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**Datasheet for the decision  
of 1 June 2011**

**Case Number:** T 1793/09 - 3.2.06

**Application Number:** 03251527.2

**Publication Number:** 1362568

**IPC:** A61F 13/15

**Language of the proceedings:** EN

**Title of invention:**  
Absorbent article

**Patentee:**  
UNI-CHARM CORPORATION

**Opponents:**  
The Procter & Gamble Company  
Paul Hartmann AG

**Headword:**  
-

**Relevant legal provisions:**  
RPBA Art. 13(1)

**Relevant legal provisions (EPC 1973):**  
EPC Art. 83, 84, 56

**Keyword:**  
"Late-filed request - admitted"  
"Claim 1 - clear and sufficient disclosure"  
"Inventive step - yes"

**Decisions cited:**  
-



Case Number: T 1793/09 - 3.2.06

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.06  
of 1 June 2011

**Appellant:**  
(Opponent OI)

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**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
25 June 2009 concerning maintenance of European  
patent No. 1362568 in amended form.

**Composition of the Board:**

**Chairman:** M. Harrison  
**Members:** G. de Crignis  
W. Sekretaruk

## Summary of Facts and Submissions

I. European Patent No. 1 362 568, granted on application No. 03 251 527.2, was found to be allowable in amended form by the interlocutory decision of the opposition division posted on 25 June 2009.

II. The opposition division held that the invention was sufficiently disclosed (Article 83 EPC 1973), that the subject-matter of claim 1 was clear (Article 84 EPC 1973) and was novel over all cited documents. It considered

E1: US-A-6 204 210

as representing the closest prior art. The subject-matter of claim 1 involved an inventive step when starting from E1, as no suggestion to provide discontinuous compressed lines for improved flexibility of the absorbent article was present in any of the cited documents.

III. On 3 September 2009 the appellant (opponent OI) filed an appeal against this decision and paid the appeal fee on the same day. A statement setting out the grounds of appeal was received at the European Patent Office on 5 November 2009.

IV. In a communication annexed to its summons to oral proceedings, the Board objected *inter alia* to the amended wording in claim 1 with respect to its original disclosure having regard to Article 123(2) EPC, and pointed to several clarity issues.

V. Oral proceedings were held on 1 June 2011. The appellant requested that the decision under appeal be set aside and that the patent be revoked. The respondent requested that the patent be maintained on the basis of its request filed during the oral proceedings.

VI. Claim 1 of the request reads:

"An absorbent article comprising:  
a liquid-permeable top material layer;  
a liquid-impermeable back material layer; and  
an absorbent body that is narrower than the top material layer and the back material layer and disposed between the top material layer and the back material layer such that longitudinally extending side edges of the absorbent body are individually inwardly spaced apart from corresponding side edges of the top material layer and the back material layer, wherein along the individual side edges of the absorbent body, the top material layer only is heat-embossed to have compressed portions, wherein the compressed portions are arranged in a longitudinally spaced relation to each other so that the compressed portions are formed in a substantially continuous, longitudinally extending pattern, with regions having no compressed portions left between longitudinally adjacent compressed portions so that at least 80% of each side edge overlaps with the compressed portions, when the top material layer is viewed from a direction perpendicular to each side edge of the absorbent body in a plane substantially flush with the top material layer, wherein the compressed portions all comprise linear compressed portions, which each extend to surround an

uncompressed portion without interruption, and the linear compressed portions form a pattern repeated along the individual side edges of the absorbent body, the compressed portions being provided in regions riding on the side edges of the absorbent body to leave a non-embossed region between the regions having the compressed portions."

