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**Datasheet for the decision
of 16 July 2010**

Case Number: T 0046/08 - 3.3.06

Application Number: 97951707.5

Publication Number: 0951602

IPC: D21H 27/02

Language of the proceedings: EN

Title of invention:

Soft tissue paper having a surface deposited softening agent

Patentee:

THE PROCTER & GAMBLE COMPANY

Opponent:

GEORGIA-PACIFIC FRANCE

Headword:

Soft tissue paper/P&G

Relevant legal provisions:

EPC Art. 56

Relevant legal provisions (EPC 1973):

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Keyword:

"Inventive step - all requests (no)"

Decisions cited:

-

Catchword:

-



Case Number: T 0046/08 - 3.3.06

DECISION
of the Technical Board of Appeal 3.3.06
of 16 July 2010

Appellant: GEORGIA-PACIFIC FRANCE
(Opponent) 11, route industrielle KUNHEIM
D-68320 Kuhnheim (FR)

Representative: Cortier, Sophie
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Respondent: THE PROCTER & GAMBLE COMPANY
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Representative: Nargolwalla, Cyra
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 14 November 2007
rejecting the opposition filed against European
patent No. 0951602 pursuant to Article 102(2)
EPC 1973.

Composition of the Board:

Chairman: P.-P. Bracke
Members: E. Bendl
J. Geschwind

Summary of Facts and Submissions

- I. The appeal is from the decision of the Opposition Division to maintain the European patent 0 951 602 as granted.
- II. In opposition procedure the Opponent raised objections with regard to sufficiency of disclosure and lack of novelty and inventive step. In its decision the Opposition Division came to the conclusion that the set of claims as granted would meet the requirements of the EPC. In the course of the procedure inter alia the following documents were cited:

D1 = WO-A-9624723

D5 = WO-A-9535411

D6 = WO-A-9426971

- III. The set of claims as granted consists of a total of ten claims, the only independent Claim 1 reads as follows:

"1. A soft tissue paper product having one or more plies, wherein at least one outer surface of the tissue paper has uniform discrete surface deposits of a substantively affixed chemical softening agent, said chemical softening agent preferably comprising a quaternary ammonium compound, wherein

- less than about 50 %, more preferably less than about 25 %, and most preferably less than about 5 % of the tissue surface is covered by the chemical softening agent, and **characterized in that**
- the uniform surface deposits are spaced apart at a frequency between about 2 deposits per lineal centimeter (5 deposits per lineal inch) and about 40

deposits per lineal centimeter (100 deposits per lineal inch), and **in that**

- the uniform surface deposits of the chemical softening agent are less than about 2700 micrometers in diameter."

IV. The Opponent, thereafter referred to as Appellant, filed on 04 January 2008 an appeal against the decision of the Opposition Division. The grounds of appeal were submitted on 25 March 2008 and contained objections with regard to lack of sufficiency of disclosure, novelty and inventive step.

V. The Proprietor, thereafter referred to as Respondent, countered with the letter of 19 August 2008 all of Appellant's objections and filed in addition to the main request, which is the rejection of the appeal, five auxiliary requests.

VI. The wording of the **first auxiliary request** differs from the wording of the claims as granted in the deletion of the passage "50%, more preferably less than about" in Claim 1.

The difference in wording of the first and the **second auxiliary request** is the deletion of the text "25%, and most preferably less than about" in Claim 1.

In the **third auxiliary request**, compared to the claims as granted, the word "preferably" was deleted before "comprising a quaternary ammonium compound" in Claim 1.

The wording of the **fourth auxiliary request** is identical with the wording of the claims as granted,

but it contains the deletions as described for the first and the third auxiliary request above.

The wording of the **fifth auxiliary request** is identical with the wording of the claims as granted, but it contains the deletions of the first, second and third auxiliary request.

VII. The Respondent informed the Board with the letter dated 24 June 2010 that he would not be represented at the oral proceedings, which took place on 16 July 2010.

VIII. **Appellant's** main arguments relevant to the present decision were as follows:

Novelty

- Document D1 discloses all the features of Claim 1.

- For instance, the percentage of surface area covered (30-99%) can be found on page 4, lines 12/13 of D1, the same page describes a range of 10-1000 deposits per lineal inch (lines 19 to 22).

Inventive step

- D1 is regarded as the closest state of the art, because it presents a soft tissue product with features as claimed.

- Independently from D1, also D5 and D6 have to be taken into account, because these documents have the same objective as the patent-in-suit.

IX. **Respondent's** main arguments relevant to the present decision were as follows:

Novelty

- D1 does not disclose a "substantively affixed softening agent".

- The main ingredients of the formulation of D1 are oil and wax, which are, according to paragraph [0046] of the patent-in-suit, excluded as softening agent.

Inventive step

- The Opposition Division's decision is correct, as D1 aims at providing a formulation which will transfer the softening agent to the user's skin.

- Auxiliary requests: Only the differences of the auxiliary requests to the claims as granted were shown.

- X. The Appellant requested that the decision under appeal be set aside and that the European patent 0 951 602 be revoked.

The Respondent requested in writing that the appeal be dismissed or alternatively that the patent be maintained on the basis of one of the auxiliary requests 1-5 as filed with the letter of 19 August 2008.

Reasons for the Decision

1. *Novelty - main request/claims as granted*

The Board does not share Appellant's opinion that the combination of features of Claim 1 of the main request is disclosed in document D1.

