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**Datasheet for the decision
of 6 May 2008**

Case Number: T 1501/07 - 3.2.04

Application Number: 05007606.6

Publication Number: 1554967

IPC: A47L 13/20

Language of the proceedings: EN

Title of invention:

Cleaning article

Applicant:

UNI-CHARM CORPORATION

Headword:

-

Relevant legal provisions:

EPC Art. 76(1)

Relevant legal provisions (EPC 1973):

-

Keyword:

"Divisional - added subject-matter (all requests) (yes)"
"Isolation of only certain features"

Decisions cited:

T 0770/90, T 1067/97, T 0714/00, T 0025/03, G 0001/05,
G 0001/06

Catchword:

-



Case Number: T 1501/07 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 6 May 2008

Appellant:

UNI-CHARM CORPORATION
182 Shimobun,
Kinsei-cho,
Shikokuchuo-shi,
Ehime-ken (JP)

Representative:

Eke, Philippa Dianne
Saunders & Dolleymore
9 Rickmansworth Road
Watford,
Hertfordshire WD18 0JU (GB)

Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 3 April 2007
refusing European application No. 05007606.6
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: M. Ceyte
Members: A. de Vries
T. Bokor

Summary of Facts and Submissions

I. The Appellant lodged an appeal, received 4 June 2007, against the decision of the Examining Division posted 3 April 2007, refusing the European patent application No. 05 007 606.6 and simultaneously paid the required fee. The grounds of appeal were received 10 August 2007.

In its decision the Examining Division held that the application, which was filed as a divisional from an earlier European application No. 01 947 846.0, extended beyond the content of the earlier application contrary to the requirements of Article 76(1) EPC.

II. Oral proceedings before the Board, auxiliarily requested by the Appellant, were held 6 May 2008.

III. The Appellant requests that the decision under appeal be set aside and that the application proceed on the basis of claims according to a main request, or in the alternative, according to first to fourth auxiliary requests filed at the oral proceedings before the Board.

IV. Claim 1 of the requests reads as follows:

Main Request:

"A cleaning article comprising:

at least one layer of a fibre bundle comprising heat-fusible thermoplastic fibers;

a fusible base sheet (2)

a further fusible sheet (5);

a plurality of cut lines (11) extending inwardly from at least one edge of the base sheet and from at least one edge of the further fusible sheet;

a plurality of strips (12) formed between adjacent cut lines;

a strip-forming region defined within the base sheet to include strips (12);

a strip-non-forming region defined by a central region of the base sheet where the strips (12) are not formed;

characterized in that the fiber bundle layer (3) is laid on one side of the base sheet across both the strip-forming region and the strip-non-forming region, wherein the strip-non-forming region of the base sheet (2) and the fiber bundle layer (3) are fusion-bonded to each other and that a brush portion is defined by the strips and the fiber bundle layer laid on the strips;

wherein the fusible base sheet and the further fusible sheet are formed of a nonwoven fabric comprising thermoplastic fibers and/or a thermoplastic resin film.

First Auxiliary Request:

With regard to claim 1 of the main request the feature of the plurality of cut lines is amended to read:

"a plurality of cut lines extending (11) inwardly from **two opposite edges** of the base sheet" (emphasis added by the Board to highlight what has been amended).

Second Auxiliary Request:

"A cleaning article (1) comprising a brush portion including: a plurality of strips (17); and at least one

layer of a fiber bundle (3) comprising heat-fusible thermoplastic fibers;

wherein at least one sheet (5) having said plurality of strips formed therein and said fiber bundle layer (3) are stacked on and partially joined to a base material (2);

wherein said base material is a sheet (2) formed with strips (12);

wherein the sheet of base material has a central region (2a) in which strips are not formed and strip-forming regions (2b) lying opposite one another and sandwiching the central region therebetween;

wherein the fibre bundle layer lies on a face of the base material sheet across both its central region and its strip-forming regions; and

wherein the stack of sheets and layers are fusion-bonded at an all-layer joining line (7) which passes through the central region of the base material sheet;

wherein the at least one sheet and the base material are formed of a nonwoven fabric comprising thermoplastic fibers and/or a thermoplastic resin film.

