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**Datasheet for the decision  
of 20 November 2008**

**Case Number:** T 0463/08 - 3.2.04

**Application Number:** 04030008.9

**Publication Number:** 1523921

**IPC:** A47L 13/18

**Language of the proceedings:** EN

**Title of invention:**

Cleaning article

**Applicant:**

UNI-CHARM CORPORATION

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 123(2)

**Relevant legal provisions (EPC 1973):**

EPC Art. 76(1), 111(1)

**Keyword:**

"Divisional - added subject-matter (no)"

**Decisions cited:**

G 0001/05, G 0001/06, T 0770/90, T 1067/97, T 0714/00,  
T 0025/03, T 1500/07, T 1501/07, T 1502/07

**Catchword:**

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Case Number: T 0463/08 - 3.2.04

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.04  
of 20 November 2008

**Appellant:** UNI-CHARM CORPORATION  
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**Representative:** Eke, Philippa Dianne  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 16 August 2007  
refusing European application No. 04030008.9  
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 16 October 2007, against the decision of the Examining Division posted 16 August 2007 refusing the European patent application No. 04 030 008.9 and simultaneously paid the required fee. The grounds of appeal were received 21 December 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 20 November 2008.

III. The Appellant requests that the decision under appeal be set aside and that the application proceed on the basis of claims 1 to 3 according to a main and sole request filed at the oral proceedings.

IV. Claim 1 of the main request reads as follows:

"A cleaning article (1) comprising a brush portion including: a plurality of strips (17); and at least one layer of a fiber bundle (3), 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; said base material (2) is provided on its outer face opposed to the cleaning face of the cleaning article with a holding sheet (8);

between the outer face of said base material (2) and said holding sheet (8), there is formed a holding space (20) into which a hand of a user or a holder (21) can be inserted; and

said sheet for forming said strips is formed of a nonwoven fabric comprising thermoplastic fibers or a thermoplastic resin film or a laminated sheet of a nonwoven fabric comprising thermoplastic fibres and a thermoplastic resin film and said fiber bundle layer comprises heat-fusible thermoplastic fibers."

## **Reasons for the Decision**

The present application was pending at the time of entry into force of the revised EPC 2000 on 13 December 2007. In accordance with Article 7 of the Act revising the EPC of 29 November 2000 in conjunction with Article 2, paragraph 1, of the decision of the Administrative Council of 28 June 2001 relevant Article 123 therefore applies in its version under EPC 2000, whereas Articles 76(1) and 111(2) EPC (neither listed in Article 2, paragraph 1) continue to apply in their 1973 versions. Where not explicitly indicated otherwise an article mentioned below refers to the EPC 2000 version. The substance of these articles is unaffected by the revision.

1. The appeal is admissible.
  
2. *Legal framework : Article 76(1) EPC 1973*

The legal framework for determining compliance with Article 76(1) EPC, second sentence, is discussed in

decisions T 1500/07, T 1501/07 and T 1502/07 issued by this Board and concerning divisional applications based on the same parent, see in particular reasons 2. In summary, as follows from reasons 5.1 of G 1/05 (OJ EPO 2008, 271) and G 1/06 (OJ EPO 2008, 307) the main criterion for assessing compliance of Article 76(1) is essentially the same as that applied when assessing compliance to Article 123(2) EPC. Thus subject-matter of the divisional must be *directly and unambiguously* derivable by the skilled person from the earlier disclosure, as determined by the *totality* of claims, description and figures of the as filed earlier application when read in context. In the instance of claim features being extracted in isolation from detailed embodiments in the description, this means, following established case law of T 1067/97, T 714/00 or T 25/03, it should be clearly recognizable that these features are not inextricably linked in terms of function or structure with the remaining features of the embodiment. Here, following T 770/90, an unduly broad filed claim cannot justify new feature combinations.

3. *Parent and Divisional as filed*

3.1 The central idea of the earlier 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 described in varying detail throughout the description.

3.2 The present divisional application pursues a refinement of this idea which resides in joining a cleaning side sheet with strips and a fiber bundle layer to one side of a base sheet, and a holding sheet to the other so as to form a *holding space for insertion of a user's hand or a holder*. The literal basis in the parent application for this idea is to be found in as filed claim 9, dependent on claims 8,2 and 1, and in as filed parent description page 5, lines 5 to 10.

3.3 Claim 1 in fact combines the features of parent claims 1, 2, 8 and 9 while adding, as a final feature, the materials used for the sheet and the fibre bundle layer. This addition is based on parent description page 7, second complete paragraph, first sentence, where these materials are stated to be "preferred" for the strip forming sheet and the fibre bundle layer. From its opening statement ("Moreover, it is preferred...") this passage adds to the list of possible modifications in the immediately preceding paragraph, and which applies, see its opening lines ("In the foregoing constructions, it is preferred ...") to all preceding embodiments. Accordingly, this passage reads as a rider to all embodiments, in particular that of page 5, lines 5 to 10, which in turn forms the basis for as filed parent claim 9 dependent on claims 8,2 and 1. The inclusion in claim 1 of a further option of a laminate for the sheet material derives from parent description page 10, lines 17 to 19. This passage when read in conjunction with the general statement in the second paragraph of page 33 is applicable to all embodiments.

The basis in the parent application for dependent claims 2 and 3 resides on like-worded passages on page 5, lines 11 to 14 (claim 2) and page 3, line 19, of the as filed parent description to which the rider of page 7 again apply.

3.4 The claimed combinations of features are thus directly and unambiguously derivable from the parent application. Therefore the claims do not add subject-matter extending beyond the content of the earlier parent application and are in accordance with Article 76(1) EPC 1973.

3.5 The Board is also satisfied that the amendments to the claims also have a basis in the divisional application as filed. The description and figures remain largely unchanged, with the central passages cited above in particular still in place, see the paragraph bridging pages 5 and 6 and the first complete paragraph of page 7. The statement of invention (pages 3,4) in the divisional as filed is narrower than the invention now claimed, but read in the context of the following paragraphs setting out preferences it is clear that many of its features must be optional. This is especially so as the description in its penultimate paragraph retains the original, much wider idea of the parent. The claims as amended thus also meet the requirements of Article 123(2) EPC.

#### 4. *Remittal*

The decision under appeal concerned only the issue of Article 76(1) EPC 1973, and did not consider any of the further requirements of the EPC, in particular those of

novelty and inventive step. So as not to deprive the Appellant of a first instance consideration of these remaining requirements, the Board considers it appropriate to exercise its discretion under Article 111(1) EPC 1973 to remit the case for further prosecution on the basis of the set of claims of the main request. In continuing its examination the department of first instance may also wish to consider necessary adaptation of the description.

## **Order**

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

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance for further prosecution.

The Registrar

The Chairman

G. Magouliotis

M. Ceyte