VII. The arguments of the appellant may be summarised as follows:

Although no objections to the wording of the claim of the request were made under Article 123(2) EPC, the objections concerning sufficiency of disclosure and clarity had not been completely remedied by the amendments, since claim 1 still included wording which was unclear (Article 84 EPC 1973) as well as being insufficiently disclosed (Article 83 EPC 1973). The skilled person did not know how to carry out the invention within the full scope of the claim. In particular, for the term "uncompressed", the description did not give the skilled person any guidance as to how to recognize whether such condition was met. Moreover the term "overlap" was not clear in the claimed context, since paragraph [0022] used the term overlap in a physical sense rather than an optical one. Additionally, since the definitions used in claim 1 related to the Fig. 2A/2B embodiment showing a leaf pattern, it was not clear which portions of such a leaf pattern were understood as surrounding uncompressed portions, since the stalk portion and central leaf ribs as such did not surround an uncompressed portion. Due to this, the dimensions of overlap as defined in claim 1 were also not clear. Hence, the patent in suit did

not disclose the invention sufficiently clearly or completely for it to be carried out by a skilled person.

Concerning inventive step of the subject-matter of claim 1, E1 disclosed all features of claim 1 with the exception of the feature (i) relating to the embossed portions not being specified as riding on the side edges of the absorbent pad and feature (ii) relating to the compressed portions specified as being arranged in a longitudinally spaced relation to each other with regions having no compressed portions therebetween.

When considering these distinguishing features, the problem to be solved by feature (i) merely concerned obtaining maximum use of the available area of the absorbent pad. This however did not involve an inventive step, since the skilled person was well aware of the advantage of maximizing the area of fluid intake by positioning embossed portions riding on the edges of an absorbent pad. Particularly in small panty liners, it would be obvious to arrange the embossed portions on the edges, since the dimensions virtually dictated such a placement. Feature (ii) did not solve any technical problem but was simply aesthetic, since any alleged improvement in flexibility would not be noticeable in such products. Accordingly, no inventive step was necessary to arrive at the claimed combination of features.

VIII. The arguments of the respondent may be summarised as follows:

The request should be admitted as an appropriate and suitable response to the objections.

The objections set out under Article 83 EPC 1973 concerned clarity (Article 84 EPC 1973) which was not a ground of opposition. Anyway, the patent in suit disclosed how to provide compressed and uncompressed portions. These portions were specified in the claim in consistency with e.g. the leaf pattern shown in Figures 2A/2B. Moreover, the term "overlap" was clear in the claimed context and referred to the position of the compressed portions along the longitudinal side edges of the absorbent body. It was not necessary to define exact dimensions as they could be adapted within reasonable limits by the skilled person and the stalks and central ribs of the leaves were clearly part of the linear compressed portions because, being part of the leaves, these had been disclosed as such. Accordingly, there was no lack of sufficiency and also no lack of clarity.

In respect of the appellant's inventive step objection, E1 did not disclose that the compressed portions were provided in regions riding on the side edges of the absorbent body and did also not disclose that the compressed portions should be arranged in a longitudinally spaced relation to each other with regions having no compressed portions between them. The position of the compressed portions allowed maximum utilization of the absorbent area. Generally in the prior art, a placement inwards from these side edges was used. The provision of regions of non-compressed areas between compressed areas, in the arrangement claimed, allowed leakage to be limited effectively while at the same time providing increased flexibility. The skilled person would not be led to a solution



involving interrupting the continuous weld lines in E1, nor had the appellant argued that there was any suggestion derivable from other cited prior art to provide these lines riding on the side edges of the absorbent body. Accordingly, the subject-matter of claim 1 involved an inventive step.

### **Reasons for the Decision**

1. The appeal is admissible.
2. Admittance of the sole request into proceedings

This request was filed during the oral proceedings, hence at the last possible stage in the proceedings. According to Article 13(1) of the Rules of Procedure of the Boards of Appeal (RPBA), it lies within the discretion of the Board to admit such a late-filed request into the proceedings. Present claim 1 is based upon the 9<sup>th</sup> auxiliary request which was filed in reply to the communication issued by the Board with its summons to oral proceedings. The Board considers that the request represents an appropriate reaction to these objections in particular since it resolves objections under Article 84 EPC 1973 and Article 123(2) EPC and does not extend the matters to be discussed over those already in the appeal proceedings. The appellant also raised no objection to the admittance of the request into proceedings. Accordingly, the request fulfils the criteria of procedural economy and is admitted into the proceedings.