Since the Board comes to the conclusion that the claimed subject-matter does not meet the requirement of inventive step, it is superfluous to give detailed reasons for this finding.

2. *Inventive step - main request/claims as granted*

According to the problem and solution approach, which is used by the Boards of Appeal of the European Patent Office in order to decide on the question of inventive step, it has to be determined which technical problem the object of a patent objectively solves vis-à-vis the closest prior art document. It also has to be determined whether or not the solution proposed to overcome this problem is obvious in the light of the available prior art disclosures.

2.1 The patent-in-suit aims at producing soft tissue paper without sacrificing tensile strength.

2.1.1 In the written procedure both parties started their considerations from D1, because the kind of products described in D1 was considered to be very close to the products of the patent-in-suit.

2.1.2 According to the jurisprudence of the Boards of Appeal only those documents can be regarded as the closest prior art, which disclose means or processes serving the same **purpose** as the means or processes described in the patent-in-suit.

2.1.3 D1 reports on a soft tissue product containing on its surface a large number of individual deposits of a

moisturizing/protective composition comprising a wax and an oil. The composition has reduced tendency to penetrate into the sheet but stays on the surface and enables the transfer to the user's skin.

2.1.4 Documents D5 and D6 cited by the Appellant also relate to soft tissue products, but additionally aim at not adversely affecting the tensile strength of the product. D5 furthermore gives on pages 27/28 a detailed explanation on the application of the softening lotion onto the paper web by means of gravure printing, whereas D6 only mentions different ways of applying the softening agent to the surface.

2.1.5 Thus, D1 does not make reference to the problem of increasing the softness while avoiding the reduction of tensile strength, whereas D5 and D6 mention **both** problems cited in the patent-in-suit. In addition to referring to the same problem(s), which is the first criterion for selecting the closest state of the art, D5 also has a higher number of technical features in common with the patent-in-suit, i.e. that D5 discloses more details on the gravure printing than D6.

Consequently the Board regards D5 as the closest prior art document.

2.2 D5 differs from the patent-in-suit in the details about the form and distribution of the deposits on the surface of the tissue paper, i.e. that neither the number of deposits per lineal inch, nor their diameter or the percentage of the coating of the tissue surface are given. However, this document mentions that between 2 and 20% by weight of the paper softening agent is

used; the patent-in-suit cites between 0,1 and 10% by weight, i.e. that both documents refer to comparable ranges.

2.2.1 The only comparative tests provided by the Respondent are Examples 1-3 in the patent-in-suit, which compare tensile strength and softness of products according to the invention with products having no surface printing. The latter products are considered to profoundly differ from the products described in D5, which **do** have a printed coating.

2.2.2 Thus, no effect resulting from the characteristics differing the claimed subject-matter from the closest state of the art has been shown. The objective problem solved over the closest prior art is therefore the provision of an **alternative** soft tissue product.

2.3 As the solution to this problem the Respondent proposes the products according to Claim 1 of the main request.

2.4 The Board does not have any doubt that the problem of providing an alternative soft tissue product has actually been solved. The Appellant did also not raise any objection in this respect.

2.5 The question to clarify is, whether products as defined in Claim 1 of the patent-in-suit are derivable from D5 without an inventive step.

2.5.1 D5 cites gravure coating methods as being preferred for the application of the emollient lotion. On page 27, lines 15-19 of D5 it is stated that "Gravure cylinders [...] each have a specific etched cell pattern and size

[...] The size of the cell volume of the gravure roll will depend upon the desired coat weight, line speed and lotion viscosity." This means that the person skilled in the art will adjust the parameters which distinguish D5 from the patent-in-suit, depending on the process conditions.

- 2.5.2 Due to this teaching and given the fact, that no effects have been demonstrated vis-à-vis D5 by the Respondent, the indication of a specific surface coverage and the number of deposits of a specific diameter per lineal centimetre are considered to represent routine variations well known to a person skilled in the art.
- 2.5.3 Claim 1 of the main request is therefore not considered to involve an inventive step.

3. *Inventive step - auxiliary requests I and II*

3.1 The wording of Claims 1 of these requests differs from the wording of Claim 1 as granted in the percentage of the coated tissue surface.

3.2 Again, since no effects with regard to the said percentage have been demonstrated, the same considerations as made for the main request are relevant. Also these requests are not considered to involve an inventive step.

4. *Inventive step - auxiliary request III*

4.1 The wording of Claim 1 of this request differs from the wording of Claim 1 as granted in the deletion of the

word "preferably", which makes the presence of a quaternary ammonium compound obligatory.

4.2 Quaternary ammonium compounds are well-known softening agents. This is also confirmed by paragraph [0011] of the patent-in-suit **describing the prior art disclosures:** "the term 'chemical softening agent' refers to any chemical ingredient which improves the tactile sensation perceived by the consumer who holds a particular paper product and rubs it across the skin. [...] This includes [...] emollients such as quaternary ammonium compounds with long alkyl chains".

4.3 Thus, the use of a known softening agent, for softening tissue paper is not considered to involve an inventive step either.

5. *Inventive step - auxiliary requests IV and V*

5.1 Finally, the wording of each of these two auxiliary requests differs from the wording of the third auxiliary request in the percentage of surface covered by the chemical softening agent.

5.2 Given the lack of a proven effect, the indication of a specific coverage does not involve an inventive step either.

6. *Remaining objections*

Since none of the sets of claims meets the requirement of inventive step, a discussion of the further objections raised is not necessary.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar

The Chairman

D. Magliano

P.-P. Bracke