with the requirements of Article 123(2) EPC.

3. *Clarity (Article 84 EPC)*

In accordance with the established case law of the Boards of Appeal, functional features defining a technical result are permissible in a claim if, from an objective viewpoint, such features cannot otherwise be defined more precisely without restricting the scope of the invention, and if these features provide instructions which are sufficiently clear for the

skilled person to reduce them to practice without undue burden, if necessary with reasonable experiments (see e.g. T 68/85).

The Board takes the view that in the present case these conditions are met.

The disclosure of the application is directed to a skilled person having general knowledge in the respective technical field. This person is familiar with the details of the construction of disposable absorbent articles and with the usual materials employed.

When this person is told the problem that the joints by which the belts are fixed to an absorbent article do not withstand the load sufficiently if the direction of the tensile force deviates from the normal perpendicular direction, he would immediately consider that the joint is too weak, and, based on general knowledge, would find solutions to reinforce the joint so that it can withstand the load for a longer time. There are several measures which would immediately come to mind, like increasing the area of the joint, applying a stronger adhesive or more adhesive and for instance. Thus, although no specific solution for the reinforcement of the joint is included in claim 1, the skilled person would find a suitable one without undue burden in order to attain higher release times.

In order to check whether the reinforcement of the joint is such as to meet the requirements of claim 1, the skilled person would need to carry out the test method described in detail on pages 13 to 16 of the

description, by which the required release times can be determined. If the measures taken by the skilled person are still not sufficient, he would consider further possibilities of reinforcement and carry out the test again.

Accordingly, on the basis of common general knowledge and through the evaluation of initial failures (by means of reasonable experiments), the skilled person could reduce to practice the functional features of claim 1. Since there are various manners in which he could achieve this result, the scope of protection would be unduly restricted if the functional features were restricted to specific structural features.

It follows that the decision of the Examining Division cannot be upheld.

4. *Remittal to the first instance*

The application was rejected by the Examining Division on the sole ground that claim 1 violated Article 84 EPC. Thus substantive examination in respect of, in particular, novelty and inventive step has not yet been carried out. In order to give the Appellant the possibility to prosecute the application at two levels of jurisdiction, the Board deems it appropriate, exercising its discretion under Article 111(1) EPC, to remit the case to the department of first instance. It is noted that during further examination, the same level of skill attributed to the skilled person for the question of clarity should be applied in considering the questions of novelty and inventive step.

Order

For these reasons it is decided that:

The decision under appeal is set aside.

The case is remitted to the first instance for continuation of the examining proceedings.

The Registrar:

The Chairman:

M. Patin

G. Pricolo