2.1 Article 123(2) EPC - Amendments

The subject-matter of claim 1 is based on the disclosure of claims 1 to 4 in the originally filed application. Additionally, it is limited to an embodiment which is disclosed on page 10, lines 6 to 17 of the originally filed application (one such embodiment is shown in Figures 2A/2B) by the specific reference to the design and arrangement of the compressed portions. Although a leaf pattern is disclosed in Figures 2A/2B as forming the linear compressed portions, this is not required in the claim, since the description on page 11, lines 5 to 7, further discloses that the pattern is not limited merely to leaves.

The subject-matter of claim 1 is further limited to the feature that only the top material layer is heat-embossed to have compressed portions. This is disclosed throughout the description and *expressis verbis* on page 9, lines 20 to 26 and on page 12, lines 17/18 of the originally filed application and as shown in e.g. Figure 1A. Accordingly, the requirement of Article 123(2) EPC is met.

3. *Clarity - Sufficiency*

3.1 Meaning of the term "overlap"

Claim 1 specifies that "at least 80% of each side edge overlaps with the compressed portions when the top material layer is viewed from a direction perpendicular to each side edge of the absorbent body in a plane substantially flush with the top material layer". The

Board finds that a skilled person reading claim 1 would understand that this wording concerns an optical overlap with the longitudinally extending side edges of the absorbent body specified in the introductory wording of the claim, rather than relating to a physical overlap (as is used for the term "overlap" in paragraph [0022]), not least because the claim defines a particular direction in which the layer is viewed. Further, the use of the term "overlap" in paragraph [0022] concerns a situation where the compressed portions are inside or outside the side edges rather than riding on the side edges as now defined. Accordingly, there is no lack of clarity in this respect.

### 3.2 "Compressed portions"

Although the appellant considered the lack of a definition for the "compressed portions" and the "uncompressed portions" to amount to an insufficient description in the patent in suit which would render it impossible for the skilled person to provide an article within the scope of the claim, the Board is of the view that the skilled person would be capable of distinguishing these portions from one another. The wording of the claim now includes that each linear compressed portion, which is a heat-embossed portion, extends to surround an uncompressed portion without interruption. Such a definition implies both a visual and physical difference between the compressed and uncompressed portions. Whilst it is true that the amount of compression is not defined, for either portion, the degree of compression can be adapted with regard to the materials involved as long as a

difference of compression between the portions exists. Dots or other compressed portions which do not extend to surround any uncompressed portions are of course excluded by the wording of the claim. Hence, the skilled person is capable of realizing the claimed pattern over the whole scope of the claim. Hence, no lack of clarity is present in this respect and the requirement of Article 83 EPC 1973 is also met.

- 3.3 Concerning the feature of claim 1 that "the compressed portions all comprise linear compressed portions, which each extend to surround an uncompressed portion without interruption" the appellant further raised an objection under Article 83 EPC 1973. However, these portions are specified in claim 1 in a manner which is consistent with e.g. the leaf pattern shown in the topsheet of Figures 2A/2B, since in particular the wording "extends to surround" has been used, which would be understood to mean merely that the embossed shape must have at least an uncompressed area which is fully surrounded by the embossed portion, but not such that the presence of a linear compression is excluded somewhere within the uncompressed portion or that the compressed portion could not itself extend beyond merely the minimum length thereof required to surround the uncompressed portion. Merely because not all shapes are described which may come under this definition does not mean that there is a lack of clarity or that the skilled person would not be able to provide such an article with compressed linear portions as defined. Concerning this wording, the skilled person understands that the stalk and the central part of the leaf pattern thus exemplify such portions. Some variations concerning the design of a pattern and its length/breadth extension are usually

included in the wording of a claim. The skilled person can certainly apply appropriate design variations within the limits set out in the claim, examples of which are given e.g. in paragraph [0025], such as stars or flowers. Therefore, the invention as defined by claim 1 is found to be disclosed sufficiently clearly and completely within the meaning of Article 83 EPC 1973 and is also clear according to Article 84 EPC 1973.

