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Datasheet for the decision of 3 August 2010

Case Number: T 0075/08 - 3.2.02

Application Number: 97304522.2

Publication Number: 0815812

IPC: A61F 5/445

Language of the proceedings: EN

Title of invention:
Water-closet disposable pouch and method of disposal

Patentee:
Bristol-Myers Squibb Company

Opponent:
Hollister Incorporated

Headword:
-

Relevant legal provisions:
EPC Art. 56, 84

Relevant legal provisions (EPC 1973):
-

Keyword:
"Clarity, inventive step (yes, after amendments)"

Decisions cited:
-

Catchword:
-

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Case Number: T 0075/08 - 3.2.02

D E C I S I O N
of the Technical Board of Appeal 3.2.02
of 3 August 2010

Appellant: (Opponent)
Hollister Incorporated
2000 Hollister Drive
Libertyville
Illinois 60048-3781 (US)

Representative:
Høiberg A/S
St. Kongensgade 59 A
DK-1264 Copenhagen K (DK)

Respondent: (Patent Proprietor)
Bristol-Myers Squibb Company
100 Headquarters Park Drive
Skillman NJ 08558 (US)

Representative:
Mays, Julie
Barker Brettell LLP
10-12 Priests Bridge
London SW15 5JE (GB)

Decision under appeal:
Interlocutory decision of the Opposition Division of the European Patent Office posted 19 November 2007 concerning maintenance of European patent No. 0815812 in amended form.

Composition of the Board:

Chairman: D. Valle
Members: C. Körber
A. Pignatelli

Summary of Facts and Submissions

I. The appellant (opponent) lodged an appeal on 14 January 2008 against the decision of the Opposition Division posted on 19 November 2007 to maintain the patent in amended form. The fee for the appeal was paid at the same time and the statement setting out the grounds for appeal was received on 26 March 2008.

II. The following documents are relevant for the decision:

D1 = US - A - 4 838 429
D2 = GB - A - 2 227 668
D4 = US - A - 5 366 295
D5 = WO - 96/01090
D6 = US - A - 4 460 365.

III. Oral proceedings took place on 3 August 2010.

The appellant requested that the decision under appeal be set aside and that the European patent No. 0 815 812 be revoked.

The respondent (patentee) requested that the appeal be dismissed (main request) or that the patent be maintained on the basis of one of the auxiliary requests 1 to 8 filed with letter of 1 July 2010.

IV. Claim 1 in the version maintained by the Opposition Division reads as follows:

"A WC-disposable pouch comprising walls (10, 12; 110, 112; 150, 152; 160A, 160B) of plastic material welded together along at least one edge, the pouch having a

top and a bottom, a first of the walls (10; 110; 150; 160A) having a pull-away element (20; 20'; 44; 136; 156; 164) secured to the exterior thereof, and a second of the walls comprising a stomal orifice therein, the stomal orifice being surrounded by an adhesive wafer for attachment of the pouch to peristomal skin, characterized in that the pull-away element is secured to the first pouch wall by one or more plastic welds (22; 22'; 42) such that, in use the pouch wall can be torn open adjacent or along the weld by pulling the element (20; 20'; 44; 136; 156; 164) away in a downward direction towards the bottom of the pouch."

Claim 18 of the main request reads as follows:

"A WC-disposable pouch comprising pouch walls (10, 12; 110, 112; 150, 152) of plastic material welded along at least one peripheral edge, the pouch having a top and a bottom, wherein a pull-away element (20; 20'; 44; 136; 156) is secured to or embedded within a first of the pouch walls, and a stomal orifice is provided in a second of the walls, the stomal orifice being surrounded by an adhesive wafer for attachment of the pouch to peristomal skin, characterized in that the pull-away element is located along or closely adjacent to an elongate heat affected zone (HAZ) in the pouch wall distinct from the welded periphery, the heat affected zone promoting tearing of the pouch wall in a direction along a periphery of the heat affected zone when the pull-away element is pulled away in a downward direction towards the bottom of the pouch."

Claim 19 of the main request reads as follows:

"A method comprising:
providing a pouch as defined in any preceding claim;
pulling the pull away (20; 20'; 44; 136; 156; 164) element downwardly toward the bottom of the pouch in order to produce a tear in the pouch wall material; and
placing the pouch in a WC to be flushed away."

V. The appellant argued as follows.

The introduction of D4 into the proceedings was justified since D4 was filed as direct reaction to the decision of the Opposition Division and in order to support the argument that welding was a common method in the field. D5 and D6 should also be introduced into the proceedings since they further supported the argument that welding was a known method in the field of ostomy.

The objection of extended subject-matter brought forward in writing was not maintained anymore. Claim 1 of the main request was not clear as far as the term "downward" was concerned. The skilled person in the field would not be able to define a downward direction unambiguously, since it depended on the orientation of the pouch.

The subject-matter of claims 1, 18 and 19 of the main request did not involve an inventive step having regard to the teaching of D2 and the general knowledge of the person skilled in the field. Also a combination of the teaching of D2 and D1 or D4 made claims 1, 18 and 19 obvious.

