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

Case Number: T 0465/08 - 3.2.04

Application Number: 04030011.3

Publication Number: 1523924

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 0465/08 - 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
182 Shimobun
Kinsei-cho
Shikokuchuo-shi
Ehime-ken (JP)

Representative:

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

Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 18 September 2007
refusing European application No. 04030011.3
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 November 2007, against the decision of the Examining Division posted 18 September 2007, refusing the European patent application No. 04 030 011.3 and simultaneously paid the required fee. The grounds of appeal were received 16 January 2008.

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 and 2 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 an elongate brush portion, the brush portion comprising:
two heat-fusible sheets (2, 8) facing each other, each having a central region (2a) and two strip-forming regions (2b) lying opposite one another and sandwiching the central region therebetween, and each having a plurality of cuts (11) extending inwardly from two opposite edges of the sheet to form a plurality of strips (12);

and at least one layer of a fiber bundle (3) lying on another face of at least one of the sheets and comprising heat-fusible thermoplastic fibers which extend in one direction to traverse said whole fibre bundle layer;

wherein the sheets and the fibre bundle layer are fusion-bonded together at joining lines;

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

wherein an all-layer joining line (7) is formed midway between the pair of parallel joining lines (13) and extends along a centre line of the brush portion; and

wherein two holding spaces (20) are provided between the two sheets into which a holder (21) is able to be detachably inserted, each holding space being defined between one of the parallel joining lines (13) and the all-layer joining line (7);

wherein the two heat fusible sheets are 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."

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 1973, 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) EPC 1973 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 which can be arranged into two main groups, the first corresponding to figures 1 to 6 where the various cleaning layers are arranged only on one side of a base sheet, and the second group shown in figures 7 to 9 where cleaning layers are provided on both sides.
- 3.2 The present divisional application pursues the idea of a holding arrangement which is shared between the two groups and which includes joining sheets and layers along parallel joining lines to form two holding spaces. This idea was also the subject of the divisional application considered in appeal T 1500/07 mentioned above. That case was decided favourably by this Board on the basis of a sixth auxiliary request, see reasons 3 to 5.
- 3.3 Claim 1 in the present case in fact corresponds to claim 1 of the sixth auxiliary request considered in T 1500/07 but for the differences noted further below. The basis for present claim 1 in the parent application as filed is primarily that indicated in that earlier

decision under reasons 5 for the sixth auxiliary request.

- 3.4 Vis-a-vis claim 1 of the sixth auxiliary request in T 1500/07 claim 1 in the present case claims the cleaning article with holding arrangement but *without* the holder insertable therein. Page 19 onwards describes the holder as essentially designed for releasable insertion into the holding space, cf. the opening paragraph of page 19 referring to insertion, shown in figure 3, and the final paragraph of page 19, where the addition of a hook-and-loop, i.e. releasable, retaining fastener 24 is detailed; page 20, final paragraph expressly describes removing the inserted holder. Clearly, such releasable insertion implies that article and holder can be regarded as separate as they are indeed shown in figure 3. These parts of the parent also provide a basis for stating - as further difference - in the penultimate feature of claim 1 that the holder is able to be detachably inserted. A final difference - the inclusion of a further alternative for the sheet material as laminate - derives from parent description page 10, lines 17 to 19 and which the skilled person understands as applying to all embodiments to provide the key joining of the sheets/layers by fusion bonding.
- 3.5 Dependent claim 2 is based parent description page 7, lines 1 to 3, which describes this feature as a generally applicable optional feature.
- 3.6 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. Given the fact that the relevant parts of the description of parent and the divisional are identical, the above amended version of claim 1 also has clear basis in the divisional application itself, and thus also meets 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