### 3.4 Inventive step

3.4.1 For the assessment of inventive step, both parties agreed that E1 represented the closest prior art. E1 discloses an absorbent hygienic article comprising a topsheet consisting of a fluid permeable composite nonwoven material having two external layers and an intermediate synthetic fibre lap (claims 1 and 8). The external layers are assembled together by hot melting. The upper outer nonwoven layer comprises a hydrophilic longitudinal central zone delimited by continuous weld lines made between at least the two outer layers and forming barriers to the transverse diffusion of body fluids and provided symmetrically to the center axis (Figure 1).

3.5 The subject-matter of claim 1 of the patent in suit differs from the article according to E1 by

- (a) the longitudinally adjacent compressed portions having regions left between them having no compressed portions ("non-embossed regions being left between the regions having the compressed portions");
- (b) the compressed portions being provided in regions riding on the side edges of the absorbent body.

- 3.6 Feature (a) defines that there are non-embossed portions between the embossed portions, the non-compressed portions being the non-embossed portions. Feature (b) ensures that the position of the compressed portions are defined with respect to the side edges of the absorbent body and that the compressed portions are not positioned elsewhere (since the claim also defines that "the compressed portions all comprise linear compressed portions").
- 3.7 Therefore, the distinguishing features result in the provision of a more flexible article - since the discontinuous compressed portions enhance the flexibility of at least the side parts of the article. Although the appellant argued that the effect of the non-compressed portions was merely aesthetic, the Board finds however that such a feature will however always have an effect on the flexibility, albeit that the effect may be more pronounced in some absorbent articles than others, depending on their exact structure and thickness. Also, the presence of a plurality of non-compressed portions along each absorbent body side edge, provides several locations where flexibility is somewhat higher than a continuous compressed portion as in E1, allowing the absorbent article to better conform to body shape. Additionally, the compressed portions do contribute to reduction of side leakage because (i) the position of the compressed portions directly on the side edge of the absorbent pad maximizes the area of fluid uptake and (ii) rewet outside of the compressed portions is not an issue, since no contact with soiled absorbent material is

possible due to all the absorbent material being positioned inside of the compressed portions.

- 3.8 Accordingly, when starting from the embodiment disclosed in Figure 1 of E1, the objective technical problem solved by the above-mentioned distinguishing features can be seen as providing improved flexibility while limiting side leakage.
- 3.9 The skilled person looking for a solution to the above identified problem starting from E1 and the concept shown therein using continuous weld lines would consider in the first place the layers and their materials and thicknesses. Side leakage is limited in the articles in E1 via a second weld line of e.g. sinusoidal shape which may act as a further barrier to the transverse migration of body fluids.
- 3.10 No suggestion is found in E1 which would lead the skilled person to alter the design of the weld lines in E1 so as to be discontinuous. Flexibility of the article in E1 with regard to the weld lines is not even addressed. There is also no suggestion to be found in E1 which would lead the skilled person to arrange the weld lines in such a way as to ride along the side edges of the absorbent body.

It may also be noted that the appellant did not cite any document which showed the arrangement of weld lines riding along the side edges of the absorbent body. On the contrary, whilst various disclosures of sanitary napkins shown in the cited prior art (albeit not cited by the appellant in this regard) include a pattern of embossed portions positioned on top of an absorbent

body, either on the topsheet alone or on the topsheet in combination with an absorbent layer (which was argued by the appellant as an example of a product where the design would basically dictate a position of the pattern riding on the edges of the absorbent body), none of these embossed portions are however arranged as claimed. Instead, the embossed portions are arranged inside the side edges of the absorbent body.

3.11 Hence, on the basis of the prior art cited by the appellant and the arguments made in respect thereof, the skilled person has no suggestion or hint which would direct him to the solution provided by the subject-matter of claim 1 when starting from E1. Thus, a skilled person would not arrive in an obvious manner at the subject-matter of claim 1. Accordingly, the subject-matter of claim 1 involves an inventive step (Article 56 EPC 1973).



## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division with the order to maintain the European patent with the following documents, all filed during the oral proceedings on 1 June 2011:

claims 1 to 4;

description columns 1, 2, insertion pages 1 to 3,  
columns 3 to 11;

drawings Figures 1a, 1b, 2a, 2b.

The Registrar

The Chairman

M. Patin

M. Harrison