Third Auxiliary Request:

"A cleaning article (1) comprising a brush portion including a plurality of strips (12) and at least one layer (3) of a fiber bundle,

characterised in that:

a thermoplastic base sheet (2) has a central region (2a) and two strip-forming regions (2b) lying opposite one another and sandwiching the central region therebetween;

a holding sheet (8) lies on a first face of the base sheet and extends from the central region to the strip-forming regions of the backsheet;

a plurality of cuts (11) extend inwardly from two opposite edges of the base sheet and the holding sheet to form said plurality of strips (12);

said at least one layer (3) of a fiber bundle lies on a second face of the base sheet and comprises thermoplastic fibers which extend continuously in one direction to traverse said whole fibre bundle layer;

the base sheet, the holding sheet and the fibre bundle layer are fusion-bonded together at joining lines;

one pair of joining lines (13) is formed along the parallel boundary lines between the central region (2a) and the strip-forming regions (2b) ; and

another pair of joining lines (14) are formed in the strip-forming regions such that the joining lines extend obliquely transversely over the strips (12) at midway areas between their longitudinal ends"

wherein the base sheet and the holding sheet are formed from a nonwoven fabric comprising thermoplastic fibers and/or a thermoplastic resin film".

Fourth Auxiliary Request:

This request adds to claim 1 of the third auxiliary request (between its last and last-but-one features) the following further features:

"an all-layer joining line (7) is formed midway between the pair of parallel joining lines (13); and two holding spaces (20) are provided, each of which is defined between one of the parallel joining lines (13) and the all-layer joining line (7);"

Reasons for the Decision

1. The appeal is admissible.
2. *Legal framework : Article 76(1) EPC 1973*
 - 2.1 Article 76(1) EPC 1973, second sentence, requires that a European divisional application is filed only in respect of subject-matter which does not extend beyond the content of the earlier application as filed. According to established jurisprudence, the same principles for determining compliance with Article 123(2) EPC 1973 with respect to an application as filed apply for testing compliance of a divisional with Article 76(1), in relation to the parent application, see G 01/05 "Divisional/Astropower" and G 01/06 "Sequences of Divisionals/Seiko" (both to be published in the OJ), reasons 5.1. Thus, a central criterion for establishing whether subject-matter complies with Article 123(2) EPC 1973, namely that it be *directly and unambiguously* derivable by the skilled person from the original disclosure, as determined by the *totality* of claims, description and figures when read in context applies also in determining whether a divisional application complies with Article 76(1) EPC 1973 in respect of the earlier application.
 - 2.2 Where newly claimed subject-matter is based on the extraction of features in isolation from a set of features originally disclosed in combination (e.g. in a specific embodiment in the description) the above criterion is met, following accepted jurisprudence as developed in T 1067/97, T 0714/00 or T 0025/03 (see

also the Case Law of the Boards of Appeal of the EPO, 5th edition, 2006 (hereinafter CLBA), III.A.1.1, page 240), if there is no clearly recognizable functional or structural relationship between the features, i.e. when they are not inextricably linked. In such cases, see CLBA, III.A.1.1, page 239, and T 770/90 mentioned therein, an unduly broad original claim, moreover, does not represent a suitable "reservoir" for amendments, i.e. does not by itself justify claiming new feature combinations which may fall within the scope of an original broad claim but are not explicitly disclosed in the original application. These criteria apply also in determining compliance of a divisional application with Article 76(1) EPC 1973.

3. *Parent and divisional as filed*

3.1 The central idea of the earlier, or parent, application concerns the use of strips (in a sheet) in a cleaning article to give a fibre bundle layer forming brush portions increased rigidity and reduce the risk of entanglement so that the brush retains its shape and dust trapping ability (see in particular the last paragraph of page 2 to 2nd paragraph of page 3). This main idea is realized in various embodiments which can be divided into two distinct groups. In that of figures 1 to 6 the various cleaning layers are arranged only on one side of a base sheet, while in figures 7 to 9 cleaning layers are provided on both sides.