D2 did not disclose welding of the pull-away element. However, D2, page 1, fourth paragraph, disclosed three alternative embodiments in order to provide an opening for disposal of the pouch. In particular, as an alternative to a line of weakening or to a hole or holes covered by adhesive, a strong adhesive strip was provided, so that, pulling off the adhesive strip, the pouch wall was torn open. The problem of the invention had therefore to be seen in improving on this last embodiment. It was obvious to substitute a strong adhesive with welding. Welding was a common way of bonding sheets in the field. D5, paragraph bridging pages 4 and 5, and D6, column 2, lines 45 to 49 showed that in the field of ostomy welding and adhesive were generally known as equivalent bonding procedures. The patent in suit itself, column 8, paragraph 49, stated that welding was a preferred method for securing the tab to the pouch wall, since welding was typically used extensively in the production of the pouch. The further distinguishing feature of claim 1 with respect to D2 that the element was pulled away in a downward direction was a mere design choice and void of any inventive significance since the pouch had to be pulled in a definite direction and downward was an obvious direction for pulling away the element.

D1 disclosed the distinguishing feature with respect to D2 that the pull-away element was secured to the first pouch wall by one or more plastic welds such that, in use, the pouch wall could be torn open adjacent or along the weld by pulling the element away, see Figure 4. Also D4, Figure 1 disclosed the same feature.

VI. The respondent contested the arguments of the appellant and argued that D4, D5 and D6 should not be introduced into the proceedings because lately filed and irrelevant since they did not contain any further relevant piece of information in comparison with that contained in D2.

Claim 1 of the version as maintained was clear. The downward direction was defined in relation to the top and the bottom of the pouch.

The subject-matter of claim 1 of the version as maintained implied an inventive step having regard to any combination of the opposed prior art.

Reasons for the Decision

1. The appeal is admissible.

2. *Lately filed documents*

Document D4 has been filed with the statement of grounds as a direct reaction to the adverse decision of the Opposition Division in order to support the argument that welding was common in the field and therefore it is introduced into the proceedings.

Documents D5 and D6 have been filed with letter of 29 June 2010 and support the statement that welding was common also in the ostomy field. They are also introduced into the proceedings.

3. *Main request*

3.1 Formal matters

Claim 1 of the version as maintained is clear within the meaning of Article 84 EPC. The term "downward (direction)" means in the direction away from the top of the pouch and toward the bottom of it. The top and the bottom of the pouch are mentioned in the claim.

3.2 Inventive step

D2 discloses a WC-disposable pouch comprising walls of plastic material welded together along at least one edge, the pouch having a top and a bottom, a first of the walls (10) having a pull-away element (22-26) secured to the exterior thereof, and a second of the walls comprising a stomal orifice (14) therein, the stomal orifice being surrounded by an adhesive wafer (16) for attachment of the pouch to peristomal skin, whereby the pull-away element is secured to the first pouch wall such that, in use the pouch wall can be torn open by pulling the element away, see page 1, lines 21 to 23.

However, D2 does not disclose that the pull-away element is secured to the first pouch wall by one or more plastic welds and that it is pulled away in downward direction towards the bottom of the pouch thereby tearing the pouch open adjacent or along the weld. In contrast the securing in D2 is done by adhesive.

The problem to be solved has therefore to be seen in improving on the disposal method of the pouch known by

D2. The solution delivered by the invention consists in providing a pull-away element secured to the first pouch wall by welds. The welding process is likely to create a line of weakness adjacent to the position of the weld which facilitates tearing away the element, see patent in suit, column 2, points 0010 and 0011.

Starting from D2, it was not obvious to substitute a strong adhesive with welding. Welding has been used before the invention in the ostomy field for joining the periphery of the outer walls, see D5, paragraph bridging pages 4 and 5, and D6, column 2, lines 45 to 49 and D2 (ref. No. 13). Certainly, D2 discloses also a filter package comprising two strips (22, 24) bonded at the periphery by, for instance, welding, see page 3, last full paragraph. Accordingly, D2 discloses welding only for the permanent joints.

However, the same document D2 explicitly discloses bonding said filter package (which performs also the function of pull-away element) to the external wall of the pouch only with adhesive without giving any hint towards welding (see page 3, third paragraph; pages 4, lines 2 and 3).

Certainly, D1 (see Figure 4) and D4 (see Figure 1) disclose a tear strip welded to the pouch wall. However both documents belong to fields far away from that of the invention so that the skilled person would not see them as relevant (foodstuffs, beverages, medical instruments and medical solutions for D1; liquid food products or solid food products immersed in a liquid for D4). Furthermore no document of the opposed prior art discloses that welding creates a line of weakening

which facilitates tearing away the element. D1 discloses on the contrary that the sidewalls of the pouch are provided with a pre-punched wishbone or chevron-shaped opening, see column 5, lines 40 to 50. D4 discloses monoxial stretching for facilitating tearing (see column 3, lines 37-47). D5 and D6 show merely that welding was common in the ostomy field. Consequently using welding for securing the pull-away element to the pouch and thus creating a line of weakening for facilitating tearing away the element, cannot be regarded as an arbitrary interchangeable alternative to adhesive.

The same considerations laid down for claim 1 apply "mutatis mutandis" for the claims 18 and 19.

Accordingly, the subject-matter of claims 1, 18 and 19 of the main request involves an inventive step within the meaning of Article 56 EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: Chairman:

D. Sauter D. Valle