3.2 The present divisional application, see its sole claim 1 as filed, focuses on the way the fibre bundle

layer is laid across strip-forming and non-strip forming regions of the base sheet.

There is no strict literal basis in the parent application as filed for the above idea as expressed in any of the requests, as also acknowledged by the Appellant. Rather it is argued to be inferable from various passages of the parent description when read in conjunction with the original broadly worded statement of invention. The cited passages relate to the embodiment shown in figures 1 to 5 and detailed on pages 8 to 21 of the description.

- 3.3 The detailed description and figures however include many more features, which do not appear in any of the versions of claim 1 according to the different requests.

Thus figures 1 and 3 show this cleaning article featuring *three* sheets, a "base sheet 2", a "holding sheet 8" and a further "sheet 5" described in separate passages - page 13, lines 6 to 11 for the base sheet 2 and holding sheet 8; the paragraph bridging pages 14 and 15 - as *each* having the same basic layout of outer, *opposite strip-forming regions sandwiching a central, non-strip forming region*, though, as set out on page 13, lines 1 to 4, and page 15, lines 13 - of *differing dimensions*. The base sheet 2 and further sheet 5 are joined to *respective* fiber bundle layers 3 and 4 at respective sets of joining lines , as described on page 13, final paragraph (via fusion bonded joining lines 13 and 14, see figure 4B), and the paragraph bridging pages 15 and 16 (joining portions 18, see figure 5). These sheets and fibre bundle layers are stacked, overlaid with a final fibre bundle layer 6 and the

entire composite is then joined by fusion-bonding at an all-layer joining line 7: see the paragraph bridging pages 17.

3.4 From a contextual reading of the various passages it is clear that all these features are bound closely together both functionally and structurally. For example, the joining lines 13 and 7 join the various layers providing structural integrity while simultaneously defining holding spaces. The joining lines 14 and 18 hold strips and fibre bundles together to form the tangle-free brush portions of increased rigidity that are central to the parent application.

3.5 Claim 1 of all requests pares down this assembly to a much simplified arrangement of two sheets, only one of which bears strips, and a single fibre bundle layer, material and manner of joining set out in various degrees of detail in the various requests. As noted such a simplified arrangement has no explicit basis in the earlier parent. Figure 4B may show two sheets joined to a single fibre bundle layer but this figure relates to an intermediate stage in the manufacture of a cleaning article, as is clear from page 16, second complete paragraph. Nor are the features which have been thus singled out given any special prominence, either individually or in combination, in the description and figures of the parent. Rather, they are woven at different points into the intricate pattern of features making up the particular cleaning article of figures 1 to 5.

3.6 The Board is unconvinced that these features would strike the skilled person reading the parent

application as special in their own right or being linked by some special relationship. Not only is this specific combination of features not so disclosed in the parent, there is nothing apparent in the parent which might highlight these features to the skilled person in terms of a technical effect, advantage or problem to be solved associated with this specific combination. Lifting these features from their original context and so raising them to prominence as does claim 1 in its different versions gives these features a special significance where hitherto there was none, thus generalizing them beyond their original context. This results in new subject-matter which extends beyond the content of the earlier parent application as filed.

- 3.7 The Board stresses that it is immaterial that this new combination of features might fall within the scope of a broad statement of invention in the parent. What is decisive is determining which specific combinations of features were originally taught by the parent, and whether the skilled person recognizes *immediately and unequivocally* from the totality of the disclosure when read contextually and using his common general knowledge that, and which, certain features are incidental to the proper functioning of these specific embodiments, and that these can be dispensed with without consequence for the remaining features. In the present case the fact that the presently claimed features were not given any special prominence, and that they are functionally and structurally bound to the other, remaining features indicates that these criteria are not met.

3.8 The Board concludes that claim 1 of each of the main and first to fourth auxiliary requests fails to meet the requirements of Article 76(1) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed

The Registrar

The Chairman

D. Sauter

M. Ceyte